

EDUCATION, HIGHER - Authority of Board of Nursing to require license applicant to hold college degree;
LICENSES, PROFESSIONAL AND OCCUPATIONAL - Authority of Board of Nursing to require license applicant to hold college degree;
NURSES, PRACTICAL - Authority of Board of Nursing to require license applicant to hold college degree;
NURSES, REGISTERED - Authority of Board of Nursing to require license applicant to hold college degree;
NURSING, BOARD OF - Authority to require license applicant to hold college degree;
MONTANA CODE ANNOTATED - Sections 2-4-305, 20-15-108, 37-1-131, 37-7-302, 37-8-102, 37-8-202, 37-8-301, 37-8-405, 37-8-415, 37-10-302, 37-17-302, 37-21-301;
MONTANA LAWS OF 1981 - Chapter 248.

HELD: The Board of Nursing does not have the authority to require applicants for professional or practical nursing licenses to hold a specific college degree as a qualification for initial licensure.

7 August 1985

Donna Small, R.N.
President, Montana Board
of Nursing
Department of Commerce
1424 Ninth Avenue
Helena MT 59620-0401

Dear Ms. Small:

You have requested my opinion on the following question:

Does the Board of Nursing have the authority to require professional and practical nursing license applicants to hold a specific college degree as a qualification for initial licensure?

Your inquiry states that the American Nurses Association has been promoting the establishment of uniform minimum educational standards for entry into a professional or practical nursing practice. Under the Association's proposed standards, a registered professional nurse would be required to hold at least a baccalaureate degree, and a licensed practical nurse would be required to hold at least an associate degree, in order to qualify for initial licensure. Your question is whether state law would authorize the Board to adopt the Association's proposed standards by establishing these threshold degree requirements for nursing license applicants.

The Legislature has set forth the qualifications required of applicants for professional and practical nursing licenses. Section 37-8-405, MCA, provides:

Professional nursing--qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

- (1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;
- (2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and
- (3) meets other qualification requirements the board prescribes.

Section 37-8-415, MCA, provides:

Licensed practical nursing--qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

Since neither statute expressly requires applicants to hold a college degree in order to be licensed, the initial inquiry is whether subsection (3) of these two statutes would permit the Board to prescribe, by rule, the qualification requirement of a specific college degree.

The Board's rulemaking authority is contained in section 37-8-202(2), MCA, which states that the Board "may make rules necessary to administer this chapter," and section 37-1-131, MCA, which requires the Board to "set and enforce standards and rules governing the licensing, certification, registration, and conduct" of members of the nursing profession. Although the Board is specifically authorized to "define the educational requirements and other qualifications applicable to specialty areas of nursing" such as nurse-anesthetists (§ 37-8-202(5), MCA), the Board is granted no such express rule-making authority with respect to further educational requirements for professional and practical nurses.

Both section 37-8-405, MCA, and section 37-8-415, MCA, in subsections (1) and (2), set forth the educational requirements for license applicants; applicants must have successfully completed "at least an approved 4-year high school course of study" or its equivalent plus the appropriate nursing education program. Section 37-8-102(4), MCA, defines "nursing education program" as

"any board-approved school that prepares graduates for initial licensure"; this statute provides that such programs for professional nurses may be in a junior college and that such programs for practical nurses may be in a vocational-technical center.

If the Legislature had intended to require nursing license applicants to hold a specific college degree, it would have set forth this requirement in the statutes, as it has done in other license qualification statutes. See, e.g., §§ 37-21-301, 37-7-302, 37-10-302, 37-17-302, MCA. Also, if the Legislature had intended to require professional nurses to hold a baccalaureate degree, it would not have permitted the nursing education program for professional nurses to be established at a junior college, which cannot award such a degree. See § 20-15-108, MCA. The same reasoning applies to the education program for practical nurses; a vocational-technical center could not award an associate degree to an applicant for a practical nursing license.

The Montana Supreme Court has held that a rule which engrafts additional, noncontradictory requirements on a statute which were not envisioned by the Legislature is "out of harmony" with legislative guidelines and therefore invalid. See, e.g., Bell v. Dept. of Professional and Occupational Licensing, 36 St. Rptr. 880, 594 P.2d 331 (1979); Board of Barbers v. Big Sky College, 38 St. Rptr. 621, 626 P.2d 1269 (1981). In light of these cases, it is likely that a rule requiring applicants to hold specific college degrees would be viewed by the Court as beyond the Board's rulemaking authority and not reasonably necessary to effectuate the purpose of the statute. See § 2-4-305(6), MCA.

The second inquiry is whether the Board's authority, under sections 37-8-202 and 37-8-301, MCA, would permit the Board to require nursing school students to obtain a specific college degree in order to complete their nursing education programs.

Section 37-8-202(2), MCA, states that the Board "shall prescribe standards for schools preparing persons for registration and licensure" as professional or practical nurses. Section 37-8-301, MCA, provides that the Board "shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a

practical nurse in those areas of service specified in 37-8-102."

Section 37-8-102, MCA, defines the terms "practice of professional nursing" and "practice of practical nursing" as the performance for compensation of services requiring knowledge of the various sciences as well as nursing theory, process, and procedures. Although the required knowledge is extensive, nothing in the statute suggests that such knowledge may be obtained only through a college degree program. As noted above, section 37-8-102(4), MCA, permits nursing education programs to be located in educational institutions which could not confer the minimum degrees proposed by the Association.

The Board's authority to prescribe standards for schools does not implicitly or necessarily include the authority to require specific college degrees of nursing school graduates. The Legislature has not expressed any intention that graduation from nursing school be contemporaneous with, or dependent upon, graduation from college. Nor does the Board's authority to adopt rules relating to the conduct of nursing education programs imply the power to require a college degree as a condition of graduation from nursing school. Regarding this delegated rulemaking authority, the statement of intent attached to SB 427 (1981 Mont. Laws, ch. 248) provided:

It is the intent of the Legislature that the rules adopted relate directly toward the nursing education programs insuring that the qualifications of a professional nurse or a practical nurse are adequate in the areas of services to be provided

The Legislature has established entry-level educational requirements for professional and practical nursing license applicants which do not include specific college degrees; the Legislature has also granted the Board rulemaking authority to define the educational requirements applicable to specialty areas of nursing without granting similar authority applicable to professional and practical nurses. It is a rule of statutory construction that the express mention of one matter excludes other similar matters not mentioned. See, e.g., Helena Valley Irrigation District v. State

Highway Commission, 150 Mont. 192, 433 P.2d 791 (1967). And in determining legislative intent, an express mention of a certain power or authority implies the exclusion of nondescribed powers. See, e.g., State ex rel. Jones v. Giles, 168 Mont. 130, 541 P.2d 355 (1975). I have concluded that these omissions by the Legislature indicate its intent not to require professional or practical nurses to hold specific college degrees in order to be licensed by the Board.

THEREFORE, IT IS MY OPINION:

The Board of Nursing does not have the authority to require applicants for professional or practical nursing licenses to hold a specific college degree as a qualification for initial licensure.

Very truly yours,

MIKE GREELY
Attorney General