

Opinion No. 54-5935

April 5, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Honorable Ray Hughes State Representative Luna County Deming, New Mexico

{*383} Receipt is acknowledged of your letter dated March 19, 1954 in which you request an opinion from this office on § 51-636, 1941, N.M.S.A., pocket supplement. You specifically want to know whether said section is a "grandfather clause" or whether or not the State Nursing Board can require applicants under said section to take an examination, the same as applicants under § 51-634, 1941 N.M.S.A., pocket supplement.

You further state in your letter that the State Nursing Board is requiring all applicants to take an examination for licensing and the ones that qualified under § 51-636, N.M.S.A., 1941 Comp., pocket supplement, are required to take an examination by virtue of subsection (c), the first two words "Gives evidence" which they interpret to mean a written examination, the same as set forth in § 51-634 (a).

Section 51-636, N.M.S.A., 1941 Comp., pocket supplement, reads as follows:

"51-636. WAIVER OF CERTAIN REQUIREMENTS -- Application for licensure under this section must be made before July 1, 1955. The board may issue a certificate of license as a licensed practical nurse to any person who shall furnish evidence satisfactory to the board that the applicant:

"(a) Has resided in and has cared for the sick in this state for one year immediately preceding the date of such application.

"(b) Has had at least two years experience in the care of the sick preceding the date of such application.

"(c) Gives evidence, satisfactory to the board, of practical nursing knowledge and ability. "The application must be endorsed by two physicians licensed in New Mexico, or two registered professional nurses, or one of each; and by one person who has employed the applicant."

The first part of § 51-634, N.M.S.A., 1941 Comp., pocket supplement, known as subsection (a), makes it mandatory on the State Nursing {*384} Board to give a written examination to all applicants for a license as a practical nurse, in such subjects as the Board may determine. Said written examination may be supplemented by an oral examination, if the Board so determines. Upon successfully passing said written examination, the Board should issue a license to applicant to practice as a practical nurse.

The second part, or subsection (b), of § 51-634, N.M.S.A., 1941 Comp., pocket supplement, makes it mandatory on the State Nursing Board to issue a license to practice as a practical nurse without an examination to any applicant who has been duly licensed as a practical nurse or any person performing similar services under a different title, under laws of another state, territory or foreign country, if, in the opinion of the Board, the applicant meets the requirements for licensed practical nurses in this State.

There is no question, from reading all of § 51-636, N.M.S.A., 1941 Comp., pocket supplement, that it was the intention of the Legislature that any applicant for a license to practice practical nursing must, before July 1, 1955, furnish evidence satisfactory to the Nursing Board that applicant

1. (a) Has resided in and has cared for the sick in this State for one year immediately preceding the date of such application.
2. (b) Has had at least two years experience in the care of the sick preceding the date of such application.
3. (c) Gives evidence, satisfactory to the board, of practical nursing knowledge and ability.

Black's Law Dictionary, Third Edition, on page 701, defines satisfactory evidence as follows:

"-- SATISFACTORY EVIDENCE. Such evidence as is sufficient to produce a belief that the thing is true; credible evidence; such evidence as, in respect to its amount or weight, is adequate or sufficient to justify the court or jury in adopting the conclusion in support of which it is adduced."

It is plain from the wording and heading of § 51-636, N.M.S.A., 1941 Comp., pocket supplement, that it was the intention of the Legislature that the State Nursing Board, if satisfactory evidence was furnished said Board of the three things that said section requires, namely, by (a), (b) and (c), must waive the written examination by applicant, and must issue a license to any and all applicants who furnishes the Board satisfactory evidence of any one of three requirements of § 51-636, N.M.S.A., 1941 Comp., pocket supplement.

It is, therefore, the opinion of this office, in view of the above interpretation of § 51-636, N.M.S.A., 1941 Comp., pocket supplement, that if any applicant for a license to practice practical nursing in New Mexico furnishes the Nursing Board satisfactory evidence of (a), (b) and (c) requirements under said section, that Board must waive the written examination of said applicant and issue a license to practice practical nursing.

I trust that this fully answers your inquiry.

By: Hilario Rubio

Assist. Attorney General