

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-133
SENATE BILL 356**

AN ACT TO MAKE VARIOUS REVISIONS TO THE NURSING PRACTICE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 90-171.23(b) reads as rewritten:

- "(b) Duties, powers. The Board is empowered to:
- (1) Administer this Article.
 - (2) Issue its interpretations of this Article.
 - (3) Adopt, amend or repeal rules and regulations as may be necessary to carry out the provisions of this Article.
 - (4) Establish qualifications of, employ, and set the compensation of an executive officer who shall be a registered nurse and who shall not be a member of the Board.
 - (5) Employ and fix the compensation of other personnel that the Board determines are necessary to carry into effect this Article and incur other expenses necessary to effectuate this Article.
 - (6) Examine, license, and renew the licenses of duly qualified applicants for licensure.
 - (7) Cause the prosecution of all persons violating this Article.
 - (8) Establish standards to be met by the students, and to pertain to faculty, curricula, facilities, resources, and administration for any nursing program as provided in G.S. 90-171.38.
 - (9) Review all nursing programs at least every eight years or more often as considered necessary by the Board or program director.
 - (10) Grant or deny approval for nursing programs as provided in G.S. 90-171.39.
 - (11) Upon request, grant or deny approval of continuing education programs for nurses as provided in G.S. 90-171.42.
 - (12) Keep a record of all proceedings and make an annual summary of all actions available.~~available to the Governor and licensees an annual summary of all actions taken.~~
 - (13) Appoint, as necessary, advisory committees which may include persons other than Board members to deal with any issue under study.
 - (14) Appoint and maintain a subcommittee of the Board to work jointly with the subcommittee of the North Carolina Medical Board to develop rules and regulations to govern the performance of medical acts by registered nurses and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in ~~G.S. 90-6~~.G.S. 90-8.2. The fees and rules developed by this subcommittee shall govern the performance of medical acts by registered nurses and shall become effective when they have been adopted by both Boards.
 - (15) Recommend and collect such fees for licensure, license renewal, examinations and reexaminations as it deems necessary for fulfilling the purposes of this Article.
 - (16) Adopt a seal containing the name of the Board for use on all certificates, licenses, and official reports issued by it.
 - (17) Enter into interstate compacts to facilitate the practice and regulation of nursing.



- (18) Establish programs for aiding in the recovery and rehabilitation of nurses who experience chemical addiction or abuse or mental or physical disabilities and programs for monitoring such nurses for safe practice.
- (18a) Establish programs for aiding in the remediation of nurses who experience practice deficiencies.
- (19) Request that the Department of Justice conduct criminal history record checks of applicants for licensure pursuant to G.S. 114-19.11.
- (20) Adopt rules requiring an applicant to submit to the Board evidence of the applicant's continuing competence in the practice of nursing at the time of license renewal or reinstatement.
- (21) Proceed in accordance with G.S. 90-171.37A, notwithstanding G.S. 150B-40(b), when conducting a contested case hearing in accordance with Article 3A of Chapter 150B of the General Statutes.
- (22) Designate one or more of its employees to serve papers or subpoenas issued by the Board. Service under this subdivision is permitted in addition to any other methods of service permitted by law.
- (23) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.
- (24) Order the production of any records concerning the practice of nursing relevant to a complaint received by the Board or an inquiry or investigation conducted by or on behalf of the Board."

SECTION 2. G.S. 90-171.24 reads as rewritten:

"§ 90-171.24. Executive director.

The executive director shall perform the duties prescribed by the ~~Board, Board and~~ serve as secretary/treasurer to the ~~Board, and furnish a surety bond as provided in G.S. 128-8. The bond shall be made payable to the Board.~~Board."

SECTION 3. G.S. 90-171.34 reads as rewritten:

"§ 90-171.34. Licensure renewal.

Every unencumbered license, except temporary license, issued under this Article shall be renewed for two years. On or before the date the current license expires, every person who desires to continue to practice nursing shall apply for licensure renewal to the Board on forms furnished by the Board and shall also file the required fee. ~~The Board shall provide space on the renewal form for the licensee to specify the amount of continuing education received during the renewal period.~~ Failure to renew the license before the expiration date shall result in automatic forfeiture of the right to practice nursing in North Carolina until such time that the license has been reinstated."

SECTION 4. G.S. 90-171.37 reads as rewritten:

"§ 90-171.37. Revocation, discipline, suspension, probation, or denial of licensure.

The Board ~~shall~~may initiate an investigation upon receipt of information about any practice that might violate any provision of this Article or any rule or regulation promulgated by the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board shall have the power and authority to: (i) refuse to issue a license to practice nursing; (ii) refuse to issue a certificate of renewal of a license to practice nursing; (iii) revoke or suspend a license to practice nursing; and (iv) invoke other such disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that the applicant or licensee:

- (1) Has given false information or has withheld material information from the Board in procuring or attempting to procure a license to practice nursing.
- (2) Has been convicted of or pleaded guilty or nolo contendere to any crime which indicates that the nurse is unfit or incompetent to practice nursing or that the nurse has deceived or defrauded the public.
- (3) Has a mental or physical disability or uses any drug to a degree that interferes with his or her fitness to practice nursing.
- (4) Engages in conduct that endangers the public health.

- (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent acts or omissions regardless of whether actual injury to the patient is established.
- (6) Engages in conduct that deceives, defrauds, or harms the public in the course of professional activities or services.
- (7) Has violated any provision of this Article.
- (8) Has willfully violated any rules enacted by the Board.

The Board may take any of the actions specified above in this section when a registered nurse approved to perform medical acts has violated rules governing the performance of medical acts by a registered nurse; provided this shall not interfere with the authority of the North Carolina Medical Board to enforce rules and regulations governing the performance of medical acts by a registered nurse.

The Board may reinstate a revoked license, revoke censure or probative terms, or remove other licensure restrictions when it finds that the reasons for revocation, censure or probative terms, or other licensure restrictions no longer exist and that the nurse or applicant can reasonably be expected to safely and properly practice nursing."

SECTION 5. G.S. 90-171.38(b) reads as rewritten:

"(b) Any individual, organization, association, corporation, or institution may establish a program for the purpose of training or educating any registered nurse licensed under G.S. 90-171.30, 90-171.32, or 90-171.33 in the skills, procedures, and techniques necessary to conduct ~~medical~~ examinations for the purpose of collecting evidence from the victims of first-degree rape as defined in G.S. 14-27.2, second-degree rape as defined in G.S. 14-27.3, statutory rape as defined in G.S. 14-27.7A, first-degree sexual offense as defined in G.S. 14-27.4, second-degree sexual offense as defined in G.S. 14-27.5 or attempted first-degree or second-degree rape or attempted first-degree or second-degree sexual offense. ~~offense as defined in G.S. 14-27.6.~~ The Board, pursuant to ~~G.S. 90-171.23(b)(14) and, in cooperation with the North Carolina Medical Board as described in G.S. 90-6,~~G.S. 90-171.23(b)(14), shall establish, revise, or repeal standards for any such program. Any individual, organization, association, corporation, or institution which desires to establish a program under this subsection shall apply to the Board and submit satisfactory evidence that it will meet the standards prescribed by the Board."

SECTION 6. G.S. 90-171.48 reads as rewritten:

"§ 90-171.48. Criminal history record checks of applicants for licensure.

(a) Definitions. – The following definitions shall apply in this section:

- (1) Applicant. – A person applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 and or G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32. The term "applicant" shall also include a person applying for reinstatement of licensure pursuant to G.S. 90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.
- (2) Criminal history. – A history of conviction of a State crime, whether a misdemeanor or felony, that bears on an applicant's fitness for licensure to practice nursing. The crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public

Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and alcohol-related offenses including sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(b) All applicants for licensure shall consent to a criminal history record check. Refusal to consent to a criminal history record check may constitute grounds for the Board to deny licensure to an applicant. The Board shall ensure that the State and national criminal history of an applicant applying for initial licensure as a registered nurse or licensed practical nurse either by examination pursuant to G.S. 90-171.29 or G.S. 90-171.30 or without examination pursuant to G.S. 90-171.32 is checked. The Board may request a criminal history record check for applicants applying for reinstatement of licensure pursuant to G.S.90-171.35 or returning to active status pursuant to G.S. 90-171.36 as a registered nurse or licensed practical nurse.

The Board shall be responsible for providing to the North Carolina Department of Justice the fingerprints of the applicant to be checked, a form signed by the applicant consenting to the criminal record check and the use of fingerprints and other identifying information required by the State or National Repositories, and any additional information required by the Department of Justice. The Board shall keep all information obtained pursuant to this section confidential.

(c) If an applicant's criminal history record check reveals one or more convictions listed under subsection (a)(2) of this section, the conviction shall not automatically bar licensure. The Board shall consider all of the following factors regarding the conviction:

- (1) The level of seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

If, after reviewing the factors, the Board determines that the grounds set forth in subsections (1), (2), (3), (4), (5), or (6) of G.S. 90-171.37 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record check to the applicant. The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

(d) Limited immunity. – The Board, its officers and employees, acting in good faith and in compliance with this section, shall be immune from civil liability for denying licensure to an applicant based on information provided in the applicant's criminal history record check."

SECTION 7. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 9th day of June, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:44 a.m. this 19th day of June, 2009