Law Relating to Licensing, Registration and Practice of Nursing

(Mrs.) A. D. Malhotra

Before touching upon the main topic it is perhaps necessary to define the terms that are to be used frequently.

Law : Blackstone defined municipal law as "rule of civil conduct and prohibiting what is wrong"[1] Thomas Aquinas defined law as "nothing other than an ordinance of reason for the common good made by him who has care of the community and promulgated"[2]

In this context, Nursing law may be defined as that body of statutes, executive orders, regulations, rules and legal precedents which have for their objective the promotion and the protection of individual and community health, as it is affected by nursing and nursing services.

broad enough to permit flexibility in the utilisation of nursing personnel within the bounds of safety. It must also permit changes in practice consistent with trends in practice of nursing and related other professions.

In India, the law pertaining to registration and practice of nursing is determined primarily by state legislation and regulation and in accordance with the provision in the Indian constitution which delegates responsibility and authority in the field of health to the states. In order to create uniformity in the standards established by the states for the practice of nursing, a central Act, the Indian Nursing Council Act, was enacted in 1947.

to be satisfied to secure recognised qualifications or to withdraw such recognition and

v) Any other matter which may be prescribed under the Act.

The power to give recognition to State Registration Councils and Examining Boards is vested in the Indian Nursing Council. However, prior to this recognition, State Govt. recognition is a must.

The Act permits enrollment in any State Register of a person holding a recognised qualification. However, the Act is permissive in the sense that the qualification is necessary to qualify for registration

"Nursing practice should be stated in terms broad enough to permit flexibility in the utilisation of nursing personnel within the bounds of safety" contends Mrs. A. D. Malhotra and suggests that the registration of nurses should be made mandatory where it is permissive at present, and re-registration (which is already under consideration with the Indian Nursing Council) be enforced as soon as possible.

Licensing. A permission accorded by a competent authority to do some act which without such authorisation would be illegal or would be a tresspass or tort ; also the written evidence of such permission. (A tresspass in its widest sense means any violation of law. A tort is civil wrong redressible in a civil proceeding).[3] Licensing in other words is registration.

Practice of Nursing : The practice of professional nursing means the performance for compensation of any act in the observation, care and counsel of the ill, the injured or the infirm, or in maintenance of health or prevention of illness of others.

The nursing practice act must contain a definition of the practice which it seeks to regulate. Nursing practice should be stated in terms

The Council is composed of representatives of State Registration Councils, Central and State Health Departments, Military Nursing Services, TNAI, Post-certificate Schools, Nursing Colleges, Medical Council and three members of Parliament with a total membership of 55.

RULES AND REGULATIONS

1. The Council is empowered to make regulations prescribing :

i) The power and duties of inspectors,

ii) The standard curricula for the training of Nurses, Midwives and Health Visitors,

iii) The conditions for admission to courses of training.

iv) The standards of examination and other requirements

thereunder, but it does not prohibit the practice of nursing by unregistered nurses as mandatory statutes would do.

Penalties for individual violations of the Act and enforcement proceedings are left to the States. The Council has little, if any, involvement with matters of nursing ethics which are controlled by the standing orders of individual hospitals and by the Central Government over the practices of private hospitals which employ non-Registered as well as Registered nurses.

2. In 1957, the Act was amended to provide for enrollment in any State Register of any Indian citizen holding registration in any foreign country, but Indian Nursing Council per se is not a registering body.

3. Temporary enrolment in a state register of a person who is not a citizen of India to practice in an individual institution as nurse or lady health visitor with the approval of the Council.

4. The Indian Nursing Council shall maintain a register of nurses, midwives, A.N.M. and lady health visitors to be known as the Indian Nurses Register containing the names of all persons currently enrolled on any state register.

The various rules regulating the practice of nurses, midwives health visitors etc. adopted by the Council establish an ethical framework for the practice of nursing but no penalty is imposed for violation. However, it is left to the States to enforce the standards laid down by the Indian Nursing Council.

PROPOSED CHANGES IN THE INDIAN NURSING COUNCIL

1. The act may be extended to include the State of Jammu and Kashmir.

2. Re-registration of nurses for keeping the register upto date.

3. Enactment of Delhi Nurses Registration Council.

The control over the nursing profession by the State governments is exercised by means of State Registration Acts. The State Registration Councils are autonomous to a great extent and are more specific than the central Act. The nurses who undergo the prescribed course of studies are registered and allowed to practice. Registration under the state Act is a pre-requisite to employment ; thus the Act is mandatory rather than permissive. Most of the State Councils have the provision to remove a name from the Register for professional misconduct and local Government bodies are required to enact laws forbidding practice by unregistered nurses under penalty of prosecution and fine of Rs. 50 for the first offence and Rs. 250 for the subsequent offence chargeable but somehow these are not implemented judiciously.

In the words of Carroll Margaret, those planning for legislation know so well that ".....if the nursing group is to make desired impact on governmental decisions affecting nurses and nursing, it must speak with one voice supported by each of its members working for the same high purpose."

The author of this paper supports the above statement wholeheartedly and would like to make the following suggestions :—

i) The state nursing legislation be reviewed periodically to meet the changing health needs of the state.[5]

ii) Registration of nurses should be made manadatory where it is permissive at present and re-registration (which is already under consideration with the Indian Nursing Council) be enforced as soon as possible.

iii) In order that the interest of the public and the practitioner both be protected the definition of nursing practice in the Licensing Law must clearly differntiate between those acts which are independent nursing functions and those which are dependent upon the prescription of the physician or the dentist.

iv) Strict enforcement of rules and regulations, standing orders with regards to nursing and midwifery practice by the State Nursing Council be complied with as advocated by the Indian Nursing Council.

In the words of Miss Mary Henry, the ex-Registrar of Nursing Council of England and Wales, we all should remember the following exhortation with regards to nursing legislation.

— Be knowledge able about the culture, economic and social background of our country, about your own legislative procedure, about your needs for nursing legislation, and the process by which it can best be achieved.

— Be realistic—do not set your sights so high that you cannot implement the legislation when it is passed.

— Be patient you will need to be.

1. William Blockstone, Commentaries on the Laws of England Book the third of Private wrongs, Philadlaphia Childs 1862 P.I.

2. Thomas Aquinas, The Summa Theological Vol. II Chicago Encyclopedis Britannica, 1952 Great book of the Western World Series p. 208.

3. Spaldiny Kennedy E & Notter Lucillee *Professional Nursing* 7th Ed. 1968 p. 436 J. B. Lippinicatt Company Philadalphia and Montreal.

4. Functions, standards and qualifications for practice. A.J.N. 10. Columbus Circle New York, 19 New York, 1960, p. 48.

5. Carroll Margaret, Planning for Nursing Legislation, I.N. Review, 7.1.29 Feb. 1960.

PURSE MONEY

The following are the details of the Purse Money received at the 7th Biennial Conference of T.N.A.I in Bangalore.

Gencral Fund : Rs. 5781

Nurses Welfare Fund : Rs. 491

Out of all the state branches, Haryana state branch presented the maximum amount of Rs. 1,000 and C.M.C. Hospital, Ludhiana, topped the list of institutions this year also by presenting Rs. 501/-.