

Opinion No. 49-5258

November 29, 1949

BY: JOE L. MARTINEZ, Attorney General

TO: Mrs. Mary Jane Carter, President New Mexico State Board of Nurse Examiners
Albuquerque, New Mexico

{*101} This is in reply to your letter of November 21, 1949, in which you request an opinion on five questions that confront your board. I will answer each of these questions in the order in which you have set them out in your letter.

Your first question is whether or not the Secretary of the Board of Nurses Examiners may, at her discretion, accept unnotarized applications for annual renewal of registration, since the fact that you have the original application would enable the secretary to compare the original application with the renewal.

Section 51-613 of the New Mexico Statutes Annotated, 1941 Compilation, provides that these renewals must be notarized. The language of the statute is self-explanatory and the word "shall" is construed to mean "must" and is mandatory. The word "shall" when addressed to public officials is mandatory. McDunn vs. Roundy, 181 N.W. 453, 454. In a statute, "shall" is mandatory and excludes the idea of discretion when addressed to a public official. In Re O'Rourke, 30 N.Y.S. 375, 377. Also, the word "shall", when used in a command to a public officer, is mandatory. Bon Howne County Farm Bureau vs. Board of Commissioners of Bon Howne County, 220 N.W. 618, 620.

In your second question you inquire whether or not an applicant for registration who is under the age of 21 years, but who has otherwise fulfilled the requirements for nurse registration in New Mexico may be issued an Under-Age Permit entitling her to practice as a nurse until her 21st birthday, when she shall be granted full registration.

Reading carefully § 51-605, we are confronted with the same problem as is contained in your first question. In this section the word "shall" is used, wherein it states that the "applicant shall furnish evidence satisfactory to the board that he or she is twenty-one years of age". The word "shall" in this statute is construed to mean "must" and leaves your board no discretion.

In your third question, you state that you have been interpreting the law to mean that a nurse may receive no permit to practice until **all** of her credentials have been reviewed by the board. I believe that under the power that you have under § 51-605 to examine each application and the qualifications of the applicant, and under § 51-602 which allows your board to make rules and regulations, that you could give a nurse a temporary permit for a reasonable time until she could get her credentials, especially in cases where she comes from another state. The way I construe this statute is that the board would have the discretion to allow this temporary permit until all the credentials of

the nurses were obtained, and of course, if after a reasonable time the applicant failed to get such credentials, then her temporary permit could be voided.

In your fourth question, you ask whether a nurse who contemplates remaining in the State of New Mexico for a short time only may apply for a "Short-Residence Permit" to practice as a registered nurse. Such a permit may be issued when the Board has received notice of the applicant's good standing from the state in which applicant maintains {*102} registration. Your intention is to charge \$ 7.50 for this temporary permit and, of course, if permanent registration is obtained, the full \$ 15.00 registration fee is to be paid.

I believe that under § 51-606 which allows the board to issue temporary permits that the board, under § 51-602 which allows them to make rules and regulations, your board can issue these temporary permits with the understanding that if the nurse does not take the examination or is not allowed to practice by reciprocity with another state, the permit would be void.

In your last question, you want to know whether or not a nurse in an emergency may accept employment as a nurse prior to obtaining registration as such and whether or not you can pass a rule that upon her accepting employment she shall make simultaneous application for registration.

§ 51-609 of the 1941 Compilation, New Mexico Statutes Annotated, reads as follows:

"It shall be unlawful hereafter for any person to practice nursing within the state of New Mexico as a graduate nurse, or to designate, the initials R.N. or similar abbreviations for the designation, description or advertisement, without first having obtained a certificate of registration as herein provided."

It is my opinion that this statute is mandatory since the word "shall" is used therein, and the word "shall" means "must", as pointed out by the authorities hereinabove set out.

I might suggest that since these statutes are mandatory your board should, at the next session of legislature, amend some of these statutes in order to make the necessary progress along these lines.

Trusting this sufficiently answers your questions, I am