

ACT 71

S. B. NO. 1584-70

A Bill for an Act to Provide for the Regulation of the Practice of Nursing; to Provide for a State Board of Nursing and to Define the Powers and Duties of the Board Including Licensure of Practitioners of Nursing and Establishment of Standards for Educational Programs Preparing for Nursing Practice, and to Prescribe Penalties for Violations of the Provisions of this Act.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Chapter 457, Hawaii Revised Statutes, is amended to read as follows:

**“Sec. 457-1 Purpose.** In order to safeguard life and health, any person practicing or offering to practice as a registered nurse or as a licensed practical nurse in this State for compensation, shall be required to submit evidence that

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he or she is qualified to so practice, and shall be licensed as provided in this chapter. After the effective date of this Act, it shall be unlawful for any person not licensed under this chapter to practice or offer to practice nursing as a registered nurse or as a licensed practical nurse or to use any sign, card, or device to indicate that the person is a registered nurse or a licensed practical nurse.

**Sec. 457-2 Definitions.** As used in this chapter unless the content otherwise requires:

- (1) 'Board' means the State board of nursing.
- (2) 'The practice of nursing as a registered nurse' means the performance for compensation of any act in the observation, care, and counsel of the ill, injured, or infirm, or in the maintenance of health or prevention of illness of others, or in the supervision and teaching of other personnel, or the administration of medications and treatments as prescribed by a licensed physician or dentist, requiring substantial specialized judgment and skill and based on knowledge and application of the principles of biological, physical, and social sciences. The foregoing shall not include acts of medical diagnosis or prescription of therapeutic or corrective measures.
- (3) 'The practice of nursing as a licensed practical nurse' means the performance for compensation of selected acts in the care of the ill, injured, or infirm under the direction of a registered nurse or a licensed physician or a licensed dentist, and not requiring the substantial specialized skill, judgment, and knowledge required in the practice of a registered nurse.

**Sec. 457-3 State board of nursing; appointment; term of office; removal from office.** There shall be a board of nursing which shall be appointed and may be removed by the governor in the manner prescribed in section 26-34. The board shall consist of seven members, five of whom shall be registered nurses and two of whom shall be licensed practical nurses. There shall be a balance on the board from nursing education and nursing service; provided that the members of the board holding office on the effective date of this Act shall serve as members of the board until the expiration of their respective terms or until their successors have been appointed. The term of office for members of the board shall be three years. No member shall be appointed to more than two consecutive terms or serve more than six years. Five members of the board shall be residents of the city and county of Honolulu and two shall be residents of counties other than the city and county of Honolulu.

**Sec. 457-4 Qualifications of board members.** Each member of the board shall be a citizen of the United States and a resident of this State and shall file with the lieutenant governor the constitutional oath of office before beginning his or her term of office.

Registered nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare

for a registered nurse and at least a bachelor's degree in nursing but preferably a graduate degree in nursing;

- (2) Be a registered nurse in the State; and
- (3) Have at least five years of successful experience after graduation in administration or teaching in an educational program to prepare practitioners of nursing and at least three years of active nursing experience immediately preceding appointment or reappointment.

Licensed practical nurse members of the board shall possess the following additional qualifications:

- (1) Graduation from a state-accredited educational program to prepare for a licensed practical nurse.
- (2) Be a licensed practical nurse in the State; and
- (3) Have at least five years of successful experience in the practice of nursing as a licensed practical nurse after graduation and at least three years of active nursing experience as a licensed practical nurse immediately preceding appointment or reappointment.

**Sec. 457-5 Duties and powers of board.** (a) The board shall hold meetings at such times as it deems necessary. The board shall have a president and a secretary-treasurer who shall be elected annually from its members.

The board may:

- (1) Adopt, amend or repeal such rules and regulations, pursuant to chapter 91, not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter;
- (2) Prescribe standards and approve curricula for educational programs preparing persons for licensure under this chapter;
- (3) Provide for surveys of such educational programs at such times as it may deem necessary;
- (4) Accredite such educational programs as meet the requirements of this chapter and the rules and regulations of the board;
- (5) Deny or withdraw accreditation from educational programs for failure to meet prescribed standards;
- (6) Examine, license, and renew the licenses of qualified applicants;
- (7) Conduct hearings upon charges calling for discipline of a licensee or, denial, suspension, or revocation of a license;
- (8) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
- (9) Cause the prosecution of all persons violating this chapter and to incur necessary expenses therefor;
- (10) Keep a record of all its proceedings; and

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(11) Make an annual report to the governor.

(b) The members of the board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

**Sec. 457-6 Executive secretary; other assistants.** (a) Subject to chapters 76 and 77 the department of regulatory agencies may employ and remove such administrative and clerical assistants as the board may require and prescribe their powers and duties.

(b) (1) The department shall employ an executive secretary of the board whose position shall be subject to chapters 76 and 77. The executive secretary shall be employed with due regard to his fitness, thorough administrative ability and knowledge of and experience in the nursing field.

(2) The executive secretary shall, under the supervision of the board, administer this chapter and the rules and regulations and orders established thereunder and perform such other duties as the board may require; he shall be in charge of the offices of the board and responsible to the board for the preparation of reports and the collection and dissemination of data and other public information relating to nursing.

**Sec. 457-7 Registered nurses; qualifications; licenses; fees; title; existing licensed nurses.** (a) An applicant for a license to practice nursing as a registered nurse shall submit to the board written evidence, verified by oath or affirmation, that the applicant:

(1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency; and

(2) Has completed the required State accredited nursing education program.

(b) Licenses shall be granted either:

(1) By examination: The applicant shall be required to pass a written examination in such subjects as the board may determine. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a registered nurse; or

(2) By endorsement: The board may issue a license to practice nursing as a registered nurse by endorsement to an applicant who has been licensed as a registered nurse under the laws of another state, territory, or foreign country if, in the opinion of the board, the applicant meets the qualifications required of registered nurses in this State at the time of graduation.

(c) The applicant applying for a license to practice as a registered nurse shall pay a fee of \$20 to the board and a fee of \$5 for each reexamination.

(d) Any person who holds a license to practice nursing as a registered nurse 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.

(e) Any person holding a license or certificate of registration to practice nursing as a registered nurse issued by the board which is valid on the effective date of this Act, shall be deemed to be licensed as a registered nurse under this chapter.

**Sec. 457-8 Licensed practical nurse; qualifications; license; fees; title; existing licensed nurses.** (a) an applicant for a license to practice nursing as a licensed practical nurse shall submit to the board written evidence, verified by oath or affirmation, that the applicant:

- (1) Has completed an approved high school course of study or the equivalent thereof as determined by the appropriate educational agency.
- (2) Has completed a prescribed curriculum in a state-accredited program to prepare for a licensed practical nurse and holds a diploma or certificate therefrom.

(b) Licenses shall be granted either:

- (1) By examination: The applicant shall be required to pass a written examination in such subjects as the board may determine. Upon successfully passing such examination, the board shall issue to the applicant a license to practice nursing as a licensed practical nurse; or
- (2) By endorsement: The board may issue a license to practice nursing as a licensed practical nurse by endorsement to any applicant who has been licensed as a licensed practical nurse, or a person entitled to perform similar services under a different title, under the laws of another state, territory, or foreign county if, in the opinion of the board, the applicant meets the requirements for licensed practical nurses in this State at the time of graduation.

(c) The applicant applying for a license to practice as a licensed practical nurse shall pay a fee of \$10 to the board and a fee of \$3 for each reexamination.

(d) Any person who holds a license to practice nursing as a licensed practical nurse in this State shall have the right to use the title 'Licensed Practical Nurse' and the abbreviation 'L.P.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 licensed practical nurse.

(e) Any person holding a license to practice nursing as a licensed practical nurse issued by the board which is valid on the effective date of this Act, shall be deemed to be licensed as a licensed practical nurse under this chapter.

**Sec. 457-9 Renewal of license.** The license of every person licensed under this chapter shall be renewed annually, except as hereinafter provided. Annually on or before July 1, the board shall mail an application for renewal of license to every person to whom a license was issued or renewed during the cur-

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rent year. The applicant shall fill in the application blank and return it to the board with a renewal fee of \$3 before June 30 of the following year. 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 for the current year beginning July 1 and expiring the following June 30. Such renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

Any licensee who allows his or her license to lapse by failing to renew the license as provided above may be reinstated by the board on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee of \$5.

Any person practicing nursing during the time his or her license has lapsed shall be considered an illegal practitioner and shall be subjected to the penalties provided for violations of this chapter.

A nurse who does not engage in nursing in the State during the succeeding year shall not be required to pay the renewal fee as long as he or she remains inactive. Should he or she wish to resume nursing at some future time he or she shall so notify the board and remit the renewal fee for the current annual period.

**Sec. 457-10 Disposition of funds.** All fees received by the board and monies collected under this chapter shall be deposited by the director of regulatory agencies with the director of finance to the credit of the general fund.

**Sec. 457-11 Nursing education programs.** (a) An institution desiring to conduct a nursing education program to prepare registered or licensed practical nurses shall apply to the board and submit evidence that:

- (1) It is prepared to carry out a program in undergraduate nursing education or a program in the training of nurses as licensed practical nurses, as the case may be; and
- (2) It is prepared to meet such standards as shall be established by law and by the board.

(b) A survey of the institution and its undergraduate or practical nursing program shall be made by the executive secretary or other authorized employee 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 nursing education program are met, the program shall be accredited as a nursing education program for registered or licensed practical nurses.

(c) From time to time as deemed necessary by the board, it shall be the duty of the board, through its authorized representative, to survey nursing education programs in the State. Written reports of the surveys shall be submitted to the board. If the board determines that any accredited nursing education program is not maintaining the standards required by law and by the board, notice thereof in writing specifying the discrepancies 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 held in conformance with chapter 91.

**Sec. 457-12 Discipline; grounds; proceedings; hearings.** (a) The board shall have the power to deny, revoke, or suspend any license to practice nursing as a registered nurse or as a licensed practical nurse issued by the board or applied for in accordance with this chapter, or otherwise to discipline a licensee upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing as a registered nurse or as a licensed practical nurse; or
- (2) Is guilty of a crime or gross immorality; or
- (3) Is unfit or incompetent by reason of negligence, habits, or other causes; or
- (4) Is habitually intemperate or is addicted to the use of habit-forming drugs; or
- (5) Is mentally incompetent; or
- (6) Is guilty of unprofessional conduct; or
- (7) Has willfully or repeatedly violated any of the provisions of this chapter.

(b) Upon filing of a sworn or affirmed complaint with the board charging a person with having been guilty of any of the actions specified as a ground for disciplinary action, the executive secretary of the board shall fix a time and place for a hearing and shall cause a copy of the charges, together with a notice of the time and place fixed for the hearing to be served on the accused at least ten days prior thereto. When personal service cannot be effected and such fact is certified on oath or affirmation by any person authorized to make legal service, the executive secretary of the board shall cause to be published, twice in each of two successive weeks, a notice of the hearings in a newspaper published in the county in which the accused last practiced according to the records of the board and shall mail a copy of the charges and of such notice to the accused at his or her last known address.

(c) When publication of the notice is necessary, the date of the hearing shall not be less than ten days after the last date of the notice. The attendance of witnesses and the production of books, papers, and documents at the hearing may be compelled by subpoenas issued by the board, which shall be served in accordance with the law. At the hearing the board shall administer oaths as may be necessary for the proper conduct of the hearing. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient legal evidence to sustain it. At the hearing the accused shall have the right to appear either personally or by counsel, or both, in his or her own behalf, to cross-examine witnesses, and to have subpoenas issued by the board. If the accused is found guilty of the charges, the board may refuse to issue a license to the applicant or may revoke, suspend a license or otherwise discipline a licensee. A revoked or suspended license may be reissued after one year in the discretion of the board.

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**Sec. 457-13 Exceptions.** This chapter does not prohibit:

- (1) The furnishing of nursing assistance in an emergency.
- (2) The practice of nursing which is incidental to their program of study by students enrolled in nursing education programs accredited by the board.
- (3) The practice of nursing by permit pending the results of licensing examination by graduates of schools whose accreditation is recognized by the board; providing the candidates enter the first licensing examination scheduled by the board following graduation.
- (4) The practice of any legally qualified nurse of another state who is employed by the United States or any bureau, division, or agency thereof, while in the discharge of his or her official duties.
- (5) The practice of nursing in connection with healing by prayer or spiritual means alone in accordance with the tenets and practice of any well recognized church or religious denomination, provided that no person practicing such nursing holds himself out to be a registered nurse or a licensed practical nurse.

**Sec. 457-14 Violations of chapter; penalties.** It shall be a misdemeanor for any person, including any corporation, association, or individual to:

- (1) Sell or fraudulently obtain or furnish any nursing diploma, license, renewal, or record or aid or abet therein; or
- (2) Practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently signed or issued unlawfully or under fraudulent representation; or
- (3) Practice nursing as a registered or as a licensed practical nurse unless licensed to practice under this chapter; or
- (4) Use in connection with his or her name any designation tending to imply that he or she is a registered nurse or a licensed practical nurse unless licensed to practice under this chapter; or
- (5) Practice nursing as a registered nurse or as a licensed practical nurse during the time his or her license issued under this chapter is suspended or revoked; or
- (6) Conduct a nursing education program to prepare for a registered nurse or licensed practical nurse unless the program has been accredited by the board; or
- (7) Otherwise violate any provisions of this chapter.

Such misdemeanor shall be punishable by a fine of not more than \$500 for a first offense. Each subsequent offense shall be fined not more than \$1,000 or imprisoned not more than one year, or both.



**Sec. 457-15 Injunctive relief.** The practice of nursing as a registered nurse or as a licensed practical nurse by any person who has not been issued a license under this chapter or whose license has been suspended or revoked or has expired is declared to be inimical to the public welfare and to constitute a public nuisance. The board of nursing may, through the attorney general, apply for an injunction in any court of competent jurisdiction to enjoin any person who has not been issued a license or whose license has been suspended or revoked or expired, from practicing nursing as a registered nurse or as a licensed practical nurse; and, upon the filing of a verified petition in such court, the court or any judge thereof, if satisfied by affidavit, or otherwise, that such person is or has been practicing nursing as a registered nurse or as a licensed practical nurse without having been issued a license, or after his license has been suspended or revoked or expired, may issue a temporary injunction, without notice or bond, enjoining the defendant from further practicing nursing as a registered nurse or as a licensed practical nurse. A copy of said verified petition shall be served upon the defendant and the proceedings shall thereafter be conducted as in other civil cases. If it be established that the defendant has been or is practicing nursing as a registered nurse or as a licensed practical nurse without having been issued a license or has been or is practicing nursing as a registered nurse or as a licensed practical nurse after his license has been revoked, or expired, the court, or any judge thereof, may enter a decree perpetually enjoining said defendant from further practicing nursing as a registered nurse or as a licensed practical nurse. In case of violation of any injunction issued under this section, the court, or any judge thereof, may summarily try and punish the offender for contempt of court. Such injunction proceedings shall be in addition to, and not in lieu of, all penalties and other remedies provided in this chapter.

**Sec. 457-16 Severability.** If any provision of this chapter, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application and to this end the provisions of this chapter are severable.”

SECTION 2. This Act shall take effect upon its approval.  
(Approved June 12, 1970.)