

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2478 Session of
1996

INTRODUCED BY DeLUCA, CIVERA, GIGLIOTTI, PISTELLA, RAYMOND,
DERMODY, FARMER, COLAFELLA, KING, TRELLO, THOMAS, MUNDY,
SHANER, STABACK, COLAIZZO, OLASZ, LEDERER, BELFANTI, MELIO,
FAJT, STEELMAN, CAPPABIANCA, JOSEPHS, YOUNGBLOOD, MANDERINO,
HORSEY, KIRKLAND, KAISER, LEVDANSKY, READSHAW, WALKO, COWELL,
BATTISTO, TANGRETTI, ITKIN, TRAVAGLIO, BELARDI AND EVANS,
MARCH 15, 1996

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 15, 1996

AN ACT

1 Amending the act of May 22, 1951 (P.L.317, No.69), entitled, as
2 amended, "An act relating to the practice of professional
3 nursing; providing for the licensing of nurses and for the
4 revocation and suspension of such licenses, subject to
5 appeal, and for their reinstatement; providing for the
6 renewal of such licenses; regulating nursing in general;
7 prescribing penalties and repealing certain laws," further
8 providing for definitions, for the State Board of Nursing and
9 for titles; providing for delegation of nursing
10 responsibilities; and further providing for examinations and
11 certificates, for fees and licensure, for education programs,
12 for sanctions, for license reinstatement and for injunctions.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Sections 2, 2.1 and 3 of the act of May 22, 1951
16 (P.L.317, No.69), known as The Professional Nursing Law, amended
17 December 20, 1985 (P.L.409, No.109), are amended to read:

18 Section 2. Definitions.--When used in this act, the
19 following words and phrases shall have the following meanings
20 unless the context provides otherwise:

1 (1) The "Practice of Professional Nursing" means diagnosing
2 and treating human responses to actual or potential health
3 problems through such services as casefinding, health teaching,
4 health counseling, and provision of care supportive to or
5 restorative of life and well-being, and executing medical
6 regimens as prescribed by a licensed physician or dentist. The
7 foregoing shall not be deemed to include acts of medical
8 diagnosis or prescription of medical therapeutic or corrective
9 measures, except as may be authorized by rules and regulations
10 jointly promulgated by the State Board of Medicine and the
11 Board, which rules and regulations shall be implemented by the
12 Board.

13 (2) "Board" means the State Board of Nursing.

14 (3) "Approved" means approved by the State Board of Nursing.

15 (4) "Diagnosing" means that identification of and
16 discrimination between physical and psychosocial signs and
17 symptoms essential to effective execution and management of the
18 nursing regimen.

19 (5) "Treating" means selection and performance of those
20 therapeutic measures essential to the effective execution and
21 management of the nursing regimen, and execution of the
22 prescribed medical regimen.

23 (6) "Human responses" means those signs, symptoms and
24 processes which denote the individual's interaction with an
25 actual or potential health problem.

26 (7) "Registered nurse assistant" means an individual who:

27 (i) performs nursing tasks delegated by an individual who
28 holds a license to practice professional nursing; and

29 (ii) is registered under this act.

30 (8) "Nondelegable nursing task" means an invasive procedure,

1 a procedure involving sterilization or a similar procedure
2 defined by regulation of the Board.

3 Section 2.1. State Board of Nursing.--(a) The State Board
4 of Nursing shall consist of the Commissioner of Professional and
5 Occupational Affairs, three members appointed by the Governor,
6 with the advice and consent of a majority of the members elected
7 to the Senate, who shall be persons representing the public at
8 large, and seven members appointed by the Governor, with the
9 advice and consent of a majority of the members elected to the
10 Senate, five of whom shall be registered nurses, graduated from
11 schools of nursing where practical and theoretical instruction
12 is given, at least three of whom shall possess Masters' degrees
13 in nursing, and two of whom shall be licensed practical nurses,
14 and all of whom shall have been engaged in nursing in this
15 Commonwealth for the five-year period immediately preceding
16 appointment. In making appointments to the Board, the Governor
17 shall give due consideration to providing representation from
18 diversified fields of nursing, including, but not limited to,
19 specialized nurses of all types.

20 (b) The terms of the members of the Board shall be six years
21 or until his or her successor has been appointed and qualified
22 but not longer than six months beyond the six-year period. In
23 the event that any of said members shall die or resign or
24 otherwise become disqualified during his or her term, his or her
25 successor shall be appointed in the same way and with the same
26 qualifications and shall hold office for the unexpired term. No
27 member shall be eligible for appointment to serve more than two
28 consecutive terms.

29 (c) A majority of the members of the Board serving in
30 accordance with law shall constitute a quorum. Except for

1 temporary and automatic suspensions under section 15.1 of this
2 act or section 17.1 of the act of March 2, 1956 (1955 P.L.1211,
3 No.376), known as the "Practical Nurse Law," a member may not be
4 counted as part of a quorum or vote on any issue, unless he or
5 she is physically in attendance at the meeting.

6 (d) The Board shall select annually a chairman from among
7 its members. The Board shall select an executive secretary who,
8 with the approval of the Commissioner of Professional and
9 Occupational Affairs, need not be a member of the Board.

10 (e) Each member of the Board, except the Commissioner of
11 Professional and Occupational Affairs, shall receive sixty
12 dollars (\$60) per diem when actually attending to the work of
13 the Board. Members shall also receive the amount of reasonable
14 traveling, hotel and other necessary expenses incurred in the
15 performance of their duties in accordance with Commonwealth
16 regulations.

17 (f) The Board is subject to evaluation, review and
18 termination within the time and in the manner provided in the
19 act of December 22, 1981 (P.L.508, No.142), known as the "Sunset
20 Act."

21 (g) A member of the Board who fails to attend three
22 consecutive meetings shall forfeit his or her seat unless the
23 Commissioner of Professional and Occupational Affairs, upon
24 written request from the member, finds that the member should be
25 excused from a meeting because of illness or the death of a
26 family member.

27 (h) A public member who fails to attend two consecutive
28 statutorily mandated training seminars in accordance with
29 section 813(e) of the act of April 9, 1929 (P.L.177, No.175),
30 known as "The Administrative Code of 1929," shall forfeit his or

1 her seat unless the Commissioner of Professional and
2 Occupational Affairs, upon written request from the public
3 member, finds that the public member should be excused from a
4 meeting because of illness or the death of a family member.

5 (i) The Board, with the approval of the Commissioner of
6 Professional and Occupational Affairs, shall also appoint and
7 fix the compensation of one or more State educational advisors
8 of schools of nursing and one or more State practice advisors,
9 who shall have the same qualifications as the nurse members of
10 the Board who hold Masters' degrees in nursing.

11 (j) The Board shall meet at least once every two months and
12 at such additional times as may be necessary to conduct the
13 business of the Board.

14 (k) The Board shall have the right and duty to establish
15 rules and regulations for the practice of professional nursing,
16 including registered nurse assistants, and the administration of
17 this act. Copies of such rules and regulations shall be
18 available for distribution to the public.

19 Section 3. Registered Nurse, Use of Title and Abbreviation
20 "R.N."; Credentials; Registered Nurse Assistant; Fraud.--(a)
21 Any person who holds a license to practice professional nursing
22 in this Commonwealth, or who is maintained on inactive status in
23 accordance with section 11 of this act, shall have the right to
24 use the title "registered nurse" and the abbreviation "R.N." No
25 other person shall engage in the practice of professional
26 nursing or use the title "registered nurse" or the abbreviation
27 "R.N." to indicate that the person using the same is a
28 registered nurse.

29 (b) Any person who holds a license to practice as a
30 registered nurse assistant in this Commonwealth, or who is

1 maintained on inactive status in accordance with section 11 of
2 this act, shall have the right to use the title "registered
3 nurse assistant."

4 (c) No person shall sell or fraudulently obtain or
5 fraudulently furnish any nursing diploma, license, record, or
6 registration or aid or abet therein.

7 Section 2. The act is amended by adding a section to read:

8 Section 3.1. Delegation of Duties.--In a facility regulated
9 under the act of July 19, 1979 (P.L.130, No.48), known as the
10 "Health Care Facilities Act," it shall be unlawful for a
11 licensed professional nurse to delegate a nondelegable nursing
12 task to an individual unless the individual is licensed,
13 certified or registered as a health care practitioner under a
14 Commonwealth statute.

15 Section 3. Section 5 of the act, amended December 20, 1985
16 (P.L.409, No.109) and December 15, 1986 (P.L.1607, No.179), is
17 amended to read:

18 Section 5. Examinations and Certificates.--(a) The Board
19 shall, once every year and at such other times and under such
20 conditions as shall be provided by its regulations, examine all
21 eligible applicants for licensure; and shall, subject to the
22 provisions of section 6 of this act, issue a license to each
23 person passing said examination to the satisfaction of the
24 Board.

25 (b) The Board may admit to examination any person who has
26 satisfactorily completed an approved nursing education program
27 for the preparation of registered professional nurses in
28 Pennsylvania or such a program in any other state, territory or
29 possession of the United States considered by the Board to be
30 equivalent to that required in this Commonwealth at the time

1 such program was completed, and who meets the requirements of
2 character and preliminary education. The Board may admit to
3 examination any person who has satisfactorily completed an
4 approved nurse assistant education program, as defined by
5 regulation of the Board, for the preparation of registered nurse
6 assistants in Pennsylvania or such a program in any other state,
7 territory or possession of the United States, considered by the
8 Board to be equivalent to that required in this Commonwealth at
9 the time such program was completed, and who meets the
10 requirements of character and preliminary education.

11 (c) The Board may admit to examination any person who has
12 satisfactorily completed a nursing education program for the
13 preparation of registered professional nurses in a country or
14 territory not mentioned above and who has been licensed,
15 registered, or duly recognized there as a professional nurse
16 provided such a program is considered by the Board to be equal
17 to that required in this Commonwealth at the time such program
18 was completed and who meets the requirements of character and
19 preliminary education. The Board may admit to examination any
20 person who has satisfactorily completed a nurse assistant
21 education program for the preparation of nurse assistants in a
22 country or territory not mentioned above and who has been
23 licensed, registered or duly recognized there as a nurse
24 assistant provided such a program is considered by the Board to
25 be equal to that required in this Commonwealth at the time such
26 program was completed and who meets the requirements of
27 character and preliminary education.

28 (d) In establishing the education requirements for
29 admittance to the nursing licensure examination under this
30 section, the Board shall not deny access to the examination for

1 licensure as a registered nurse to a graduate of a State-
2 approved associate degree, diploma or baccalaureate degree
3 nursing program.

4 (e) All written examinations shall be prepared and
5 administered by a qualified professional testing organization
6 under contract with the Bureau of Professional and Occupational
7 Affairs and approved by the Board, except that national uniform
8 examinations or grading services or both shall be used if
9 available. No Board member shall have a financial interest in a
10 professional testing organization. This section shall not apply
11 to any oral, practical or other nonwritten examination which may
12 be required by the Board.

13 Section 4. Section 6 of the act, amended December 15, 1986
14 (P.L.1607, No.179), is amended to read:

15 Section 6. Fees; Qualifications for Licensure.--(a) No
16 application for licensure as a registered nurse or as a
17 registered nurse assistant shall be considered unless
18 accompanied by a fee determined by the Board by regulation.

19 (b) Every applicant, to be eligible for examination for
20 licensure as a registered nurse, shall furnish evidence
21 satisfactory to the Board that he or she is of good moral
22 character, has completed work equal to a standard high school
23 course as evaluated by the Board and has satisfactorily
24 completed an approved program of professional nursing. Approved
25 programs shall include baccalaureate degree, associate degree
26 and diploma nursing programs.

27 (c) Every applicant, to be eligible for examination for
28 licensure as a registered nurse assistant, shall furnish
29 evidence satisfactory to the Board that he or she is of good
30 moral character, has completed work equal to a standard high

1 school course as evaluated by the Board and has satisfactorily
2 completed an approved program of nurse assistant training.

3 (d) The Board shall not issue a license or certificate to an
4 applicant who has been convicted of a felonious act prohibited
5 by the act of April 14, 1972 (P.L.233, No.64), known as "The
6 Controlled Substance, Drug, Device and Cosmetic Act," or
7 convicted of a felony relating to a controlled substance in a
8 court of law of the United States or any other state, territory
9 or country unless:

10 (1) at least ten (10) years have elapsed from the date of
11 conviction;

12 (2) the applicant satisfactorily demonstrates to the Board
13 that he has made significant progress in personal rehabilitation
14 since the conviction such that licensure of the applicant should
15 not be expected to create a substantial risk of harm to the
16 health and safety of patients or the public or a substantial
17 risk of further criminal violations; and

18 (3) the applicant otherwise satisfies the qualifications
19 contained in or authorized by this act.

20 As used in this subsection the term "convicted" shall include a
21 judgment, an admission of guilt or a plea of nolo contendere. An
22 applicant's statement on the application declaring the absence
23 of a conviction shall be deemed satisfactory evidence of the
24 absence of a conviction, unless the Board has some evidence to
25 the contrary.

26 Section 5. Section 6.1 of the act, amended December 20, 1985
27 (P.L.409, No.109), is amended to read:

28 Section 6.1. Education Programs, Standards and Approval.--
29 The Board shall establish standards for the operation and
30 approval of [nursing] education programs for the preparation of

1 registered professional nurses and registered nurse assistants
2 and for the carrying out of the rights given to the Board under
3 this act. Programs [for the preparation of registered
4 professional nurses] under this section shall be established or
5 conducted only with the approval of the Board. Initial approval
6 shall be followed by submission of an annual report by the
7 program to the Board and a site visit of the program at least
8 once every three years to assure maintenance of acceptable
9 standards.

10 Section 6. Section 14 of the act, amended December 20, 1985
11 (P.L.409, No.109) and May 27, 1994 (P.L.248, No.35), is amended
12 to read:

13 Section 14. Refusal, Suspension or Revocation of Licenses.--

14 (a) The Board may refuse, suspend or revoke any license in any
15 case where the Board shall find that--

16 (1) The licensee is on repeated occasions negligent or
17 incompetent in the practice of professional nursing or in acting
18 as a registered nurse assistant.

19 (2) The licensee is unable to practice professional nursing
20 or to act as a registered nurse assistant with reasonable skill
21 and safety to patients by reason of mental or physical illness
22 or condition or physiological or psychological dependence upon
23 alcohol, hallucinogenic or narcotic drugs or other drugs which
24 tend to impair judgment or coordination, so long as such
25 dependence shall continue. In enforcing this clause [(2)], the
26 Board shall, upon probable cause, have authority to compel a
27 licensee to submit to a mental or physical examination as
28 designated by it. After notice, hearing, adjudication and appeal
29 as provided for in section 15, failure of a licensee to submit
30 to such examination when directed shall constitute an admission

1 of the allegations against him or her unless failure is due to
2 circumstances beyond his or her control, consequent upon which a
3 default and final order may be entered without the taking of
4 testimony or presentation of evidence. A licensee affected under
5 this [paragraph] clause shall at reasonable intervals be
6 afforded an opportunity to demonstrate that he or she can resume
7 a competent practice of professional nursing or resume acting as
8 a registered nurse assistant with reasonable skill and safety to
9 patients.

10 (3) The licensee has wilfully or repeatedly violated any of
11 the provisions of this act or of the regulations of the Board.

12 (4) The licensee has committed fraud or deceit in the
13 practice of nursing, or in securing his or her admission to such
14 practice or nursing school.

15 (5) The licensee has been convicted, or has pleaded guilty,
16 or entered a plea of nolo contendere, or has been found guilty
17 by a judge or jury, of a felony or a crime of moral turpitude,
18 or has received probation without verdict, disposition in lieu
19 of trial or an Accelerated Rehabilitative Disposition in the
20 disposition of felony charges, in the courts of this
21 Commonwealth, the United States or any other state, territory,
22 possession or country.

23 (6) The licensee has his or her license suspended or revoked
24 or has received other disciplinary action by the proper
25 licensing authority in another state, territory, possession or
26 country.

27 (7) The licensee has acted in such a manner as to present an
28 immediate and clear danger to the public health or safety.

29 (8) The licensee possessed, used, acquired or distributed a
30 controlled substance or caution legend drug for other than an

1 acceptable medical purpose.

2 (9) The licensee has been guilty of immoral or
3 unprofessional conduct. Unprofessional conduct shall include
4 departure from or failing to conform to an ethical or quality
5 standard of the profession. The ethical and quality standards of
6 the profession are those embraced by the professional community
7 in this Commonwealth. In proceedings based on this clause,
8 actual injury to a patient need not be established.

9 (b) When the Board finds that [the] a license [of any nurse]
10 may be refused, revoked or suspended under the terms of
11 subsection (a), the Board may:

12 (1) Deny the application for a license.

13 (2) Administer a public reprimand.

14 (3) Revoke, suspend, limit or otherwise restrict a license
15 as determined by the Board.

16 (4) Require a licensee to submit to the care, counseling or
17 treatment of a physician or a psychologist designated by the
18 Board.

19 (5) Suspend enforcement of its finding thereof and place a
20 licensee on probation with the right to vacate the probationary
21 order for noncompliance.

22 (6) Restore or reissue, in its discretion, a suspended
23 license [to practice professional or practical nursing] and
24 impose any disciplinary or corrective measure which it might
25 originally have imposed.

26 Section 7. Sections 15.2 and 15.4 of the act, added December
27 20, 1985 (P.L.409, No.109), are amended to read:

28 Section 15.2. Reinstatement of License.--Unless ordered to
29 do so by Commonwealth Court or an appeal therefrom, the Board
30 shall not reinstate [the] a license [of a person to practice

1 nursing] which has been revoked. Any person whose license has
2 been revoked may reapply for a license, after a period of at
3 least five (5) years, but must meet all of the licensing
4 qualifications of this act for the license applied for, to
5 include the examination requirement, if he or she desires to
6 practice at any time after such revocation.

7 Section 15.4. Injunction or Other Process.--(a) It shall be
8 unlawful for any person to practice or attempt to offer to
9 practice nursing, as defined in this act, without having at the
10 time of so doing a valid, unexpired, unrevoked and unsuspended
11 license issued under this act. The unlawful practice of nursing
12 as defined in this act may be enjoined by the courts on petition
13 of the Board or the Commissioner of Professional and
14 Occupational Affairs. In any such proceeding, it shall not be
15 necessary to show that any person is individually injured by the
16 actions complained of. If it is determined that the respondent
17 has engaged in the unlawful practice of nursing, the court shall
18 enjoin him or her from so practicing unless and until he or she
19 has been duly licensed.

20 (b) It shall be unlawful for any person to practice or
21 attempt to offer to act as a registered nurse assistant without
22 having at the time of so doing a valid, unexpired, unrevoked and
23 unsuspended license issued under this act. The unlawful practice
24 as a registered nurse assistant as defined in this act may be
25 enjoined by the courts on petition of the Board or the
26 Commissioner of Professional and Occupational Affairs. In any
27 such proceeding, it shall not be necessary to show that any
28 person is individually injured by the actions complained of. If
29 it is determined that the respondent has engaged in unlawful
30 practice as a registered nurse assistant, the court shall enjoin

1 him or her from so practicing unless and until he or she has
2 been duly licensed.

3 (c) Procedure in such cases shall be the same as in any
4 other injunction suit. The remedy by injunction hereby given is
5 in addition to any other civil or criminal prosecution and
6 punishment.

7 Section 8. The State Board of Nursing shall promulgate
8 regulations to implement this act.

9 Section 9. This act shall take effect as follows:

10 (1) The amendment or addition of sections 3, 3.1, 5, 6,
11 6.1, 14 and 14.2 of the act shall take effect upon the
12 effective date of the regulations promulgated under section 8
13 of this act.

14 (2) This section shall take effect immediately.

15 (3) The remainder of this act shall take effect in 60
16 days.