

MAINE STATE LEGISLATURE

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July 22, 1965

Agnes E. Flaherty, R. N.
Executive Director
Maine State Board of Nursing
585 Forest Avenue
Portland, Maine 04101

Dear Miss Flaherty:

Reference is made to your letter of April 7th in which you ask several questions. Answers are herewith submitted.

FACTS NO. 1:

Title 32, Section 2101, provides in the second paragraph:

" . . . nor does it affect or prohibit the employment of persons functioning under supervision as nursing aides, attendants, orderlies and other auxiliary workers in private homes, offices, hospitals, nursing or rest homes or institutions."

QUESTION NO. 1:

What is the meaning of the word "supervision" as contained in this paragraph? Does it refer to the registered nurse or would it include a registered nurse and/or a licensed physician or dentist?

ANSWER NO. 1:

See Opinion No. 1, following.

Although the question is set forth as two, it is in substance only one. The word "supervision" refers to any legal or medically

correct "supervision." The statutes in 32 M.R.S.A., section 2102, 2, C, provide that "professional nursing" includes "supervision and teaching of other personnel" for compensation within certain generalized fields.

Hence, it follows that "supervision" in section 2101 does include supervision by a licensed professional or registered nurse within the realm of her authority. The statutes do not define this authority in any detail. It would appear that this authority is something which is determined within the medical profession. Professional or registered nurses are in turn under the supervision of licensed doctors or dentists. Thus, it follows that licensed doctors or dentists may supervise the activities of "nursing aides, attendants, orderlies and other auxiliary workers."

QUESTION NO. 2 (a):

When the license of a registered nurse or a licensed practical nurse has been duly suspended, is there any contradiction to the Board of Nursing notifying all agencies employing nurses in the State that such a license has been suspended, giving the name of person and date of suspension? Are there any rules in Maine which govern such a procedure? Is it permissible to include reason for suspension on the notice? Is this permissible according to Maine Law? Others list these in a quarterly or monthly Newsletter that has very wide circulation.

ANSWER NO. 2 (a):

See Opinion No. 2 (a).

OPINION NO. 2 (a):

Any hearing before the Hearing Commissioner is public. The records are public. The decision is public. Hence, there is nothing to be concealed. The Board may disseminate the results of a decision of the Hearing Commissioner as long as it is not done maliciously, and with intent to injure the person involved. Any such notification should be sent during the period of suspension. A notification sent out after the suspension is over might be construed to have been done maliciously and with intent to injure the person. Certainly the reason for suspension may be included.

The same rules apply to publication of suspension out of state.

July 22, 1965

QUESTION 2 (b):

We have recently been notified by the Florida Board of Nursing that a nurse licensed in that State on basis of endorsement of her Maine license has had her license suspended for one year. She is currently licensed in Maine. We have requested further information from the Florida Board of Nursing. However, is there any legal action which we could or should take in this State if the reason for the Florida suspension is one which may lead to suspension in this State?

ANSWER 2 (b):

See Opinion 2 (b).

OPINION 2 (b):

I cannot fully answer this question without knowledge of all the facts. Mere suspension in another State is not grounds for suspension in Maine. See 32 M.R.S.A., section 2103, for reasons for suspensions.

FACTS NO. 3:

The Board of Nursing has received a request for admission to the licensing examination for practical nurses from a student currently enrolled in a collegiate professional school of nursing. In July of this year the potential applicant will have met the educational qualification cited in 32 M.R.S.A., section 2251, subsection 6. However, the Board is concerned about admitting to the licensing examination for practical nurses, a student who is being prepared educationally for professional practice. If this were to become a common practice, it may have an indirect effect of encouraging students presently enrolled in schools to seek this level of licensure and not complete their educational program.

QUESTION NO. 3:

Must the Board of Nursing allow such a person to take the examination for a practical nurse's license?

ANSWER NO. 3:

No.

July 22, 1965

OPINION NO. 3:

An examination of 32 M.R.S.A., Chapter 31, indicates that the legislature intended to license two types of nurses: (1) professional or registered, and (2) practical. Obviously, because of the difference in qualifications, one person should not hold two licenses at the same time. There is nowhere in this chapter any intent shown that would authorize a person to take the practical nurses' examination, automatically, upon completion of 2 years of study in an accredited professional school of nursing.

This is a matter solely within the discretion of the Board. Note the last clause of subsection 6 by which the Board must determine if the 2-year part of the course gives adequate equivalent of the approved practical nurse program.

Very truly yours,

George C. West
Deputy Attorney General

GCW:H