

No. 1985-110

AN ACT

SB 1117

Amending the act of March 2, 1956 (1955 P.L.1211, No.376), entitled "An act providing for and regulating the licensing and practice of practical nursing; imposing duties on the State Board of Nurse Examiners; and imposing penalties," further providing for the practice of practical nursing; changing provisions relating to the issuance of licenses and the suspension and revocation of licenses; providing for fees; providing for penalties; and making repeals.

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

Section 1. Section 1 of the act of March 2, 1956 (1955 P.L.1211, No.376), known as the Practical Nurse Law, is amended to read:

Section 1. *Short Title.*—This act shall be known and may be cited as the "Practical Nurse Law."

Section 2. Section 2 of the act, amended January 13, 1966 (1965 P.L.1295, No.516), is amended to read:

Section 2. *Definitions.*—When used in this act the following words and phrases shall have the following meaning, unless the context clearly indicates otherwise.

(1) The "practice of practical nursing" means the performance of selected nursing acts in the care of the ill, injured or infirm under the direction of a licensed professional nurse, a licensed physician or a licensed dentist which do not require the specialized skill, judgment and knowledge required in professional nursing.

(2) "Board" means the State Board of [Nurse Examiners] *Nursing*.

Section 3. Section 3 of the act, amended January 13, 1966 (1965 P.L.1295, No.516) and December 28, 1972 (P.L.1660, No.354), is amended to read:

Section 3. *Scope of Act.*—This act confers no authority to practice any profession other than practical nursing.

This act does not prohibit:

(1) Home care of the sick by friends, domestic servants, nursemaids and companions or household aides of any type so long as such persons do not represent or hold themselves out to be practical nurses or use in connection with their names any designation tending to imply that they are licensed to practice under the provisions of this act.

(2) Gratuitous care of the sick by friends or members of the family.

(3) Domestic administration of family remedies by any person.

(4) Nursing services by anyone in case of an immediate emergency.

(5) Nursing by a person temporarily in this Commonwealth in compliance with an engagement made outside of this Commonwealth which engagement requires that such person accompany and care for a patient while temporarily in this Commonwealth whenever the engagement shall not be of more than six (6) months' duration.

(6) Care of the sick with or without compensation or personal profit when done in connection with the practice of the religious tenets of any church by adherents thereof.

(7) Nursing services rendered by a student enrolled in an approved school of practical nursing, when these services *are performed under qualified supervision and* are part of the course of study.

(8) Nursing services rendered *pursuant to a temporary practice permit* by a graduate of an approved school of practical nursing in Pennsylvania or any other state, working under qualified supervision, during the period not to exceed one (1) year between completion of his or her **[course] program of practical** nursing education and notification of the results of a licensing examination taken by such person, and during such additional period as the board may in each case especially permit.

(9) Nursing services rendered *pursuant to a temporary practice permit* by a person who holds a current license or other evidence of the right to practice practical nursing as that term is defined in this act, issued by any other state or territory of the United States or province of the Dominion of Canada, during the period that an application filed by such person for licensure in Pennsylvania is pending before the board, **[or] but not** for a period of *more than* one (1) year[, **whichever period first expires**], *and during such additional period as the board may in each case especially permit.*

(10) Auxiliary services rendered by persons carrying out duties necessary for the support of nursing service, including those duties which involve minor *and very basic* nursing services for patients, performed in **[hospitals] health care facilities** or elsewhere under the direction of licensed physicians or as delegated by licensed registered nurses and performed under the direction of professional nurses or licensed practical nurses.

Section 4. The act is amended by adding a section to read:

Section 3.1. Temporary Practice Permit.—In order for a person to practice practical nursing during the one-year period from the completion of the examination requirements or the one-year period from the application for licensure by a person who holds a current license issued by any other state, territory or possession of the United States or the Dominion of Canada, the board may issue a temporary practice permit which is nonrenewable and valid for a period of one year and during such additional period as the board may in each case especially permit, except that the temporary practice permit shall expire if the person fails the licensing examination.

Section 5. Section 4 of the act is amended to read:

Section 4. *Examination of Applicants; Issuance of Licenses.*—The board shall **[once every] twice each** year and at such other times and under such conditions as shall be provided by its regulations examine all applicants eligible for examination to determine whether they are qualified to be licensed, and shall authorize the issue to each person passing said examination to the satisfaction of the board a proper certificate setting forth that such person has been licensed to practice as a licensed practical nurse.

Section 6. Section 5 of the act, amended May 2, 1985 (P.L.24, No.11), is amended to read:

Section 5. *Fee; Qualifications of Applications.*—No application for licensure as a licensed practical nurse shall be considered unless accompanied by a fee [of five dollars (\$5.00)] *determined by the board by regulation.* Every applicant for examination as a licensed practical nurse shall furnish evidence satisfactory to the board that he or she is eighteen years of age or over, is a citizen of the United States or has legally declared intention to become such, is of good moral character, has completed at least twelve years of education with diploma in public, parochial or private school, or its equivalent as evaluated by the Department of Education; and has satisfactorily completed a [course] *program* in practical nursing prescribed and approved by the board in a school, hospital or other *educational* institution, of not less than fifteen hundred hours and within a period of not less than twelve months, [and has not] *or has completed a program considered by the board to be equal to that required in this Commonwealth at the time such program was completed. The board shall not issue a license or certificate to an applicant who has* been convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as “The Controlled Substance, Drug, Device and Cosmetic Act,” or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country *unless:*

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

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

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

As used in this section the term “convicted” shall include a judgment, an admission of guilt or a plea of nolo contendere. An applicant’s statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction, unless the board has some evidence to the contrary.

[Any licensed practical nurse licensed to practice without examination prior to May 14, 1966, shall be eligible to apply for the examination conducted by the board even though such applicant does not possess the educational background or its equivalent required of other applicants for examination.]

Section 7. Section 6 of the act, amended January 13, 1966 (1965 P.L.1295, No.516), is amended to read:

Section 6. *License Without Examination.*—The board may license without examination a graduate of an approved school for the training of practical nurses in any other state, territory, [province] *possession* or country, who has completed a [course] *program* of study in practical nursing considered by the board to be equivalent to that required in this Commonwealth and who was licensed in such state, territory, [province] *possession* or country, by examination and has met the foregoing requirements as to age, character, citizenship and preliminary education.

Section 8. Sections 7 and 8 of the act are repealed.

Section 9. Section 9 of the act, amended January 13, 1966 (1965 P.L.1295, No.516), is amended to read:

Section 9. *Approved List of Schools and Institutions; Candidates for Admission.*—The board shall annually prepare and make available for public distribution lists of all schools and institutions, or combinations thereof, for the training *and education* of practical nurses, approved by the board, the graduates of which shall be eligible for examination for licensure as licensed practical nurses. [After January 1, 1967, all candidates for admission to any such school or institution for the training of practical nurses shall have completed, with diploma, at least a high school education in public, parochial or private school, or its equivalent, as evaluated by the Department of Public Instruction.] The removal of any such school or institution from the approved list shall not make any bona fide student therein at the time of said removal ineligible for examination.

Section 10. Sections 10 and 11 of the act are amended to read:

Section 10. *Insignia.*—An insignia bearing the initials “LPN” may be worn by persons licensed under the provisions of this act.

Section 11. *Record of Licenses and Renewals.*—The board shall maintain a record of all licenses issued under the provisions of this act and renewals thereof as hereinafter provided.

Section 11. Sections 12 and 13 of the act are repealed.

Section 12. The act is amended by adding sections to read:

Section 13.1. Licenses, Duration, Renewal, Inactive Status.—
(a) *Licenses issued pursuant to this act shall expire on the thirtieth day of June of each biennium, or on such other biennial expiration date as may be established by regulation of the board. Application for renewal of a license shall biennially be forwarded to each person holding a current license prior to the expiration date of the current renewal biennium. The application form shall be completed and returned to the board, accompanied by the required fee, as determined by the board by regulation; upon approval of each application, the applicant shall receive a renewal of license.*

(b) *Any person licensed under this act may request an application for inactive status. The application form may be completed and returned to the board; upon receipt of each application, the applicant shall be maintained on inactive status without fee and shall be entitled to apply for an active license at any time. Any person who requests an active status license who has been on inactive status for a period of five (5) consecutive years shall, prior to receiving an active license, satisfy the requirements of the board's regulations for ensuring continued competence, and remit the required fee. A person shall not be denied active status as a result of any increased educational requirements for licensure since the time he or she received his or her original license.*

Section 13.2. Reporting of Multiple Licensure.—*Any licensed practical nurse of this Commonwealth who is also licensed to practice nursing in any other state, territory, possession or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken*

in other states shall be reported to the board on the biennial renewal application or within ninety (90) days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the nurse's record and such state, territory, possession or country shall be notified by the board of any disciplinary actions taken against said practical nurse in this Commonwealth.

Section 13. Section 14 of the act, amended January 13, 1966 (1965 P.L.1295, No.516), is amended to read:

Section 14. *Violations.*—Except as otherwise herein provided, it shall be unlawful for any person, association, partnership, corporation or institution, after the effective date of this act, to

(1) Furnish, sell or obtain by fraud or misrepresentation a record of any qualification required for a license, or aid or abet therein;

(2) Use in connection with his or her name the words practical nurse, licensed practical nurse, or the letters "PN," or "LPN," or any designation tending to imply that he or she is a practical nurse, or licensed practical nurse, unless he or she is duly licensed to so practice under the provisions of this act;

(3) Practice practical nursing during the time his or her license issued under the provisions of this act is suspended or revoked;

(4) Practice practical nursing without a valid current license;

(5) To transfer, offer to transfer, or permit the use by another of any license issued under this act;

(6) To aid or abet any person to violate any provision of this act;

(7) Otherwise violate any of the provisions of this act.

Section 14. Sections 15 and 16 of the act are amended to read:

Section 15. *Penalties.*—(a) Any person or an officer or employe of any association, corporation, institution or partnership, violating any of the provisions of this act [shall, upon summary] or any rule or regulation of the board, commits a misdemeanor and, upon conviction therefor, shall be sentenced to pay a fine of [not less than fifty dollars (\$50) for the first offense, and for a second and subsequent offense not less than one hundred dollars (\$100.00) nor more than two hundred dollars (\$200.00), and in default of the payment of such fine and costs to undergo imprisonment for a period not to exceed thirty (30) days.] not more than five hundred dollars (\$500), or undergo imprisonment for no more than six (6) months for the first violation. On the second and each subsequent conviction, he or she shall be sentenced to pay a fine of not more than one thousand dollars (\$1,000), or undergo imprisonment for not less than six (6) months or more than one (1) year in jail, or both.

(b) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five (5) members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) on any current licensee who violates any provision of this act or on any person who practices practical nursing without

being properly licensed to do so under this act or on the responsible officers or employes of any corporation, copartnership, institution or association violating any of the provisions of this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 16. Refusal, Suspension or Revocation of License; Grounds.—

(a) The board may *refuse*, suspend or revoke any license in any case where the board shall find, that the licensee

(1) Is guilty of gross immorality;

(2) Is unfit or incompetent by reason of negligence, habits or other causes;

(3) Has wilfully or repeatedly violated any of the provisions of this act or of the regulations of the board;

(4) Has committed fraud or deceit in the practice of practical nursing or in securing his or her admission to such practice *or to practical nursing school*;

(5) Has been convicted or has pleaded guilty or entered a plea of nolo contendere or has been found guilty by a judge or jury of a [crime] *felony or a crime of moral turpitude in the courts of this Commonwealth, the United States, or any other state, territory or country, or has received probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges*, or has been dishonorably discharged or has been discharged under circumstances amounting to dishonorable discharge from the military forces of the United States or of any other country;

(6) Is [an habitual drunkard] *addicted to alcohol* or is addicted to [the use of morphine, cocaine or other] *hallucinogenic or narcotic drugs or other drugs [having a similar effect] which tend to impair judgment or coordination, so long as such dependence shall continue*, or if he or she has become mentally incompetent. *In enforcing this clause, the board shall, upon probable cause, have authority to compel a licensee to submit to a mental or physical examination as designated by it. After notice, hearing, adjudication and appeal as provided in section 17, failure of a licensee to submit to such examination when directed shall constitute an admission of the allegations against him or her unless failure is due to circumstances beyond his or her control, consequent upon which default and final order may be entered without the taking of testimony or presentation of evidence. A licensee affected under this clause shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume a competent practice of practical nursing with reasonable skill and safety to patients*;

(7) Is continuing to practice nursing when such licensee knows he or she has an infectious, communicable or contagious disease;

(8) Has been guilty of unprofessional conduct or such conduct as to require a suspension or revocation in the public interest;

(9) That said licensee having obtained a license or certificate of record upon declaration of intention to become a citizen of the United States has

not become a citizen of the United States within seven years from the date of such declaration of intention.]

(9) *Has had his or her license suspended or revoked, or received other disciplinary action by the proper licensing authority in another state, territory, possession or country;*

(10) *Has acted in such a manner as to present an immediate and clear danger to the public health or safety.*

(b) *When the board finds that the license of any nurse may be refused, revoked or suspended under the terms of subsection (a), the board may:*

(1) *Deny the application for a license.*

(2) *Administer a public reprimand.*

(3) *Revoke, suspend, limit or otherwise restrict a license as determined by the board.*

(4) *Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.*

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

(6) *Restore or reissue, in its discretion, a suspended license to practice practical nursing and impose any disciplinary or corrective measure which it might originally have imposed.*

Section 15. Section 16.1 of the act is repealed.

Section 16. The act is amended by adding a section to read:

Section 16.2. Impaired Practical Nurses Program.—*The impaired nurse program as that program is set forth in the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law," shall be applicable to all licensed practical nurses under this act.*

Section 17. Section 17 of the act is amended to read:

Section 17. Suspension or Revocation of License; Procedure.—All suspensions and revocations shall be made only in accordance with the regulations of the board and only by majority vote of the members of the board, and shall be subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with the provisions [~~of the Administrative Agency Law, approved June four, one thousand nine hundred forty-five (Pamphlet Laws 1388), or any amendment or reenactment thereof relating to adjudication procedure~~] *in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).* The board by majority action and in accordance with its regulations may reissue any license which has been suspended [~~or revoked~~].

Section 18. The act is amended by adding sections to read:

Section 17.1. Temporary and Automatic Suspensions.—*(a) A license issued under this act may be temporarily suspended under circumstances determined by the board to be an immediate and clear danger to public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of section 17 shall not apply to tempo-*

rary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty (30) days following the issuance of an order temporarily suspending a license, the board shall conduct or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than one hundred eighty (180) days.

(b) A license issued under this act shall automatically be suspended upon the legal commitment to an institution because of mental incompetency from any cause upon filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this subsection shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as hereinafter provided in the case of revocation or suspension of such license.

Section 17.2. Reinstatement of License.—Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the license of a person to practice practical nursing pursuant to this act which has been revoked. Any person whose license has been revoked may apply for reinstatement, after a period of at least five (5) years, but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement, if he or she desires to practice at any time after such revocation.

Section 17.3. Surrender of Suspended or Revoked License.—The board shall require a person whose license has been suspended or revoked, to return the license in such manner as the board directs. Failure to do so, and upon conviction thereof, shall be a misdemeanor of the third degree.

Section 17.4. Injunction or Other Process.—It shall be unlawful for any person to practice or attempt to offer to practice practical nursing, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of practical nursing as defined in this act may be enjoined by the courts on petition of the board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it is deter-

mined that the respondent has engaged in the unlawful practice of practical nursing, the court shall enjoin him or her from so practicing unless and until he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.

Section 17.5. Setting of Fees and Disposition of Fees, Fines and Civil Penalties.—*(a) All fees required pursuant to this act shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by the fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase the fees by regulation so that projected revenues will meet or exceed projected expenditures.*

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board pursuant to subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement efforts.

(c) All fees, fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account established pursuant to and for use in accordance with the act of July 1, 1978 (P.L.700, No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act."

Section 17.6. Rules and Regulations.—*The board shall establish rules and regulations for the practice of practical nursing and the administration of this act. Copies of such rules and regulations shall be available for distribution to the public. The board may charge a fee as set by the board, by regulation, for all examinations, registrations, renewals, certifications, licensures or applications permitted by this act or the regulations thereunder.*

Section 17.7. Communication with Licensees.—*The board shall communicate with licensees on issues affecting the education, practice and regulation of practical nursing on at least an annual basis.*

Section 17.8. Subpoenas; Oaths; Reports.—*(a) The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses, and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing, held or had by it. Medical records may not be subpoenaed without consent of the patient or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion into patient confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.*

(b) An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reported alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

(c) The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate containing a description of the types of complaints received, status of cases, board action which has been taken, and the length of time from the initial complaint to final board resolution.

Section 19. Each rule and regulation of the board in effect on December 31, 1985, and not inconsistent with this act, shall remain in effect after such date until repealed or amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act. Each fee of the board in effect on December 31, 1985, and not inconsistent with this act, shall remain in effect after such date until repealed or amended in accordance with the provisions of this act.

Section 20. All practical nurses licensed by the State Board of Nurse Examiners prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Board of Nursing.

Section 21. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 22. This act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH