



# The Ohio Nurse Practice Act Protecting Patients Protecting YOU



April 14, 2018

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Director Corporate Compliance

# What is The Nurse Practice Act?

- State law
- Regulates practice
- All states have Nurse Practice Acts [NPA's]
- Ohio's Nurse Practice Act codified chapter 4723 of Ohio Revised Code (ORC)
- As condition of licensure, each nurse promises to comply
- The Board of Nursing enforces compliance

# Ohio Board of Nursing

## O.R.C. 4723.02

- Established by state legislature
- Write rules
- Membership
- Appointments
- Authority



# Ohio Board of Nursing Makes the Rules

- Ohio Administrative Code (OAC) Chapter 4723
- Nurse Practice Act and Rules - OBN website:  
<http://www.nursing.ohio.gov/index.htm>
- Nurses licensed in other states



# Accessible from the OBN Website

The screenshot shows the Ohio Board of Nursing website. At the top, the logo reads "The Ohio Board of Nursing Ohio.gov". Below the logo is a horizontal navigation bar with the following links: Home, News, Apply for a License, MA-C Renewal, License Inactivation, Name & Address Change, Verify a License, File a Complaint, and Discipline Records Request. On the left side, there is a vertical navigation menu with the following items: Community Health Workers, Continuing Education, Dialysis Technicians, Discipline and Compliance, Education Programs, Forms and Applications, Law and Rules, Licensure and Renewal, License Verification, Medication Aides, Military and Veterans, Practice RN and LPN, Practice APRN, Prescribing Resources, Publications, and Workforce Data. A red circle highlights the "Law and Rules" link in the menu, and a grey callout box with the text "Law and Rules" and a red arrow points to it. The main content area features a "Welcome to the Ohio Board of Nursing" section with a mission statement and two bullet points: "To contact the Board, the Board address, directions to the Board office, hours of operation and other information, [click here](#)." and "For information about the Board, meeting schedule and meeting agenda items, [click here](#)." Below this is a section for "Ohio Workers' Compensation Medical & Health Symposium, March 8-9 Comprehensive Care for an Injured Worker" with a link "Click here for additional information". Another section titled "Pending Transactions in Ohio eLicense Started Prior to February 10, 2018" provides instructions for users who did not submit transactions by the deadline. The final section is "Ohio Board of Pharmacy Flu Protocol" with a link "Click here for the resolution and related FAQs." At the bottom left, there are social media icons for eNews, Facebook, and Twitter, and a link to "Subscribe to eNews, Facebook & Twitter".


# Tips For Reading the Law & Rules

- Definitions important!
- Conjunctions “and” & “or”
- Hyperlinks

For example:

- **4723.47 License suspension or revocation.**
  - If an advanced practice registered nurse's license to practice nursing as a registered nurse lapses for failure to renew under section [4723.24](#) of the Revised Code....

4723.24 License or certificate renewal;  
notice of change of address.



# Some Key Provisions of the Nurse Practice Act

- O.R.C. 4723.43 Scope of specialized nursing services
- O.R.C. 4723.431 Standard care arrangements
- O.R.C. 4723.44 Unauthorized practice
- O.R.C. 4723.481 Authority to prescribe
- O.R.C. 4723.489 Delegated authority to administer drugs
- O.R.C. 4723.28 Disciplinary actions

# Let's Look at a Few Violations

- Misappropriation

The applicable regulations define abuse as "... the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish." Neglect is defined as "... failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness." **Misappropriation** of resident property is defined as "... the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent . . ." (42 CFR § 488.301).

- Activities that exceed those permitted by nurse's specialty
- *"Violation of this chapter or any rules adopted under it"*



# Texas Doctor, Nurses Exploited Trust-Based Systems

- December 4, 2017 - **Health Care Fraud**
- Dr. Jacques Roy, ringleader, 35-year sentence was ordered to repay \$268 million
- Roy and his co-conspirators—some of them nurses—perpetrated a home health care fraud that involved thousands of patients over a period of eight years

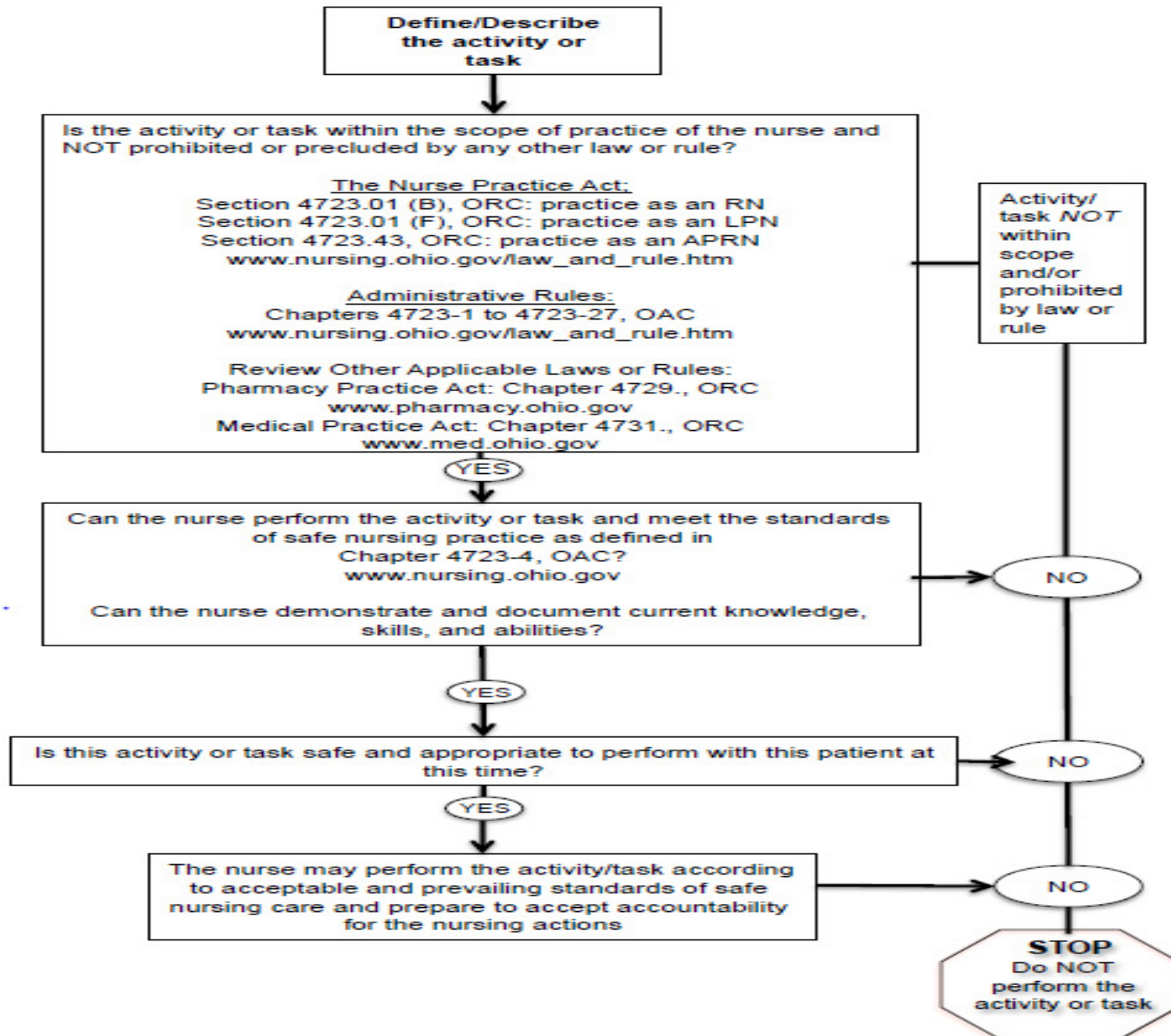
**NOW LET'S TAKE A LOOK AT  
SOME OF THE RULES**



# PERFORMING NURSING TASKS



# RN and LPN Decision Making Model



# Direction vs. Delegation

- “Direction”
- Communicating a plan of care to a licensed practical nurse
- Direction is not meant to imply the registered nurse is supervising the licensed practical nurse in the employment context

# Direction vs. Delegation

- Delegation defined
- Additional standards and criteria apply

# OK to Delegate to Unlicensed Person If . . . .

- Results are reasonably predictable
- *No nursing* judgment
- Can be safely performed
- Does not require complex observations or critical decisions

(continued)

# OK to Delegate to Unlicensed Person If . . . .

- Not require repeated performance of nursing assessments
- Consequences of performing improperly are minimal and not life-threatening
- On-site direct supervision





# When Delegating to an Unlicensed Person

- Task within nurse's scope of practice
- Task within knowledge, skill and ability of the delegating nurse
- Delegating nurse is accountable



# A Word About Training

- Informal demonstration of task does not meet training requirements of the O.A.C
- Must be documentation of training **and** *demonstration of competency*

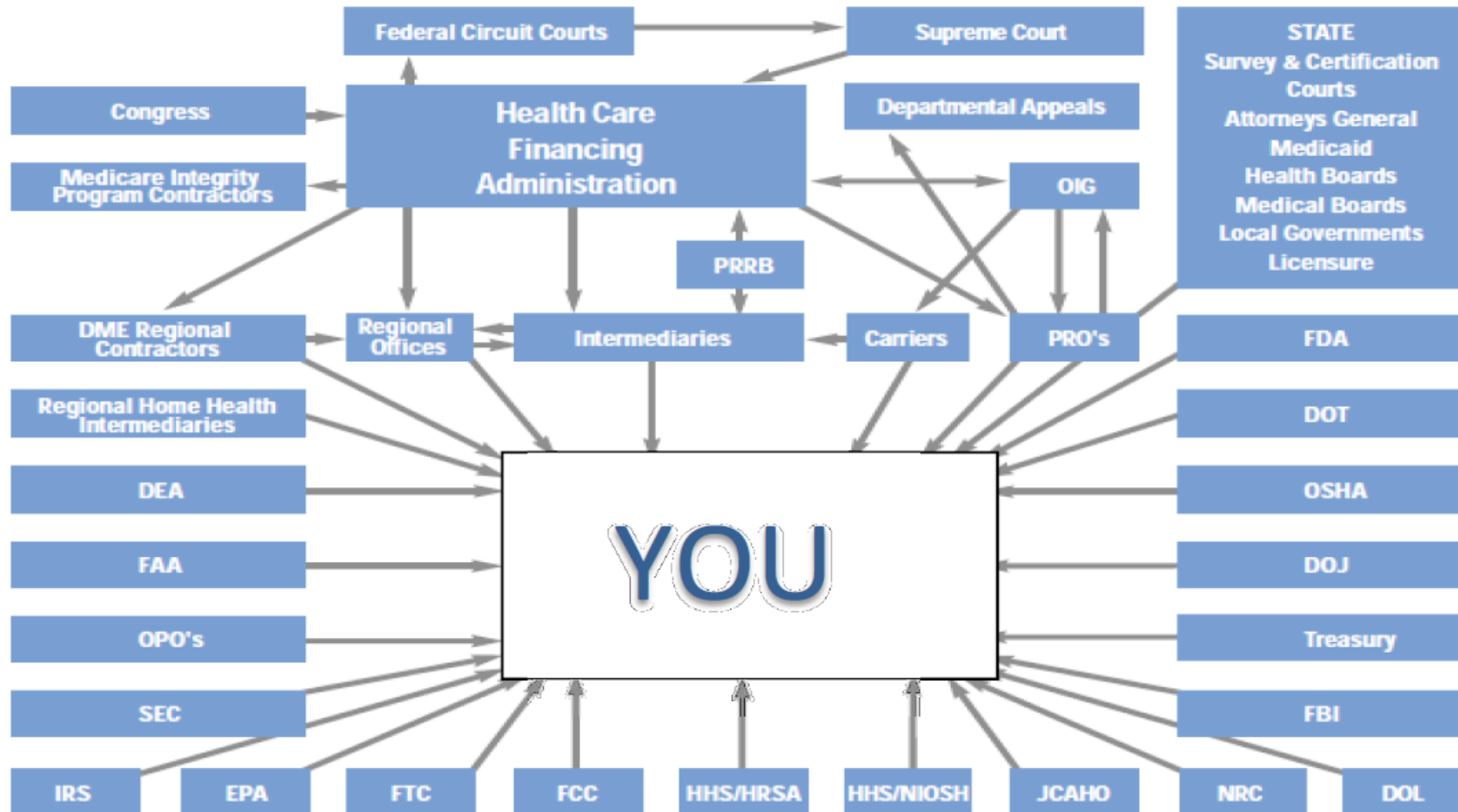


# “Five Rights” of Delegation to Unlicensed Personnel

- Right Task
- Right Circumstances
- Right Person
- Right Direction
- Right Evaluation



# The NPA & Rules Help You Comply With Many Other Requirements



# Confidentiality

- RN shall maintain confidentiality of patient information {PI}
- Communicate PI for health care purposes only
- Access PI only for purposes of patient care
- Not disseminate PI for purposes other than patient care, .... through social media, texting, emailing or any other form of communication

FOR IMMEDIATE RELEASE

April 24, 2017

Contact: HHS Press Office

202-690-6343

[media@hhs.gov](mailto:media@hhs.gov)

## \$2.5 million settlement shows that not understanding HIPAA requirements creates risk

The U.S. Department of Health and Human Services, Office for Civil Rights (OCR), has announced a Health Insurance Portability and Accountability Act of 1996 (HIPAA) settlement based on the impermissible disclosure of unsecured electronic protected health information (ePHI). CardioNet has agreed to settle potential noncompliance with the HIPAA Privacy and Security Rules by paying \$2.5 million and implementing a corrective action plan. This settlement is the first involving a wireless health services provider, as CardioNet provides remote risk for cardiac arrhythmias.

In January 2012, CardioNet reported to the HHS member's laptop was stolen from a parked vehicle contained the ePHI of 1,391 individuals. OCR's investigation found that CardioNet had an insufficient risk analysis and risk management processes in place at the time of the theft. Additionally, CardioNet's policies and procedures implementing the standards of the HIPAA Security Rule were in draft form and had not been implemented. Further, the Pennsylvania-based organization was unable to produce any final policies or procedures regarding the implementation of safeguards for ePHI, including those for mobile devices.

"Mobile devices in the health care sector remain particularly vulnerable to theft and loss," said Roger Severino, OCR Director. "Failure to implement mobile device security by Covered Entities and Business Associates puts individuals' sensitive health information at risk. This disregard for security can result in a serious breach, which affects each individual whose information is left unprotected."

“ .. a workforce member’s laptop was stolen from a parked vehicle outside of the employee’s home. The laptop contained the ePHI of 1,391 individuals”

# Snooping in Records

July 2011



UCLA Health System agreed to pay \$865,000 to the federal government to resolve allegations that its employees violated federal patient privacy laws by snooping in the medical records of two celebrity patients. Separately, in January 2010, a former UCLA employee pleaded guilty to four counts of illegally reading medical records from celebrities and other patients, and was sentenced to four months in federal prison.

“..a former UCLA employee pleaded guilty to four counts of illegally reading medical records, mostly from celebrities and other high-profile patients, and was **sentenced to four months in federal prison.**”

UCLA Medical Center in Los Angeles has many celebrity patients

# Case Example

- Nurse fired
- Social media
- Posted info about an alleged cop-killer she treated
- No other identifying info posted





# Case Example

- “John Doe” was being treated at NY facility
- Nurse recognized Doe as boyfriend of sister-in-law
- Not assigned to Doe’s care, checked Doe’s chart
- Texted sister-in-law and told her Doe being treated for STD
- Sister-in-law forwarded messages to Doe
- Five days after his treatment, Doe met with the administrator of the facility
- Nurse was fired

# Case Example

- Kentucky Court of Appeals found hospital acted lawfully for firing nurse for HIPAA violation
- Working with patient with Hepatitis C
- Told colleagues to wear gloves
- Patient filed complaint:
  - Confidential information improperly disclosed
  - Nurse was loud enough to have been heard by other patients and medical personnel

# Snooping nurse forces Palomar to notify 1,300 patients of records breaches



Palomar Medical Center Escondido. (Howard Lipin / U-T San Diego)



By **Paul Sisson** · Contact Reporter

JANUARY 12, 2018, 10:45 AM

This is a 2018 case... you would think that after all the publicity of other cases that this would not continue to happen!!

# Misconduct Makes for Great Headlines

## Update: Former Upstate nurse photographed private parts of unconscious patients



By Jacob Pucci | [jpucci@syracuse.com](mailto:jpucci@syracuse.com)

[Email the author](#) | [Follow on Twitter](#)

on May 22, 2015 at 12:45 PM, updated May 22, 2015 at 10:05 PM



*Note: This story has been updated to say Johnson was released from jail Friday, but did not respond to a phone message.*

SYRACUSE, N.Y. -- A former Upstate University Hospital nurse was arrested on charges that she photographed the private parts of unconscious patients.

Kristen A. Johnson's arrest comes as a result of a nine-month investigation, Onondaga County District Attorney William Fitzpatrick announced.

Johnson, 26, was charged with two counts of felony second-degree unlawful surveillance and one count of second-degree disseminating unlawful surveillance, a misdemeanor. She was arraigned in City Court. She was held in the Onondaga County Justice Center, but released from custody Friday evening. Johnson did not respond to a message left at her listed phone number.

"Despite what certain people seem to think, it is a crime in the state of New York to view, broadcast or record images of another person's intimate body parts, surreptitiously," Fitzpatrick said in a statement.



Kristen Johnson

*Onondaga County  
Sheriff's Office*

# Safeguarding Patient Information

- Minimum necessary standard
- Use de-identified data if possible
- ALWAYS Encrypt PHI (it's your “get out of jail free” card)
- Never send PHI to a personal email account (don't auto-forward work email)





# More Safeguards

- Never access PHI unless necessary to perform legitimate job duties
- Offer patients the “opportunity to object” when visitors are present
- Don’t post anything patient-related on social media



# PROTECTING YOURSELF THROUGH GOOD NURSING PRACTICE

- Use basic nursing principles
- Use resources - communicate
- Know your limitations
- Carefully document
- Know policies and procedures
- 
- Ensure appropriate education, and staffing
- Be proactive
- Use chain of command
- Share information with your patients
- Report system flaws

# When Errors can Lead to a Crime

- Wisconsin obstetrics nurse
- Plea agreement
- Charged with criminal neglect following a medication error
- Mistakenly injected epidural anesthetic into I.V. line
- Patient died
- Courtroom full of nurses came to offer support



# Follow Steps to Reduce Medication Errors

- Follow 5 rights every time
- Double check with another nurse
- Contact pharmacy when medication is not labeled correctly
- Reverify medication volume when unfamiliar with the medication
- Monitor serum drug levels
- Use equipment only after orientation and demonstrated competence
- Medication area should have limited distractions

A Nurse Who Violates  
the NPA & Rules Might  
Also Be Violating State  
or Federal Fraud &  
Abuse Laws



# Fraud is Not Always What You Think It Is

THE **Daily**  
Briefing

[View the Archives](#) | [Print Today's Stories](#)

## 27 doctors charged in \$100M fraud scheme— including one who traded blood tests for Bieber tickets

### **Also received tickets to Knicks game, Broadway show**

11:00 AM - August 14, 2015

A federal grand jury this week indicted a Long Island doctor as part of a \$100 million fraud scheme, alleging the doctor accepted bribes from employees and associates of a New Jersey blood lab in return for referring patients.

According to the **U.S. Attorney's Office for the District of New Jersey**, 38 individuals—including 26 physicians—have so far pleaded guilty to charges related to the bribery scheme. The investigation has resulted in more than \$11.5 million being recovered via forfeiture.

The U.S. Attorney's Office says that it "is believed to be the largest number of medical professionals ever prosecuted in a bribery case."

#### **Background on fraud scheme**

In June 2013, Scott Nicoll—the former president of New Jersey-based **Biodiagnostic Laboratory Services LLC**

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#### **Notable recent fraud schemes**

Former hospital CEO sentenced to 4.5 years in prison →

# Fraud Has Many Faces

(and they all violate the NPA!)

- Data compromise
- Embezzlement
- Insider dealing
- Theft of assets
- Falsely reporting compliance w/requirements
- Procurement fraud
- Misappropriation
- Bribery & corruption
- Conflict of interest
- Falsification of records

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Friday, March 22, 2013

**Registered Nurse Pleads Guilty in Connection with Detroit Medicare Fraud Scheme**

A registered nurse who fabricated nursing visit forms in connection with a \$24 million home health care fraud conspiracy in Detroit pleaded guilty today for her role in the scheme, announced Acting Assistant Attorney General Mythili Raman of the Justice Department's Criminal Division, U.S. Attorney for the Eastern District of Michigan B. Agent in Charge Robert D. Foley III of the FBI's Detroit Field Office and Special Agent in Charge of the Department of Health and Human Services Office of Inspector General (HHS-OIG), Chicago.

Beverly Cooper, 59, of Detroit, pleaded guilty before U.S. District Judge Victoria A. Roberts in the Eastern District of Michigan to one count of conspiracy to commit health care fraud.

Cooper admitted that she and others conspired to defraud Medicare through home health care companies in the Detroit area, including Reliance Home Care LLC, First Choice Home Health Care Services Inc. According to court documents, Cooper fabricated nursing visit notes and other documents to give Medicare the false impression that she had provided home health care services, when, in fact, home health care was not needed and/or was not being provided. Cooper also admitted that while at these companies, she signed nursing visit notes for home visits made by other unlicensed individuals to give Medicare the false impression that she had provided home health care. Court documents reveal that Cooper understood that the documents she created would be used by these companies to submit claims to Medicare for home health services that were not medically necessary and/or not provided.

Court documents show that when home health companies were inspected by state regulatory agencies, Cooper and her co-conspirators participated in staged home health visits, posing as employees of these companies and treating fake patients, all to give inspectors the false impression that these companies' operations were legitimate and that home health services were in fact being provided.

Court documents allege that between 2006 and May 2012, Cooper's conduct caused Reliance, First Choice and Accessible to submit claims to Medicare for services that were not medically necessary and/or not provided, causing Medicare to pay these companies approximately \$5,403,703.

Beverly Cooper pleaded guilty one count conspiracy to commit healthcare fraud... fabricated nursing visit notes... signed nursing visits made by unlicensed individuals....



**Department of Justice**

U.S. Attorney's Office

Eastern District of Texas

SHARE 

FOR IMMEDIATE RELEASE

Wednesday, August 3, 2016


## **Texas Nurse Sentenced to Prison for Health Care Fraud Scheme**

PLANO, Texas – A 55-year-old Denton County, Texas, nurse, has been sentenced to federal prison for health care fraud violations in the Eastern District of Texas, announced U.S. Attorney John M. Bales.

Florence Kroma, a/k/a Florence Kamara, a/k/a Florence Koroma, a/k/a Florence Bangura, 55, of Denton, Texas, was found guilty by a jury of nine counts of health care fraud following a four-day trial before U.S. District Judge Marcia A. Crone in December, 2015. She was sentenced today to 97 months in federal prison and ordered to pay restitution in the amount of \$775,099.09 to Medicare.

According to information presented in court, Kroma, a registered nurse, owned and operated a Home Health Agency in Denton, Texas. From April 2008 to October 2013, Kroma carried out a scheme to defraud Medicare through the submission of false and fraudulent claims for skilled nursing services which were not provided and which were not authorized by the patients' physicians. At times Kroma submitted claims for services which she allegedly provided when she was out of state. At other times she submitted claims for services which she allegedly provided to patients who testified that they never heard of her company. Kroma was indicted by a federal grand jury on August 11, 2015.

The case was investigated by the U.S. Department of Health and Human Services – Office of the Inspector General (HHS-OIG), the Federal Bureau of Investigation (FBI) and the U.S. Department of State.

Any individuals with knowledge of these or other health care fraud violations are encouraged to contact the Department of Health and Human Services' fraud hotline at 1-800-HHS-TIPS  (447-8477)

Submitted claims for nursing services not provided or ordered. Sentenced to 97 months in federal prison and ordered to pay \$775,099



“It takes 20 years to  
build a reputation  
and  
5 minutes to ruin it.”

Warren Buffett, Berkshire-Hathaway

# Documentation Integrity

- Licensed nurse shall not falsify any patient record
- This includes:
  - case management documents
  - reports
  - other documents related to billing for nursing services



# Documentation Integrity

- Licensed nurse shall not make any false, misleading, or deceptive statements to:
  - The Board
  - Current employers
  - Prospective employers
  - **Other members of the patient's health care team**
  - Law enforcement personnel

# Many Eyes Are on Your Documentation

- Government
  - Sophisticated data mining
  - Unprecedented inter-agency collaboration
  - Focusing on quality of care, medical necessity & EHR fraud
- Patients
  - Exercising their Right of Access
  - Exercising their Right to Amend
  - Challenging what is documented



# Government Also Focused on “Cloned” Records

*“Documentation is considered cloned when each entry in the medical record for a beneficiary is worded exactly like or similar to the previous entries. . . . Cloning of documentation is considered a misrepresentation of the medical necessity requirement for covered services”*

- CMS

# OIG's Letter to Hospital CEOs

## 9/24/12



September 24, 2012

**American Hospital Association**  
Richard Umbdenstock  
President and Chief Executive Officer  
325 Seventh Street, N.W.  
Washington, DC 20004

**Federation of American Hospitals**  
Charles N. Kahn, III  
President and Chief Executive Officer  
750 9th Street, NW, Suite 600  
Washington, DC 20001-4524

**Association of Academic Health Centers**  
Steve Wartman  
President and Chief Executive Officer  
1400 M Street, NW, Suite 720  
Washington, DC 20036

**Association of American Medical Colleges**  
Darrell G. Kirch, M.D.  
President and Chief Executive Officer  
2450 N Street, NW  
Washington, DC 20037-1126

**Association of Public Hospitals and Health Systems**  
John J. Geigel, MD, MPH  
President and Chief Executive Officer  
1301 Pennsylvania Avenue, NW  
Suite 950  
Washington DC 20004

***“False documentation of care is not just bad patient care; it’s illegal”***

***“There are also reports that some hospitals may be using EHRs to facilitate “upcoding” of the intensity of care”***

Executive Officers:

In the health care system, our nation’s hospitals have been at the forefront of adopting electronic health records for use in coordinating care, improving quality, reducing paperwork, and eliminating duplicative tests. Over 55 percent of hospitals have already qualified for incentives authorized by Congress to encourage health care providers to adopt and use this technology. Used appropriately, electronic health records have the potential to save money and save lives.

However, there are troubling indications that some providers are using this technology to game the system, possibly to obtain payments to which they are not entitled. False documentation of care is not just bad patient care; it’s illegal. These indications include potential “cloning” of medical records in order to inflate what providers get paid. There are also reports that some hospitals may be using electronic health records to facilitate “upcoding” of the intensity of care

# Safety Risks – Cut-n- Paste Records

- Propagation of inaccurate, inconsistent, outdated, irrelevant, or incorrect information
- Authorship questions
- Redundant information (with important, relevant information hidden)



# Additional Consequences

- False Claims Act
  - Prohibits the “knowing” submission of false or fraudulent claim for payment (or causing it to be submitted)
  - “knowing” includes “reckless disregard” and “deliberate ignorance” (e.g. no specific intent is required)

# The Feds' Perspective

- *“They billed for equipment that wasn't provided, for care that wasn't needed, and for services that weren't rendered.”*

Attorney General Loretta E. Lynch

# 11 Offenses - Automatic Bars to Obtaining Nursing License

- Aggravated Murder
- Murder
- Voluntary Manslaughter
- Felonious Assault
- Kidnapping
- Rape
- Aggravated Robbery
- Aggravated Burglary
- Sexual Battery
- Gross Sexual Imposition
- Aggravated Arson
- or substantially similar law of another state



# Murder

- Nurse Charles Cullen
- Admitted to killing up to 40 patients
- Admitted to purposefully injecting lethal drugs
- Currently serving 18 consecutive life sentences in prison



# Automatic Suspension of License

- If issued a nursing license and later convicted Board is required to *automatically suspend* the nurse's license
- Effective date = date of his or her conviction, guilty plea or finding of guilt

# Offenses that may be bars to obtaining license

- Conviction of, a plea of guilty ... for the following:
  - any felony (that is not an absolute bar)
  - a crime involving gross immorality or moral turpitude
  - a misdemeanor drug law violation or
  - a misdemeanor in the course of practice

# Initiation of Criminal Charges

- Wisconsin nurse administered epidural anesthetic to an OB patient instead of an IV antibiotic
- Colorado – lethal dose of PCN
- Hospitals are required to report when disciplinary action is taken when a nurse's action put a patient at a safety risk

# Factors Considered when Determining if Disciplinary Action Should be Taken

- The factors include, but are not limited to:
  - when offense occurred
  - if the applicant or nurse has had other convictions or disciplinary action
  - acts underlying the offenses and
  - whether restitution has been made and/or probationary terms have been completed

# Working in Particular Settings

- Granted nursing license but precluded from working in elder or pediatric care
- Senate Bill 38 (in 1993) and Senate Bill 160 (in 1997)
  - requires background checks for potential employees in certain settings
  - establishes “disqualifying offenses”
- Case example

# Think of the NPA & Rules as Preventative Medicine

- Fully read, understand and follow the NPA & Rules
- Laws, rules & regulations are always being updated
  - Professional societies keep track
- If unsure – take the time to ask



**QUESTIONS?**





# Additional Resources

- Ohio Board of Nursing <http://www.nursing.ohio.gov/>
- National Council of State Nursing Boards <https://www.ncsbn.org/index.htm>
- HHS Office for Civil Rights (*Great FAQs on HIPAA*) <http://www.hhs.gov/hipaa/index.html>
- Office of National Coordinator (*Great info on info security*) <https://www.healthit.gov/>
- HHS Office of Inspector General <http://oig.hhs.gov/> (*Enforcement results, fraud alerts, advisory opinions*)



**Every life deserves world class care.**