

ENROLLED SENATE
BILL NO. 265

By: Monson of the Senate

and

Askins of the House

An Act relating to professions and occupations; amending 59 O.S. 2001, Sections 567.4, 567.5, 567.6, 567.7, 567.8 and 567.17, which relate to the Oklahoma Nursing Practice Act; clarifying residency requirement for membership; broadening rulemaking authority of Board; modifying evidence required for application for licensure as registered nurse and licensed practical nurse; clarifying license renewal requirements; granting Board rulemaking authority to establish and modify certain fees; establishing maximum amounts for specified fees; deleting specified fees; deleting per-day administrative penalty; clarifying maximum per-count administrative penalty; deleting certain time restrictions for reinstatement; limiting administrative penalty; requiring suspension of license under specified circumstance and requiring hearing date be scheduled; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 567.4, is amended to read as follows:

Section 567.4 A. The Oklahoma Board of Nursing is hereby established in the State of Oklahoma. The Board shall consist of eleven (11) members who shall be citizens of the United States of America, and residents of Oklahoma, for ~~no less period than~~ at least the previous three (3) years. Six of the members shall be registered nurses, in good standing under the provisions of the Oklahoma Nursing Practice Act, currently engaged in the practice of nursing as a registered nurse and shall have had no less than five (5) years of experience as a registered nurse. At least two of the registered nurses shall be from the field of nursing education, actively associated with a recognized school of nursing in Oklahoma, and who hold an organizational role of administration/management and who are accountable for strategic, operational and/or performance outcomes. At least two of the registered nurses who hold an organizational role of administration/management and who are accountable for strategic, operational and/or performance outcomes shall represent nursing service. At least one of the registered nurses shall be currently engaged in the practice of nursing as an

advanced practice nurse. Three of the members shall be licensed practical nurses in good standing under the provisions of the Oklahoma Nursing Practice Act and currently engaged in the practice of practical nursing as a licensed practical nurse and shall have had no less than five (5) years of experience as a licensed practical nurse. One of the licensed nurses must be employed in the field of long-term care. One of the licensed nurses shall be employed in the area of acute care. Two members shall represent the public and shall be eligible voters of this state, knowledgeable in consumer health concerns, and shall neither be nor ever have been associated with the provision of health care, nor be enrolled in any health-related educational program. The public members shall be appointed by the Governor to serve coterminously with the Governor. At least one registered nurse Board member, one licensed practical nurse Board member and one public Board member shall be appointed from a county with a population of less than forty thousand (40,000).

B. For the purpose of nominating, appointing or reappointing members to the Board, this state shall be divided into eight geographical districts, consisting of counties within the districts as follows:

District No. 1 Cimarron, Texas, Beaver, Harper, Woods, Alfalfa, Grant, Kay, Ellis, Woodward, Major, Garfield, Noble, Dewey, Blaine, Kingfisher and Logan;

District No. 2 Roger Mills, Custer, Beckham, Washita, Caddo, Greer, Kiowa, Harmon, Jackson, Comanche, Tillman and Cotton;

District No. 3 Canadian, Grady, McClain, Garvin, Stephens, Murray, Jefferson, Carter and Love;

District No. 4 Oklahoma;

District No. 5 Lincoln, Okfuskee, Cleveland, Pottawatomie, Seminole, Hughes, Pontotoc, Coal, Johnston, Marshall and Bryan;

District No. 6 Creek and Tulsa;

District No. 7 Osage, Washington, Nowata, Craig, Ottawa, Pawnee, Payne, Rogers, Mayes and Delaware; and

District No. 8 Wagoner, Cherokee, Adair, Okmulgee, Muskogee, Sequoyah, McIntosh, Haskell, Leflore, Pittsburg, Latimer, Atoka, Pushmataha, McCurtain and Choctaw.

Not more than one registered nurse and one licensed practical nurse and one public member shall be appointed from any one geographical district.

C. The Governor shall appoint the Registered Nurse Board members from a list of names submitted by the Oklahoma Nurses Association and Oklahoma chapters of nationally recognized

registered nurse organizations. The Governor shall appoint the licensed practical nurse Board members from a list of names submitted by the Oklahoma State Association of LPN's and Oklahoma chapters of nationally recognized practical nurse organizations. Individuals who are members of the Oklahoma Board of Nursing prior to the effective date of this act shall be allowed to fulfill their terms and be eligible for reappointment.

D. The Registered Nurse and Licensed Practical Nurse members shall be appointed for terms of five (5) years. Upon the death, resignation, or removal of any member, a list from the aforementioned organizations shall be submitted to the Governor who shall appoint a member to fill the vacancy.

1. In addition to the grounds for removal by the Governor of members appointed to the Board provided in Section 2 of Title 74 of the Oklahoma Statutes, it is a ground for removal if a member:

- a. does not have at the time of appointment the qualifications required by subsection A of this section,
- b. is not employed in nursing for a period of twelve (12) consecutive months during the term for which the member was appointed,
- c. is absent from more than half of the regularly scheduled Board meetings that the member is eligible to attend during a calendar year, unless the absence is excused by a majority vote of the Board, or
- d. cannot discharge the duties as a Board member for a substantial portion of the term for which the member is appointed because of illness or disability.

2. The validity of an action of the Board is not affected by the fact that it is taken when a ground for removal of a Board member exists.

3. If the president of the Board has knowledge that a potential ground for removal exists, the president shall then notify the Governor that a potential ground for removal exists.

E. A quorum shall be a majority of the Board which must include at least three (3) registered nurses and one (1) licensed practical nurse.

F. The members of the Board shall annually elect from their number a president, vice-president and a secretary who shall also be the treasurer, and other such officers as necessary to conduct the business of the Board. It shall hold six (6) regular business meetings during each calendar year. Special meetings may be called by the president or secretary with five (5) days' notice to each member of the Board. The Board shall have a seal; it shall make and adopt all necessary rules not inconsistent with the laws of this state, the United States, or with the Oklahoma Nursing Practice Act; and it shall perform the duties and transact the business required

under the provisions of the act. The Board shall cause to be kept a record of all meetings for the Board and give notice of all meetings in accordance with the Administrative Procedures Act and the Open Meetings Act. A list of all persons duly licensed and qualified under this act shall be maintained by the Board. Each member of the Board shall receive, in addition to actual and necessary travel expenses as provided in the State Travel Reimbursement Act, compensation of One Hundred Dollars (\$100.00) for each regular scheduled monthly meeting attended, not to exceed more than six (6) meetings per year. All monies received by the Board shall be held by the treasurer of the Board for meeting the expenses of the Board and for the promotion of nursing education, to employ an attorney to assist the Board and other state and county officials in carrying out the provisions of the Oklahoma Nursing Practice Act, and such other purposes which the Board may determine, and shall be disbursed as directed by the Board. The Board is authorized to adopt and ~~from time to time~~, revise such rules, not inconsistent with the provisions of the Oklahoma Nursing Practice Act, as may be necessary to enable it to carry into effect the provisions of the act, including rules establishing fees, charges and reimbursement costs. The Board shall appoint and employ a qualified person, who shall be a registered nurse, to serve as Executive Director, and shall fix the compensation, require a satisfactory bond, and define the duties of the Executive Director.

SECTION 2. AMENDATORY 59 O.S. 2001, Section 567.5, is amended to read as follows:

Section 567.5 A. An applicant for a license to practice as a registered nurse shall submit to the Oklahoma Board of Nursing certified written evidence that the applicant:

1. Has completed the basic professional curricula of a school of nursing approved by a state board of nursing, and holds or is entitled to hold a diploma or degree therefrom;

2. Has never been convicted in this state, the United States or another state of any felony, unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant by the sentencing court, whichever shall last occur, or a presidential or gubernatorial pardon for the criminal offense has been received, provided that the provisions of this paragraph shall not be effective until November 1, 2003;

3. Has submitted a criminal history records search conducted by the Oklahoma State Bureau of Investigation ~~not less than three (3) months~~ that is not more than ninety (90) days old; and

4. Has met such other qualifications as the Board may prescribe in its rules.

An applicant for a license shall be required to pass a written examination in such subjects as the Board may determine. Upon successfully passing such an examination, the Board shall issue to the applicant a license to practice as a registered nurse. An applicant who fails such examination shall be subject to

reexamination according to the rules of the Board. The passing criteria shall be established by the Board in its rules.

B. The Board may issue a license to practice nursing as a registered nurse without examination to an applicant who has been duly licensed as a registered nurse under the laws of another state, territory, the District of Columbia or a foreign country, if such applicant meets the qualifications required for licensing as a registered nurse in this state.

C. Any person who holds a license to practice as a registered nurse in this state shall have the right to use both 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 figures to indicate that the person using the same is a registered nurse. Any individual doing so shall be guilty of a misdemeanor, which shall be punishable, upon conviction, by imprisonment in the county jail for not more than one (1) year or by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine for each offense.

SECTION 3. AMENDATORY 59 O.S. 2001, Section 567.6, is amended to read as follows:

Section 567.6 A. An applicant for a license to practice as a licensed practical nurse shall submit to the Oklahoma Board of Nursing certified evidence that the applicant:

1. Has received a high school diploma or a graduate equivalency degree;

2. Has successfully completed the prescribed curricula in a state-approved program of practical nursing and holds or is entitled to hold a diploma or certificate therefrom, or equivalent courses in a state-approved program of nursing;

3. Has never been convicted in this state, the United States or another state of any felony, unless five (5) years have elapsed since the date of the criminal conviction or the termination of any probation or other requirements imposed on the applicant by the sentencing court, whichever shall last occur, or a presidential or gubernatorial pardon for the criminal offense has been received, provided that the provisions of this paragraph shall not be effective until November 1, 2003;

4. Has submitted a criminal history records search conducted by the Oklahoma State Bureau of Investigation that is not ~~less than three (3) months~~ more than ninety (90) days old; and

5. Has met such other reasonable preliminary qualification requirements as the Board may prescribe.

The applicant for a license to practice as a licensed practical nurse shall be required to pass a written examination in such subjects as the Board may require. Upon successfully passing such examination the Board shall issue to the applicant a license to

practice as a licensed practical nurse. An applicant who fails such examination shall be subject to reexamination according to the rules of the Board. The passing criteria shall be established by the Board in its rules.

B. The Board may issue a license to practice as a licensed practical nurse without examination to any applicant who has been duly licensed or registered as a licensed practical nurse, or is entitled to perform similar services under a different title, according to the laws of another state, territory, the District of Columbia or a foreign country if such applicant meets the requirements for licensed practical nurses in the State of Oklahoma.

C. Any person holding a license to practice as a licensed attendant issued by the Board, which is valid on July 1, 1953, shall be deemed to be a licensed practical nurse under the provisions of this act.

D. Any person who holds a license to practice as a licensed practical nurse in this state shall have the right to use both 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 figures to indicate that the person using the same is a licensed practical nurse.

Any individual doing so shall be guilty of a misdemeanor, which shall be punishable, upon conviction, by imprisonment in the county jail for not more than one (1) year or by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by both such imprisonment and fine for each offense.

SECTION 4. AMENDATORY 59 O.S. 2001, Section 567.7, is amended to read as follows:

Section 567.7 A. ~~Licenses~~ Upon expiration of an initial license issued pursuant to the Oklahoma Nursing Practice Act, a license shall be renewed every two (2) years according to a schedule published by the Oklahoma Board of Nursing.

B. A licensee who applies for reinstatement of a license shall meet such requirements as the Board may prescribe in its rules.

C. Any licensee who desires to retire temporarily from the practice of nursing in this state shall submit a written request to that effect to the Board. It shall be the duty of the Board to place the name of such licensee upon the nonpracticing list in accordance with the rules of the Board. During the period of temporary retirement, the licensee shall not practice nursing nor be subject to the payment of any renewal fees. When the licensee desires to resume practice, such licensee shall meet such requirements as the Board may prescribe in its rules.

D. ~~An~~ The Board is authorized to establish by rule fees to be charged for the purpose of implementing and enforcing the provisions of the Oklahoma Nursing Practice Act; provided, however, fees for an initial application to practice as a registered nurse shall be accompanied by a fee established by the Board not to exceed the

~~actual administrative and material costs for licensure, certification or recognition, or for renewal, reinstatement or return to active practice shall not to exceed One Hundred Twenty-five Dollars (\$125.00). An initial application for a license to practice as a licensed practical nurse shall be accompanied by a fee established by the Board not to exceed the actual administrative and material costs not to exceed Eighty-five Dollars (\$85.00).~~

~~E. The Board is authorized to fix the biennial renewal license fee for a registered nurse and licensed practical nurse which shall not exceed Sixty Dollars (\$60.00).~~

~~F. The Board shall by rule establish the fees for reexamination of any applicant who fails an examination, but such fees shall not exceed the amounts specified herein for licensure.~~

~~G. An initial application or a biennial renewal application for recognition for advanced practice shall be accompanied by a fee established by the Board not to exceed the actual administrative and material costs of One Hundred Dollars (\$100.00) for an initial application and Sixty Dollars (\$60.00) for a biennial renewal application.~~

~~H. An initial application or a biennial renewal application for recognition for prescriptive authority for advanced practice nurses shall be accompanied by a fee established by the Board not to exceed the actual administrative and material costs of One Hundred Dollars (\$100.00) for an initial application and Sixty Dollars (\$60.00) for a biennial renewal application.~~

~~I. An initial application and a biennial renewal application for recognition for authority to order, select, obtain and administer drugs for a certified registered nurse anesthetist shall be accompanied by a fee established by the Board not to exceed the actual administrative and material costs of One Hundred Dollars (\$100.00) for an initial application and Sixty Dollars (\$60.00) for a biennial renewal application.~~

SECTION 5. AMENDATORY 59 O.S. 2001, Section 567.8, is amended to read as follows:

Section 567.8 A. The Oklahoma Board of Nursing shall have the power:

1. To deny, revoke or suspend any:
 - a. license to practice registered nursing or licensed practical nursing,
 - b. recognition for practice as an advanced practice nurse, or
 - c. certification as an advanced unlicensed assistive person;
2. To assess administrative penalties; or

3. To otherwise discipline a licensee or advanced unlicensed assistive person.

B. The Board shall impose a disciplinary action pursuant to the provisions of subsection A of this section upon proof that the person:

1. Is guilty of fraud or deceit or material deception in procuring or attempting to procure:

- a. a license to practice registered nursing, licensed practical nursing, or recognition to practice advanced practice nursing, or
- b. certification as an advanced unlicensed assistive person;

2. Is guilty of a felony, or any offense reasonably related to the qualifications, functions or duties of any licensee or advanced unlicensed assistant, or any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed, or any conduct resulting in the revocation of a deferred or suspended sentence or probation imposed pursuant to such conviction;

3. Fails to adequately care for patients or to conform to the minimum standards of acceptable nursing or advanced unlicensed assistant practice that, in the opinion of the Board, unnecessarily exposes a patient or other person to risk of harm;

4. Is intemperate in the use of alcohol or drugs, which use the Board determines endangers or could endanger patients;

5. Exhibits through a pattern of practice or other behavior actual or potential inability to practice nursing with sufficient knowledge or reasonable skills and safety due to impairment caused by illness, use of alcohol, drugs, chemicals or any other substance, or as a result of any mental or physical condition, including deterioration through the aging process or loss of motor skills, mental illness, or disability that results in inability to practice with reasonable judgment, skill or safety; provided, however, the provisions of this paragraph shall not be utilized in a manner that conflicts with the provisions of the Americans with Disabilities Act;

6. Has been adjudicated as mentally incompetent, mentally ill, chemically dependent or dangerous to the public or has been committed by a court of competent jurisdiction, within or without this state;

7. Is guilty of unprofessional conduct as defined in the rules of the Board;

8. Is guilty of any act that jeopardizes a patient's life, health or safety as defined in the rules of the Board;

9. Violated a rule promulgated by the Board, an order of the Board, or a state or federal law relating to the practice of registered, practical or advanced practice nursing or advanced unlicensed assisting, or a state or federal narcotics or controlled dangerous substance law; or

10. Has had disciplinary actions taken against the individual's registered or practical nursing license, advanced unlicensed assistive certification, or any health-related license, in this or any state, territory or country.

C. Any person who supplies the Board information in good faith shall not be liable in any way for damages with respect to giving such information.

D. The Board may cause to be investigated all reported violations of the Oklahoma Nursing Practice Act.

E. The Board may authorize the executive director to issue a confidential letter of concern to a licensee when evidence does not warrant formal proceedings, but the executive director has noted indications of possible errant conduct that could lead to serious consequences and formal action.

F. All individual proceedings before the Board shall be conducted in accordance with the Administrative Procedures Act.

G. At a hearing the accused shall have the right to appear either personally or by counsel, or both, to produce witnesses and evidence on behalf of the accused, 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 renewal of license to the applicant, revoke or suspend a license, or otherwise discipline a licensee.

H. A person whose license is revoked may not apply for reinstatement during the time period set by the Board, ~~which shall not exceed five (5) years.~~ The Board on its own motion may at any time reconsider its action.

I. Any person whose license is revoked or who applies for renewal of registration and who is rejected by the Board shall have the right to appeal from such action pursuant to the Administrative Procedures Act.

J. 1. Any person who has been determined by the Board to have violated any provisions of the Oklahoma Nursing Practice Act or any rule or order issued pursuant thereto shall be liable for an administrative penalty ~~of not more than One Hundred Dollars (\$100.00) for each day that the violation continues.~~ The maximum administrative penalty shall not to exceed Five Hundred Dollars (\$500.00) for each count for which any holder of a certificate or license has been determined to be in violation of the Oklahoma Nursing Practice Act or any rule promulgated or order issued thereto.

2. The amount of the penalty shall be assessed by the Board pursuant to the provisions of this section, after notice and an opportunity for hearing is given to the accused. In determining the amount of the penalty, the Board shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to practice, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Nursing Practice Act.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 567.17, is amended to read as follows:

Section 567.17 A. There is hereby established a peer assistance program to rehabilitate nurses whose competency may be compromised because of the abuse of drugs or alcohol, so that such nurses can be treated and can return to or continue the practice of nursing in a manner which will benefit the public. The program shall be under the supervision and control of the Oklahoma Board of Nursing.

B. The Board shall appoint one or more peer assistance evaluation advisory committees hereinafter called the "peer assistance committees". Each of these committees shall be composed of members, the majority of which shall be licensed nurses with expertise in chemical dependency. The peer assistance committees shall function under the authority of the Oklahoma Board of Nursing in accordance with the rules of the Board. The committee members shall serve without pay, but may be reimbursed for the expenses incurred in the discharge of their official duties in accordance with the State Travel Reimbursement Act.

C. The Board shall appoint and employ a qualified person, who shall be a registered nurse, to serve as program coordinator and shall fix such person's compensation. The Board shall define the duties of the program coordinator who shall report directly to the Executive Director of the Board and be subject to the Executive Director's direction and control.

D. The Board is authorized to adopt and, ~~from time to time,~~ revise ~~such~~ rules, not inconsistent with the Oklahoma Nursing Practice Act, as may be necessary to enable it to carry into effect the provisions of this section.

E. A portion of licensing fees for each nurse not to exceed Ten Dollars (\$10.00) may be used to implement and maintain the peer assistance program.

F. Records of the nurse enrolled in the peer assistance program shall be maintained in the program office in a place separate and apart from the Board's records. The records shall be made public only by subpoena and court order. ~~Confidential;~~ provided, however, confidential treatment shall be cancelled upon ~~the~~ default by the nurse in complying with the requirements of the program.

G. Any person making a report to the Board or to a peer assistance committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs, or a nurse's progress or lack of progress in rehabilitation, shall be immune from any civil or criminal action resulting from such reports, provided such reports are made in good faith.

H. A nurse's participation in the peer assistance program in no way precludes additional proceedings by the Board for acts or omissions of acts not specifically related to the circumstances resulting in the nurse's entry into the program. However, in the event the nurse defaults from the program, the Board may discipline the nurse for those acts which led to the nurse entering the program.

I. The Executive Director of the Board shall suspend the license immediately upon notification that the licensee has defaulted from the peer assistance program, and shall assign a hearing date for the matter to be presented to the Board.

J. As used in this section, unless the context otherwise requires:

1. "Board" means the Oklahoma Board of Nursing; and
2. "Peer assistance committee" means the peer assistance evaluation advisory committee created in this section, which is appointed by the Oklahoma Board of Nursing to carry out specified duties.

SECTION 7. This act shall become effective November 1, 2003.

Passed the Senate the 30th day of April, 2003.

Presiding Officer of the Senate

Passed the House of Representatives the 22nd day of April, 2003.

Presiding Officer of the House
of Representatives

