

# South Carolina Legislature

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## South Carolina Code of Laws Unannotated

### Title 40 - Professions and Occupations

#### CHAPTER 33

##### Nurses

#### ARTICLE 1

##### Nurse Practice Act

#### **SECTION 40-33-5.** Application of Chapter 1, Article 1; conflicts.

Unless otherwise provided for in this chapter, Article 1, Chapter 1, Title 40 applies to the profession of nursing. However, if there is a conflict between this chapter and Article 1, Chapter 1, Title 40, the provisions of this chapter control.

HISTORY: 2004 Act No. 225, Section 1.

#### **SECTION 40-33-10.** State Board of Nursing; membership; seal; promulgation of regulations; powers and duties.

(A) There is created the State Board of Nursing composed of eleven members. Two must be licensed practical nurses from the State at large, and two must be lay members from the State at large. Seven must be registered nurses, each representing one congressional district, and at least one must be employed in a hospital setting and at least one must be licensed as an advanced practice registered nurse. When appointing members to the board, consideration should be given to including a diverse representation of principal areas of nursing including, but not limited to, hospital, acute care, advanced practice, community health, and nursing education. Registered nurse and licensed practical nurse members must be licensed in South Carolina, must be employed in nursing, must have at least three years of practice in their respective professions immediately preceding their appointment, and shall reside in the district they represent. Lay members must not be licensed or employed as a health care provider but shall represent the public at large as a consumer of nurse services. No member may serve as an officer of a professional health related state association. The chairman or designee of the State Board of Medical Examiners shall serve as an advisory nonvoting member to the board to provide consultation on matters requested by the Board of Nursing.

(B) Members shall serve terms of four years and until their successors are appointed and qualify. Board members must be appointed by the Governor with the advice and consent of the Senate. An individual, group, or association may nominate qualified persons and submit them to the Governor for consideration. Vacancies must be filled for the unexpired portion of a term by appointment of the Governor.

(C) The Governor may remove members pursuant to Section 1-3-240(C) or members who have been guilty of continued neglect of their duties or members who are found to be incompetent, unprofessional, or dishonorable. No members may be removed without first giving them the opportunity to refute the charges filed against them. The member must be given copies of the charges at the time they are filed.

(D) A board member, or person authorized and approved by the board, engaged in business for the board may receive for board service the usual per diem, mileage, and subsistence as provided by law. These expenses must be paid from the fees received by the board under this chapter.

(E) The board may have and use an official seal bearing the words: "State Board of Nursing for South Carolina". The board may promulgate regulations as it considers necessary for the purposes of carrying out the provisions of this chapter.

(F) The board shall meet at least quarterly for the purpose of transacting business. A majority of the members of the board constitutes a quorum; however, if there is a vacancy on the board, a majority of the members serving constitutes a quorum. A board member is required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the board as provided in Section 1-3-245.

(G) A chairman, a vice chairman, and a secretary comprise the officers of the board. The election of the chairman must be from the registered nurse members of the board, and the vice chairman and secretary must be elected from the members. Officers shall serve terms of one year and until their successors are elected. The administrator shall certify to the Governor the names of the officers elected for regular and unexpired terms.

(H) The Chairman of the State Board of Nursing, or the chairman's designee, shall serve as an advisory nonvoting member of the State Board of Medical Examiners to provide consultation on matters requested by the State Board of Medical Examiners. The Board of Medical Examiners shall send written notice at least ten days before meetings that the Board of Medical Examiners wants the chairman or designee of the State Board of Nursing to attend. The Chairman of the State Board of Nursing, or the chairman's designee, and the State Board of Medical Examiners shall meet at least twice a year and more often as necessary.

(I) In addition to the powers and duties enumerated in Section 40-1-70, the board may:

- (1) publish advisory opinions and position statements relating to nursing practice procedures or policies authorized or acquiesced to by any agency, facility, institution, or other organization that employs persons authorized to practice under this chapter to comply with acceptable standards of nursing practice;
- (2) develop minimum standards for continued competency of licensees continuing in or returning to practice;
- (3) conduct surveys of educational enrollments and licensure and report to the public;
- (4) conduct investigations and hearings concerning alleged violations of this chapter;
- (5) develop minimum standards for nursing education programs;
- (6) approve nursing education programs that meet the prescribed standards;
- (7) deny or withdraw approval or limit new student admissions of nursing education programs that fail to meet the prescribed standards;
- (8) use minimum standards as a basis for evaluating safe and effective nursing practice;
- (9) examine, license, and renew the authorizations to practice of qualified applicants;
- (10) join organizations that develop and regulate the national nursing licensure examinations and promote the improvement of the practice of nursing for the protection of the public;

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(11) collect any information the board considers necessary, including social security numbers or alien identification numbers, in order to report disciplinary actions to national databanks of disciplinary information;

(12) establish guidelines to assist employers of nurses when errors in nursing practice can be handled through corrective action in the employment setting.

HISTORY: 2004 Act No. 225, Section 1; 2012 Act No. 222, Section 5, eff June 7, 2012.

## Editor's Note

Prior Laws: 1942 Code Section 5224; 1935 (39) 173; 1947 (45) 579; 1952 Code Section 56-961; 1959 (51) 307; 1962 Code Section 56-961; 1974 (58) 1943; 1975 (59) 563; 1981 Act No. 89, Sections 2, 3, 5; 1990 Act No. 513, Section 1; 1976 Code Section 40-33-210.

2012 Act No. 222, Section 15, provides as follows:

"SECTION 15. Notwithstanding any other provision of law to the contrary, any person elected or appointed to serve, or serving, as a member of any board, commission, or committee to represent a congressional district, whose residency is transferred to another district by a change in the composition of the district, may serve, or continue to serve, the term of office for which he was elected or appointed; however, the appointing or electing authority shall appoint or elect an additional member on that board, commission, or committee from the district which loses a resident member on it as a result of the transfer to serve until the term of the transferred member expires. When a vacancy occurs in the district to which a member has been transferred, the vacancy must not be filled until the full term of the transferred member expires."

## Effect of Amendment

The 2012 amendment rewrote subsection (A) and removed subsection (I)(13) relating to fee schedule regulations.

**SECTION 40-33-20. Definitions.**

In addition to the definitions provided in Section 40-1-20, for purposes of this chapter:

- (1) "Accreditation" means official authorization or status granted by an agency other than a state board of nursing.
- (2) "Active license" means the status of a license that has been renewed for the current period and authorizes the licensee to practice nursing in this State.
- (3) "Additional acts" means activities performed by a nurse that expand the scope of practice, as established in law. The following must be submitted in writing to the board for approval before a nurse implements additional acts:
  - (a) additional activity being requested;
  - (b) statement with rationale as to how the activity will improve client outcomes;
  - (c) documentation based on the literature review to support the nurse's performing the additional activity;
  - (d) qualification requirements, including educational background and experience needed;
  - (e) special training required, including theory and clinical practice. A nurse must successfully complete a course of 'special education and training' acceptable to the board to perform additional acts; and
  - (f) evaluation and follow-up procedures.

Additional acts that constitute medical acts must be agreed to jointly by both the Board of Nursing and the Board of Medical Examiners.

(4) "Administration of medications" means the acts of preparing and giving drugs in accordance with the orders of a licensed, authorized nurse practitioner, certified nurse-midwife, clinical nurse specialist, or a physician, dentist, or other authorized licensed provider as to drug, dosage, route, and frequency; observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy; intervening when emergency care is required as a result of drug therapy; appropriately instructing the patient regarding the medication; recognizing accepted prescribing limits and reporting deviations to the prescribing nurse practitioner, certified nurse-midwife, or clinical nurse specialist, physician, dentist, or other authorized licensed provider.

(5) "Advanced Practice Registered Nurse" or "APRN" means a registered nurse who is prepared for an advanced practice registered nursing role by virtue of additional knowledge and skills gained through an advanced formal education program of nursing in a specialty area that is approved by the board. The categories of APRN are nurse practitioner, certified nurse-midwife, clinical nurse specialist, and certified registered nurse anesthetist. An advanced practice registered nurse shall hold a doctorate, a post-nursing master's certificate, or a minimum of a master's degree that includes advanced education composed of didactic and supervised clinical practice in a specific area of advanced practice registered nursing. APRNs must achieve national certification within two years post-graduation. An APRN may perform those activities considered to be the practice of registered nursing or advanced practice consisting of nonmedical acts, such as population health management; quality improvement or research projects within a health care system; and analysis of data and corresponding system recommendations, revisions, developments, or informatics. An APRN also may perform specified medical acts pursuant to a practice agreement as defined in item (45).

(6) "Agreed to jointly" means the agreement by the Board of Nursing and Board of Medical Examiners on medical acts that nurses perform and that must be defined in a practice agreement pursuant to item (45).

(7) "Ancillary services" means services associated with the basic services provided to an individual in need of in-home care who needs one or more of the basic services and includes:

- (a) homemaker-type services, including shopping, laundry, cleaning, and seasonal chores;
- (b) companion-type services, including transportation, letter writing, reading mail, and escorting; and
- (c) assistance with cognitive tasks, including managing finances, planning activities, and making decisions.

(8) "Approval" means the process by which the board evaluates nursing education programs, which must meet established uniform and reasonable standards.

(9) "Approved written guidelines" means specific statements developed by a certified registered nurse anesthetist and a supervising licensed physician or dentist or by the medical staff within the facility where practice privileges have been granted.

(10) "Attendant care services" means those basic and ancillary services that enable an individual in need of in-home care to live in the individual's home and community rather than in an institution and to carry out functions of daily living, self-care, and mobility.

(11) "Authorized licensed provider" means a provider of health care services who is authorized to practice by a licensing board in this State where the scope of practice includes authority to order and prescribe drugs in treating patients.

(12) "Basic services" includes:

- (a) getting in and out of a bed, wheelchair, motor vehicle, or other device;

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(b) assistance with routine bodily functions including health maintenance activities, bathing and personal hygiene, dressing and grooming, and feeding, including preparation and cleanup.

(13) "Board" means the State Board of Nursing for South Carolina.

(14) "Board-approved credentialing organization" means an organization that offers a certification examination in a specialty area of nursing practice, establishes scope and standards of practice statements, and provides a mechanism for evaluating continuing competency in a specialized area of nursing practice which has been approved by the board.

(15) "Business days" means every day except Saturdays, Sundays, and legal holidays.

(16) "Cancellation" means the withdrawal or invalidation of an authorization to practice that was issued to an ineligible person either in error or based upon a false, fraudulent, or deceptive representation in the application process.

(17) "Certification" of a registered nurse means approval by an established body, other than the board, but recognized by the board, that recognizes the unique, minimal requirements of specialized areas of nursing practice. Certification requires completion of a recognized formal program of study and specialty board examination, if the specialty board exists, and certification of competence in nursing practice by the certifying agency.

(18) "Certified Nurse-Midwife" or "CNM" means an advanced practice registered nurse who holds a master's degree in the specialty area, maintains an American Midwifery Certification Board certificate, and is trained to provide management of women's health care from adolescence beyond menopause, focusing on gynecologic and family planning services, preconception care, pregnancy, childbirth, postpartum, care of the normal newborn during the first twenty-eight days of life, and the notification and treatment of partners for sexually transmitted infections.

(19) "Certified Registered Nurse Anesthetist" or "CRNA" means an advanced practice registered nurse who:

(a) has successfully completed an advanced, organized formal CRNA education program at the master's level accredited by the national accrediting organization of this specialty area and that is recognized by the board;

(b) is certified by a board-approved national certifying organization; and

(c) demonstrates advanced knowledge and skill in the delivery of anesthesia services.

A CRNA must practice in accordance with approved written guidelines developed under supervision of a licensed physician or dentist or approved by the medical staff within the facility where practice privileges have been granted.

(20) "Clinical Nurse Specialist" or "CNS" means an advanced practice registered nurse who is a clinician with a high degree of knowledge, skill, and competence in a practice discipline of nursing. This nurse shall hold a master's degree in nursing, with an emphasis in clinical nursing. These nurses are directly available to the public through the provision of nursing care to clients and indirectly available through guidance and planning of care with other nursing personnel. A CNS who performs medical acts is required to have physician support and to practice pursuant to a practice agreement as defined in item (45). A CNS who does not perform medical acts is not required to have physician support or to practice pursuant to a practice agreement as provided in Section 40-33-34.

(21) "Competence" means the ability of a licensed nurse to perform safely, skillfully, and proficiently the functions within the role of the licensee. The role encompasses the possession and interrelation of essential knowledge, judgment, attitudes, values, skills, and abilities, which are varied and range in complexity. Competence is a dynamic concept, changing as the licensed nurse achieves a higher stage of development, responsibility, and accountability within the role.

(22) "Delivering" means the act of handing over to a patient medications as ordered by an authorized licensed provider and prepared by an authorized licensed provider.

(23) "Dentist" means a dentist licensed by the South Carolina Board of Dentistry.

(24) "Entity" means a sole proprietorship, partnership, limited liability partnership, limited liability corporation, association, joint venture, cooperative, company, corporation, or other public or private legal entity authorized by law.

(25) "Expanded role" of a registered nurse means a process of diffusion and implies multi-directional change. Expansion, as a process of role change, is undertaken to fill perceived needs in the health care system, and also to project new components or systems of health care. The authority base for practice from which the expanded role emanates is the body of knowledge that constitutes a nurse's preparation for practice. The expanded role of a registered nurse requires specialized knowledge, judgment, and skill, but does not require or permit medical diagnosis or medical prescription of therapeutic or corrective measures. The expanded role of a licensed practical nurse with special education and training includes performing delegated professional nursing activities, as authorized by the board under the direction and supervision of a registered nurse, but does not authorize violation of state law pertaining to medical or pharmacy practice.

(26) "Graduate Registered Nurse Anesthetist" or "GRNA" means a new graduate of an advanced organized formal education program for nurse anesthetists accredited by the national accrediting organization who must achieve certification within one year of graduation of program completion.

(27) "Graduate Registered Nurse-Midwife" or "GRNM" means a new graduate of an advanced organized formal education program for nurse-midwives accredited by the national accrediting organization. A GRNM is required to become certified within one year of graduation or program completion.

(28) "Health maintenance activities" include, but are not limited to, catheter irrigation, administration of medications, enemas and suppositories, and wound care, if these activities could be performed by an individual if the individual were physically and mentally capable.

(29) "Inactive license" means the official temporary retirement of a person's authorization to practice nursing upon the person's notice to the board that the person does not plan to practice nursing or the status of a license that does not currently authorize a licensee to practice nursing in this State.

(30) "Incompetence" means the failure of a nurse to demonstrate and apply the knowledge, skill, and care that is ordinarily possessed and exercised by other nurses of the same licensure status and required by the generally accepted standards of the profession. Charges of incompetence may be based upon a single act of incompetence or upon a course of conduct or series of acts or omissions that extend over a period of time and that, taken as a whole, demonstrate incompetence. It is not necessary to show that actual harm resulted from the act or omission or series of acts or omissions if the conduct is such that harm could have resulted to the patient or to the public from the act or omission or series of acts or omissions.

(31) "Individual in need of in-home care" means a functionally disabled individual in need of attendant care services because of impairment who requires assistance to complete functions of daily living, self-care, and mobility, including attendant care services.

(32) "Lapsed license" means the termination of a person's authorization to practice nursing due to the person's failure to renew his or her nursing license within the renewal period.

(33) "Letter of caution" means a written caution or warning about past or future conduct issued when it is determined that no misconduct has been committed or that only minor misconduct not warranting the imposition of a sanction has been committed. The issuance of a letter of caution is not a form of discipline and does not constitute a finding of misconduct unless the letter of caution specifically states that misconduct has been committed. The fact that a letter of caution has been issued must not be considered in a subsequent disciplinary proceeding against a person authorized to practice unless the caution or warning contained in the letter of caution is relevant to the misconduct alleged in the proceedings.

(34) "License" means a current document issued by the board authorizing a person to practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse.

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- (35) "Licensed Practical Nurse" or "LPN" means a person to whom the board has issued an authorization to practice as a licensed practical nurse.
- (36) "Medical staff" means licensed physicians who are approved and credentialed to provide health care to patients in a hospital system or a facility that provides health care.
- (37) "Misconduct" means:
- (a) a violation of any of the provisions of this chapter or regulations promulgated by the board pursuant to this chapter; or
  - (b) a violation of any of the principles of nursing ethics as adopted by the board or incompetence or unprofessional conduct.
- (38) "NCLEX" means the National Council Licensure Examination for Registered Nurses or Licensed Practical Nurses.
- (39) "Nurse" means a person licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse pursuant to this chapter.
- (40) "Nurse Practitioner" or "NP" means a registered nurse who has completed an advanced formal education program at the master's level or doctoral level acceptable to the board, and who demonstrates advanced knowledge and skill in assessment and management of physical and psychosocial health, illness status of persons, families, and groups. Nurse practitioners who perform medical acts must do so pursuant to a practice agreement as defined in item (45).
- (41) "Nursing diagnosis" means a clinical judgment about a person, family, or community that is derived through a nursing assessment and the standard nursing taxonomy.
- (42) "Orientation" means any introductory instruction into a new practice environment or employment situation where being a nurse is a requirement of employment or where the individual uses any title or abbreviation indicating that the individual is a nurse. Orientation is considered the practice of nursing in this State.
- (43) "Person" means a natural person, male or female.
- (44) "Physician" means a physician licensed by the South Carolina Board of Medical Examiners who possesses an active, unrestricted, permanent license to practice medicine in this State and who actively is practicing within the geographic boundaries of this State.
- (45) "Practice agreement" means a written agreement developed by an NP, CNM, or CNS and a physician or medical staff who agrees to work with and to support the NP, CNM, or CNS. The practice agreement must establish the medical aspects of care to be provided by the NP, CNM, or CNS, including the prescribing of medications. The practice agreement must contain mechanisms that allow the physician to ensure that quality of clinical care and patient safety is maintained in accordance with state and federal laws, as well as all applicable Board of Nursing and Board of Medical Examiners rules and regulations. The practice agreement must comply with Section 40-33-34. A CNM also may practice pursuant to written policies and procedures for practice developed and agreed to with a physician who is board certified or board eligible by the American College of Obstetricians and Gynecologists. Written policies and procedures constitute a practice agreement for purposes of compliance with Section 40-33-34 and must address medical aspects of care including prescriptive authority and must contain transfer policies and details of the on-call agreement with the physician with whom the policies and procedures were developed and agreed. The on-call physician has the authority to designate another qualified physician to be the on-call physician if necessary. The on-call physician must be available to the CNM to provide medical assistance in person, by telecommunications, or by other electronic means.
- (46) "Practice of nursing" means the provision of services for compensation, except as provided in this chapter, that assists persons and groups to obtain or promote optimal health. Nursing practice requires the use of nursing judgment. Nursing judgment is the logical and systematic cognitive process of identifying pertinent information and evaluating data in the clinical context in order to produce informed decisions, which guide nursing actions. Nursing practice is provided by advanced practice registered nurses, registered nurses, and licensed practical nurses. The scope of nursing practice varies and is commensurate with the educational preparation and demonstrated competencies of the person who is accountable to the public for the quality of nursing care. Nursing practice occurs in the state in which the recipient of nursing services is located at the time nursing services are provided.
- (47) "Practice of practical nursing" means the performance of health care acts that require knowledge, judgment, and skill and must be performed under the supervision of an advanced practice registered nurse, registered nurse, licensed physician, licensed dentist, or other practitioner authorized by law to supervise LPN practice. The practice of practical nursing includes, but is not limited to:
- (a) collecting health care data to assist in planning care of persons;
  - (b) administering and delivering medications and treatments as prescribed by an authorized licensed provider;
  - (c) implementing nursing interventions and tasks;
  - (d) providing basic teaching for health promotion and maintenance;
  - (e) assisting in the evaluation of responses to interventions;
  - (f) providing for the maintenance of safe and effective nursing care rendered directly or indirectly;
  - (g) participating with other health care providers in the planning and delivering of health care;
  - (h) delegating nursing tasks to qualified others;
  - (i) performing additional acts that require special education and training and that are approved by the board including, but not limited to, intravenous therapy and other specific nursing acts and functioning as a charge nurse.
- (48) "Practice of registered nursing" means the performance of health care acts in the nursing process that involve assessment, analysis, intervention, and evaluation. This practice requires specialized independent judgment and skill and is based on knowledge and application of the principles of biophysical and social sciences. The practice of registered nursing includes, but is not limited to:
- (a) assessing the health status of persons and groups;
  - (b) analyzing the health status of persons and groups;
  - (c) establishing outcomes to meet identified health care needs of persons and groups;
  - (d) prescribing nursing interventions to achieve outcomes;
  - (e) implementing nursing interventions to achieve outcomes;
  - (f) administering and delivering medications and treatments prescribed by an authorized licensed provider;
  - (g) delegating nursing interventions to qualified others;
  - (h) providing for the maintenance of safe and effective nursing care rendered directly or indirectly;
  - (i) providing counseling and teaching for the promotion and maintenance of health;

- (j) evaluating and revising responses to interventions, as appropriate;
  - (k) teaching and evaluating the practice of nursing;
  - (l) managing and supervising the practice of nursing;
  - (m) collaborating with other health care professionals in the management of health care;
  - (n) participating in or conducting research, or both, to enhance the body of nursing knowledge;
  - (o) consulting to improve the practice of nursing; and
  - (p) performing additional acts that require special education and training and that are approved by the board.
- (49) "Private reprimand" means a statement by the board that a violation was committed by a person authorized to practice which has been declared confidential and which is not subject to disclosure as a public document.
- (50) "Probation" means the issuance of an authorization to practice with terms and conditions imposed by the board. The holder of the authorization to practice on probation may petition the board for reinstatement to full, unrestricted practice upon compliance with all terms and conditions imposed by the board.
- (51) "Public reprimand" means a publicly available statement of the board that a violation was committed by a person authorized to practice.
- (52) "Readily available" means the physician or medical staff who enters into a practice agreement with an NP, CNM, or CNS must be able to be contacted either in person or by telecommunications or other electronic means to provide consultation and advice to the NP, CNM, or CNS performing medical acts.
- (53) "Registered Nurse" means a person to whom the board has issued an authorization to practice as a registered nurse.
- (54) "Restriction" means a limitation on the activities in which a licensee may engage under an authorization to practice, including revocation, suspension, or probation.
- (55) "Revocation" means the cancellation or withdrawal of a license or other authorization issued by the board either permanently or for a period specified by the board before the person is eligible to reapply. A person whose license or other authorization has been permanently revoked by the board is permanently ineligible for a license or other authorization of any kind from the board.
- (56) "Special education and training" means an organized advanced course of study acceptable to the board, required to expand a nurse's scope of practice. This educational training must be completed after graduation from one's basic nursing education program and includes both theory and clinical practice.
- (57) "Supervision" means the process of critically observing, directing, and evaluating another's performance.
- (58) "Suspension" means the temporary withdrawal of authorization to practice for either a definite or indefinite period of time ordered by the board. The holder of a suspended authorization to practice may petition the board for reinstatement to practice upon compliance with all terms and conditions imposed by the board.
- (59) "State or jurisdiction in this country" means a state of the United States or the District of Columbia and does not include a territory or dependency of the United States.
- (60) "Temporary permit" means a current time-limited document that authorizes the practice of nursing at the level for which one is seeking licensure.
- (61) "Underserved or rural area" means an area determined by a federal or state agency authorized to determine such a designation.
- (62) "Underserved population" means a population residing in a rural or urban area, which includes, but is not limited to:
- (a) persons receiving Medicaid, Medicare, Department of Health and Environmental Health care, or free clinic care;
  - (b) those residing in long-term care settings or receiving care from a licensed hospice;
  - (c) those in institutions including, but not limited to, incarceration institutions and mental health institutions; and
  - (d) persons including, but not limited to, the homeless, HIV patients, children, women, the economically disadvantaged, the uninsured, the underinsured, the developmentally disabled, the medically fragile, the mentally ill, migrants, military persons and their dependents, and veterans and their dependents.
- (63) "Unlicensed assistive personnel" or "UAP" are persons not currently licensed by the board as nurses who perform routine nursing tasks that do not require a specialized knowledge base or the judgment and skill of a licensed nurse. Nursing tasks performed by a UAP must be performed under the supervision of an advanced practice registered nurse, registered nurse, or selected licensed practical nurse.
- (64) "Unprofessional conduct" means acts or behavior that fail to meet the minimally acceptable standard expected of similarly situated professionals including, but not limited to, conduct that may be harmful to the health, safety, and welfare of the public, conduct that may reflect negatively on one's fitness to practice nursing, or conduct that may violate any provision of the code of ethics adopted by the board or a specialty.
- (65) "Voluntary surrender" means the invalidation of a nursing license at the time of its surrender and thereafter. A person whose license is voluntarily surrendered may not practice nursing or represent oneself to be a nurse until the board takes action.
- (66) "Volunteer license" means authorization of a retired nurse to provide nursing services to others through an identified charitable organization without remuneration.

HISTORY: 2004 Act No. 225, Section 1; 2005 Act No. 122, Section 1; 2018 Act No. 234 (S.345), Section 1, eff July 1, 2018.

#### Editor's Note

Prior Laws: 1935 (39) 173; 1942 Code Section 5223; 1947 (45) 579; 1952 Code Section 56-951; 1959 (51) 307; 1962 Code Section 56-951; 1969 (56) 263; 1975 (59) 563; 1987 Act No. 114, Section 1; 1989 Act No. 137, Section 1; 2002 Act No. 337, Section 2A; 1976 Code Section 40-33-10.

#### Effect of Amendment

2018 Act No. 234, Section 1, in (3), in the undesignated paragraph following (f), deleted "delegated" following "constitute" and "and must be promulgated by the Board of Nursing in regulation" following "Board of Medical Examiners"; rewrote (5), relating to the definition of "Advanced Practice Registered Nurse"; in (6), substituted "medical acts that nurses perform and that must be defined in a practice agreement pursuant to item (45)" for "delegated medical acts which nurses perform and which are promulgated by the Board of Nursing in regulation"; deleted (10), which related to the definition of "Approved written protocols", and redesignated (11) to (22) as (10) to (21); rewrote (18), relating to the definition of "Certified Nurse-Midwife"; in (20), in the fourth sentence, deleted "delegated" following "who performs" and substituted "pursuant to a practice agreement as defined in item (45)" for "within approved written protocols", and in the fifth sentence, substituted "pursuant to a practice agreement" for "within approved written protocols"; deleted former (23), which related to the definition of "Delegated medical acts", and redesignated (24) to (37) as (22) to (35); in (27), in the second sentence, substituted "GRNM" for "GRNA"; inserted (36), relating to the definition of "Medical staff", and redesignated (38) to (45) as (37) to (44); in (37), inserted the (a) and (b) designators; in (40), in the first sentence, inserted "or doctoral level" following "master's level", and in the second sentence, substituted "medical acts must do so pursuant to a practice agreement as defined in item (45)" for "delegated medical acts must have a supervising physician or dentist who is readily available for consultation and shall operate within the approved written protocols"; in (44), inserted "who possesses an active, unrestricted, permanent license to practice medicine in this State and who actively is practicing within the geographic boundaries of this State" at the end; inserted (45), relating to the definition of "Practice agreement"; rewrote

(52), relating to the definition of "Registered Nurse" in the Code of Laws, Professions and Occupations, Nurses (2) Nurse Practice Act, and underserved population", and redesignated (61) to (64) as (63) to (66); and made nonsubstantive changes.

**SECTION 40-33-25.** Criminal records checks; dishonored check as evidence of act of moral turpitude.

(A) In addition to other requirements established by law and for the purpose of determining an applicant's eligibility for licensure to practice nursing, the department may require a state criminal records check, supported by fingerprints, by the South Carolina Law Enforcement Division, and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. Costs of conducting a criminal history background check must be borne by the applicant. The department shall keep information received pursuant to this section confidential, except that information relied upon in denying licensure may be disclosed as may be necessary to support the administrative action.

(B) In an investigation or disciplinary proceeding concerning a licensee, the department may require a state criminal records check, supported by fingerprints, by the South Carolina Law Enforcement Division, and a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records checks must be reported to the department. The South Carolina Law Enforcement Division is authorized to retain the fingerprints for certification purposes and for notification of the department regarding criminal charges. Costs of conducting a criminal history background check must be borne by the department and may be recovered as administrative costs associated with an investigation or hearing pursuant to this chapter unless ordered by the board as a cost in a disciplinary proceeding. The department shall keep information received pursuant to this section confidential, except that information relied upon in an administrative action may be disclosed as may be necessary to support the administrative action.

(C) Notwithstanding any other provision of this section or any other provision of law, the dismissal of a prosecution of a fraudulent intent in drawing a dishonored check case by reason of want of prosecution or proof of payment of restitution and administrative costs must not be used as evidence of an act of moral turpitude for disciplinary purposes or for the purposes of disqualifying a person seeking licensure or renewal of licensure pursuant to this chapter.

HISTORY: 2008 Act No. 345, Section 1.

**SECTION 40-33-30.** Licensing requirement; use of title "nurse"; exceptions; establishment of policies to cover special health care needs.

(A) A person may not practice nursing without an active license issued in accordance with this chapter. A South Carolina license as an advanced practice registered nurse or registered nurse is required for a person located in another state to provide nursing services to a recipient located in this State at the time nursing services are provided. A licensee located in this State who provides nursing services to a recipient located in another state must be properly licensed in this State and comply with any applicable licensing requirements where the recipient of nursing services is located at the time the services are provided.

(B) It is unlawful for a person to practice as an advanced practice registered nurse, a registered nurse, or a licensed practical nurse in this State, or to use the abbreviation "APRN", "RN", or "LPN" or any variation or subdesignation of these, or use any title, sign, card, or device to indicate that the person is a nurse, or that the person is practicing as a nurse, within the meaning of this chapter, unless the person is actively licensed under the provisions of this chapter.

(C) A person may not use the word "nurse" as a title, or use an abbreviation to indicate that the person is practicing in this State as a nurse, unless the person is actively licensed as a nurse as provided for in this chapter. If the term "nurse" is part of a longer title, such as "nurse's aide", a person who is entitled to use that title shall use the entire title and may not abbreviate the title to "nurse". This does not prohibit the use of the title "nurse" by persons who hold a temporary permit pending licensure by endorsement from another jurisdiction, and it does not prohibit the use of the title "nurse" by persons enrolled in a board-approved refresher course for the purpose of obtaining an active South Carolina license.

(D) A provision of this chapter may not be construed to prohibit:

- (1) gratuitous nursing care by friends or members of the family;
- (2) the incidental care of the sick by domestic servants or persons primarily employed as housekeepers as long as they do not practice nursing within the meaning of this chapter;
- (3) nursing assistance in case of an emergency;
- (4) the practice of nursing by students enrolled in approved nurse education programs;
- (5) the practice of nursing in this State by a legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this State during the period of one engagement, not to exceed six months, if the person does not represent or hold herself or himself out as a nurse licensed to practice in this State;
- (6) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency of the United States government, while in the discharge of official duties;
- (7) care given to maternity patients, in the performance of their duties by licensed midwives trained and supervised under the authority of the South Carolina Department of Health and Environmental Control, so long as these midwives confine care to maternity patients only and do not claim to be licensed nurses or certified nurse-midwives;
- (8) the practice of nursing by a licensed nurse of another state who is enrolled in a board-approved course of study or board-approved experimental or experiential project requiring nursing practice as a part of the educational program;
- (9) a person not licensed under this chapter from providing attendant care services directed by or on behalf of an individual in need of in-home care; and
- (10) performance of an act which a person would normally perform if the person were physically and cognitively able.

(E) The South Carolina Department of Health and Environmental Control may establish policies that authorize licensed registered nurses to provide health care under the direction of a physician licensed to practice medicine in this State and under the guidance of a registered pharmacist including, but not limited to, the dispensing of drugs for the treatment of tuberculosis and sexually transmitted diseases, HIV/AIDS, maternal and child care, children with special health care needs, family planning, immunizations, and any other public health program. The original diagnosis and treatment as prescribed by the physician must be maintained on the individual patient's records. The provisions of this chapter must not be construed to require the employment of registered pharmacists at local health clinics for the guidance of registered nurses in the dispensing of drugs in accordance with these provisions.

HISTORY: 2004 Act No. 225, Section 1; 2005 Act No. 122, Section 1.

Editor's Note

Prior Laws: 1935 (39) 173; 1942 Code Sections 5230, 5223; 1947 (45) 579; 1952 Code Sections 56-953, 56-981; 1962 Code Sections 56-953, 56-981; 1969 (56) 263; 1987 Act No. 114, Section 2; 1989 Act No. 137, Section 2; 1976 Code Sections 40-33-20; 40-33-510.

**SECTION 40-33-32.** Initial licensure examination; foreign educated nurses.

(A) An applicant for initial licensure must pass the appropriate National Council Licensure Examination (NCLEX) prescribed by the board. The applicant shall comply with all application procedures established by the governing body of the NCLEX and by the board. Applications for licensure are valid for one year from the date of filing with the board. An applicant who fails to attain licensure during this period shall submit a new application with the prescribed fee.

(B) The board shall admit an applicant for licensure examination if the applicant:

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- (1) submits a completed application on a form provided by the board;
  - (2) submits a 2" x 2" photograph, signed and dated;
  - (3) submits the appropriate application fee;
  - (4) submits satisfactory proof of identity and age demonstrating that the applicant is eighteen years of age or older;
  - (5) submits a copy of the applicant's social security card or permanent resident card; a resident alien who does not have a social security number must have an alien identification number;
  - (6) has not committed any acts that are grounds for disciplinary action;
  - (7) has completed all requirements for graduation from an approved school of nursing or nursing education program approved by the state or jurisdiction in this country or territory or dependency of the United States in which the program is located.
- (C) Credit may not be given in an initial application for an unapproved correspondence course or for experience gained through employment.
- (D) The board shall accept applicants for the National Council Licensure Examination-PN who:
- (1) have successfully completed an approved nursing education program for professional nursing within the past five years of the date of the application;
  - (2) have received an equivalent education from an approved nursing education program within the past three years of the date of the application.
- (E) An applicant who does not pass the licensure examination on the first attempt may retake the examination not more frequently than once every forty-five days for up to one year from the first attempt. An applicant who does not pass the examination within one year of the first examination shall provide evidence satisfactory to the board of remediation approved by the board before reexamination. An applicant who has not passed the National Council Licensure Examination within three years of graduation must requalify to take the examination by enrolling in an approved nursing education program and demonstrating knowledge, skills, and ability of a graduate nurse.
- (F) A foreign educated nurse who holds a license to practice in a jurisdiction outside a state or jurisdiction in this country or territory or dependency of the United States who applies for licensure as a nurse shall satisfy all the requirements of this section and the following:
- (1) An applicant's general education and nursing education must be at a level required of graduates of nursing education programs in this State who are candidates for licensure as verified by a certificate of the Commission on Graduates of Foreign Nursing Schools or another board-approved credentials evaluation service. An applicant whose native language is not English shall submit evidence of passing the Test of English as First Language (TOEFL), Test of Written English (TWE), and Test of Spoken English (TSE) offered by TOEFL/TSE Services or another service approved by the board. An applicant whose education for nursing is not verified as equivalent may qualify for a license by completing a supplemental course as prescribed by the board to be covered in an approved nursing education program and, upon completion of the course, writing and passing the licensing examination.
  - (2) An applicant shall pass the appropriate National Council Licensure Examination and shall comply with all application procedures established by the governing body of the NCLEX and by the board. Applications for licensure are valid for one year from the date of filing with the board. An applicant who fails to attain licensure during this period shall submit a new application with the prescribed fee.
  - (3) An applicant shall submit verification of authorization to practice as a registered nurse, licensed practical nurse, or comparable title from the country of original licensure.
  - (4) A foreign educated applicant who does not become licensed within three years of first taking the examination shall requalify to take the National Council Licensure Examination (NCLEX) by enrolling in an approved nursing education program and demonstrating knowledge, skills, and ability of a graduate nurse.
- HISTORY: 2004 Act No. 225, Section 1; 2008 Act No. 194, Section 1.

**SECTION 40-33-33.** Inactive status of certain licenses.

- (A) When a licensed practical nurse becomes licensed as a registered nurse, the person's LPN license must be placed on inactive status.
- (B) When a registered nurse becomes licensed as an advanced practice registered nurse, the person's RN license must be placed on inactive status. However, an APRN is authorized to practice as a RN while the person's APRN license is in good standing, unless otherwise specifically authorized by the board.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-34.** Performance of medical acts; qualifications; practice agreements; prescriptive authorization; anesthesia care; definitions.

- (A) An advanced practice registered nurse applicant shall furnish evidence satisfactory to the board that the applicant:
  - (1) has met all qualifications for licensure as a registered nurse; and
  - (2) holds current specialty certification by a board-approved credentialing organization. New graduates shall provide evidence of certification within one year of program completion; however, psychiatric clinical nurse specialists shall provide evidence of certification within two years of program completion; and
  - (3) has earned a minimum of a master's degree from an accredited college or university, except for those applicants who:
    - (a) provide documentation as requested by the board that the applicant was graduated from an advanced, organized formal education program appropriate to the practice and acceptable to the board before December 31, 1994; or
    - (b) graduated before December 31, 2003, from an advanced, organized formal education program for nurse anesthetists accredited by the national accrediting organization of that specialty. CRNAs who graduate after December 31, 2003, must graduate with a master's degree from a formal CRNA education program for nurse anesthetists accredited by the national accreditation organization of the CRNA specialty. An advanced practice registered nurse must achieve and maintain national certification, as recognized by the board, in an advanced practice registered nursing specialty;
  - (4) has paid the board all applicable fees; and
  - (5) has declared specialty area of nursing practice and the specialty title to be used must be the title which is granted by the board-approved credentialing organization or the title of the specialty area of nursing practice in which the nurse has received advanced educational preparation.
- (B) An APRN is subject, at all times, to the scope and standards of practice established by the board-approved credentialing organization representing the specialty area of practice and shall function within the scope of practice of this chapter and must not be in violation of Chapter 47.
- (C) A licensed nurse practitioner, certified nurse-midwife, or clinical nurse specialist must provide evidence of a practice agreement, as provided in this section. A licensed NP, CNM, or CNS must spend a portion of his time practicing in an underserved or rural area or serving an underserved population as defined in Section 40-33-20. A licensed NP, CNM, or CNS performing medical acts must do so pursuant to a practice agreement with a physician who must be readily available for consultation.
- (D)(1) Medical acts performed by a nurse practitioner or clinical nurse specialist must be performed pursuant to a practice agreement between the nurse and the physician

or medical staff. The practice agreement must include:

(a) the following general information:

- (i) name, address, and South Carolina license number of the nurse;
- (ii) name, address, and South Carolina license number of the physician;
- (iii) nature of practice and practice locations of the nurse and physician;
- (iv) date the practice agreement was entered into and dates the practice agreement was reviewed and amended; and
- (v) description of how consultation with the physician is provided and provision for backup consultation if the physician is unavailable; and

(b) the following information for medical acts:

- (i) medical conditions for which therapies may be initiated, continued, or modified;
- (ii) treatments that may be initiated, continued, or modified;
- (iii) drug therapies that may be prescribed; and
- (iv) situations that require direct evaluation by or referral to the physician.

(2) Notwithstanding any provisions of state law other than this chapter and Chapter 47, and to the extent permitted by federal law, an APRN may perform the following medical acts unless otherwise provided in the practice agreement:

- (a) provide noncontrolled prescription drugs at an entity that provides free medical care for indigent patients;
- (b) certify that a student is unable to attend school but may benefit from receiving instruction given in his home or hospital;
- (c) refer a patient to physical therapy for treatment;
- (d) pronounce death and sign death certificates;
- (e) issue an order for a patient to receive appropriate services from a licensed hospice as defined in Chapter 71, Title 44; and
- (f) certify that an individual is handicapped and declare that the handicap is temporary or permanent for purposes of the individual's application for a placard.

(3) The original practice agreement and any amendments to it must be reviewed at least annually, dated and signed by the nurse and physician, and made available to the board for review within seventy-two hours of request. Failure to produce a practice agreement upon request of the board is considered misconduct and subjects the licensee to disciplinary action. A random audit of a practice agreement must be conducted by the board at least biennially.

(4) Licensees who change practice settings or physicians shall notify the board of the change within fifteen business days and provide verification of a practice agreement. NPs, CNMs, and CNSs who discontinue their practice shall notify the board within fifteen business days.

(E)(1) An NP, CNM, or CNS who applies for prescriptive authority:

- (a) must be licensed by the board as a nurse practitioner, certified nurse-midwife, or clinical nurse specialist;
- (b) shall submit a completed application on a form provided by the board;
- (c) shall submit the required fee;
- (d) shall provide evidence of completion of forty-five contact hours of education in pharmacotherapeutics acceptable to the board, within two years before application or during the time of the organized educational program shall provide evidence of prescriptive authority in another state meeting twenty hours in pharmacotherapeutics acceptable to the board, within two years before application;
- (e) shall provide at least fifteen hours of education in controlled substances acceptable to the board as part of the twenty hours required for prescriptive authority if the NP, CNM, or CNS has equivalent controlled substance prescribing authority in another state;
- (f) shall provide at least fifteen hours of education in controlled substances acceptable to the board as part of the forty-five contact hours required for prescriptive authority if the NP, CNM, or CNS initially is applying to prescribe in Schedules II through V controlled substances.

(2) The board shall issue an identification number to the NP, CNM, or CNS authorized to prescribe medications. Authorization for prescriptive authority is valid for two years unless terminated by the board for cause. Initial authorization expires concurrent with the expiration of the Advanced Practice Registered Nurse license.

(3) Authorization for prescriptive authority must be renewed after the applicant meets requirements for renewal and provides documentation of twenty hours acceptable to the board of continuing education contact hours every two years in pharmacotherapeutics. For a NP, CNM, or CNS with controlled substance prescriptive authority, two of the twenty hours must be related to prescribing controlled substances.

(F)(1) Authorized prescriptions by a nurse practitioner, certified nurse-midwife, or clinical nurse specialist with prescriptive authority:

- (a) must comply with all applicable state and federal laws and executive orders;
- (b) is limited to drugs and devices utilized to treat medical problems within the specialty field of the nurse practitioner or clinical nurse specialist as prescribed in the practice agreement;
- (c) may include Schedules III through V controlled substances if listed in the practice agreement and as authorized by Section 44-53-300;
- (d) may include Schedule II nonnarcotic substances if listed in the practice agreement and as authorized by Section 44-53-300, provided, however, that each such prescription must not exceed a thirty-day supply;
- (e) may include Schedule II narcotic substances if listed in the practice agreement and as authorized by Section 44-53-300, provided, however, that the prescription must not exceed a five-day supply and another prescription must not be written without the written agreement of the physician with whom the nurse practitioner, certified nurse-midwife, or clinical nurse specialist has entered into a practice agreement, unless the prescription is written for patients in hospice or palliative care;
- (f) may include Schedule II narcotic substances for patients in hospice or palliative care if listed in the practice agreement as authorized by Section 44-53-300, provided, however, that each such prescription must not exceed a thirty-day supply;
- (g) must be signed or electronically submitted by the NP, CNM, or CNS with the prescriber's identification number assigned by the board and all prescribing numbers required by law. Written prescription forms must include the name, address, and phone number of the NP, CNM, or CNS and physician. Electronic prescription forms must



include the name, address, and phone number of the prescriber. A prescription must comply with the provisions of Section 39-24-40. A prescription must designate a specific number of refills and may not include a nonspecific refill indication;

(h) must be documented in the patient record of the practice and must be available for review and audit purposes.

(2) An NP, CNM, or CNS who holds prescriptive authority may request, receive, and sign for professional samples and may distribute professional samples to patients as listed in the practice agreement, subject to federal and state regulations.

(G) Prescriptive authorization may be terminated by the board if an NP, CNM, or CNS with prescriptive authority has:

- (1) not maintained certification in the specialty field;
- (2) failed to meet the education requirements for pharmacotherapeutics;
- (3) prescribed outside the scope of the practice agreement;
- (4) violated a provision of Section 40-33-110; or
- (5) violated any state or federal law or regulations applicable to prescriptions.

(H)(1) Nothing in this section may be construed to require a CRNA to obtain prescriptive authority to deliver anesthesia care.

(2) A CRNA shall practice pursuant to approved written guidelines developed with the supervising licensed physician or dentist or by the medical staff within the facility where practice privileges have been granted and must include, but are not limited to:

(a) the following general information:

- (i) name, address, and South Carolina license number of the registered nurse;
- (ii) name, address, and South Carolina license number of the supervising physician, dentist, or the physician director of anesthesia services or the medical director of the facility;
- (iii) dates the guidelines were developed, and dates the guidelines were reviewed and amended;
- (iv) physical address of the primary practice and any additional practice sites;

(b) these requirements for providing anesthesia services:

- (i) documentation of clinical privileges in the institutions where anesthesia services are provided, if applicable;
- (ii) copy of job description;
- (iii) policies and procedures that outline the pre-anesthesia evaluation, induction, intra-operative maintenance, and emergence from anesthesia.
- (iv) evidence of outcome evaluation for anesthesia services.

(3) The original and any amendments to the approved written guidelines must be reviewed at least annually, dated and signed by the CRNA and physician or dentist, and must be made available to the board for review within seventy-two hours of request. Failure to produce the guidelines is considered misconduct and subjects the licensee to disciplinary action. A random audit of approved written guidelines must be conducted by the board at least biennially.

(4) A person who changes primary practice settings or physician or dentist shall notify the board of this change within fifteen business days and provide verification of approved written guidelines. A CRNA who discontinues his or her practice shall notify the board within fifteen business days.

(5) The physician or dentist responsible for the supervision of a CRNA must be identified on the anesthesia record before administration of anesthesia.

(I)(1) For purposes of this subsection:

- (a) "Telemedicine" has the same meaning as provided in Section 40-47-20(52).
- (b) "Unprofessional conduct" has the same meaning as provided in Section 40-33-20(64).

(2) An APRN may perform medical acts via telemedicine pursuant to a practice agreement as defined in Section 40-33-20(45).

(3) An APRN who establishes a nurse-patient relationship solely by means of telemedicine shall adhere to the same standard of care as a licensee employing more traditional in-person medical care. Failure to conform to the appropriate standard of care is considered unprofessional conduct and may be subject to enforcement by the board.

(4) An APRN may not establish a nurse-patient relationship by means of telemedicine for the purpose of prescribing medication when an in-person physical examination is necessary for diagnosis.

(5) An APRN who establishes a nurse-patient relationship solely by means of telemedicine only may prescribe within a practice setting fully in compliance with this chapter and during an encounter in which threshold information necessary to make an accurate diagnosis is obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II through V prescriptions are only permitted pursuant to a practice agreement as defined in Section 40-33-20(45) and nothing in this item may be construed to authorize the prescribing of medications via telemedicine that otherwise are restricted by the limitations in Section 40-47-37(C)(6) unless approved by a joint committee of the Board of Medical Examiners and the Board of Nursing.

(6) An APRN who establishes a nurse-patient relationship solely by means of telemedicine shall generate and maintain medical records for each patient using those telemedicine services in compliance with any applicable state and federal laws, rules, and regulations, including the provisions of this chapter, the Health Insurance Portability and Accountability Act (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH). These records must be accessible to other practitioners and to the patient in a timely fashion when lawfully requested by the patient or his lawfully designated representative.

(7) The provisions of this subsection may not be construed to allow an APRN to perform services beyond the scope of what is authorized by Chapter 33, Title 40 and Chapter 47, Title 40.

HISTORY: 2004 Act No. 225, Section 1; 2008 Act No. 194, Section 2; 2018 Act No. 234 (S.345), Section 2, eff July 1, 2018.

Effect of Amendment

2018 Act No. 234, Section 2, rewrote the section, revising the requirements for the performance of medical acts, allowing the performance of certain additional medical acts, revising the prescriptive authority of certain advanced practice registered nurses with respect to controlled substances and narcotics, and defining terms.

**SECTION 40-33-35.** Licensing of applicant authorized to practice in other states.

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An applicant for a license who currently holds or has held an authorization to practice nursing in another state or jurisdiction in this country or territory or dependency of the United States may be licensed by the board by endorsement, without examination, if the applicant:

- (1) submits a completed application on a form provided by the board;
- (2) submits one 2" x 2" photograph signed and dated;
- (3) submits the appropriate application fee;
- (4) submits satisfactory proof of identity and age demonstrating that the applicant is eighteen years of age or older;
- (5) submits a copy of the applicant's social security card or permanent resident card; a resident alien who does not have a social security number must have an alien identification number;
- (6) has not committed any acts that are grounds for disciplinary action;
- (7) has completed all requirements for graduation from a nursing education program approved by the state or jurisdiction in this country or territory or dependency of the United States in which the program is located, as evidenced by a graduation transcript or other proof of education satisfactorily demonstrating graduation as determined by the board. The applicant's education must be equivalent to that required in this State at the time of the applicant's initial licensure in the other jurisdiction. An applicant shall comply with these educational requirements for basic RN licensure and satisfy the requirements of Section 40-33-34 to practice as an APRN;
- (8) submits verification of current or prior authorization to practice as a nurse in another state or jurisdiction or territory or dependency of the United States and that a license:
  - (a) has been issued on the basis of passing the State Board Test Pool Examination before 1983 or the appropriate National Council Licensure Examination;
  - (b) was not issued on the basis of passing the State Board Test Pool Examination before 1983 or the appropriate National Council Licensure Examination, in which case the applicant shall demonstrate not fewer than three years of successful practice as a licensed nurse in another state or jurisdiction in this country without disciplinary action that resulted in restriction of practice, including probation;
  - (9) evidence of continued competency as provided in this chapter; and
  - (10) whose native language is not English, submits evidence of passing the Test of English as First Language (TOEFL), Test of Written English (TWE), and Test of Spoken English (TSE) offered by the TOEFL/TSE Services or another service approved by the board.

HISTORY: 2004 Act No. 225, Section 1; 2008 Act No. 194, Section 3.

#### Editor's Note

Prior Laws: 1935 (39) 173; 1942 Code Section 5228; 1947 (45) 579; 1952 Code Section 56-986; 1959 (51) 307; 1962 Code Section 56-986; 1969 (56) 263; 1987 Act No. 114, Section 9; 1976 Code Section 40-33-560.

#### **SECTION 40-33-36.** Issuance of licenses; temporary or limited licenses.

- (A) The board shall examine all candidates for licensure as nurses, pass upon their qualifications to practice nursing in this State, and issue each successful applicant a license. A license is the property of the State and subject to return upon demand.
- (B) A license must be issued in the person's legal name as verified by a birth certificate or other legal document acceptable to the board. If a licensee changes her or his name after a license has been issued, notification of the change must be filed with the board within fifteen business days, accompanied by a copy of the legal document that authorizes the change. A licensee's name may not be changed on a record in the office of the board without written authorization for the change and an adequate identification of the applicant.
- (C) A statement verifying current license status may be secured from the board by a licensee who submits adequate identification and a written statement explaining the reason for the request, if the reason is satisfactory to the board.
- (D)(1) The board may issue a temporary or limited license to practice nursing, in accordance with this subsection, or as may be provided for in regulation, to an applicant:
  - (a) for licensure as an advanced practice registered nurse, a registered nurse, or as a licensed practical nurse, if the applicant's preliminary credentials have been approved and whose fee has been paid;
  - (b) for licensure by endorsement as an advanced practice registered nurse, a registered nurse, or as a licensed practical nurse, for up to sixty days, unless further authorized by the administrator or designee, pending completion and approval of the application, if the applicant has filed an application, paid the fee, and has produced a valid license to practice in another jurisdiction;
  - (c) while participating in a refresher course for up to ninety days, unless further authorized by the administrator or designee, when the applicant is seeking reinstatement of a lapsed or an inactive license or licensure by endorsement and must submit evidence of nursing competence before returning to nursing practice.
- (2) An applicant who has failed the licensing examination is not eligible for a temporary permit to practice nursing.
- (3) The board or department may immediately cancel a temporary permit or license that was issued based upon false, fraudulent, or misleading information provided by an applicant.

HISTORY: 2004 Act No. 225, Section 1; 2008 Act No. 194, Section 4.

#### **SECTION 40-33-37.** Volunteer licenses.

- (A) The board may issue a volunteer license without a fee to a retired nurse, upon written application, to donate nursing services through one specific charitable organization approved by the board if the nurse:
  - (1) has been granted inactive status and has practiced not less than twenty-five years or until age sixty-five after a minimum of fifteen years of practice;
  - (2) submits evidence of completing not less than twenty-five hours of initial training with the charitable organization; and
  - (3) has been on the official inactive status list for not more than ten years.
- (B) A volunteer license is not transferable and authorizes the retired nurse to provide nursing services to others without remuneration of any kind. A separate application must be filed and a separate license must be issued for every charitable organization to which the retired nurse wishes to donate nursing services.
- (C) A volunteer license may be renewed annually, except as otherwise provided in Section 40-1-50, upon application and satisfactory demonstration of continued competency or not less than twenty-five hours of service or additional training per year with the same charitable organization. A volunteer license may be renewed if the license has been renewed without interruption with the same charitable organization and all other qualifications have been met.

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(D) The board may promulgate regulations to carry out the provisions of this section.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-38.** Renewal of licenses.

(A) A license issued pursuant to this chapter may be renewed biennially or as otherwise provided by the board in regulation. A licensee who has not demonstrated continuing nursing competence, as required by this chapter, is not eligible for renewal or issuance of an active license.

(B) A licensee shall complete the renewal form and submit it to the board with the renewal fee. Upon receipt of the application and the fee, the board shall verify the accuracy of the application and renew the license for the applicable period. If a licensee fails to timely renew his or her license, the license is deemed lapsed at the close of the renewal period, and the licensee may not practice nursing in this State until the licensee is reinstated to practice. The board may reinstate the licensee on payment of a reinstatement fee, the current renewal fee, and demonstration of continued competency satisfactory to the board. The board may deny reinstatement based on evidence of misconduct.

(C) A licensee shall notify the board in writing within fifteen business days of any change of address.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-39.** Identification badges.

A licensed nurse must clearly identify himself or herself as officially licensed by the board. A licensed nurse shall wear a clearly legible identification badge or other adornment at least one inch by three inches in size bearing the nurse's first or last name, or both, and title as officially licensed.

HISTORY: 2008 Act No. 345, Section 2.

**SECTION 40-33-40.** Demonstration of competency for initial and renewal of licenses.

(A) Demonstration of competency for initial licensure requires documented evidence of the following:

- (1) graduation from an approved nursing education program; and
- (2) successful completion of the NCLEX appropriate to the area of licensure and appropriate credentials for advanced practice registered nursing licensure, if applicable.

(B) Demonstration of competency for:

(1) renewal of an active license biennially requires documented evidence of at least one of the following requirements during the licensure period:

- (a) completion of thirty contact hours from a continuing education provider recognized by the board;
  - (b) maintenance of certification or recertification by a national certifying body recognized by the board;
  - (c) completion of an academic program of study in nursing or a related field recognized by the board; or
  - (d) verification of competency and the number of hours practiced, as evidenced by employer certification on a form approved by the board;
- (2) reinstatement from lapsed or inactive status of five years or less requires documented evidence of at least one of the following within the preceding two years:
- (a) completion of thirty contact hours from a continuing education provider recognized by the board and successful completion of a course in legal aspects approved by the board;
  - (b) maintenance of certification or recertification by a national certifying body recognized by the board;
  - (c) completion of an academic program of study in nursing or a related field recognized by the board;
  - (d) verification of competency and the number of hours practiced, as evidenced by employer certification on a form approved by the board; or
  - (e) successful completion of a refresher course approved by the board;

(3) reinstatement from lapsed or inactive status of more than five years requires documented evidence of at least one of the following within the preceding two years:

- (a) successful completion of a refresher course approved by the board; or
- (b) successful completion of the NCLEX appropriate to the area of licensure.

(C) Demonstration of competency for reinstatement from lapsed or inactive status or licensure of a person who holds a current authorization to practice in another state or jurisdiction in this country or territory or dependency of the United States requires documented evidence of at least one of the requirements in subsection (B) during the preceding two years.

(D) Failure to comply with applicable continued competency requirements results in nonrenewal or denial of the application. A licensee shall maintain all documented evidence of compliance for at least four years. This documented evidence must be presented by the licensee within five business days of request by a representative of the department acting in its discretion or in accordance with a random audit of a sample of licensees. Failure to provide satisfactory documented evidence of compliance within the prescribed time results in the immediate temporary suspension or cancellation of the license pending compliance with all requirements for licensure and until order of the board.

HISTORY: 2004 Act No. 225, Section 1; 2008 Act No. 194, Section 5.

**SECTION 40-33-41.** Request for inactive status.

Upon request on a form provided by the board and payment of the applicable fee, the board shall place a person on the official inactive status if the person is currently licensed under this chapter and does not meet the minimum continued competency requirement for renewal or wishes to retire from practice temporarily. While on inactive status the person is not subject to the payment of any renewal fees and must not practice nursing in this State. To apply for reinstatement, the person shall submit an application, pay a reinstatement fee for the current period, and demonstrate continued competency as defined in regulation. The board may deny reinstatement based on evidence of unlawful acts, incompetence, unprofessional conduct, or other misconduct.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-42.** Delegation of tasks to unlicensed assistive personnel.

(A) An advanced practice registered nurse, registered nurse, or licensed practical nurse is responsible for the delegation and supervision of nursing tasks to unlicensed assistive personnel. Tasks that may be assigned to unlicensed assistive personnel must be stated in the employers' policies, and the employer shall verify the training of

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(B) Tasks which may be delegated and performed under supervision may include, but are not limited to:

- (1) meeting patients' needs for personal hygiene;
- (2) meeting patients' needs relating to nutrition;
- (3) meeting patients' needs relating to ambulation;
- (4) meeting patients' needs relating to elimination;
- (5) taking vital signs;
- (6) maintaining asepsis;
- (7) observing, recording, and reporting any of the tasks enumerated in the subsection.

(C) Subject to the rights of licensed physicians and dentists under state law, the administration of medications is the responsibility of a licensed nurse as prescribed by the licensed physician, dentist, other authorized licensed provider or as authorized in an approved written protocol or guidelines. Unlicensed assistive personnel must not administer medications, except as otherwise provided by law.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-43.** Provision of medications in community residential facilities by selected unlicensed persons.

In community residential care facilities, the provision of medications may be performed by selected unlicensed persons with documented medication training and skill competency evaluation. The provision of medications by selected unlicensed persons is limited to oral and topical medications, and regularly scheduled insulin, and prescribed anaphylactic treatments under established medical protocol and does not include sliding scale insulin or other injectable medications. Licensed nurses may train and supervise selected unlicensed persons to provide medications and, after reviewing their competency evaluations, may approve selected unlicensed persons for the provision of medications.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-44.** Exceptions to supervision requirements for licensed practical nurses.

Notwithstanding any other provision of law, requiring the practice of practical nursing to be performed under the direction of an advanced practice registered nurse, registered nurse, licensed physician, or licensed dentist, a licensed practical nurse may provide nursing care authorized for licensed practical nurses under this chapter without the on-site supervision of an advanced practice registered nurse, registered nurse, licensed physician, or licensed dentist in:

- (1) home or residential settings, if a registered nurse has approved the plan of care;
- (2) public schools and in institutions and facilities of the Department of Juvenile Justice and Department of Corrections, if the licensed practical nurse follows the policies, procedures, and guidelines of the employing entity and if a registered nurse is available on call by telecommunications.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-50.** Administrative support of board activities; establishment of fees.

(A) The Department of Labor, Licensing and Regulation shall provide all administrative, fiscal, investigative, inspectional, clerical, secretarial, and license renewal operations and activities of the board in accordance with Section 40-1-50.

(B) Initial fees must be established by the board in regulation and shall serve as the basis for necessary adjustments in accordance with Section 40-1-50(D) to ensure that they are sufficient, but not excessive, to cover expenses, including the total of the direct and indirect costs to the State for the operations of the board.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-70.** Code of ethics.

Nurses shall conduct themselves in accordance with the code of ethics adopted by the board in regulation.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-80.** Investigation of complaints and violations.

The department shall investigate complaints and violations of this chapter as provided in Section 40-1-80.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-90.** Administration of oaths.

In addition to the powers and duties enumerated in Section 40-1-90, the presiding officer of the board may administer oaths when taking of testimony upon any and all matters pertaining to the business or duties of the board.

HISTORY: 2004 Act No. 225, Section 1.

Editor's Note

Prior Laws: 1935 (39) 173; 1942 Code Section 5226; 1947 (45) 579; 1952 Code Section 56-968; 1962 Code Section 56-968; 1976 Code Section 40-33-280.

**SECTION 40-33-100.** Issuance of restraining orders and cease and desist orders.

Restraining orders and cease and desist orders may be issued in accordance with Section 40-1-100.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-110.** Grounds for discipline of licensees.

(A) In addition to the grounds provided in Section 40-1-110, upon finding misconduct the board may cancel, fine, suspend, revoke, issue a public reprimand or a private reprimand, or restrict, including probation or other reasonable action such as requiring additional education and training, the authorization to practice of a person who has:

- (1) violated a federal, state, or local law involving alcohol or drugs or committed an act involving a crime of moral turpitude. A conviction is not required to prove misconduct

under this item. The board may receive evidence from the licensee or applicant, or from any other person, and may use only in making the administrative decision regarding the proposed discipline;

- (2) allowed another person to use the licensee's authorization to practice;
- (3) wilfully or repeatedly followed a course of conduct that, by reasonable professional or ethical standards, renders the licensee incompetent to assume, perform, or be entrusted with the duties, responsibilities, or trusts which normally devolve upon a licensed nurse;
- (4) had a license to practice nursing in another state suspended or revoked or had other disciplinary action taken by another state; in which case, the action by another state creates a rebuttable presumption that a South Carolina nursing license may be acted upon similarly. The finding may be based solely upon the record in the other state, and there is no requirement for a de novo hearing on the facts established in that proceeding. Other evidence is admissible to support or rebut this presumption. The licensee must produce a copy of all transcripts, documents, orders, or other items from the other state's proceedings upon request by the department. Failure to produce all requested items within ninety days of the request results in the immediate temporary suspension of the license until further order of the board;
- (5) violated a provision of this chapter or a regulation or order of the board;
- (6) failed to cooperate with an investigation or other proceeding of the board;
- (7) failed to comply with a directive or order of the department or board;
- (8) disseminated a patient's health or personal information acquired during the course of practice to persons not entitled by law or hospital or agency policy to disclosure of this information;
- (9) falsified or altered, for the purpose of reflecting incorrect or incomplete information, any organization's records, including personnel records or patient records;
- (10) misappropriated money, property, or drugs from an employer or patient;
- (11) obtained or attempted to obtain a fee for patient service for one's self or for another through fraud, misrepresentation, or deceit;
- (12) wilfully aided, abetted, assisted, or hired an individual to violate a provision of this chapter or a regulation of the board;
- (13) obtained, possessed, administered, or furnished prescription drugs to a person including, but not limited to, one's self, except as directed by a person authorized by law to prescribe drugs;
- (14) engaged in the practice of nursing when judgment or physical ability is impaired by alcohol, drugs, or controlled substances or has declined or been unsuccessful in accomplishing rehabilitation;
- (15) sustained a physical or mental disability that renders further practice dangerous to the public;
- (16) omitted, in a grossly negligent fashion, to record information concerning a patient that would be relevant to that patient's condition;
- (17) indicated the witnessing of wastage of narcotics or controlled substances on record when the wastage was not witnessed or failed to obtain a witness to the wastage of narcotics or controlled substances;
- (18) failed to make or keep accurate, intelligible entries in records as required by law, policy, or standards for the practice of nursing;
- (19) obtained, or attempted to obtain, a license to practice nursing for one's self or for another through fraud, deceit, misrepresentation, or any other dishonesty in any phase of the licensing process including, but not limited to, the examination;
- (20) practiced nursing without a valid, current South Carolina license or aided, abetted, or assisted another to practice nursing without a valid, current South Carolina license;
- (21) practiced outside the scope of the license by assuming duties and responsibilities without adequate education as determined by the board;
- (22) failed to report incompetent or unprofessional practice of a licensed nurse to the appropriate authorities, including the board;
- (23) assigned unqualified persons to perform nursing care functions, tasks, or responsibilities or failed to effectively supervise persons to whom nursing functions are delegated or assigned;
- (24) abandoned a patient after accepting the patient assignment and establishing a nurse-patient relationship and disengaged the nurse-patient relationship without giving reasonable notice to the appropriate personnel responsible for making arrangements for continuation of nursing care;
- (25) failed to comply with best practice standards and recommendations to minimize transmission of infectious or communicable diseases;
- (26) failed to timely notify the department of changes in information required in an original or renewal application;
- (27) engaged in practice as an NP, CNS, or CNM without a compliant practice agreement as defined in Section 40-33-20(45);
- (28) failed to follow or comply with the practice agreement as defined by Section 40-33-20(45); or
- (29) knowingly allowed himself to be misrepresented as a physician.

(B)(1) Acts or omissions by a licensee or applicant causing the denial, revocation, suspension, or restriction of a license to practice in another state supports the issuance of a formal complaint and the commencement of disciplinary proceedings. This subsection applies only if the disciplinary action taken in another state is based on grounds that would constitute misconduct in this State. Proof of these acts or omissions may be shown by a copy of the transcript of record of the disciplinary proceedings in another state or a copy of the final order, consent order, or similar order stating the basis for the action taken.

(2) Upon filing an application or an initial complaint alleging that the applicant or licensee has been disciplined in another state, the applicant or licensee must produce copies of all transcripts, documents, and orders used, relied upon, or issued by the licensing authority in the other state. Failure to produce these items within ninety days of written request results in the denial of the individual's application or suspension of the individual's license to practice in this State until these items have been provided.

(3) The applicant or licensee may present mitigating testimony to the board or hearing panel regarding disciplinary action taken in another state or evidence that the acts or omissions committed in another state do not constitute misconduct under this chapter.

HISTORY: 2004 Act No. 225, Section 1; 2018 Act No. 234 (S.345), Section 3, eff July 1, 2018.

#### Effect of Amendment

2018 Act No. 234, Section 3, in (A), inserted (27), (28), and (29), relating to engaging in practice as a NP, CNS, or CNM without a compliant practice agreement, failure to comply with a practice agreement, and knowingly allowing oneself to be misrepresented as a physician, respectively.

**SECTION 40-33-111.** Reporting misconduct; review of findings of board.

**006-1, South Carolina Code of Laws-Professions and Occupations, Nurses, Nurse Practice Act, page. 4**

(A) An employer, including an agency, or supervisor of nurses, shall report any instances of the misconduct or the incapacities described in Section 40-33-110 to the State Board of Nursing not more than fifteen business days, excepting Saturdays, Sundays, and legal holidays, from the discovery of the misconduct or incapacity. A nurse supervisor who fails to timely report the misconduct or incapacity may be subject to disciplinary action and civil sanctions as provided for in Section 40-33-120. An employer who is not licensed by the board and who fails to timely report the misconduct or incapacity shall pay a civil penalty of one thousand dollars per violation upon notice of the board.

(B) The findings of the board, including the amount of the fine, are final unless within thirty days after receipt of their notice the employer submits a request in writing to the board for a review of the findings or the amount of the fine. If a request for review is made to the board, a final determination must be made after an opportunity for a hearing pursuant to the Administrative Procedures Act.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-115.** Jurisdiction of the board.

The board has jurisdiction over the acts and omissions of current and former licensees as provided in Section 40-1-115.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-116.** Mental or physical examinations; consent to submit; review hearing; admissibility of medical records.

(A) If the board finds that probable cause exists that a licensee or applicant may be addicted to alcohol or drugs or may have sustained a physical or mental disability that may render practice by the licensee or applicant dangerous to the public, the board, without a formal complaint or opportunity for hearing, may require a licensee or applicant to submit to a mental or physical examination by authorized practitioners designated by the board. The results of an examination are admissible in a hearing before the board, notwithstanding a claim of privilege under a contrary rule of law or statute. A person who accepts the privilege of engaging in the licensed practice of nursing in this State, or who files an application for a license to practice under this chapter, is deemed to have consented to submit to a mental or physical examination and to have waived all objections to the admissibility of the results in a hearing before the board upon the grounds that this constitutes a privileged communication. If a licensee or applicant fails to submit to an examination when properly directed to do so by the board, unless the failure was due to circumstances beyond the person's control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is required to submit to a mental or physical examination may request within twenty-four hours of receipt of the requirement a review by an administrative hearing officer appointed by the board or its designee. Filing of a written request for a review by an administrative hearing officer does not stay the time directed in which to submit to a mental or physical examination, and no stay may be issued, except as provided in this section. Upon proper written request, a review hearing must be conducted within forty-eight hours of receipt of the request. Failure to provide a review hearing within the prescribed time stays the time required to submit to a mental or physical examination until a decision is issued by the administrative hearing officer. The review hearing for purposes of this section must be limited to the issues of whether the person is a licensee or applicant, whether reasonable grounds exist to require a mental or physical examination, and whether the licensee or applicant has been informed that failure to submit to an examination will result in the entry of an order automatically suspending or denying the license pending compliance and further order of the board. The administrative hearing officer's decision is not subject to appeal. A licensee or applicant who is prohibited from practicing under this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the board the ability to resume or begin the practice with reasonable skill and safety.

(B) The board upon probable cause may obtain records relating to the mental or physical condition of a licensee or applicant including, but not limited to, psychiatric records; and these records are admissible in a hearing before the board, notwithstanding any other provision of law. A person who accepts the privilege of engaging in the licensed practice of nursing in this State, or who files an application to practice under this chapter, is deemed to have consented to the board obtaining these records and to have waived all objections to the admissibility of these records in a hearing before the board upon the grounds that this constitutes a privileged communication. If a licensee or applicant refuses to sign a written consent for the board to obtain these records when properly requested by the board, unless the failure was due to circumstances beyond the person's control, the board shall enter an order automatically suspending or denying the license pending compliance and further order of the board. A licensee or applicant who is prohibited from practicing under this subsection must be afforded at reasonable intervals an opportunity to demonstrate to the board the ability to resume or begin the practice of nursing with reasonable skill and safety.

(C) An order requiring a licensee or applicant to submit to a mental or physical examination or an order requiring the submission of records relating to the mental or physical condition of a licensee or applicant is confidential and must not be disclosed, except to the extent necessary for the proper disposition of the matter before the board. An order automatically suspending or denying a license pending compliance and further order of the board is public information under the South Carolina Freedom of Information Act. A decision of an administrative hearing officer is confidential, unless an order automatically suspending or denying a license pending compliance and further order of the board has been issued, in which case the administrative hearing officer's decision and the order requiring an examination of records is public information under the South Carolina Freedom of Information Act.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-120.** Fines and other discipline; effective date; stay or supersedeas.

(A) In addition to the powers and duties enumerated in Section 40-1-120, the board may issue private reprimands. The board may impose a fine of up to two thousand dollars for each violation of a provision of this chapter or of a regulation promulgated by the board, not to exceed a total of ten thousand dollars. Fines are payable immediately upon the effective date of discipline unless otherwise provided by the board. Interest accrues after fines are due at the maximum rate allowed by law. No licensee against whom a fine is levied is eligible for reinstatement until the fine has been paid in full.

(B) A decision by the board to revoke, suspend, or restrict a license or to limit or discipline a licensee becomes effective upon delivery of a copy of the decision to the licensee and a petition for review does not operate as a supersedeas or stay.

(C) No stay or supersedeas may be granted pending an appeal from a decision by the board to revoke, suspend, or restrict the license for six months or more. An appeal taken to an administrative law judge as provided under Article 5, Chapter 23, Title 1 has precedence on the calendar of an administrative law judge, is considered an emergency appeal if the board has revoked, suspended, or restricted a license for six months or more, and should be heard not later than thirty days from the date the petition is filed. The review is limited to the record established by the board hearing.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-130.** Denial of licensure.

As provided in Section 40-1-130, the board may deny licensure to an applicant based on the same grounds for which the board may take disciplinary action against a licensee.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-140.** Effect of criminal record.

As provided for in Section 40-1-140, a license may not be denied based solely on a person's prior criminal record.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-150.** Surrender of license.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license to practice in accordance with and subject to the provisions of Section 40-1-150.

HISTORY: 2004 Act No. 225, Section 1, South Carolina Code of Laws-Professions and Occupations, Nurses, Nurse Practice Act, page. 4

**SECTION 40-33-160.** Appeal; board decision not stayed pending appeal.

A person aggrieved by a final action of the board may seek review of the decision to the Administrative Law Court in accordance with Section 40-1-160. Service of a petition for review does not stay the board's decision pending completion of the appellate process.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-170.** Costs.

A person found in violation of this chapter or regulations promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40-1-170.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-180.** Payment of costs and fines.

All costs and fines imposed pursuant to this chapter must be paid in accordance with and are subject to the collection and enforcement provisions of Section 40-1-180. No person against whom a fine is levied is eligible for the issuance or reinstatement of an authorization to practice until the fine has been paid in full.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-190.** Matters relating to complaint and proceeding privileged.

(A) No person connected with any complaint, investigation, or other proceeding before the board including, but not limited to, a witness, counsel, counsel's secretary, board member, board employee, court reporter, or investigator may mention the existence of the complaint, investigation, or other proceeding, disclose any information pertaining to the complaint, investigation, or other proceeding, or discuss any testimony or other evidence in the complaint, investigation, or proceeding, and then only to the extent necessary for the proper disposition of the complaint, investigation, or other proceeding.

(B) Every communication, oral or written, to the board, department, staff, counsel, or any other person acting on behalf of the board or department during the investigation, hearing, or adjudication of the disciplinary matters including, but not limited to, investigative reports concerning interviews and issues under investigation, correspondence, summaries, incident reports, computer printouts, and documents created during peer review proceedings are privileged and these persons are immune from liability.

(C) Information that has been declared confidential or personal under this chapter or other applicable law must not be disclosed, except to the extent necessary for the proper disposition of the matter before the board, and is protected in the same manner as provided in Section 40-71-20, or as otherwise provided by law.

(D) The identity of the initial complainant and any confidential informants or other witnesses who do not testify must not be disclosed to other parties, entities, or persons, and all information contained in confidential investigative files is privileged from disclosure for any reason whatsoever, except as provided for in subsection (E).

(E) Whenever the department receives information indicating a violation of state or federal law, the department may provide that information, to the extent the department considers necessary, to the appropriate state or federal law enforcement or regulatory body.

(F) No information in investigative files or disciplinary proceedings is required to be expunged pursuant to any other provision of state law.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-200.** Unauthorized practice; penalty.

A person who practices or offers to practice nursing in this State in violation of this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars. Each violation constitutes a separate offense. The provisions of this chapter apply to a person or entity aiding and abetting in a violation of this chapter.

HISTORY: 2004 Act No. 225, Section 1.

Editor's Note

Prior Laws: 1935 (39) 173; 1942 Code Section 5230; 1947 (45) 579; 1952 Code Section 56-953; 1962 Code Section 56-953; 1969 (56) 263; 1987 Act No. 114, Section 2; 1976 Code Section 40-33-20.

**SECTION 40-33-210.** Civil action for injunctive relief.

The department, in addition to instituting a criminal proceeding, may institute a civil action through the Administrative Law Court, in the name of the State, for injunctive relief against a person violating this chapter, a regulation promulgated under this chapter, or an order of the board. For each violation the administrative law judge may impose a fine of not more than ten thousand dollars.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-220.** Severability.

If a provision of this chapter or the application of a provision of this chapter to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this statute which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: 2004 Act No. 225, Section 1.

**SECTION 40-33-230.** Licensure requirements for foreign-educated nurses.

Beginning January 1, 2007, the State Board of Nursing shall require foreign-educated candidates for licensing as registered nurses to pass:

- (1) the National Council Licensure Examination (NCLEX); and
- (2) an English language proficiency test that determines whether or not the license applicant is proficient in conversational English with regard to medical terminology and the skills required of a registered nurse.

HISTORY: 2005 Act No. 87, Section 5.

Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

## Nurse Licensure Compact

**SECTION 40-33-1300.** Nurse Licensure Compact enacted.

The Nurse Licensure Compact is hereby enacted into law and entered into by this State with all other states legally joining therein, in the form substantially as set forth in this article.

HISTORY: 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

**SECTION 40-33-1305.** Findings; purposes.

(A) The party states find that:

- (1) the health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;
- (2) violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;
- (3) the expanded mobility of nurses and the use of advanced communication technologies as part of our nation's health care delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;
- (4) new practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;
- (5) the current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant for both nurses and states; and
- (6) uniformity of nurse licensure requirements throughout the states promotes public safety and public health benefits.

(B) The general purposes of this compact are to:

- (1) facilitate the states' responsibility to protect the public's health and safety;
- (2) ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;
- (3) facilitate the exchange of information between party states in the areas of nurse regulation, investigation, and adverse actions;
- (4) promote compliance with the laws governing the practice of nursing in each jurisdiction;
- (5) invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses;
- (6) decrease redundancies in the consideration and issuance of nurse licenses; and
- (7) provide opportunities for interstate practice by nurses who meet uniform licensure requirements.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

## Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

## Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact.

**SECTION 40-33-1310.** Definitions.

As used in this article:

- (1) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a nurse, including actions against an individual's license or multistate licensure privilege such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other encumbrance on licensure affecting a nurse's authorization to practice, including issuance of a cease and desist action.
- (2) "Alternative program" means a nondisciplinary monitoring program approved by a licensing board.
- (3) "Commission" means the Interstate Commission of Nurse Licensure Compact Administrators.
- (4) "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws that is administered by a nonprofit organization composed of and controlled by licensing boards.
- (5) "Current significant investigative information" means:
  - (a) investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond, if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or
  - (b) investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.
- (6) "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing imposed by a licensing board.
- (7) "Home state" means the party state which is the nurse's primary state of residence.
- (8) "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.
- (9) "Multistate license" means a license to practice as a registered or a licensed practical/vocational nurse (LPN/VN) issued by a home state licensing board that authorizes the licensed nurse to practice in all party states under a multistate licensure privilege.
- (10) "Multistate licensure privilege" means a legal authorization associated with a multistate license permitting the practice of nursing as either a registered nurse (RN) or LPN/VN in a remote state.



(11) "Nurse" means RN or LPN/VN, as defined in the Code of Laws of the State of South Carolina, Code of Laws, Professions and Occupations, Nurses, Nurse Practice Act, page. 4

(12) "Party state" means any state that has adopted this compact.

(13) "Remote state" means a party state, other than the home state.

(14) "Single-state license" means a nurse license issued by a party state that authorizes practice only within the issuing state and does not include a multistate licensure privilege to practice in any other party state.

(15) "State" means a state, territory, or possession of the United States and the District of Columbia.

(16) "State practice laws" means a party state's laws, rules, and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" do not include requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact.

#### **SECTION 40-33-1315.** General provisions and jurisdiction.

(A) A multistate license to practice registered or licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a nurse to practice as a registered nurse (RN) or as a licensed practical/vocational nurse (LPN/VN), under a multistate licensure privilege, in each party state.

(B) A state must implement procedures for considering the criminal history records of applicants for initial multistate license or licensure by endorsement. These procedures must include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records.

(C) Each party state shall require the following for an applicant to obtain or retain a multistate license in the home state:

(1) meets the home state's qualifications for licensure or renewal of licensure, as well as all other applicable state laws;

(2) has graduated:

(a) or is eligible to graduate from a licensing board-approved RN or LPN/VN prelicensure education program; or

(b) from a foreign RN or LPN/VN prelicensure education program that has been:

(i) approved by the authorized accrediting body in the applicable country; and

(ii) verified by an independent credentials review agency to be comparable to a licensing board-approved prelicensure education program;

(3) has, if a graduate of a foreign prelicensure education program not taught in English or if English is not the individual's native language, successfully passed an English proficiency examination that includes the components of reading, speaking, writing, and listening;

(4) has successfully passed an NCLEX-RN or NCLEX-PN examination or recognized predecessor, as applicable;

(5) is eligible for or holds an active, unencumbered license;

(6) has submitted, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that state's criminal records;

(7) has not been convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law;

(8) has not been convicted or found guilty, or has entered into an agreed disposition, of a misdemeanor offense related to the practice of nursing as determined on a case-by-case basis;

(9) is not currently enrolled in an alternative program;

(10) is subject to self-disclosure requirements regarding current participation in an alternative program; and

(11) has a valid United States Social Security number.

(D) All party states must be authorized, in accordance with existing state due process law, to take adverse action against a nurse's multistate licensure privilege such as revocation, suspension, probation, or any other action that affects a nurse's authorization to practice under a multistate licensure privilege, including cease and desist actions. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system must promptly notify the home state of any such actions by remote states.

(E) A nurse practicing in a party state must comply with the state practice laws of the state in which the client is located at the time service is provided. The practice of nursing is not limited to patient care, but must include all nursing practice as defined by the state practice laws of the party state in which the client is located. The practice of nursing in a party state under a multistate licensure privilege will subject a nurse to the jurisdiction of the licensing board, the courts and the laws of the party state in which the client is located at the time service is provided.

(F) Individuals not residing in a party state shall continue to be able to apply for a party state's single-state license as provided under the laws of each party state. However, the single-state license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state. Nothing in this compact may affect the requirements established by a party state for the issuance of a single-state license.

(G) A nurse holding a home state multistate license, on the effective date of this compact, may retain and renew the multistate license issued by his then-current home state, provided that a nurse who:

(1) changes primary state of residence after this compact's effective date, must meet all applicable requirements of subsection (C) to obtain a multistate license from a new home state; and

(2) fails to satisfy the multistate licensure requirements of the compact, the nurse shall not be eligible to retain or renew a multistate license, and the nurse's multistate license must be revoked or deactivated in accordance with applicable rules adopted by the Interstate Commission of Nurse Licensure Compact Administrators.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Recognition of multistate licensure privilege; revocation or suspension of license; nonparty state license applicants.

#### **SECTION 40-33-1320.** Applications for licensure in a party state.

(A) Upon application for a multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether:

- (1) the applicant has ever held, or is the holder of, a license issued by another state;
- (2) there is an encumbrance on a license or multistate licensure privilege held by the applicant;
- (3) an adverse action has been taken against a license or multistate licensure privilege held by the applicant; and
- (4) the applicant is currently participating in an alternative program.

(B) A nurse may hold a multistate license, issued by the home state, in only one party state at a time.

(C) If a nurse changes primary state of residence by moving between two party states, the nurse must apply for licensure in the new home state, and the multistate license issued by the prior home state will be deactivated in accordance with applicable rules adopted by the commission, provided:

- (1) the nurse may apply for licensure in advance of a change in primary state of residence; and
- (2) the new home state may not issue a multistate license until the nurse provides satisfactory evidence of a change in primary state of residence to the new home state and satisfies all applicable requirements to obtain a multistate license from the new home state.

(D) If a nurse changes primary state of residence by moving from a party state to a nonparty state, the multistate license issued by the prior home state will convert to a single-state license, valid only in the former home state.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Licensees to only be licensed in home state; change of primary state of residence.

#### **SECTION 40-33-1325.** Additional authorities invested in party state licensing boards.

(A) In addition to the other powers conferred by state law, a licensing board has the authority to:

- (1) Take adverse action against a nurse's multistate licensure privilege to practice within that party state, provided:
  - (a) only the home state has the power to take adverse action against a nurse's license issued by the home state; and
  - (b) for purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state, and in so doing, the home state shall apply its own state laws to determine appropriate action.
- (2) Issue cease and desist orders or impose an encumbrance on a nurse's authority to practice within that party state.
- (3) Complete any pending investigations of a nurse who changes primary state of residence during the course of such investigations. The licensing board also has the authority to take appropriate action and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.
- (4) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, as well as the production of evidence. Subpoenas issued by a licensing board in a party state for the attendance and testimony of witnesses or the production of evidence from another party state must be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located.
- (5) Obtain and submit, for each nurse licensure applicant, fingerprint or other biometric-based information to the Federal Bureau of Investigation for criminal background checks, receive the results of the Federal Bureau of Investigation record search on criminal background checks, and use the results in making licensure decisions.
- (6) If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse.
- (7) Take adverse action based on the factual findings of the remote state, provided that the licensing board follows its own procedures for taking such adverse action.

(B) If adverse action is taken by the home state against a nurse's multistate license, the nurse's multistate licensure privilege to practice in all other party states must be deactivated until all encumbrances have been removed from the multistate license. All home state disciplinary orders that impose adverse action against a nurse's multistate license must include a statement that the nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

(C) Nothing in this compact may override a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any nurse for the duration of the nurse's participation in an alternative

program.

OO6-1, South Carolina Code of Laws-Professions and Occupations, Nurses, Nurse Practice Act, page. 4

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Adverse actions affecting license; reporting to coordinated licensure information system.

**SECTION 40-33-1330.** Reserved.

HISTORY: Former Section, titled Actions by licensing board against licensee, had the following history: 2005 Act No. 87, Section 2. Reserved by 2017 Act No. 41, Section 1, eff May 10, 2017.

**SECTION 40-33-1335.** Reserved.

HISTORY: Former Section, titled Powers of licensing board; recovery of investigative costs; subpoenas; cease and desist orders; regulations, had the following history: 2005 Act No. 87, Section 2. Reserved by 2017 Act No. 41, Section 1, eff May 10, 2017.

**SECTION 40-33-1340.** Coordinated licensure information system and exchange of information.

(A) All party states shall participate in a coordinated licensure information system of all licensed registered nurses (RNs) and licensed practical/vocational nurses (LPNs/VNs). This system will include information on the licensure and disciplinary history of each nurse, as submitted by party states, to assist in the coordination of nurse licensure and enforcement efforts.

(B) The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection, and exchange of information under this compact.

(C) All licensing boards shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications, with the reasons for such denials, and nurse participation in alternative programs known to the licensing board regardless of whether such participation is considered nonpublic or confidential under state law.

(D) Current significant investigative information and participation in nonpublic or confidential alternative programs must be transmitted through the coordinated licensure information system only to party state licensing boards.

(E) Notwithstanding another provision of law, all party state licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with nonparty states or disclosed to other entities or individuals without the express permission of the contributing state.

(F) Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with nonparty states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

(G) Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information must be expunged from the coordinated licensure information system.

(H) The compact administrator of each party state shall furnish a uniform data set to the compact administrator of each other party state, which must include, at a minimum:

(1) identifying information;

(2) licensure data;

(3) information related to alternative program participation; and

(4) other information that may facilitate the administration of this compact, as determined by commission rules.

(I) The compact administrator of a party state shall provide all investigative documents and information requested by another party state.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Creation of coordinated data base; reporting adverse action; sharing information with nonparty states.

**SECTION 40-33-1345.** Establishment of the Interstate Commission of Nurse Licensure Compact Administrators.

(A) The party states hereby create and establish a joint public entity known as the Interstate Commission of Nurse Licensure Compact Administrators.

(1) The commission is an instrumentality of the party states.

(2) Venue is proper, and judicial proceedings by or against the commission must be brought, solely and exclusively, in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

(3) Nothing in this compact may be construed to be a waiver of sovereign immunity.

(B) Membership, voting, and meetings.

(1) A party state must have and be limited to one administrator. The administrator of the nurse licensing board or his designee must be the administrator of this compact for each party state. An administrator may be removed or suspended from office as provided by the law of the state from which he is appointed. A vacancy occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.

## OO6-1, South Carolina Code of Laws-Professions and Occupations, Nurses, Nurse Practice Act, page. 4

(2) An administrator is entitled to one vote with regard to the promulgation of rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the commission. An administrator shall vote in person or by other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings must be held as provided in the bylaws or rules of the commission.

(4) A meeting must be open to the public, and public notice of meetings must be given in the same manner as required under the rulemaking provisions in Section 40-33-1350.

(5) The commission may convene in a closed, nonpublic meeting if the commission must discuss:

(a) noncompliance of a party state with its obligations under this compact;

(b) the employment, compensation, discipline, or other personnel matters, practices, or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

(c) current, threatened, or reasonably anticipated litigation;

(d) negotiation of contracts for the purchase or sale of goods, services, or real estate;

(e) accusing a person of a crime or formally censuring a person;

(f) disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(g) disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(h) disclosure of investigatory records compiled for law enforcement purposes;

(i) disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigation of compliance with this compact; or

(j) matters specifically exempted from disclosure by federal or state statute.

(6) If a meeting, or portion of a meeting, is closed pursuant to this provision, the commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and provide a full and accurate summary of actions taken, and the reasons for taking the actions, including a description of the views expressed. All documents considered in connection with an action must be identified in these minutes. All minutes and documents of a closed meeting must remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(C) The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of this compact including, but not limited to:

(1) establishing the fiscal year of the commission;

(2) providing reasonable standards and procedures:

(a) for the establishment and meetings of other committees; and

(b) governing any general or specific delegation of any authority or function of the commission;

(3) establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(4) providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission; provided that notwithstanding any civil service or other similar laws of any party state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(5) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations; and

(6) providing reasonable procedures for calling and conducting meetings of the commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets. The commission may meet in closed session only after a majority of the administrators vote to close a meeting in whole or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each administrator, with no proxy votes allowed.

(D) The commission shall publish its bylaws and rules, and any amendments to them, in a convenient form on the website of the commission.

(E) The commission shall maintain its financial records in accordance with the bylaws.

(F) The commission shall meet and take actions consistent with the provisions of this compact and the bylaws.

(G) The commission has power to:

(1) promulgate uniform rules to facilitate and coordinate implementation and administration of this compact, and these rules have the force and effect of law and are binding in all party states;

(2) bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of a licensing board to sue or be sued under applicable law may not be affected;

(3) purchase and maintain insurance and bonds;

(4) borrow, accept or contract for services of personnel including, but not limited to, employees of a party state or nonprofit organizations;

(5) cooperate with other organizations that administer state compacts related to the regulation of nursing including, but not limited to, sharing administrative or staff expenses, office space, or other resources;

(6) hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(7) accept appropriate donations, grants, and gifts of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the same; provided that the commission shall avoid any appearance of impropriety or conflict of interest;

(8) lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, whether real, personal, or mixed; provided that the

commission shall avoid any appearance of impropriety. 006-1, South Carolina Code of Laws-Professions and Occupations, Nurses, Nurse Practice Act, page. 4

- (9) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, whether real, personal, or mixed;
  - (10) establish a budget and make expenditures;
  - (11) borrow money;
  - (12) appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, and consumer representatives, and other such interested persons;
  - (13) provide and receive information from, and to cooperate with, law enforcement agencies;
  - (14) adopt and use an official seal; and
  - (15) perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of nurse licensure and practice.
- (H) Financing of the commission.
- (1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.
  - (2) The commission also may levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff in its annual budget as approved each year. The aggregate annual assessment amount, if any, must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.
  - (3) The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same, nor may the commission pledge the credit of any of the party states, except by, and with the authority of, such party state.
  - (4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission must be audited yearly by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.
- (I) Qualified immunity, defense, and indemnification.
- (1) The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities; provided that nothing in this item may be construed to protect him from suit or liability for any damage, loss, injury, or liability caused by his intentional, wilful, or wanton misconduct.
  - (2) The commission shall defend an administrator, officer, executive director, employee, or representative of the commission in a civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing herein may be construed to prohibit that person from retaining his own counsel; and provided further that the actual or alleged act, error, or omission did not result from that person's intentional, wilful, or wanton misconduct.
  - (3) The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission for the amount of a settlement or judgment obtained against that person arising out of an actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that he had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from his intentional, wilful, or wanton misconduct.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Head of nurse licensing board designated administrator of compact for state; furnishing information on licensees; development of uniform rules and regulations.

#### **SECTION 40-33-1350. Rulemaking.**

- (A) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this article and the rules adopted pursuant to it. Rules and amendments become binding as of the date specified in each rule or amendment and have the same force and effect as provisions of this compact.
- (B) Rules or amendments to the rules must be adopted at a regular or special meeting of the commission.
- (C) Prior to promulgation and adoption of a final rule or rules by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking on the websites of:
  - (1) the commission; and
  - (2) each licensing board or the publication in which each state would otherwise publish proposed rules.
- (D) The notice of proposed rulemaking must include:
  - (1) the proposed time, date, and location of the meeting in which the rule will be considered and voted upon;
  - (2) the text of the proposed rule or amendment and the reason for the proposed rule;
  - (3) a request for comments on the proposed rule from any interested person; and
  - (4) the manner in which interested persons may submit notice to the commission of their intention to attend the public hearing and any written comments.
- (E) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

- (F) The commission shall grant an opportunity for public hearing on the proposed rule.
- (G) The commission shall publish the place, time, and date of the scheduled public hearing, provided:
- (1) hearings must be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing;
  - (2) all hearings will be recorded and a copy will be made available upon request; and
  - (3) nothing in this subsection may be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the commission at hearings required by this section.
- (H) If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.
- (I) Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.
- (J) The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.
- (K) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment or hearing, provided that the usual rulemaking procedures provided in this compact and in this section must be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule. For the purposes of this subsection, an emergency rule is one that must be adopted immediately in order to:
- (1) meet an imminent threat to public health, safety, or welfare;
  - (2) prevent a loss of commission or party state funds; or
  - (3) meet a deadline for the promulgation of an administrative rule that is required by federal law or rule.
- (L) The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. The revision is subject to challenge by any person for a period of thirty days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing and delivered to the commission before the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Immunity of officers and employees of party state licensing boards.

#### **SECTION 40-33-1355.** Oversight, dispute resolution and enforcement.

##### (A) Oversight.

- (1) Each party state shall enforce this compact and take all actions necessary and appropriate to effectuate this compact's purposes and intent.
- (2) The commission is entitled to receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process in such proceeding to the commission renders a judgment or order void as to the commission, this compact, or promulgated rules.

##### (B) Default, technical assistance, and termination.

- (1) If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this compact or the promulgated rules, the commission shall provide:
  - (a) written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default or any other action to be taken by the commission; and
  - (b) remedial training and specific technical assistance regarding the default.
- (2) If a state in default fails to cure the default, the defaulting state's membership in this compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.
- (3) Termination of membership in this compact may be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate must be given by the commission to the governor of the defaulting state and to the executive officer of the defaulting state's licensing board and each of the party states.
- (4) A state whose membership in this compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.
- (5) The commission may not bear any costs related to a state that is found to be in default or whose membership in this compact has been terminated unless agreed upon in writing between the commission and the defaulting state.
- (6) The defaulting state may appeal the action of the commission by petitioning the U.S. District Court for the District of Columbia or the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.

##### (C) Dispute resolution.

- (1) Upon request by a party state, the commission shall attempt to resolve disputes related to the compact that arise among party states and between party and nonparty states.
- (2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

- (3) In the event the commission cannot resolve a dispute between the party states, the following provisions shall apply:
- (a) the party states may submit the issues in dispute to an arbitration panel, which must be comprised of individuals appointed by the compact administrator in each of the affected party states and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute; and
  - (b) a decision of a majority of the arbitrators is final and binding.
- (D) Enforcement.

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

(2) By majority vote, the commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district in which the commission has its principal offices against a party state that is in default to enforce compliance with the provisions of this compact and its promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party must be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies in this section are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Compact; effective date; withdrawal; agreements with nonparty state; amendment.

#### **SECTION 40-33-1360.** Effective date, withdrawal and amendment.

(A) This compact must become effective and binding on the earlier of the date of legislative enactment of this compact into law by no less than twenty-six states or December 31, 2018. All party states to this compact that also were parties to the prior Nurse Licensure Compact, superseded by this compact, must be considered to have withdrawn from the prior compact within six months after the effective date of this compact.

(B) Each party state to this compact shall continue to recognize a nurse's multistate licensure privilege to practice in that party state issued under the prior compact until such party state has withdrawn from the prior compact.

(C) A party state may withdraw from this compact by enacting a statute repealing the same. A party state's withdrawal may not take effect until six months after enactment of the repealing statute.

(D) A party state's withdrawal or termination may not affect the continuing requirement of the withdrawing or terminated state's licensing board to report adverse actions and significant investigations occurring prior to the effective date of such withdrawal or termination.

(E) Nothing contained in this compact may be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a nonparty state that is made in accordance with the other provisions of this compact.

(F) This compact may be amended by the party states. No amendment to this compact becomes effective and binding upon the party states unless and until it is enacted into the laws of all party states.

(G) Representatives of nonparty states to this compact must be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this compact by all states.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, rewrote the section to reflect changes mandated for membership in the Nurse Licensure Compact. Former section was titled Arbitration.

#### **SECTION 40-33-1365.** Construction and severability.

This compact must be liberally construed so as to effectuate its purposes. The provisions of this compact are severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of it to any government, agency, person, or circumstance is not affected. If this compact is held to be contrary to the constitution of any party state, this compact remains in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

HISTORY: 2005 Act No. 87, Section 2; 2017 Act No. 41 (H.3349), Section 1, eff May 10, 2017.

#### Editor's Note

2005 Act No. 87, Section 7, provides as follows:

"This act takes effect upon approval by the Governor and applies to nursing licenses applied for after September 30, 2006."

#### Effect of Amendment

2017 Act No. 41, Section 1, deleted the paragraph identifiers; in the first sentence, substituted "its purposes" for "the purposes as stated in Section 40-43-1305(B)"; in the second sentence, substituted "applicability thereof" for "applicability of any of them"; and made other nonsubstantive changes.