

**342****How the Board of Nursing Functions
Sandra Nichols**

Pat: This is Pat Iyer with Legal Nurse Podcast, and today we're going to be talking about some of the fascinating things that happen behind the scenes at a Board of Nursing hearing. I brought on the show Sandra Nichols, who is eminently qualified to talk about this topic. She spent three years on the Board of Nursing in Florida. She has her PhD. She is an advanced nurse practitioner and probably the only person who I know who is board certified as a family nurse practitioner, an emergency department nurse practitioner, and a psychiatric mental health nurse practitioner.

Sandra, welcome to the show. I'm so pleased that you could join us today.

Sandra: Well, thank you so much for having me.

Pat: What we wanted to talk about is to give the legal nurse consultants who are listening to this show some insight on what happens with the Board of Nursing. We have listeners in 72 countries, and they may not have the term Board of Nursing in their country. So, particularly for our international listeners, could you explain what the Board of Nursing does in the United States?

Sandra: Certainly. Each state has a board of nursing, and I know in Florida they're appointed by the governor. Generally, they're appointed positions. State statutes will outline the people who are appointed to be the board. In Florida, we had consumer members who were not nurses. We had an LPN member. We had a couple of RN members. We had one NP member, and that's the role I had. You can apply, and I was asked to apply, so I applied. And then you're appointed, and you're vetted, and all those sorts of things. And the Senate must confirm you, the State Senate.

So, the board in Florida meets every other month, and it's a regulatory body for the profession of nursing. We also cover certified nurse assistants or CNAs, all the way from the CNAs to the top advanced

practice nurses. If you had a nursing license, it came from the Board of Nursing. And the Board of Nursing is there in every state with the primary role to protect the public.

I think that right there is one of the big misconceptions that some nurses have, is they think the Boards of Nursing is there for nurses. And in a way they are, but the reason that they're there is protect the public. And so, we take the laws that are passed by the legislature and the administrative rules that are in place, and we made sure that everyone practicing nursing in the state is practicing it to the benefit of the public.

Pat: And I know as legal nurse consultants we sometimes are involved in cases, particularly if we do expert witness work, (which I personally did for 20 years), we sometimes get discovery materials that show a nurse has been reported to the Board of Nursing in addition to being named as a defendant in a nursing malpractice case.

Can you give us a sense of, from your experience being on the board, what were some of the common issues that caused nurses to be reported to the board?

Sandra: Well, some of the common issues that would cause nurses to be reported including inadequate charting: if they said they did a procedure, or they said they gave them medication, or if they said they checked on a patient and then they didn't chart it. As we all heard in nursing school, I'm sure I heard it enough times for everyone, is that if you didn't chart it, it didn't happen. And it's easy, I think, after you've been in practice for a while to let those standards that you were taught in nursing school sort of slip. Because you feel like, "Of course I checked on him, I check on him every two hours," and we all get busy, and then you forget. And so, I saw that quite a bit.

I also saw if there was a problem with the medication, not giving medications, the reason you didn't give medications. Also, multiple times I saw nurses reported for issues related to patient abandonment. If they were at work but unable to be found, and their patient had an issue, or their patient had a bad outcome, that's a problem. You know patient abandonment is not just leaving the scene and not giving a report but being unable to be found.

Pat: When you say they were unable to be found, are you talking about them leaving the hospital or leaving the unit or just being tied up with a heavy assignment?

Sandra: No, leaving the hospital or leaving the unit, going outside to smoke, going outside to sit in the car with their boyfriend who came to see them at night, and not wanting to get in trouble. So, they wouldn't tell anyone where they were going and they thought, "My patients will be fine." And this was generally in less acute settings, but it did happen in acute care settings as well. So, that certainly was an issue.

Pat: When you talk about nurses being reported, is there necessarily harm to the patient in these types of reports? Does there always have to be harm for the patient is what I mean to say?

Sandra: No, and that is a very good question. We had several nurses who came before the board when I was on the board, and I can only presume that it happened before and after my tenure. One thing I think nurses don't realize is according to the board, you're a nurse 24 hours a day, seven days a week, 365 days a year.

And if you're the best nurse ever while you're on shift and then you leave shift and go home and for whatever reason you're involved in illegal activity, or you have a domestic situation, or you're caught shoplifting or anything, illicit drug use, you have an alcohol problem. You know there are so many things that you can do and never do them while you're at work. It can still put your license in jeopardy, and the board looks at nurses as you are always a nurse. You are always representative of your profession no matter where you are. You don't ever take that off.

Pat: Which raises an interesting question that I got asked all the time, and still get asked by nurses, "Why do I need to have my own nursing malpractice policy if my hospital covers me?"

Sandra: Because your hospital won't cover you. And if you read the practice clause in your hospital's malpractice policy, it will most likely say, all of them that I've ever seen do, will say that they cover you in the venues where the hospital has you employed because the hospital is the one paying the policy. If you have your own policy, which I do

because I think it's a good idea, if you have your own policy, that covers you wherever you are because you are paying for that policy.

And one of the things that's nice about having your own policy is: Let's say you're covered by the hospital's policy and the hospital decides that they want to settle a suit that you're named in, but you don't want to settle, and you feel you didn't do anything wrong. If you're not the owner of that policy, you have much less say, generally speaking, in how that suit is settled or handled than if you are the owner of the policy. Also, you can generally pick your legal representative if you have your own policy. And if it's not your policy, you will have much less of a voice in picking who represents you.

Pat: In terms of representation, what difference if any did you see that it made when a nurse had an attorney representing him or her at a Board of Nursing hearing?

Sandra: Oh my gosh, I would never ever recommend anyone go before any professional board, not just nursing, but any professional board without an attorney who is familiar with that board. It's not so much just having an attorney. It's having an attorney who regularly represents professionals before that board because there are so many nuances. A great deal of negotiation goes on in the process leading up to the board appearance.

So, you go and hire an attorney. You're notified by the board that you have an issue, that you have a complaint and you hire an attorney. That attorney is going to represent you from that point forward. And that means in all the correspondence with the investigators for that professional board and all the correspondence with the attorneys who represent that professional board. And they know each other, so they can communicate and talk to each other and probably settle your case on much better terms than you would be able to do.

If you're thinking about representing yourself, you're really taking your license in your own hands and some jeopardy. I saw nurses do it. I understand because a lot of times when you've had a complaint filed against you, you may be suspended from your work. You may be fired from your work. Whether or not the complaint is accurate, you just have a complaint against you and you're trying to defend yourself and you think, "Well, I don't want to spend the money on an attorney."

But what I always advise was to look at the money you spent on getting your nursing license. That was an awful lot of money and an awful lot of time. And I think it's a worthwhile investment to hire an attorney to defend that investment because you're not able to do it. You just don't understand the law, and the proceedings move so quickly. And there's so much language and jargon legalese, so to say, whenever you go to a Board of Nursing meeting or any professional board. It's easy to be overcome if you're a nurse there trying to represent yourself.

Pat: Did you see situations where patients filed complaints with the Board of Nursing, and you believe that the patient was being vindictive or overreacting or emotional or unjustified in the complaint?

Sandra: Usually those cases would be vetted out before they made it all the way to the board. What happened in Florida, the process is if someone files a complaint against you, it goes to the investigative unit. So, there's an investigator assigned, and they go out and do their due diligence, and they talk to all the parties, and they get the information that they need. Usually something like that would come out right then. And then it goes to a committee called "Probable Cause," which will have one board member on it, and it will have a couple of other board members. And those probable cause panels meet and decide is this case egregious enough to go before the entire board, or is this something that we can just recommend that they settle or is this something that needs to just be thrown out, the nurse didn't do anything wrong?

For a case to come before the whole board, it must go through quite a process. And usually the things that would be done as a matter of a motion, which I guess is sort of what I hear you saying, those would be vetted out before you got to the board meeting.

Pat: So, the issues that you were looking at were serious in terms of the nurses' practice?

Sandra: Yes.



So much of care is provided in ambulatory care settings. Surgeries that used to require a week of hospitalization are done on an outpatient basis.

I had an opportunity a few years back to teach a workshop for attendees at the American Association of Ambulatory Care Nurses.

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Pat: One of the questions that I think that we started with was the charting problems that represent the typical or a portion of what you looked at as a board. If the nurse gave the care but didn't chart it, is that the type of question that would come before the board or is it more that the care wasn't given, and the nurse charted that it was?

Sandra: You would see both. I think the care wasn't given but was charted. There were several high-profile cases in Florida that made the national news about home health providers who documented that they provided care to patients, and they never did. And then of course the care was billed to Medicare, so that was Medicare fraud and that's a federal crime. But ultimately, it came before the Florida Board of Nursing also because these are registered nurses in the state of Florida.

As a nurse not only can you be found to be liable in a *civil* matter, not only can you be found to be liable in a *criminal* matter at the state level you know if you did something deliberately to harm your patient, which you rarely see in nursing but it does happen, you can be found on the *federal level* criminally negligent if you falsely bill an insurance company for services provided that you never provided.

So, if you charge something, you need to make sure you did it. And if you did something, you need to make sure you chart it so. And think of your chart always as a legal document. It's hard to keep that as a motivator in your mind, but it's just, it's a habit. It's something that you must get to where you train yourself to think to do, where it's just second nature.

Pat: I don't have any knowledge of the case that you're talking about with the home care agency. I mean, what was the motivation behind having nurses document care that they didn't deliver?

Sandra: Millions of dollars. Millions and millions of dollars. There were several cases that came before us. And I mean, they were headlines, and I can send you the references for them. You hear of them in the news every now and again. You know a home health agency says they do this and says they do that, and they bill for services that they say they provide. The sad thing is that very often, and I think this is why it came out in Florida, is they're older patients who are at home who don't know. You know they may even have dementia, but they don't understand how the system works so it's billed on their behalf. They never see the bill and then someone finally said, "Well, you've got this, this, and that service," and they say, "No I didn't," you know and then the whole thing begins to unravel.

Pat: Can you think of a case that was most memorable for you in terms of the details, that perhaps gave you nightmares?

Sandra: There were a couple that gave me nightmares as the thought of being a patient. In Florida, we have the Sunshine Law, and all our board meetings were recorded and then put online, so you can go and listen to all of these. So, I'm not violating anybody's privacy and that's an interesting note to put up there for people. At least in Florida, the way it would happen is maybe two weeks before the board would meet, we would get documents from the board of nursing that we were tasked to review. And it was all the cases that would come before us. Now some would settle out before we got there, so you know we didn't go through all of them. But it was anywhere between probably 60 and 120,000 pages of documents every other month. And you get really good at reading fast and going through cases and, looking at what's pertinent. We are not allowed as board members to discuss privately by Florida law to discuss any of those cases.

So, if I were to carpool from Tallahassee with another member, which I routinely did, we were not allowed to discuss any of the cases on the way to the meeting. And everyone on the board when I was on the board, and I'm sure I still do, took that very seriously. We were all very conscious to do the right thing for the people coming before us and mind our Ps and Qs. So, you know if anyone out there is thinking, "Well, they're probably meeting in the back room and talking about...", we definitely did not. We were very focused on doing the right thing and minding the law.

But I think one of the cases that came before us just as I was getting on the board, a nurse came before us who was brought up on a complaint of not following standard of practice because she worked in I guess it was like a holistic health center where they did IV therapy for health.

I always say it wrong. I never say it right. It's C-H-E-L-A-T-I-O-N. I always say it wrong.

Pat: Chelation.

Sandra: But it's you know where you get vitamins and IV therapy and that sort of thing. There was a center in central Florida, I want to say in the

Tampa, St. Petersburg area, where they were offering this sort of therapy, but they were reusing IV tubing. They were not getting new tubing and she said, "Well, when they oriented me, they told me that's just how they did it here." And this was in the national news because several people got hepatitis, and that was memorable. That was sort of scary because you know nurses, or every year when it comes out, you know who is the most trusted profession, nurses are always at or near the top.

Pat: Yep.

Sandra: And I don't think people question, "Is this nurse here doing everything he or she can to help me, to care for me?" Everyone I know in nursing got into this profession to help people. And nurses very often save patients by stopping and questioning, "Hey, why are we doing XYZ?" And those nurses got in trouble because they didn't stop and question. And so, that was memorable and scary, probably because it was one of my first meetings and there were all these national NBC, ABC, CBS news trucks out front because it was a big national story.

Pat: Yep.

Sandra: So, that really made an impression on me. I'm sure none of those nurses thought when they went to work every day that they were ever going to be on the national news, but they deviated from the standard of care, and patients were injured.

Pat: I think I've heard of a couple of similar stories. I know there was an oncology clinic that was giving chemotherapy where the nurses were reusing equipment and those were patients who were particularly vulnerable because many of them had low white blood cell counts and were being exposed to the risk of infection. And there were several people who developed infections as a result of that poor practice.

Sandra: Right and you know I would just say if you're a nurse and you're in practice and you ever get an order that makes you uncomfortable, stop and ask. Go to your charge nurse. If you ever are doing a med order, and it's something you don't routinely do and it takes 10 vials to draw out the medicine for one dose, stop and ask. If you're hanging what you think is a medicine and it won't infuse in the IV, don't just put it

on a pump to push it into the patient, stop and ask. Go ask. You know we all have brain fog some days, but for you and for the patient.

You know I very often would tell nurses you know who would say, "I made a mistake," and you know they want their license back and whatever. And I would say, "If I'm not comfortable with you taking care of my children or my family in an ER tonight or hospital tonight, shame on me if I let you back into practice because I'm here to protect the public. And if I'm not comfortable with your nursing judgment taking care of the people I care about the most, why am I turning you loose on other people that are out there?"

And you know it is hard. I said I always did the white-knuckle drive home from Board of Nursing meetings because you think of, "Oh my gosh, oh my gosh." I'm like there's so many lessons you learn just in one meeting. I was very empathetic though to the nurses because like I said, "Everybody has a bad day." Everybody has moments where you just do things rogue and there's nobody available to go ask, and you don't want to get in trouble again for being late on a med. I understand that there's conflicting you know, but it's almost like a car wreck. I can't tell you how many people are heard saying, "If I could just go back, if I could just go back," so take that minute. If that little voice inside you is saying, "Wait a minute, this doesn't seem right," trust that voice. That that would be my big advice to any nurse practicing, just to trust that voice.

Pat: You know that's a great piece of advice, and that voice gets stilled by pressures of the day, the push to get through the shift, the multitasking, the delicate balancing job that we get involved in as nurses in trying to meet the needs of several conflicting people's demands. That voice is a critical one and if nurses were consistently listening to that voice, we would have much less work to do in the legal field.

Sandra: In another group that I'm in, the person posted. She was a nurse practitioner, and she posted that her admin team were really pushing her to do things that she did not feel like were in the best interest of her patient, and she didn't know what to do. The board is there to protect the public, but the nurse is there to be the advocate for the patient who very often doesn't understand the healthcare system. You

know how often have we been in the room and the physician has walked out and the patient looks at us and says, "What did they just say?" and we must interpret for them.

And I just posted below there, I said, "I don't know of a single case where an admin team has sued a nurse for malpractice because they were following the best interest of their patient. My mantra has always been, I'm going to do what's best for my patient. And if you do what's best for your patient, you will always be okay, and your patient will always be okay. And if a place doesn't want to keep you employed because you're doing what's best for your patient, do you really want to work there anyway?"

There's a nursing shortage. You can get a job somewhere else where your license isn't in jeopardy. I think a lot of times people are afraid to speak their conscience because they're job scared and that leads down a road to bad outcomes for everyone involved.

Pat: We've been focusing today, Sandra, on your experiences in the Board of Nursing and I know that you do expert witness work. If our listeners were interested in contacting you about reviewing a case, what would you say would be the clinical areas where you would feel most comfortable reviewing cases?

Sandra: Emergency settings, primarily urgent care settings, emergency settings. I've also had done some correctional facility work because several of the emergency departments where I've worked, I do see a tremendous amount of inmates. One is located very close to two state prisons and a federal prison, so we have the high number of inmates that come in. But primarily the emergency department setting, psychiatric also because I am a psychiatric NP and I do some psych work, but primarily it's emergency medicine.

Pat: And how can our listeners get in touch with you?

Sandra: Sandranicholsnp.com and I also have legalnursepractitionerconsulting.com, but I am just getting that website up and running in the next week or two.

Pat: All right and I'll spell out Sandra's name, S-A-N-D-R-A N-I-C-H-O-L-S dot com.

Sandra: Correct. Well, "NP" at the end of that, sandranicholsnp.com.

Pat: Perfect, perfect.

Well, thank you so much for spending your time with us. We've gone through a very fast 30 minutes talking about some of the insights that you've shared with us as a person who spent three years reading 60,000 to 120,000 pages to prepare for a meeting. That alone is an accomplishment. I can't even imagine.

Sandra: Well, it's funny, you know they say, "We only meet every other month," and I said, "You want every other month to come by fast, sign up for a meeting that happens..."

Pat: And that should be wonderful preparation for what you do as a legal nurse consultant in wading through what attorneys laughingly call a voluminous medical record that might be about three inches thick, and you go, "I could eat that for breakfast."

Sandra: That's right.

Pat: And thank you to our listeners who are being part of this show. I hope that you've gotten some insights from Sandra about how the Board of Nursing functions. When you are working on a case and you get that discovery material from the Board of Nursing and their deliberations, this should make sense to you. And as one of the takeaways for sure, how important it is to have your own representation at the Board of Nursing should that ever be a part of your clinical life. Keep your own medical malpractice policy current. It's a very small fee and it's certainly well worth the peace of mind.

Sandra: Thank you very much, Pat.

Pat: All right, thank you so much for being part of the show, Sandra.

Sandra: Sure.

Be sure to get your copy of my book, *Safeguard Your Ambulatory Nursing Care Practice* at the show notes for this podcast. It is a terrific primer for LNCs.

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