

Opinion No. 66-99

August 8, 1966

BY: OPINION OF BOSTON E. WITT, Attorney General Myles E. Flint, Assistant Attorney General

TO: Mrs. Hazel W. Bush, R. N., Director, New Mexico Board of Nursing, 1115 1/2 Central Avenue N. E., Albuquerque, New Mexico

QUESTION

QUESTIONS

1. May the Board of Nursing set a fee for the service under Section 67-6-27, N.M.S.A., 1953 Compilation, of surveying institutions with which a school of nursing will be affiliated?
2. a) Does the Board of Nursing have the power to establish regulations for issuing a duplicate license?
b) May a fee be charged for this?
3. Section 67-6-31 (d) of the Nursing Practice Act states that the Act does not apply to or affect "Nursing by students enrolled in accredited schools of nursing or accredited courses for the training of practical nurses." Does this exception apply to nursing done by students for compensation and not connected with their educational training?
4. If Section 67-6-31 of the Nursing Practice Act is construed to apply only to nursing connected with educational training, does repeated violation of the section jeopardize licensure after graduation?

CONCLUSIONS

1. No.
2. a) Yes.
b) No.
3. No.
4. See Analysis.

OPINION

{*133} ANALYSIS

Section 67-6-27 of the Nursing Practice Act, N.M.S.A., 1953 Compilation, provides in part as follows:

"From time to time, as deemed necessary by the board, it shall be the duty of the board, through a board member or an authorized employee, to survey all schools of nursing for licensing in this state. . . ."

The purpose of this section is to give the Board of Nursing power to see that schools of nursing meet standards set by the board for accreditation. No provision is made for setting a fee for this service. Since no statute authorizes a fee, we must conclude that no fee may be charged. Similar rulings have issued from this office in the past. In A. G. Opinion No. 5006, April 8, 1947, it was held that the Justice of the Peace could not charge a fee for issuance of a special license, since the statute involved {*134} made no provisions for collecting such a fee. And, in a recent opinion, No. 66-44, dated April 11, 1966, we held that there could be no charge for a certificate of registration as an architect. Section 67-12-3 (E), N.M.S.A., 1953 Compilation (P.S.), provides for issuance of such a certificate, but no provision is made for a fee chargeable therewith.

Turning now to your second question, we quote in pertinent part Section 67-6-8 of the Nursing Practice Act, N.M.S.A., 1953 Compilation:

"POWERS AND DUTIES OF THE BOARD. -- In addition to other powers and duties conferred in this act [67-6-1 to 67-6-33], the board is hereby authorized and shall have the duty to:

(a) Make such bylaws and rules as are necessary to govern the proceedings of the board and carry into effect the purpose of the act."

We believe this section authorizes the Board of Nursing to establish regulations for issuing a duplicate certificate, a practice which is not provided for specifically in the act. Such regulations would not be unusual or unreasonable. See for example provisions for issuing duplicate licenses for collection agencies, Section 67-15-62, N.M.S.A., 1953 Compilation, and for cosmetologists, Section 67-17-16 (B), N.M.S.A., 1953 Compilation. We hold, however, that a fee cannot be charged for the duplicate certificate under the reasoning outlined in our answer to your first question.

The purpose of the Nursing Practice Act is set forth under Section 67-6-2, N.M.S.A., 1953 Compilation, which reads as follows: "The purpose of this act [67-6-1 to 67-6-33] is to safeguard life and health and promote the public welfare by regulating the practice of nursing and by regulating schools of nursing in this state." The Act should be construed with this purpose in mind. In excepting "nursing by students enrolled in accredited schools of nursing or accredited courses for the training of practical nurses", Section 67-6-31 (d), 1953 Compilation, the legislature could not, we think, have meant to except nursing for compensation by students not connected with their training program.

Nursing schools do compensate trainees for work done under supervision of instructors, and in connection with the school. A reason for this compensation is to aid the students financially while they complete their course of study. We believe that Section 67-6-31 (d), supra, excepts nursing to that extent.

Finally, in determining whether violations of Section 67-6-31 (d), supra, would jeopardize licensure after graduation, we must refer to Sections 67-6-13 and 67-6-19 of the Act, N.M.S.A., 1953 Compilation, which deal with qualifications for licensure as a practical or professional nurse. These sections require that an applicant furnish evidence satisfactory to the board that said applicant meets certain qualifications enumerated under the sections. The first qualification under both sections is that the applicant be of "good moral character". It would be, we feel, at the discretion of the board to determine whether activities of a student nurse trainee were of a serious enough nature to warrant disqualification for licensure as a professional or practical nurse.