

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

course meets the criteria the advisory committee developed under subsection 3.

Sec. 3. PL 1985, c. 435, §4 is repealed.

Effective July 16, 1986.

CHAPTER 724

S.P. 816 - L.D. 2061

AN ACT to Amend the Regulation of the Practice of Nursing.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §2101, 2nd ¶, as amended by PL 1967, c. 263, §1, is repealed.

Sec. 2. 32 MRSA §2102, sub-§2, as amended by PL 1977, c. 497, §10, is repealed and the following enacted in its place:

2. Professional nursing. The practice of "professional nursing" means the performance, by a registered professional nurse, for compensation of professional services defined as follows:

A. Diagnosis and treatment of human responses to actual or potential physical and emotional health problems, through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being and execution of the medical regimen as prescribed by a licensed physician or dentist or otherwise legally authorized person acting under the delegated authority of a physician or dentist:

(1) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. This diagnostic privilege is distinct from medical diagnosis;

(2) "Human responses" means those signs, symptoms and processes which denote the individual's health needs or reaction to an actual or potential health problem; and

(3) "Treatment" means selection and performance of those therapeutic measures essential to the effective management and execution of the nursing regimen;

B. Medical diagnosis or prescription of therapeutic or corrective measures when those services are delegated by a licensed or otherwise legally authorized physician to a registered nurse who has completed the necessary additional educational program required for the proper performance of those services and whose credentials must be approved by the board;

The board may adopt, pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, rules defining the appropriate scope of practice for nurses practicing under this paragraph. The rules shall also define the appropriate relationship with the physician. In adopting the rules, the board shall invite comment from the Board of Registration in Medicine.

C. Delegation of selected nursing services to licensed practical nurses when the services use standardized protocols and procedures leading to predictable outcomes in the observation and care of the ill, injured and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by any person authorized by state law to prescribe. The board shall issue such rules concerning delegation as it deems necessary to ensure quality health care to the patient;

D. Delegation of selected nursing services to assistants to nurses who have completed or are currently enrolled in a course sponsored by a state-approved facility or a facility licensed by the Department of Human Services. This course shall include a curriculum approved by the State Board of Nursing. The board shall issue such rules concerning delegation as it deems necessary to ensure quality of health care to the patient;

E. Supervision and teaching of nursing personnel;

F. Administration of medications and treatment as prescribed by a legally authorized person. Nothing in this section may be construed as limiting the administration of medication by licensed or unlicensed personnel as provided in other laws; and

G. Teaching activities of daily living to care providers designated by the patient and family.

Sec. 3. 32 MRSA §2102, sub-§3, as repealed and replaced by PL 1977, c. 395, §2, is repealed and the following enacted in its place:

3. Practical nursing. The practice of "practical nursing" means performing tasks and responsibilities, by a licensed practical nurse, for compensation within a structured health care setting, reinforcing the patient and family teaching program through health teaching, health counseling and provision of supportive and restorative care, under the direction of a registered nurse or licensed or otherwise legally authorized physician or dentist.

Sec. 4. 32 MRSA §2102, sub-§§4 to 7 are amended to read:

4. License. A "license" is an authorization to practice nursing as a professional nurse or practical nurse designated therein.

5. Professional nurse. The terms "professional nurse," "registered nurse" or "registered professional nurse" mean a person who is currently licensed under this chapter and who practices professional nursing as defined in subsection 2. "R.N." is the abbreviation for the title of "registered professional nurse".

6. Licensed practical nurse. The term "licensed practical nurse" means a person who is currently licensed under this chapter and who practices practical nursing as defined in subsection 3. "L.P.N." is the abbreviation for the title of "licensed practical nurse".

7. Approved nursing school. An "accredited approved nursing school" or "accredited approved nursing education program" means a school of nursing or a nursing department or division of a university or college or a school for the ~~training~~ education of practical nurses ~~accredited~~ approved by the board as provided in this chapter.

Sec. 5. 32 MRSA §2103, sub-§1 is amended to read:

1. Emergency. The ~~furnishing~~ rendering of nursing assistance in ~~an~~ the case of emergency;

Sec. 6. 32 MRSA §2103, sub-§2 is repealed and the following enacted in its place:

2. Students. The practice of nursing that is an integral part of a program by students enrolled in board-approved nursing education programs leading to initial licensure; and the practice of nursing by graduates of board-approved programs pending the results of the first licensing examination for which they are eligible following graduation, provided that they practice under on-site delegation and supervision of a registered professional nurse and only in the practice setting. The board may, by rule, define what constitutes supervision and practice setting;

Sec. 7. 32 MRSA §2103, sub-§3 is repealed.

Sec. 8. 32 MRSA §2103, sub-§4, as amended by PL 1967, c. 263, §3, is repealed and the following enacted in its place:

4. Licensure in another state. The practice of:

A. Nursing by a registered nurse or a licensed practical nurse currently licensed in another state for a period of 90 days pending licensure in Maine provided that the nurse, upon employment, has furnished the employer with satisfactory evidence of current licensure in another state and provided that the nurse furnishes a letter of authorization to the prospective employer of having submitted proper application and fees to the board for licensure prior to employment;

B. Any currently licensed nurse of another United States jurisdiction or foreign country who is providing educational programs or consultative services within this State for a period not to exceed a total of 21 days per year;

C. Any currently licensed nurse of another state who is transporting patients into, out of or through this State. The exemption shall be limited to a period not to exceed 48 hours for each transport; or

D. Nursing in this State by any currently licensed nurse whose employment was made outside

this State but required the nurse to accompany and care for the patient while in this State. This practice is limited to the particular patient, to 3 months within one year and is at the discretion of the board; or

Sec. 9. 32 MRSA §2103, sub-§6 is enacted to read:

6. Nursing services; practice of religious principles. This chapter does not prohibit nursing services by anyone when done in accordance with the practice of the religious principles or tenets of any church or denomination which relies upon prayer or spiritual means alone for healing.

Sec. 10. 32 MRSA §2104, sub-§§1 and 2 are amended to read:

1. Application for approval. An institution desiring to conduct a nursing education program to prepare professional or practical nurses shall apply to the board and submit evidence that:

A. It is prepared to carry out the prescribed professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and

B. It is prepared to meet such other standards as shall be established by this chapter and by the board.

2. Survey. A survey of the institution and its entire nursing education program shall be made by either or both the executive director or other authorized appointee of the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an ~~accredited~~ approved nursing education program are met, it shall be ~~accredited~~ approved as a nursing education program for professional or practical nurses.

From time to time as deemed necessary by the board, it shall be the duty of the board, through its executive director or other authorized representative of the board, to survey all nursing education programs in the State. Written reports of such surveys shall be submitted to the board. If the board determines that any ~~accredited~~ approved nursing education program is not maintaining the standards required by statute and by the board, notice thereof in writing specifying the defect or defects shall be immediately

given to the institution conducting the program. A program which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be discontinued after a hearing.

Sec. 11. 32 MRSA §2105-A, sub-§1, as amended by PL 1983, c. 769, §1, is repealed.

Sec. 12. 32 MRSA §2105-A, sub-§1-A is enacted to read:

1-A. Disciplinary proceedings and sanctions. The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of any rules adopted by the board. Investigation may include a hearing before the board to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. The board may subpoena witnesses, records and documents, including records and documents maintained by a health care facility, in any investigation or hearing it conducts.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than within 60 days of receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and it is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference shall be conducted in executive session of the board, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it deems appropriate:

A. Warn, censure or reprimand;

B. With the consent of the licensee, enter into a consent agreement which fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office;

C. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement, which ensure protection of the public health and safety and which serve to rehabilitate or educate the licensee. These stipulations shall be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office;

D. If the board concludes that modification or nonrenewal of the license might be in order, hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or

E. If the board concludes that suspension or revocation of the license is in order, file a complaint in the Administrative Court in accordance with Title 4, chapter 25.

Sec. 13. 32 MRSA §2152, as repealed and replaced by PL 1975, c. 258, §2, is repealed and the following enacted in its place:

§2152. Qualifications

Each member of the board must be a citizen of the United States and a resident of this State for at least 3 consecutive years prior to appointment and shall file with the Secretary of State an oath of office before beginning his term of office. The State Board of Nursing shall be composed of:

1. Professional nurses. Five professional nurses, each of whom:

A. Must be a graduate of a state-approved educational program in professional nursing;

B. Holds a current Maine license to practice nursing; and

C. Has at least 3 years' experience in active practice immediately preceding appointment.

A minimum of 2 professional nurses must be active in an approved educational program in nursing. A minimum of 2 professional nurses must be active in nursing service;

2. Licensed practical nurse. Two licensed practical nurses who:

A. Must be a graduate of a state approved educational program in practical nursing;

B. Holds a current Maine license to practice practical nursing; and

C. Has at least 3 years' experience in active practice immediately preceding appointment; and

3. Public members. Two public members. No person may qualify for appointment as a public member of the board if that person or any member of his immediate family is currently serving as:

A. A member of any other state licensing board;

B. On the board of any other health care agency; and

C. Engaged for compensation in the provision of health services or the provision of health research, instruction or insurance.

Sec. 14. 32 MRSA §2153, first ¶, as amended by PL 1975, c. 575, §29, is further amended to read:

The board shall hold annual meetings at which it shall elect from its members a president and a secretary ~~who shall also be treasurer~~. It may hold such other meetings during the year as may be deemed necessary to transact its business. Special meetings shall be called by the secretary on request of any 2 members. Four members of the board shall constitute a quorum at any meeting.

Sec. 15. 32 MRSA §2153, sub-§§2, 5 and 6 are amended to read:

2. Seal. Adopt a seal which shall be placed in the care of the ~~secretary~~ executive director;

5. Approval. ~~Acceredit~~ Approve such nursing educational programs within the State of Maine as meet the requirements of this chapter and of the board;

6. Denial. Deny or withdraw ~~accreditation~~ approval from nursing educational programs for failure to meet approved curricula or other standards as established by this chapter or pursuant to law;

Sec. 16. 32 MRSA §2154, as amended by PL 1975, c. 258, §3, is further amended to read:

§2154. Qualifications of executive employee

The executive director shall meet all the qualifications for professional nurse board members required in section 2152 and shall, in addition, hold a master's degree ~~from a recognized college or university~~ with an educational preparation which shall have included courses in administration and teaching in ~~schools of~~ in nursing.

Sec. 17. 32 MRSA §2155, as amended by PL 1983, c. 812, §217, is further amended to read:

§2155. Compensation

The Eligible members of the board shall be compensated according to the provisions of Title 5, chapter 379.

Sec. 18. 32 MRSA §2201, sub-§§2 and 3 are amended to read:

2. High school. Has completed an approved 4-year high school course of study or the equivalent thereof; ~~and~~

3. Professional school. Has completed a course of not less than 2 years in an ~~accredited~~ approved professional school of nursing and holds a diploma.

In case of transfer of a student from one ~~accredited~~ approved school of nursing to another, the time allowance for previous preparation shall be determined by the board, provided that not less than one year shall have been spent in the school from which she receives her diploma. In case of transfer of a student because of closing of a school of nursing, the board shall determine the length of time required to be spent in the school of nursing granting her diploma-;

Sec. 19. 32 MRSA §2202 is amended to read:

§2202. Licenses; examination

The applicant shall be required to pass a written examination in such subjects deemed by the board necessary to determine the fitness of the applicant to practice professional nursing. Upon successfully passing such examination, the board shall issue to the applicant a license to practice professional nursing as a registered nurse, ~~said~~ the license to be in force from the date of issue thereof until one year from and after the first day of the following January for a period of at least one year until the birth date of the licensee.

Sec. 20. 32 MRSA §2206, first ¶, as repealed and replaced by PL 1983, c. 176, Pt. A, §13, is amended to read:

~~Starting January 1, 1985, the~~ The license of every registered nurse licensed under this chapter shall be renewed annually, except as otherwise provided. At least 30 days before the anniversary of his birth, the board shall mail an application for renewal of license to each professional nurse who holds a valid license, which application shall be mailed to the most recent address of that person as it appears on the records of the board. That person shall complete the renewal application and return it to the board with a renewal fee of \$10 before the anniversary of his birth. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal of license for the year expiring on the anniversary of the applicant's birth.

Sec. 21. 32 MRSA §2206, 2nd ¶, as repealed and replaced by PL 1983, c. 176, Pt. A, §13, is repealed.

Sec. 22. 32 MRSA §2208 is amended to read:

§2208. Title and abbreviation

Any person who holds a current license to practice professional nursing in this State shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or devices to indicate that the person using the same is a registered nurse.

Sec. 23. 32 MRSA §2251, as amended by PL 1983, c. 378, §23, is repealed.

Sec. 24. 32 MRSA §2251-A is enacted to read:

§2251-A. Qualifications

An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant has the following qualifications.

1. Education. The applicant must have completed an approved 4-year high school course of study or the equivalent thereof.

2. Approved program. The applicant must have completed a prescribed curriculum in a state-approved program for the preparation of practical nurses and holds a diploma or certificate.

Sec. 25. 32 MRSA §2252 is amended to read:

§2252. License; examination

The applicant shall be required to pass a written examination in such subjects deemed by the board necessary to determine the fitness of the applicant to practice practical nursing. Each written examination may be supplemented by an oral or practical examination. Upon successfully passing such examination the board shall issue to the applicant a license to practice as a licensed practical nurse, said that license to be in force from the date of issue until one year from and after the first day of the following July for a period of at least one year until the birth date of the licensee.

Sec. 26. 32 MRSA §2255, first ¶, as repealed and replaced by PL 1983, c. 176, Pt. A, §14, is amended to read:

Starting July 1, 1985, the The license of every practical nurse licensed under this chapter shall be renewed annually, except as otherwise provided. At least 30 days before the anniversary of his birth, the board shall mail an application for renewal of license to each practical nurse who holds a valid license, which application shall be mailed to the most recent address of the person as it appears on the records of the board. That person shall complete the renewal application and return it to the board with a renewal fee of \$10 before the anniversary of his birth. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal of license for the year expiring on the anniversary of the applicant's birth.

Sec. 27. 32 MRSA §2255, 2nd ¶, as repealed and replaced by PL 1983, c. 176, Pt. A, §14, is repealed.

Sec. 28. 32 MRSA §2257 is amended to read:

§2257. Title and abbreviation

Any person who holds a current license to practice as a licensed practical nurse in this State shall have the right to use the title "Licensed Practical Nurse" and abbreviation "L.P.N.". No other person shall assume such title or use such abbreviation or any other words, letters, signs or figures to indicate that the person using the same is a licensed practical nurse.

Sec. 29. 32 MRSA c. 31, sub-c. V is enacted to read:

SUBCHAPTER V

COMMISSION ON NURSING SUPPLY AND

EDUCATIONAL ACCESSIBILITY

§2261. Commission

1. Commission established. There is established a Commission on Nursing Supply and Educational Accessibility. This commission shall be composed of 15 persons appointed by the Governor, with 2 members representing the general public and 13 members representing respectively the Maine State Nurses' Association, the Maine Council of Nursing Service Administrators, the Maine Hospital Association, the Maine Society for Hospital Personnel Administrators, the Maine Licensed Practical Nurses' Association, the Maine Community Health Association, the State Board of Nursing, the Longterm Care Nursing Council, Consortium United Maine Nurses, public baccalaureate nursing education, private baccalaureate nursing education, Vocational-technical institutes and Maine Council of Associate Degree Nursing Programs. All regions of the State must be fairly represented. Appointments shall be for 3-year terms, except that no more than 3 members' terms may expire in any one calendar year and appointments for terms of less than 3 years may be made in order to comply with this limitation.

2. Staff. The commission shall be provided staff support by the Office of Vital Statistics. Funding for staff support and data collection shall

come from the dedicated revenue fund of the State Board of Nursing.

3. Study. Commencing in 1986, the commission shall study the following:

A. The educational accessibility of approved courses for both the associated and baccalaureate degree levels throughout the State;

B. The availability of education programs for upgrading all levels of nurses throughout the State;

C. The extent that credits are transferable between vocational-technical institutes and the university system and whether full credit for courses will be granted toward a baccalaureate degree;

D. Whether there will be a sufficient supply of both levels of nurses to meet needs throughout the State if associate or baccalaureate degrees are required;

E. The extent to which there is access to assessment of prior learning of nursing knowledge and transferability of nursing credits throughout the State, including areas that are geographically underserved;

F. Which titles should be used by each level of nursing and how each level should be defined;

G. Whether competency testing should be required and whether certain educational requirements should be waived if new levels of education are implemented; and

H. Whether nurses coming in from other states will or should continue to have endorsement from the State and how this will affect the supply of nurses throughout the State.

4. Intent. It is the intent of the Legislature that by 1995 or as soon as possible thereafter and when the commission reports that all criteria have been met which will ensure the availability and educational needs of nurses throughout the State the following will be implemented:

A. That there be 2 levels of nurses requiring either an associate degree or a baccalaureate degree; and

B. That provisions be made concerning educational requirements that take into consideration the protection of those currently licensed and the availability of nurses throughout the State.

5. Report; dissolution of commission. The commission shall report its findings to the joint standing committee of the Legislature having jurisdiction over business and commerce by January 1, 1990 and every 2 years thereafter until provisions concerning educational levels, educational requirements and titles have been implemented at which time the commission shall be dissolved.

Effective July 16, 1986.

CHAPTER 725

H.P. 1666 - L.D. 2346

AN ACT Making Allocations from the Highway
Fund and other Funds for the
Expenditures of State Government and
Changing Certain Provisions of the Law
Necessary to the Proper Operations of
State Government for the Fiscal Years
Ending June 30, 1986, and June 30,
1987

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, certain obligations and expenses incident to the operation of state departments and institutions will become due and payable immediately; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows: