

VOLUME NO. 38

OPINION NO. 24

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Authority of Board of Nursing to approve courses not leading to licensure;
NURSING, BOARD OF - Authority to approve nursing-related courses;

NURSING SCHOOLS AND COURSES - Authority of Board of Nursing to approve nursing-related courses;

MONTANA CODE ANNOTATED - Sections 37-8-101, 37-8-102(3), 37-8-202(2), 37-8-443(1)(g).

HELD: The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects, but which did not prepare students for licensure as registered or licensed practical nurses.

29 June 1979

Ed Carney, Director
Department of Professional and
Occupational Licensing
LaLonde Building
Helena, Montana 59601

Dear Mr. Carney:

You have requested my opinion on the following question:

Whether the Board of Nursing has the authority to approve schools and courses which teach nursing-related subjects, but which do not prepare

students for licensure as registered or licensed practical nurses.

Title 37, chapter 8, of the Montana Code Annotated addresses the approval of schools of nursing and the licensure of professional and practical nurses. The Legislature has given the Board of Nursing the authority and the duty to survey and approve nursing schools and courses to ensure that persons practicing nursing in the State are qualified. To effectuate this approval requirement, section 37-8-443 (1)(g), MCA, makes it a misdemeanor for a person or institution to "conduct a school of nursing or a course unless the school or course has been approved by the board."

The question you have raised involves schools and courses which are designed to teach students certain nursing-related tasks, such as acting as nursing aides, inhalation therapists, and operating room technicians. The performance of these tasks does not at present require licensure in the State of Montana, and the courses are not offered to prepare the students to become registered or licensed practical nurses. Your specific inquiry is whether the board-approval requirements of Title 37, chapter 8, apply to these courses and schools as well as to courses and schools qualifying students for licensure.

While the general term "nursing" encompasses a wide range of activities involving the care and attendance of the sick, it is clear that not all aspects of nursing are covered by the provisions of Title 37, chapter 8. Section 37-8-101, MCA, states that the purpose of the statutory provisions in chapter 8 is to ensure only qualified persons practice in the areas of professional and practical nursing. The types of nursing covered by the chapter are explicitly set forth in the definitional statute, section 37-8-102(3). Most important for the question presented here, section 37-8-202(2), which establishes the powers and duties of the Board of Nursing, states: "The board under each administration shall prescribe curricula and standards for schools and courses preparing persons for registration and licensure under this chapter." (Emphasis added.)

From a reading of the statutes as a whole, it is clear that the powers and duties of the Board of Nursing were intended to extend only to those areas of nursing education culminating in the licensure of registered and practical nurses. Although section 37-8-443(1)(g), does not explicitly limit its proscription of unapproved nursing schools and courses

to those preparatory to licensure, such a limitation is implicit when the statute is read in conjunction with the rest of the chapter. Therefore, schools and courses in nursing-related subjects that are not designed to prepare students for registration or licensure as professional or practical nurses do not require approval by the Board of Nursing.

THEREFORE, IT IS MY OPINION:

The Board of Nursing lacks authority to require approval of schools and courses which teach nursing-related subjects, but which do not prepare students for licensure as registered or licensed practical nurses.

Very truly yours,

MIKE GREELY
Attorney General