



125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1472

S.P. 461

In Senate, April 13, 2011

An Act To Create the State Advanced Practice Registered Nursing Board

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.

Secretary of the Senate

Presented by Senator WHITTEMORE of Somerset.
Cosponsored by Representative DUNPHY of Embden and
Senators: SAVIELLO of Franklin, THOMAS of Somerset, Representatives: BERRY of
Bowdoinham, CAIN of Orono, CURTIS of Madison, CUSHING of Hampden, DRISCOLL of
Westbrook, GRAHAM of North Yarmouth, HAYES of Buckfield, INNES of Yarmouth.

1 B. Within the advanced practice registered nurse's scope of practice as specified by
2 the advanced board by rulemaking, taking into consideration any national standards
3 that exist; and

4 C. In accordance with the standards of practice for advanced practice registered
5 nurses as specified by the advanced board by rulemaking, taking into consideration
6 any national standards that may exist. Advanced practice registered nursing includes
7 consultation with or referral to medical and other health care providers when required
8 by client health care needs.

9 A certified nurse practitioner or a certified nurse midwife who qualifies as an advanced
10 practice registered nurse may prescribe and dispense drugs or devices, or both, in
11 accordance with rules adopted by the advanced board.

12 A certified nurse practitioner who qualifies as an advanced practice registered nurse must
13 practice, for at least 24 months, under the supervision of a licensed physician or a
14 supervising nurse practitioner or must be employed by a clinic or hospital that has a
15 medical director who is a licensed physician. The certified nurse practitioner shall submit
16 written evidence to the advanced board upon completion of the required clinical
17 experience.

18 The advanced board shall adopt rules necessary to effectuate the purposes of this chapter
19 relating to advanced practice registered nursing.

20 **Sec. 6. 32 MRSA §2102, sub-§10**, as enacted by PL 2007, c. 316, §2, is amended
21 to read:

22 **10. Supervising nurse practitioner.** "Supervising nurse practitioner" means a
23 certified nurse practitioner who qualifies as an advanced practice registered nurse who
24 has:

- 25 A. Completed 24 months of supervised practice in accordance with subsection 2-A;
- 26 B. Practiced as an advanced practice registered nurse for a minimum of 5 years in the
27 same speciality;
- 28 C. Worked in a clinical health care field for a minimum of 10 years; and
- 29 D. Been approved by the advanced board.

30 The advanced board shall adopt rules necessary to effectuate the purposes of this chapter
31 relating to supervising nurse practitioners. Rules adopted pursuant to this subsection are
32 routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

33 **Sec. 7. 32 MRSA §2104, sub-§1**, as amended by PL 1993, c. 600, Pt. A, §114, is
34 further amended to read:

35 **1. Application for approval.** An institution desiring to conduct a nursing education
36 program to prepare professional nurses, advanced practice registered nurses or practical
37 nurses must apply to the board or advanced board and submit evidence that:

1 A. It is prepared to carry out the prescribed professional nursing curriculum,
2 advanced practice registered nursing curriculum or the ~~prescribed~~ curriculum for
3 practical nursing, as the case may be; and

4 B. It is prepared to meet other standards as established by this chapter and by the
5 board or advanced board.

6 **Sec. 8. 32 MRSA §2104, sub-§2**, as amended by PL 1993, c. 600, Pt. A, §114, is
7 further amended to read:

8 **2. Survey.** A survey of the institution and its entire nursing education program must
9 be made by either or both the executive director or other authorized appointee of the
10 board or advanced board depending on what program is reviewed, who shall submit a
11 written report of the survey to the board or advanced board. If, in the opinion of the board
12 or advanced board, the requirements for an approved nursing education program are met,
13 the institution must be approved as a nursing education program for professional,
14 advanced practice registered or practical nurses.

15 From time to time as determined necessary by the board or advanced board, it is the duty
16 of the board or advanced board, through its executive director or other authorized
17 representative of the board or advanced board, to survey all nursing education programs
18 in the State. Written reports of the surveys must be submitted to the board or advanced
19 board. If the board or advanced board determines that an approved nursing education
20 program is not maintaining the standards required by statute and by the board or
21 advanced board, notice in writing specifying the defect or defects must be immediately
22 given to the institution conducting the program. If a program fails to correct these
23 conditions to the satisfaction of the board or advanced board within a reasonable time, the
24 board or advanced board shall take appropriate action pursuant to section ~~2153~~ 2153-A.

25 **Sec. 9. 32 MRSA §2105-A, sub-§1-A**, as amended by PL 2001, c. 260, Pt. D, §2,
26 is further amended to read:

27 **1-A. Disciplinary proceedings and sanctions.** The board or advanced board shall
28 investigate a complaint, on its own motion or upon receipt of a written complaint filed
29 with the board or advanced board, regarding noncompliance with or violation of this
30 chapter or of rules adopted by the board or advanced board. Investigation may include a
31 hearing before the board or advanced board to determine whether grounds exist for
32 suspension, revocation or denial of a license, or as otherwise considered necessary to the
33 fulfillment of its responsibilities under this chapter. The board or advanced board may
34 subpoena witnesses, records and documents, including records and documents maintained
35 by a health care facility, in an investigation or hearing it conducts.

36 The board or advanced board shall notify the licensee of the content of a complaint filed
37 against the licensee as soon as possible, but not later than 60 days from receipt of this
38 information. The licensee shall respond within 30 days. If the licensee's response to the
39 complaint satisfies the board or advanced board that the complaint does not merit further
40 investigation or action, the matter may be dismissed, with notice of the dismissal to the
41 complainant, if any.

1 If, in the opinion of the board or advanced board, the factual basis of the complaint is or
2 may be true, and it is of sufficient gravity to warrant further action, the board or advanced
3 board may request an informal conference with the licensee. The board or advanced
4 board shall provide the licensee with adequate notice of the conference and of the issues
5 to be discussed. The conference must be conducted in executive session of the board or
6 advanced board, or its subcommittee, pursuant to Title 1, section 405, unless otherwise
7 requested by the licensee. Statements made at the conference may not be introduced at a
8 subsequent formal hearing unless all parties consent.

9 If the board or advanced board or its subcommittee finds that the factual basis of the
10 complaint is true and is of sufficient gravity to warrant further action, it may take any of
11 the following actions it considers appropriate:

12 A. Warn, censure or reprimand;

13 B. With the consent of the licensee, enter into a consent agreement that fixes the
14 period and terms of probation best adapted to protect the public health and safety and
15 to rehabilitate or educate the licensee. A consent agreement may be used to terminate
16 a complaint investigation, if entered into by the board or advanced board, the licensee
17 and the Attorney General's office;

18 C. In consideration for acceptance of a voluntary surrender of the license, negotiate
19 stipulations, including terms and conditions for reinstatement that ensure protection
20 of the public health and safety and serve to rehabilitate or educate the licensee. These
21 stipulations may be set forth only in a consent agreement signed by the board or
22 advanced board, the licensee and the Attorney General's office;

23 D. If the board or advanced board or its subcommittee concludes that modification or
24 nonrenewal of the license is in order, hold an adjudicatory hearing in accordance with
25 the provisions of Title 5, chapter 375, subchapter ~~IV~~ 4; or

26 E. If the board or advanced board or its subcommittee concludes that suspension or
27 revocation of the license is in order, file a complaint in the District Court in
28 accordance with Title 4, chapter 5.

29 **Sec. 10. 32 MRSA §2105-A, sub-§2**, as amended by PL 1993, c. 600, Pt. A,
30 §116, is further amended to read:

31 **2. Grounds for discipline.** The board or advanced board may suspend or revoke a
32 license pursuant to Title 5, section 10004. The following are grounds for an action to
33 refuse to issue, modify, suspend, revoke or refuse to renew the license of an individual
34 licensed under this chapter:

35 A. The practice of fraud or deceit in obtaining a license under this chapter or in
36 connection with service rendered within the scope of the license issued;

37 B. Habitual substance abuse that has resulted or is foreseeably likely to result in the
38 licensee performing services in a manner that endangers the health or safety of
39 patients;

40 C. A professional diagnosis of a mental or physical condition that has resulted or is
41 foreseeably likely to result in the licensee performing the licensee's duties in a
42 manner that endangers the health or safety of the licensee's patients;

1 D. Aiding or abetting the practice of nursing by an individual not licensed under this
2 chapter and who claims to be legally licensed;

3 E. Incompetence in the practice for which the licensee is licensed. A licensee is
4 considered incompetent in the practice if the licensee has:

5 (1) Engaged in conduct that evidences a lack of ability or fitness to discharge the
6 duty owed by the licensee to a client or patient or the general public; or

7 (2) Engaged in conduct that evidences a lack of knowledge or inability to apply
8 principles or skills to carry out the practice for which the licensee is licensed;

9 F. ~~Unprofessional conduct.~~ A licensee is considered to have engaged in
10 unprofessional conduct if the licensee violates a standard of professional behavior
11 that has been established in the practice for which the licensee is licensed;

12 G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that
13 involves dishonesty or false statement or that relates directly to the practice for which
14 the licensee is licensed or conviction of a crime for which incarceration for one year
15 or more may be imposed;

16 H. A violation of this chapter or a rule adopted by the board or advanced board; or

17 I. Engaging in false, misleading or deceptive advertising.

18 **Sec. 11. 32 MRSA §2105-A, sub-§3**, as amended by PL 1993, c. 600, Pt. A,
19 §116, is further amended to read:

20 **3. Confidentiality of information.** Reports, information or records provided to the
21 board or advanced board by a health care facility pursuant to this chapter are confidential
22 insofar as the reports, information or records identify or permit identification of a patient,
23 except that the board or advanced board may disclose confidential information:

24 A. In an adjudicatory hearing or informal conference before the board or advanced
25 board or in a subsequent formal proceeding to which the information is relevant; and

26 B. In a consent agreement or other written settlement when the information
27 constitutes or pertains to the basis of board or advanced board action.

28 A copy of a report, information or record received by the board or advanced board under
29 this subsection must be provided to the licensee.

30 **Sec. 12. 32 MRSA §2105-A, sub-§4**, as enacted by PL 2009, c. 47, §2, is
31 amended to read:

32 **4. Authority to request mental and physical examinations.** For the purposes of
33 this section, by application for and acceptance of a license to practice, a nurse is
34 considered to have given consent to a mental or physical examination when directed by
35 the board or advanced board. The board or advanced board may direct a nurse to submit
36 to an examination whenever the board or advanced board determines the nurse may be
37 suffering from a mental illness that may be interfering with the competent practice of
38 nursing or from the use of intoxicants or drugs to an extent that they are preventing the
39 nurse from practicing nursing competently and with safety to patients. A nurse examined
40 pursuant to an order of the board or advanced board may not prevent the testimony of the

1 examining individual or prevent the acceptance into evidence of the report of an
2 examining individual in a proceeding under subsection 1-A. Failure to comply with an
3 order of the board or advanced board to submit to a mental or physical examination
4 results in the immediate suspension of the license of the nurse by order of the District
5 Court until the nurse submits to the examination.

6 **Sec. 13. 32 MRSA §2105-A, sub-§5**, as enacted by PL 2009, c. 47, §3, is
7 amended to read:

8 **5. Nurse health program.** The board and advanced board may establish protocols
9 for the operation of a professional review committee as defined in Title 24, section 2502,
10 subsection 4-A. The protocols must include the committee's reporting information the
11 board ~~considers~~ and advanced board consider appropriate regarding reports received,
12 contracts or investigations made and the disposition of each report, as long as the
13 committee is not required to disclose any personally identifiable information. The
14 protocols may not prohibit an impaired nurse from seeking alternative forms of treatment.

15 The board and advanced board may contract with other agencies, individuals, firms or
16 associations for the conduct and operation of a nurse health program operated by a
17 professional review committee as that term is defined in Title 24, section 2502,
18 subsection 4-A.

19 **Sec. 14. 32 MRSA §2107**, as amended by PL 1993, c. 600, Pt. A, §118, is further
20 amended to read:

21 **§2107. Injunctions**

22 The Superior Court has jurisdiction, upon information filed by the county attorney at
23 the request of the board or advanced board, to restrain or enjoin an individual from
24 committing an act declared to be a misdemeanor by this chapter. If it is established that
25 the defendant has been or is committing an act declared to be a misdemeanor by this
26 chapter, the court shall enter a decree perpetually enjoining the defendant from further
27 committing that act. In case of violation of an injunction issued under this section, the
28 court may summarily try and punish the offender for contempt of court. Injunction
29 proceedings are in addition to, and not in lieu of, all penalties and other remedies
30 provided in this chapter.

31 **Sec. 15. 32 MRSA §2108-A, sub-§1**, as amended by PL 1993, c. 600, Pt. A,
32 §119, is further amended to read:

33 **1. Making information available to the board and advanced board.** Making a
34 report or other information available to the board and advanced board under this chapter;
35 and

36 **Sec. 16. 32 MRSA §2108-A, sub-§2**, as amended by PL 1993, c. 600, Pt. A,
37 §119, is further amended to read:

38 **2. Assisting the board and advanced board.** Assisting the board and advanced
39 board in carrying out ~~its~~ their duties.

1 **Sec. 17. 32 MRSA §2109**, as enacted by PL 2003, c. 64, §1, is amended to read:

2 **§2109. Confidentiality of personal information of applicant or licensee**

3 For applications for licensure and for renewal of licensure submitted on or after July
4 1, 2004, an applicant or licensee shall provide the board or advanced board with a current
5 professional address and telephone number, which is the public contact address, and a
6 personal residence address and telephone number. An applicant's or licensee's personal
7 residence address and telephone number, and e-mail address if provided by the applicant,
8 are confidential information and may not be disclosed except as permitted by this section
9 or as required by law unless the personal residence address, telephone number and e-mail
10 address have been provided as the public contact address. Personal health information
11 submitted as part of any application is confidential information and may not be disclosed
12 except as permitted or required by law.

13 **Sec. 18. 32 MRSA §2151-A** is enacted to read:

14 **§2151-A. Appointment; term; removal**

15 The State Advanced Practice Registered Nursing Board, as established by Title 5,
16 section 12004-A, subsection 25-A, consists of 7 members who are appointed by the
17 Governor. A full-term appointment is for 4 years. Appointment of members must
18 comply with Title 10, section 8009. Members of the advanced board may be removed
19 from office for cause by the Governor.

20 **Sec. 19. 32 MRSA §2152, sub-§1**, as amended by PL 1995, c. 379, §6, is further
21 amended to read:

22 **1. Professional nurses.** Six professional nurses, each of whom:

23 A. Must be a graduate of a state-approved educational program in professional
24 nursing;

25 B. Holds a current state license to practice nursing; and

26 C. Has at least 3 years' experience in active practice immediately preceding
27 appointment.

28 A minimum of 2 professional nurses must be active in an approved educational program
29 in nursing. A minimum of 2 professional nurses must be active in nursing service. ~~One~~
30 Two of the professional nurse members of the board must be practicing long-term care
31 nursing. ~~One of the professional nurse members of the board must be an advanced~~
32 ~~practice registered nurse;~~

33 **Sec. 20. 32 MRSA §2152-A** is enacted to read:

34 **§2152-A. Qualifications**

35 Each member of the advanced board must be a citizen of the United States and a
36 resident of this State for at least 3 consecutive years prior to appointment and shall file
37 with the Secretary of State an oath of office before beginning service. The advanced

1 board is composed of 2 nurse practitioners, one clinical nurse specialist, one certified
2 nurse anesthetist, one certified nurse midwife and 2 public members.

3 **Sec. 21. 32 MRSA §2153-B**, as enacted by PL 2005, c. 163, §4, is amended to
4 read:

5 **§2153-B. Liaison; limitations**

6 The Commissioner of Professional and Financial Regulation shall act as a liaison
7 between the board and the Governor and the advanced board and the Governor. The
8 commissioner may not exercise or interfere with the exercise of discretionary, regulatory
9 or licensing authority granted by statute to the board and advanced board. The
10 commissioner may require the board and advanced board to be accessible to the public
11 for complaints and questions during regular business hours and to provide any
12 information the commissioner requires in order to ensure that the board is and advanced
13 board are operating administratively within the requirements of this chapter.

14 **Sec. 22. 32 MRSA §2155**, as amended by PL 1985, c. 724, §17, is further
15 amended to read:

16 **§2155. Compensation**

17 Eligible members of the board ~~shall~~ and advanced board must be compensated
18 according to the provisions of Title 5, chapter 379.

19 **Sec. 23. 32 MRSA §2201-A**, as enacted by PL 1995, c. 379, §7 and affected by
20 §11, is amended to read:

21 **§2201-A. Qualifications for advanced practice registered nurse**

22 An applicant for approval to practice advanced practice registered nursing shall
23 submit to the advanced board written evidence verified by oath that the applicant:

24 **1. License.** Holds a current license to practice as a registered professional nurse in
25 this State;

26 **2. Education.** Has successfully completed a formal education program that is
27 acceptable to the advanced board in an advanced nursing specialty area; and

28 **3. Credential.** Holds a current certification credential for advanced practice
29 registered nursing from a national certifying body whose certification program is
30 acceptable to the advanced board.

31 A registered professional nurse who is approved by the advanced board to practice in
32 accordance with former section 2102, subsection 2, paragraph B on the effective date of
33 this section is considered to have met the requirements of subsections 2 and 3.

34 **Sec. 24. 32 MRSA §2204-A** is enacted to read:

1 **§2204-A. Examination; time**

2 The advanced board shall hold at least 3 examinations for advanced practice
3 registered nurses approved by the advanced board annually at a place and at a time
4 determined by the advanced board, with an option for a 4th examination, if the advanced
5 board so determines.

6 **Sec. 25. 32 MRSA §2205-A**, as amended by PL 2005, c. 473, §1, is further
7 amended to read:

8 **§2205-A. Licensure of persons licensed by another jurisdiction**

9 The board or advanced board may issue a license to practice professional nursing or
10 advanced practice registered nursing as a registered professional nurse or advanced
11 practice registered nurse under the following circumstances.

12 **1. Applicants licensed by other states, United States territories and Canadian**
13 **provinces.** The board or advanced board may issue a license without examination of the
14 applicant by the board or advanced board to an applicant licensed to practice by a state or
15 territory of the United States or a province of Canada if the applicant:

16 A. Has graduated from an educational program approved by the official approving
17 authority of a state or territory of the United States or a province of Canada, which at
18 the time of graduation had standards considered by the board or advanced board to be
19 equivalent to those of Maine schools;

20 B. Has been duly licensed by examination by the nursing board of a state or territory
21 of the United States or a province of Canada, ~~provided that~~ as long as the
22 examination is considered by the board or advanced board to be equivalent in all
23 essentials to Maine's examination and ~~provided that~~ as long as the license of the
24 applicant is in good standing and that there is no cause for suspension or revocation
25 of that license. Acceptable examinations include examinations approved pursuant to
26 section 2204-A, the State Board Examination, State Board Test Pool Examination,
27 the National Council Licensure Examination and, for a person licensed prior to
28 December 31, 2006, the Canadian Nurses' Association Testing Service Examination;
29 and

30 C. If licensed in the other jurisdiction by passing an examination in a language other
31 than English, has passed the Test of English as a Foreign Language. The board or
32 advanced board shall provide information regarding the test to applicants who are
33 required to take that test.

34 **2. Applicants licensed by other jurisdictions.** The board or advanced board may
35 issue a license to an applicant licensed to practice by a jurisdiction other than those listed
36 in subsection 1, if the applicant:

37 A. Has graduated from an educational program approved by the official approving
38 authority of a jurisdiction other than those listed in subsection 1, which at the time of
39 graduation had standards considered by the board or advanced board to be equivalent
40 to those of Maine schools;

- 1 B. Has been duly licensed by examination by the nursing board of a jurisdiction
2 other than those listed in subsection 1, ~~provided that~~ as long as the examination is
3 considered by the board or advanced board to be equivalent in all essentials to
4 Maine's examination and ~~provided that~~ as long as the license of the applicant is in
5 good standing and that there is no cause for suspension or revocation of that license;
- 6 C. Has passed the National Council Licensure Examination for registered nurses; and
- 7 D. If licensed in the other jurisdiction by passing an examination in a language other
8 than English, has either passed the Test of English as a Foreign Language or fulfilled
9 the requirements of paragraph C by passing a test given in English.

10 **Sec. 26. 32 MRSA §2205-B, first ¶**, as enacted by PL 1995, c. 379, §8 and
11 affected by §11, is amended to read:

12 The advanced board may grant approval to practice as an advanced practice
13 registered nurse to a person who qualifies pursuant to section 2201-A.

14 **Sec. 27. 32 MRSA §2205-B, sub-§1**, as enacted by PL 1995, c. 379, §8 and
15 affected by §11, is amended to read:

16 **1. Temporary approval to practice.** Temporary approval to practice as an
17 advanced practice registered nurse may be granted by the advanced board:

18 A. For a period of 90 days to an applicant who is currently approved to practice as an
19 advanced practice registered nurse in another jurisdiction with requirements at least
20 equivalent to those of this State; or

21 B. For a period of 12 months to an applicant who meets the requirements of section
22 2201-A, subsections 1 and 2 and who qualifies to take and takes the next available
23 certification examination under section 2204-A.

24 **Sec. 28. 32 MRSA §2205-B, sub-§2**, as enacted by PL 1995, c. 379, §8 and
25 affected by §11, is amended to read:

26 **2. Termination.** The advanced board may terminate a person's advanced practice
27 registered nurse designation when the person no longer holds a current certification
28 credential.

29 **Sec. 29. 32 MRSA §2206**, as amended by PL 1993, c. 600, Pt. A §129, is further
30 amended to read:

31 **§2206. Renewals**

32 The license of every registered nurse and advanced practice registered nurse licensed
33 under this chapter is renewable every 2 years, except as otherwise provided. At least 30
34 days before the date that the license expires, the board or advanced board shall mail an
35 application for renewal of license to each professional nurse who holds a valid license.
36 The application must be mailed to the most recent address of that individual as it appears
37 on the records of the board or advanced board. That individual shall complete the
38 renewal application and return it to the board or advanced board with the renewal fee

1 designated by the board or advanced board, but not to exceed \$100, before the expiration
2 date of the license. Upon receipt of the application and fee, the board or advanced board
3 shall verify the accuracy of the application and issue to the applicant a renewal of license
4 for a period of 2 years, expiring on the anniversary of the applicant's birth.

5 A registered nurse or advanced practice registered nurse who fails to renew the
6 license as provided may be reinstated by the board or advanced board on satisfactory
7 explanation for failure to renew the license and on payment of a reinstatement fee of \$10
8 in addition to the current renewal fee.

9 An individual practicing professional or advanced practice registered nursing during
10 the time the individual's license has lapsed is considered an illegal practitioner and is
11 subject to the penalties provided for violations of this chapter.

12 An individual who is not engaged in professional or advanced practice registered
13 nursing in the State is not required to pay a renewal fee for as long as the individual does
14 not practice but shall notify the board or advanced board of inactive status in writing.
15 Prior to resumption of the practice of professional or advanced practice registered
16 nursing, that individual is required to notify the board or advanced practice board and
17 remit a renewal fee for the current period.

18 **Sec. 30. 32 MRSA §2207-A** is enacted to read:

19 **§2207-A. Advanced practice registered nurse; fees**

20 Every applicant applying for a license to practice as an advanced practice registered
21 nurse shall pay a fee to the advanced board as follows:

22 **1. Examination.** For examination under section 2204-A, a fee not to exceed \$130
23 payable on application;

24 **2. Reexamination.** For reexamination, a fee determined by the advanced board not
25 to exceed \$130; and

26 **3. Endorsement.** For endorsement, a fee not to exceed \$130 payable on application.

27 **Sec. 31. Maine Revised Statutes headnote amended; revision clause.** In
28 the Maine Revised Statutes, Title 32, chapter 31, subchapter 2, in the subchapter
29 headnote, the words "state board of nursing" are amended to read "state board of nursing
30 and state advanced practice registered nursing board" and the Revisor of Statutes shall
31 implement this revision when updating, publishing or republishing the statutes.

32 **SUMMARY**

33 This bill establishes the State Advanced Practice Registered Nursing Board that is
34 independent of the State Board of Nursing and provides separate oversight and regulation
35 of advanced practice registered nurses.