

Opinion No. 68-112

November 8, 1968

BY: OPINION OF BOSTON E. WITT, Attorney General

TO: Hazel W. Bush, R. N. Director, State Board of Nursing 505 Marquette Avenue,
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QUESTION

FACTS

1. Section 67-2-15, N.M.S.A. 1953 Compilation (Nursing Practice Act) lists the qualifications for licensure as a practical nurse; however, the last paragraph of this section waives sub-sections C and D (relating to education) for the applicant who presents evidence of having performed practical nurse duties for a period of at least five years, and has been endorsed by two medical doctors licensed to practice medicine in New Mexico.

2. Sections 67-2-11 and 67-2-16, subsections A, N.M.S.A., 1953 Compilation, require the applicant for licensure by examination to pass the state board test pool licensing examination. This examination has been in use since 1944. It has been used as the licensing examination by all nurse licensing boards in the United States, with the exception of the Texas Vocational Nurse Board, since 1950. Six Canadian provinces also use this examination for licensing. Items for the test pool examination are written by experts who are nominated by boards which have membership in the "pool." These items are then put into a draft which is reviewed in closed session by members of each participating board for selection or deletion before the final form is printed for use. Items are changed from time to time to reflect current trends in nursing.

Each jurisdiction sets its own minimum passing score; however, most all states have accepted a standard score of 350 as the minimum for many years. The Board of Nursing does not have the opportunity to review the examination used by foreign countries or the Texas Vocational Board.

QUESTIONS

1. Under the waiver provisions of Section 67-2-15, is the examination for practical nurse applicants, required under Section 67-2-16(A), *supra*, also waived?
2. Can the State Board of Nursing require the test pool examination for those who have not written it elsewhere or who have not achieved the minimum passing score adopted for New Mexico?

CONCLUSIONS

1. No.
2. See analysis.

OPINION

*{*181}* ANALYSIS

As to question one, it is our opinion that the last paragraph of Section 67-2-15, supra, does not authorize the Board to waive the requirement of examination under Section 67-2-16, supra. Rather, this provision simply provides a method, until July 1, 1969, by which applicants for licensure as practical nurses may substitute for the evidence of educational qualifications required under subsections C and D evidence of equivalent practical experience and qualification.

Nowhere in the Nursing Practice Act does it provide nor can it be reasonably deduced, that an applicant for licensure as a practical nurse who has had five years experience in performing the duties of a practical nurse and has been endorsed for licensure by two licensed New Mexico medical doctors is not required to take the examination provided for in Section 67-2-16.

Provisions in the law for temporary licensure (Section 67-2-17), for recognition of those licensed under prior laws (Section 67-2-18) and for licensing without examination of those from another state, territory or foreign country (Section 67-2-16(B)), all indicate an intent on the part of the Legislature that unless an applicant qualifies under one of these sections for a temporary or permanent license he is required to take the examination provided for in Section 67-2-16(A). If the Legislature had intended otherwise, it would have so provided, as it did in the clear language of the prior law (Section 67-6-22) which this office interpreted as waiving the written examination (Opinion of AG 1953-54, No. 5935).

*{*182}* As to question number two, it is clear that applicants for licensure by examination under Sections 67-2-11(A) and 67-2-16(A), may be required to take and achieve the minimum passing score adopted by the Board. The problem is whether there are any circumstance under which the Board could require applicants for licensure **without examination** under subsections B of these sections to take and pass the test pool examination.

It is our opinion that the Board may not make such a requirement unless it specifically finds that an applicant for licensure without examination does not meet the "qualifications or equivalent" required of licensed professional or practical nurses in this State.

The qualifications clearly include the successful passing of the test pool examination "or if such test is not available then such other written examination of similar nature as the board may determine." In making such a determination, the Board must necessarily

consider what, if any, examination the applicant has taken in another state, territory or foreign country, and must decide whether or not that examination and the applicant's score thereon is substantially equivalent to the examination and passing mark required in New Mexico. It would seem that in no other way could the Board determine whether an applicant for licensure without examination is entitled to be licensed in this State.

If the Board should determine that such applicant is not so entitled for the reason that the applicant's examination or mark elsewhere do not meet the equivalent standards in New Mexico, then, of course, the application for licensure should be denied and the applicant required to qualify by examination.

This analysis also requires that the Board by reasonable regulations establish a procedure by which the applicant can furnish evidence concerning his examination elsewhere as well as standards for the Board's evaluation thereof.