

**OPINION
77-36**

August 1, 1977 (OPINION)

Mrs. Irene E. Sage, R.N.
Executive Director
North Dakota Board of Nursing
219 North Seventh Street
Bismarck, ND 58501

Dear Mrs. Sage:

In your letter of May 25, 1977, you request the opinion of the Attorney General's Office regarding the powers and duties of the Board of Nursing over nursing education programs as set forth in that letter. Specifically you ask the Board's responsibility regarding:

1. Establishing standards for all nursing education programs or acknowledging programs accredited by national nursing accrediting agencies.
2. Conduct surveys as necessary of nursing education programs required to meet Board standards.
3. Approve such nursing education programs which meet Board standards.

You point out that a nurse practitioner program exists which leads to certification by the school administering such programs and that a masters degree program in nursing is being contemplated by the University, as well as the existence of continuing education programs in nursing which may lead to certification as well as inservice education programs in hospitals, together with various conferences and workshops.

The Board of Nursing has the duty and power to license registered nurses and license practical nurses who practice in this State. An examination is required in order to obtain such license and the law provides that a prerequisite to taking such license examination, the applicant must meet certain requirements, including the satisfactory completion of the appropriate nursing education program in other countries or the appropriate nursing education program approved by the Board of Nursing of the United States. Licensure may be granted by endorsement providing that the applicant has met the same requirements. Thus, in order to take the licensure examination the candidate must have completed a nursing education program approved by a Board of Nursing in the United State. This clearly gives to the Board of Nursing the power to screen candidates for the licensure examination by determining whether the nursing education program of such candidate meets the standards of a Board of Nursing in the United States. Nursing education programs preparing the applicant for the licensure examination in the State of North Dakota are therefore subject to board approval. As far as educational institutions which grant baccalaureate degrees, the Board of Nursing has no direct control over the nursing education program which may be offered by such an institution; however, the Board has a right to

reject candidates for the licensure examination who are graduates of an institution which has a nursing education program which does not meet Board standards.

The status of the law in North Dakota at this time gives the Board or Nursing power only over the examination and licensure of nurses. Once a nurse is licensed the only power the Board has is in regard to disciplinary procedure. Thus, while the legislature has enacted legislation which states that the Board shall "establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies," no power has been established by the legislature to enforce such standards. Nursing education programs which provide continuing education or lead to further specialization would seemingly be within the powers of the Board to regulate, but the Board has no power to conduct examinations after the completion of such program such as is the case where the graduate nurse seeks state licensure.

The legislature may have considered the desirability of standardization of nursing education programs so that institutions offering such programs would have a guideline from the Board of Nursing as to what should be included in such a program. This may be desirable even though the Board is without the power of enforcement of such standards.

In addition to the foregoing, it is recognized that most hospitals and medical care facilities have inservice training programs for nurses and, in addition, there are numerous conferences and workshops conducted by various agencies and organizations which present nursing education material to those attending. Some states have adopted laws which require continuing education in the nursing field on an annual basis and provide that the Board of Nursing of such states should approve such programs. North Dakota has no such law, and it should be recognized that there is no legal requirement for continuing education of a nurse who has a current nursing license.

The only power of enforcement the Board of Nursing has over nursing education programs which do not lead to the licensure examination would be by way of seeking injunctive relief in the courts to prevent an institution from offering and certifying a nurse in some specialty wherein the Board did not approve such program. Thus it might occur that an institution was training and certifying a nurse to be a nurse practitioner wherein the Board had not approved the program and did not believe it was sufficient to properly qualify such person as a nurse practitioner. The Board has a duty to protect the public insofar as nurses are concerned and ensure, insofar as the law allows, that the nurse is qualified to perform the medical procedures in which she is engaging. Such enforcement would have to come by way of injunctive relief against the institution under the powers given by the legislature to the Board to establish standards for all nursing education programs and the outcome of such enforcement procedure would be extremely dubious. It is possible that the Board could take action against a nurse holding herself out to perform medical procedures beyond that ordinarily performed by a nurse by reason of certification of some nursing education program. Since such a nurse might be conducting medical procedures which the Board would consider beyond her capabilities, such conduct might be

considered "unprofessional conduct likely to deceive, defraud or harm the public" since the public would be relying on such certification. Again, the outcome of an action in which the Board sought to suspend or revoke the license of a nurse under such circumstances would be problematical. Certainly the Board would be entering into a new area of disciplinary procedure, and the right of the Board to act in such a case might very well be challenged in the courts.

We might further note the authority of the Board in the section of the statute creating the powers of the Board provides, at subsection 6, that the Board shall "establish standards for all nursing education programs or acknowledge programs accredited by national nursing accrediting agencies." It appears to us that this is subject to a construction which requires the Board to either establish their own standards or accept those programs accredited by national nursing accrediting agencies. If the Board does not adopt its own standards, it would appear it would be required to accept those programs accredited by national nursing accrediting agencies.

Taking these matters into consideration, it is our opinion that the Board of Nursing has the authority to establish standards for nursing education programs which culminate in some form of degree or certification by which the institution giving such degree or certification authorizes the nurse by the issuance and publication of such degree or certification to perform acts or procedures beyond that authorized by the nurse's licensure. We are also of the opinion that institutional inservice education programs, conferences, and workshops generally designed to give information to nurses, but not leading to any degree or certification are not within the power of the Board to approve and regulate.

We have raised the question of the problems of enforcement by the Board of standards for nursing education programs which lead to a degree, diploma or certification which is beyond that required for the licensure examination; however, the mere fact of approval or disapproval by the Board of any such program may, in itself, have considerable effect on such programs and their acceptance in the nursing field. There would not be a necessity for the Board to pursue legal or disciplinary action for every violation, but it could simply allow its disapproval to stand for whatever effect it might have. As a practical matter the best solution would appear to be cooperation between the institutions offering such programs and the Board to resolve any conflicts.

Sincerely,

ALLEN I. OLSON

Attorney General