

Opinion No. 66-100

August 11, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

TO: Honorable Frank McClure, State Representative, Box 57, Grants, New Mexico

QUESTION

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If the New Mexico State Board of Nursing accepts the required payment of the fee for licensure as a professional nurse by examination, can the Board then refuse to permit the applicant to take the examination?

CONCLUSION

See analysis.

OPINION

{*135} ANALYSIS

Under Section 67-6-16, N.M.S.A., 1953 Compilation, we find that applicants for licensure as professional nurses by examination are required to pay certain application fees. After perfecting this application we see that an applicant by the terms of Section 67-6-13, N.M.S.A., 1953 Compilation, must show to the Nursing Board with satisfactory evidence that said applicant possesses certain **qualifications** for licensure as a professional nurse.

The Nursing Board follows the policy of inquiring into whether professional nurse applicants possess the qualifications required by Section 67-6-13, supra, before the applicants are permitted to take the examination. From time to time, the Nursing Board upon examining the applicant's background will discover that the applicant for licensure as a professional nurse by examination fails to possess all those qualifications required for licensure by Section 67-6-13, supra. When this happens, the Board immediately notifies the applicant that said applicant will not be permitted to take the examination, for even if the applicant was successful in passing the examination, the Board would be powerless to license that applicant.

We are of the opinion that the procedure followed by the New Mexico State Board of Nursing is in conformity with the intent of the Legislature as embodied in the Nursing Practice Act, Sections 67-6-1 through 67-6-33, N.M.S.A., 1953 Compilation. To hold that the Board of Nursing **must** permit all applicants to take the examination for

licensure as professional nurses even though some of those applicants do not possess the statutory qualifications for licensure would be to require a useless act.

Therefore, we must conclude that where the State Board of Nursing properly determines that an applicant fails to meet the statutory qualifications for licensure as a professional nurse which are set up under Section 67-6-13, supra, the Board of Nursing may then validly refuse to allow said applicant to take the examination.