

OHIO GENERAL ASSEMBLY
JOINT COMMITTEE ON AGENCY RULE REVIEW

SENATE MEMBERS

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December 11, 2017

Chairman Duffey called the meeting to order at 1:40 p.m.

Deputy Director Fouche called the role. Representatives Duffey, Gavarone, Manning, Boggs, Ramos and Senators Uecker, Hackett, Kunze, Skindell, and Thomas were in attendance. Senator Balderson was excused from the meeting. Senator Hackett substituted for Senator Balderson. Deputy Director Fouche stated a quorum was present. Chairman Duffey asked the Committee members to review the November 16, 2017 minutes. The minutes were approved as presented.

Director Wolpert read the No Change Agenda. Chairman Duffey called for questions or comments on the No Change Agenda. There were no questions from the Committee or public. Director Wolpert read the Regular Agenda. Items 7 and 14 were moved to the review portion of the agenda. Director Wolpert read the addendum to the Regular Agenda. Chairman Duffey called for questions or comments on the Regular Agenda. There were no questions from the Committee or public. Chairman Duffey temporarily recessed the Committee at 1:44 p.m.

Chairman Duffey called the Committee back to order at 1:46 p.m. to discuss review portion of the agenda. Chairman Duffey called Jesse McClain, Ohio Association of Advanced Practice Nurses (OAAPN), to provide opponent testimony on item 7 of the agenda. Mr. McClain stated proposed rule 4723-9-10 is unnecessary and directly conflicts with existing Ohio rules that create framework of the collaborative relationship between APRNs and physicians.

Senator Skindell referred to Patricia Sharpnack's, President of the Ohio Board of Nursing, written testimony that stated Mr. McClain's testimony was not presented at the various interested party meetings or the Board's public hearing. Mr. McClain stated the Board had very little discussion with OAAPN until after the proposed rule was written. Mr. McClain stated it has been OAAPN's argument all along that they do not practice by a supervisory agreement but practice by a collaborative agreement. Senator Skindell asked Mr. McClain to address Ms. Sharpnack's testimony regarding the OAAPN confusing physician delegation to unlicensed persons. Mr. McClain stated the proposed rule does not involve unlicensed providers and was not of the understanding as to how delegating to an unlicensed personnel from the Ohio Nurse Practice Act would correlate with the physician delegating prescriptive authority to an advance practice nurse (APRN) or physician assistant. Senator Skindell asked what was actually happening in the rule and what Mr. McClain would rather see. Mr. McClain stated the proposed rule brings forth liability issues and that OAAPN would like to see the proposed rule mirror the Board of Medicine's rule. There were no further questions for the witness.

Chairman Duffey called Holly Fischer, Chief Legal Counsel of the Ohio Board of Nursing, to provide comments to the Committee. Ms. Fischer stated APRNs can only prescribe in Ohio in collaboration of a physician or podiatrist. This requires a standard care arrangement between the APRN and the physician or podiatrist. Ms. Fischer stated APRNs prescriptive authority cannot exceed that of their collaborating physician. Ms. Fischer stated APRNs can only prescribe schedule II opiates in certain settings with the exception that they could prescribe to a patient who has a terminal condition or if a physician has already initiated the prescription. Ms. Fischer stated that as of August 31, 2017 the State Medical Board adopted rule 4731-11-13. Ms. Fischer stated the rule limits the prescribing of opiates for acute pain to all

prescribers. Ms. Fischer stated the OAAPN's suggestion to the Board would directly conflict with the State Medical Board rule.

Senator Skindell asked whether rule 4731-11-13 delegated prescriptive authority. Ms. Fischer stated rule 4731-11-13 did not provide for delegation of prescriptive authority. Representative Ramos asked if the Board had conversations with the State Medical Board as to whether or not the rules conflicted with one another. Ms. Fischer stated the proposed rule was carefully vetted with other regulatory bodies and none have raised concerns that the rules conflict.

Chairman Duffey called Patricia Sharpnack, President of the Ohio Board of Nursing, to offer comments to the Committee. Ms. Sharpnack stated the Board respectfully disagrees with OAAPN because O.R.C. 4723.481(B) states the prescriptive authority of APRNs cannot exceed that of their collaborating physicians. Ms. Sharpnack stated any physician who is not the treating physician cannot determine that the 30 MED may be exceeded and only the treating physician remains accountable for the decision to exceed the 30 MED. Ms. Sharpnack stated in order for the APRN's prescriptive authority not to exceed that of the APRN's collaborating physician, the APRN must collaborate with the treating physician. Ms. Sharpnack mentioned the critical statewide effort to stop the opioid abuse and diversion epidemic in the State of Ohio. There were no questions for the witness.

Chairman Duffey called Mary Jane Maloney, member of OAAPN, to provide comments to the Committee. Ms. Maloney stated the meaning singularly accountable to the Association is the indicative of changing the collaborative agreement. Ms. Maloney stated by saying the physician is now responsible for a piece of the APRN practice creates liability for the physician fundamentally changes the collaborative relationship with the APRN. Ms. Maloney stated the fundamental principal that needs to be fixed is not to change the relationship from collaboration to supervision. There were no questions for the witness.

Chairman Duffey called Erin Keels, Ohio Board of Nursing, to provide comments to the Committee. Ms. Keels stated the APRN Advisory Committee fully acknowledges the opiate crisis in Ohio. Ms. Keels stated APRNs are not able to prescribe medications for patients that need them which has resulted in delay of care. Ms. Keels stated the Committee was not happy with the singularly accountable language but understood that patients need the care which is why the Committee approved the language with a 6 to 2 vote. There were no questions for the witness.

Chairman Duffey called David Miran, Department of Agriculture, to answer questions from the Committee regarding agenda item 14. Chairman Duffey asked Mr. Miran to brief the Committee on proposed rule 901:9-1-01. Mr. Miran stated the budget bill removed a statutory inspection fee and required the Department to establish a fee for inflatable rides via the rule making process. The bill language required the Department to adopt a fee which reasonably reflects the cost of inspection and re-inspection of inflatables. Mr. Miran stated the Department to a representative sample of a few inflatable ride companies in Ohio and looked at the way the Department conducts inspections for the inflatables. Mr. Miran stated the Department used the 2016 inspection records and discovered the average cost of inspecting an inflatable ranged from \$40 to \$400 per inflatable. Mr. Miran stated the cost was dependent upon how the ride operators requested the inspection.

Chairman Duffey stated the fee is structured as a flat fee. Mr. Miran stated Chairman Duffey was correct. Chairman Duffey stated there was no discount for scheduling and inspection of all inflatable rides at one time. Mr. Miran stated no, not currently. Chairman Duffey asked if statute allowed the Department to charge per hour rather than charge at a flat fee. Mr. Miran stated the statute directed the Department to set a fee that reasonably reflects the cost of inspection. Chairman Duffey asked if the Department was concerned about charging the flat fee for a small company who may have two inflatables and less drive time compared to a larger company who may have one hundred inflatables to inspect in a day. Mr. Miran stated in order for the Department to effectively administer the program at this time the Department is charging the \$104 inflatable inspection fee.

Chairman Duffey asked if the inspectors used to inspect the inflatables were the same for roller coasters and other rides. Mr. Miran stated all the Department's inspectors were cross-trained. Chairman Duffey asked for the amount of time it takes to inspect a roller coaster. Mr. Miran stated he did not have that information. Chairman Duffey asked if the inspection for a roller coaster would be at the same hourly rate

for an inflatable. Mr. Miran stated the inspector gets paid the same hourly rate no matter which ride they may be inspecting. Chairman Duffey asked if the cost to inspect a roller coaster would cover the cost for an inflatable inspection. Mr. Miran stated the roller coaster inspection fee is in statute and not in rule. Chairman Duffey asked if the inspection fee for the inflatable could be covered under the roller coaster fee even though the roller coaster fee is set in statute. Mr. Miran stated the Department has not done the same cost analysis with regard to roller coaster as they have done for inflatables as required by statute. Chairman Duffey asked what defines a roller coaster. Mr. Miran stated if the ride was not a roller coaster it would be considered a portable ride.

Chairman Duffey asked if the Department is charging a fee that is a deficit compared to the actual labor cost of the inspection would it produce a motivation for the Department to rush through the inspection. Mr. Miran stated he believed, regardless of the time it takes, the inspectors take the time necessary to inspect each and every ride. There were no further questions for the witness.

Chairman Duffey reminded the public of the next JCARR meeting on Monday, January 8, 2018 at 1:30 p.m. in the Senate Finance Hearing Room.

Chairman Duffey adjourned the meeting at 2:31 p.m.



Joseph Uecker, Chair



Larry Wolpert, Director