



Final Analysis

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Legislative Service Commission

Sub. S.B. 111 123rd General Assembly (As Passed by the General Assembly)

Sens. Drake, Kearns, Spada, Watts, Armbruster

**Reps. Vesper, Van Vyven, Smith, Tiberi, Mead, Terwilleger, Patton, Britton,
Peterson, Barrett, Barnes, Boyd**

Effective date: *

ACT SUMMARY

- Requires that the Board of Nursing assume the duty of certifying dialysis technicians and prohibits a dialysis technician from practicing without a certificate.
- Requires that a dialysis technician practice only under the supervision of a physician or registered nurse.
- Creates, under the Board of Nursing, the Advisory Group on Dialysis.
- Establishes sexual misconduct with a patient as a reason for which the Board may impose administrative sanctions against a dialysis technician and extends the provision to registered nurses and licensed practical nurses.

CONTENT AND OPERATION

Dialysis technician certification

(secs. 4723.02(Q), 4723.72(A), 4723.73, and 4723.99; Section 3)

The act prohibits a person from engaging in dialysis care (as a dialysis technician) and from claiming to the public to be a dialysis technician, unless the person holds a current, valid certificate to practice as a dialysis technician.

* *The Legislative Service Commission had not received formal notification of the effective*

"Dialysis care" is defined as the care and procedures that a dialysis technician is authorized to perform. Under the act, a dialysis technician may engage in dialysis care by doing the following: performing and monitoring dialysis procedures, including initiating, monitoring, and discontinuing dialysis, drawing blood, administering specified medications when essential to the dialysis process, and responding to complications that arise during dialysis. A dialysis technician is prohibited from engaging in dialysis care in a manner that is inconsistent with the act.

Under the act, the Board of Nursing issues permanent and temporary certificates. Only a person who holds a permanent certificate may use the title "Ohio Certified Dialysis Technician" or "OCDT." The act prohibits the use of any other title or initials representing that a person is authorized to perform dialysis care unless the person holds a permanent certificate.

The dialysis technician certification requirements are delayed until one year after the act's effective date. Any person who violates these requirements after that time is subject to a fine of \$500, imprisonment of not more than 90 days, or both.

Practice limitations

(secs. 4723.72 and 4723.79(J))

For a dialysis technician to provide dialysis care, the act requires that the care be delegated to the technician by a physician or registered nurse. The act permits a dialysis technician to administer medication, but only in accordance with standards adopted by the Board and as ordered by a licensed health professional authorized to prescribe drugs.¹ The technician must be under the supervision of a physician or registered nurse and in the immediate presence of the physician or nurse. If the technician is providing dialysis care in a patient's home, the technician must be supervised in accordance with rules of supervision adopted by the Board. The rules must include a requirement of monthly home visits by a registered nurse to monitor the quality of the dialysis care.

¹ In this context, the licensed health professionals authorized to prescribe drugs would primarily be physicians. Podiatrists and dentists may prescribe drugs, as well as veterinarians. Certain advanced practice nurses may prescribe drugs, but only those listed on a formulary established committee established under nursing law and consisting of physicians, pharmacists, and nurses. Some optometrists may prescribe drugs, but the statutory list of drugs they may prescribe does not appear to include the medications that a dialysis technician may administer.

Only the following medications may be administered by a dialysis technician: (1) intradermal lidocaine or other single therapeutically equivalent local anesthetic for the purpose of initiating dialysis treatment, (2) intravenous heparin or other single therapeutically equivalent anticoagulant for the purpose of initiating and maintaining dialysis treatment, (3) intravenous normal saline, and (4) patient-specific dialysate, to which the technician may add electrolytes but no other additives or medications.

Exemptions

(sec. 4723.73(E))

The prohibition against performing dialysis without a certificate as a dialysis technician does not apply to the following: (1) a patient who performs self- or home-dialysis with little or no professional assistance, if the patient has completed a Medicare-approved training program, (2) a friend or family member who assists a patient in performing self- or home-dialysis, if the friend or family member has completed a Medicare-approved self- or home-dialysis training program for the particular dialysis patient being assisted, (3) a student performing dialysis care under the supervision of an instructor as an integral part of a dialysis training program approved by the Board of Nursing, (4) a registered nurse or licensed practical nurse, or (5) a physician.

Dialysis training programs

(secs. 4723.73(F), 4723.74, 4723.79(A), and 4723.99)

The act prohibits a person from operating a dialysis training program unless the program is approved by the Board of Nursing. Anyone who violates this provision is subject to a fine of \$500, imprisonment of not more than 90 days, or both.

A person seeking to operate a training program must apply to the Board and pay the fee prescribed by the Board. If the program meets the Board's requirements for approval, the Board must approve the program. The act requires the Board to adopt rules prescribing the application process, the fee to be paid, and the requirements that must be met for approval. The requirements for approval must include standards to be satisfied regarding curriculum, length of training, and instructions in patient care. The rules adopted apply to reapproval of training programs, as well as withdrawal of approval. The Board is authorized to withdraw the approval of a program that ceases to meet the requirements for approval.

Qualifications for certification

(secs. 4723.75, 4723.751(A), and 4723.79)

Under the act, a person seeking to practice as a dialysis technician must apply to the Board of Nursing for a certificate. The application must include the fee established in rules adopted by the Board. The act specifies that the fee can be no greater than the fee the Board charges for issuing licenses by examination to nurses (\$50). The Board must issue a certificate to each applicant who meets the requirements specified in the act and in rules adopted by the Board.

To receive the certificate, the applicant must be 18 years of age or older, possess a high school diploma or high school equivalence diploma, and demonstrate competence to practice as a dialysis technician. To demonstrate competency, the person must (1) successfully complete a dialysis training program, (2) perform dialysis as an employee of a dialysis provider for not less than 12 months before applying for certification, and (3) pass a certification examination demonstrating the applicant's competence to perform dialysis care.

The applicant must pass the certification examination not later than 18 months after entering a Board-approved dialysis training program. If an applicant does not pass the examination within 18 months, the applicant must repeat and successfully complete the same training program, or complete another Board-approved training program, and pass the examination not less than six months after entering the program. If an applicant does not pass the examination within six months after entering the new or repeated program, the applicant must wait not less than one year before entering or reentering a training program. The applicant then must successfully complete the program and pass the examination not later than six months after entering the program.

The certification examinations may be conducted by the Board itself or by testing organizations that have been approved by the Board in accordance with rules adopted under the act. If the Board conducts the examinations, it may use all or part of a standard examination created by an approved testing organization. Regardless of who conducts the examination, it must cover all of the subjects the Board specifies in its rules.

Persons who passed certification examinations before the act

(secs. 4723.75(B)(2) and 4723.751(B))

The act provides for the issuance of certificates to persons who passed a certification examination before the act's effective date. The difference appears to be that a person who qualifies under this provision is not required to complete a

Board-approved dialysis training program. To receive a certificate under this provision, an applicant must hold a current certificate from a Board-qualifying testing organization or provide evidence to the Board of having passed a qualifying testing organization's examination not longer than five years before the act's effective date. The applicant's employer must provide the Board with information attesting to the person's competence to perform dialysis, as specified in rules adopted by the Board.

Endorsement of out-of-state licenses

(secs. 4723.07(H) and 4723.75(B)(3))

The act provides for the issuance of a certificate to practice as a dialysis technician to a person who submits to the Board satisfactory evidence of holding a license, certificate, or other form of authority to perform dialysis care issued by another state. The other state must have standards for dialysis technicians that the Board considers substantially similar to those in Ohio. The Board is required to adopt rules establishing requirements for issuing certificates by endorsement.

The act expressly authorizes the Board to adopt rules for endorsing out-of-state nursing licenses.

Renewal and continuing education

(secs. 4723.77 and 4723.79(F))

A certificate to practice as a dialysis technician expires biennially and may be renewed in accordance with rules adopted by the Board. The rules must include a schedule for renewal, a renewal fee, and the continuing education requirements that must be satisfied. The act specifies that the renewal fee can be no greater than the fee the Board charges for renewing the licenses of nurses (\$35).

Temporary certificates

(secs. 4723.76 and 4723.79(C))

The act provides for the issuance of a temporary certificate to practice as a dialysis technician. The Board of Nursing is required to adopt rules regarding the application process, fee, and requirements for issuance of a temporary certificate. A temporary certificate is to be issued to an applicant who provides documentation from an employer demonstrating that the person is competent to perform dialysis care, if one of the following applies to the applicant:

(1) The person has successfully completed a Board-approved dialysis training program. Under this provision, the certificate is valid for 18 months from the date on which the person entered the program;

(2) The person is, on the act's effective date, employed as a dialysis technician but has been so employed for less than 12 months. In this case, the certificate is valid for 18 months minus the number of months of employment. For example, if the person has worked for seven months, the certificate is valid for 11 months.

(3) The person has experience as a dialysis technician in a jurisdiction that does not regulate dialysis technicians and has successfully completed a training program that is substantially similar to a program approved by the Board. If the person has worked for 12 months or longer, the certificate is valid for six months. If the person has worked for less than 12 months, the certificate is valid for 18 months minus the number of months of employment.

A temporary certificate may be renewed once if the holder enrolls or re-enrolls in a dialysis training program. A person holding a temporary certificate must provide a copy of the certificate to the dialysis provider who employs the person. The act prohibits a temporary certificate holder from acting as a trainer or preceptor in a dialysis training program.

Disciplinary action

(secs. 4723.28 and 4723.281)

For purposes of the Board's regulation of dialysis technicians, the act extends the same authority to take disciplinary action as the Board currently has in its regulation of registered nurses and licensed practical nurses. The sanctions that may be imposed are as follows: denial or refusal to grant a certificate, revocation or permanent revocation, suspension, placing restrictions on the certificate, reprimanding or otherwise imposing discipline, and imposition of a fine of not more than \$500. The procedures for taking disciplinary action against a dialysis technician are the same as those used by the Board for imposing sanctions against a nurse.

Most of the grounds for taking disciplinary action against nurses are extended to dialysis technicians. For example, sanctions may be imposed for (1) committing fraud in obtaining a certificate, (2) being convicted of a felony, a misdemeanor committed in the course of practice, or any crime involving moral turpitude, (3) being impaired in the ability to practice by substance abuse, physical disability, or mental disability, and (4) failing to practice in accordance with acceptable and prevailing standards for providing safe care to patients. A

summary suspension, which occurs prior to the opportunity for a hearing, may be imposed when the Board determines there is evidence that a dialysis technician has committed one of several specified crimes, including murder, rape, arson, and aggravated burglary.

Sexual misconduct

(sec. 4723.28(B)(28))

The act adds a new reason for which the Board may take disciplinary action against nurses, and permits the Board to discipline dialysis technicians for the same reason. Under this provision, the Board may impose sanctions for engaging in certain sexual behavior with a patient, other than the person's spouse, regardless of whether it is consensual. The restricted acts are: (1) sexual contact, defined as any touching of an erogenous zone of another person for the purpose of arousing or gratifying either person, and (2) verbal behavior that is sexually demeaning to the patient or may be reasonably interpreted by the patient as sexually demeaning.

Dialysis registry

(secs. 4723.78 and 4723.79(G))

The act requires the Board of Nursing to establish a dialysis registry. The registry must include (1) the names of, and other identifying information about persons who have enrolled in a dialysis training program and persons who hold a permanent or temporary certificate to practice as a dialysis technician and (2) the names and locations of the dialysis providers who employ certified dialysis technicians. The act requires that all persons provide information that is to be included in the registry in accordance with standards and procedures established in rules adopted under the act.

Rule-making authority

(sec. 4723.79; Section 4)

The act requires the Board of Nursing to adopt rules to administer and enforce the certification and practice of dialysis technicians. In addition to the rules expressly referenced in the act, the rules must include any other procedures or requirements necessary for the administration and enforcement of the certification program. All rules adopted under the act must be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.).

Initial rules must be adopted not later than 180 days after the act's effective date. In adopting the rules, the Board is required to consult with representatives

designated by the Ohio Renal Association, Ohio Renal Physicians Association, National Association of Nephrology Technologists, American Nephrology Nurses Association, and the Ohio Nurses Association.

Advisory Group on Dialysis

(sec. 4723.71; Section 5)

The act establishes under the Board of Nursing the Advisory Group on Dialysis. The advisory group is to advise the Board on the qualifications, standards for training, and competence of dialysis technicians, and all other matters related to dialysis technicians. Meetings of the group are to be chaired by a member of the Board or a representative appointed by the Board.

The Board appoints the members of the advisory group. The act requires that representatives of certain interested parties be appointed, while other persons may be appointed at the recommendation of the mandatory members. The mandatory membership consists of the following:

- (1) Four dialysis technicians who, except for initial appointments, hold certificates to practice issued by the Board;
- (2) A registered nurse who regularly performs dialysis and cares for patients who receive dialysis;
- (3) A physician, recommended by the State Medical Board, who specializes in nephrology;
- (4) A dialysis center administrator;
- (5) A dialysis patient;
- (6) A representative of the Association for Hospitals and Health Systems (OHA);
- (7) A representative of the End-Stage Renal Disease Network, which consists of all Medicare-approved end-stage renal disease facilities in a particular geographic area designated by the federal Health Care Financing Administration.

Members are to serve for terms specified by the Board. All members are to serve at the Board's discretion. They are to be reimbursed for actual and necessary expenses.

The act specifies that the creation of the advisory group is not subject to the existing statute (R.C. 101.84) that requires boards and commissions to cease to exist after four years unless legislation is enacted extending their existence.

Administrative procedures

The act extends many of the Board of Nursing's existing administrative powers and duties pertaining to its regulation of nurses to the act's requirement that the Board regulate dialysis technicians. These powers and duties include the following:

(1) The duty to approve peer support programs for dialysis technicians and to maintain a list of approved programs (secs. 4723.06 and 4723.07(I));

(2) The authority to abstain from taking disciplinary action against a dialysis technician for chemical dependency or practice deficiencies if the Board believes the technician's dependency can be monitored through its alternative program for chemical dependency or the technician's practice deficiencies can be remedied through its practice intervention and improvement program (secs. 4723.282 and 4723.35);

(3) The authority to hold closed meetings when considering the summary suspension of a dialysis technician's certificate to practice (sec. 121.22(D));

(4) The authority to adopt rules on the use of "universal precautions" when performing exposure-prone invasive procedures (sec. 4723.07(M));

(5) The duty to adopt rules establishing requirements for restoring an inactive or lapsed certificate and for reinstating a suspended certificate (sec. 4723.07(G) and (I));

(6) The duty to provide a replacement copy of a certificate and to verify a person's certification to another jurisdiction (sec. 4723.271);

(7) The authority to impose fees on dialysis technicians (sec. 4723.08);

(8) The general duty to assume and exercise all powers and duties conferred on the Board with regard to dialysis technicians (sec. 4723.04).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-16-99	p. 205



Reported, S. Health, Human Services & Aging	10-14-99	p.	1070
Passed Senate (32-0)	10-19-99	p.	1079
Reported, H. Health, Retirement & Aging	01-27-00	p.	1578
Passed House (94-1)	02-16-00	pp.	1609-1610

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