

DECLARATORY STATEMENT ON EMPLOYMENT OF NURSING STUDENTS  
AND UNSUCCESSFUL CANDIDATES ON NCLEX-RN

The question continues to be raised relative to the legal authority for the practice of nursing by students in nursing and individuals who were unsuccessful candidates on the NCLEX-RN examination. The Louisiana State Board of Nursing specifically addresses this question in the Louisiana Administrative Code, specifically LAC 46:XLVII.4303.

While the Board recognizes that nursing students and unsuccessful candidates may seek employment in health care institutions for many reasons, they are unlicensed persons and cannot legally perform, nor be assigned, nursing duties other than those allowable to other unlicensed nursing personnel.

The Law Governing the Practice of Nursing in Louisiana provides that only those individuals who are duly qualified and licensed shall practice as a registered nurse. When student nurses perform registered nursing functions as an integral part of their program of study in an approved school of nursing, they are practicing under LRS 37:929, D, a special exception in the Nurse Practice Act. This exception permits students to perform any nursing function designed to meet the objectives of a particular course in their curriculum, under the supervision of nursing faculty employed by the school of nursing.

The exception waives the licensure requirements for student nurses in those particular educational situations, but it does not apply when the same persons are employed in the capacity of unlicensed persons (nurse externs, nurse techs, nursing assistants, etc.). In the latter situation, there are different statutory and regulatory provisions.

The Nurse Practice Act, specifically LRS 37:913, (3), (c), provides that a registered nurse may delegate selected nursing functions to licensed and unlicensed personnel, with certain provisos: (1) the Board of Nursing must approve the delegation; (2) there must be no objection to the delegation from the attending physician or dentist, nor from the medical staff of the institution; and (3) the registered nurse must be physically present when the task is performed if such presence is necessary to provide care of the "same quality as provided by the registered nurse."

The Louisiana Administrative Code, specifically LAC 46:XLVII.3703.A.12, provides criteria which must be met when any delegation takes place, as follows:

- 1.The person has been adequately trained for the task.
- 2.The person has demonstrated that the task has been learned.
- 3.The person can perform the task safely in the given nursing situation.
- 4.The patient's status is safe for the person to carry out the task.
- 5.Appropriate supervision is available during the task implementation.
- 6.The task is in an established policy of the nursing practice setting and the policy is written, recorded and available to all.

The administrative rules additionally provide specific requirements for delegation to licensed practical nurses, and for delegation to unlicensed persons. The criteria for delegation to unlicensed persons are as follows:

Contingent upon the registered nurse's evaluation of each patient's condition, and also upon the registered nurse's evaluation of the competency of each unlicensed nursing personnel, registered nurses may delegate non-complex tasks to unlicensed nursing personnel. (emphasis added)

The rules then define a non-complex task as "one that can safely be performed according to exact directions, with no need to alter the standard procedure, and the results are predictable." A task is defined as complex if it requires the consideration of a number of factors in order to perform the procedure, or if it requires judgment to determine how to proceed from one step to the next. The administration of medications is specifically identified as a complex task.

Further clarification of the appropriate role of nursing students employed as unlicensed personnel is found in LAC 46:XLVII.4303.C, which provides, in part, that the employer shall ... "Make no distinction between the student of nursing, the unsuccessful candidate for registered nurse licensure, and any other unlicensed nursing personnel, especially in regard to the delegated responsibilities, functions, mode of dress, and identification..."

In view of the above-cited statutory and regulatory provisions, the basic prerequisite for making a legally defensible decision regarding the functions of an individual who is student nurse and who is also employed in a health care agency is to identify which role the individual is enacting: (1) a bonafide student enrolled in an approved school of nursing, practicing nursing as an integral part of the nursing education program, under the supervision of an instructor employed by the school of nursing, in accord with LRS 37:929, D.; or (2) an unlicensed person, performing non-complex nursing functions delegated by a registered nurse in accord with the statutory and regulatory provisions for the delegation of nursing functions (LRS 37:913, (3), (c), and LAC 46:XLVII. 3703.A.12). The decision is then made in accord with the relevant sections of the Nurse Practice Act and the Louisiana Administrative Code.

Strictly observational experiences involving complex tasks may be provided to unlicensed personnel. However, it must be clear that the performance of the complex task is not delegated to these persons. Delegation of nursing functions contrary to the administrative rules is a cause for disciplinary action against a registered nurse, regardless of the position held by said nurse. Additionally, the performance of complex nursing functions by the unlicensed person who is also a nursing student could place in jeopardy that individual's opportunity for RN licensure.