

Advanced Practice / Script Authority: Court Finds No Unprofessional Conduct.

A nurse practitioner who had been licensed as an advanced practice nurse in three other states obtained employment with a clinic in Arkansas and began writing prescriptions for the clinic's patients.

Some time later she was notified by the Arkansas State Board of Nursing that her collaborative practice agreement with her Arkansas employer did not meet the specifications for such a document required to practice in Arkansas as an advanced practitioner.

She admitted she had been writing prescriptions for various medications at the clinic. She mistakenly believed prescriptive authority came along with advanced practice standing as it did in the other states where she had been licensed. In fact, prescriptive authority was contingent on receipt and approval by the Arkansas state board of the collaborative practice agreement with her employer.

The Arkansas State Board found her guilty of unprofessional conduct, fined her \$1000 and suspended her license. She asked for review in court.

The Court of Appeals of Arkansas sided with the nurse and overruled the State Board.

Unprofessional Conduct Defined

The nurse had always practiced with her Arkansas employer under direct supervision by three physicians at the clinic as she believed her license required, and that was verified by the physicians with whom and for whom she worked.

There was no proof she ever abused her prescriptive authority by writing unnecessary or contraindicated prescriptions or by attempting to divert controlled substances.

In the context of professionals abusing prescriptive authority the courts have always looked for intentional improper conduct above and beyond technical deficiencies in the writer's licensing papers. **Board of Nursing v. Morrison**, __ S.W. 3d __, 2004 WL 2453932 (Ark. App., November 3, 2004).

The Board's regulations define unprofessional conduct as conduct which, in the Board's opinion is likely to deceive, defraud, or injure patients or the public.

Unprofessional conduct means any act, practice or omission that fails to conform to the accepted standards of the nursing profession and which results from conscious disregard for the health and welfare of the public and the patient under the nurse's care.

The nurse's prescriptive authority technically was not valid from May to November 2002, while she was writing prescriptions.

First, the nurse had no intent to break the law. She was not aware her prescriptive authority was technically invalid and she promptly stopped writing prescriptions when she found out.

Second, these regulations are meant to counteract abuse of prescriptive authority through incompetence or a desire to profit from over-medication or diversion of narcotics. Nothing like that happened here.

COURT OF APPEALS OF ARKANSAS
November 3, 2004

Dura Hooks: Confusion Over Sharps Count Leads To Lawsuit.

The Court of Appeals of Kentucky recently reversed a lower court's ruling that summarily dismissed a patient's medical malpractice lawsuit against the surgeon who performed his brain surgery.

The Court of Appeals said a jury should decide if the surgeon was negligent for relying on the scrub tech's and circulating nurse's statements that all sharps had been counted and accounted for, when one of the dura hooks was still inside the patient. The Court believed, as it was the surgeon's responsibility to remove the dura hooks, it was his responsibility to account for them.

This was yet another case of apparent miscommunication between the surgeon and other operating room personnel over the definition of "sharps" that were to be counted by the nurses. **Branham v. Nazar**, __ S.W. 3d __, 2004 WL 2367143 (Ky. App., October 22, 2004).

Assault On Healthcare Worker: Crime Defined.

A patient was convicted of third degree assault for biting the hand of a nursing assistant caring for him in the hospital's intensive care unit while he was in four-point restraints.

The Court of Appeals of Washington, in an unpublished opinion, threw out his conviction because the prosecution did not bother to offer proof the aide was a "health care provider" as defined by statute and that the hospital was licensed as required by law. **State v. Gray**, 2004 WL 2445752 (Wash. App., November 2, 2004).