

Kansas State Board of Nursing

Position Statement on Multistate Regulation of Nurses

General statement:

Over the past several years there has been discussion and debate between the State Boards of Nursing on issues involving nursing practice across state lines. New modalities and technology in the field of telehealth communications has expanded the domain of nursing practice. The mobility of nurses has increased greatly requiring multiple licenses. *Large hospital networks utilize pools of specialized nurses to provide staffing in facilities in different states.* Professional health care groups have completed studies of these issues which report a need for more flexibility within the regulatory agencies and licensure. *In response, the National Council of State Boards of Nursing developed the concept of multistate regulation (MSR) to address these problems.*

History:

The National Council of State Boards of Nursing (NCSBN) is organized with representation of all 50 states and 10 territories. Its purpose is to advance the safe and effective practice of nursing in the interest of protecting the health and welfare of the public.

The NCSBN approved the concept of multistate licensure for nurses in August 1997 at the delegate assembly. This concept would allow individual states to grant nurses the ability to hold one license and practice in multiple states. Following approval of the concept, NCSBN developed interstate compact language that was approved in December 1997. At this point the language addresses four main areas: jurisdiction, discipline, information sharing and administration of the compact. The NCSBN Board of Directors revised the compact language in November 1998. *Five states have adopted the compact language with three states continuing legislative action after the 1999 sessions.* Various nursing organizations have taken differing positions with regard to multistate licensure.

The Kansas State Board of Nursing has actively participated in all of the discussion since the conception of multistate licensure. Although many questions have been answered, many remain which concern the Board in providing protection to the public.

Jurisdiction:

The multistate licensure model would drastically change the regulation of nursing practice in Kansas. We are currently authorized by the legislature to examine and license applications and take appropriate disciplinary action against licensees. When we grant a license to practice nursing, we are granting a property right to that licensee to practice nursing in our state. Our Board's jurisdiction is over the license we issue. This compact would remove most of the Board's direct authority over an out-of-state licensee by removing jurisdiction over the license. *The Board may not know who is practicing nursing in Kansas, if the licensee holds a multistate license. In 1998 Kansas enacted legislation barring persons with certain felony convictions from practicing nursing in Kansas (K.A.R. 65-1120). If a nurse holds a multistate license from a state that does not have this restriction, she/he would be able to practice in Kansas without the Board's knowledge.*

The Board requested an Attorney General's opinion to address this concern. Attorney General opinion no. 99-3 states that the enactment of the nurse licensure compact as it presently is drafted would be an unconstitutional delegation of legislative authority because it grants other states the unqualified right to determine the qualifications for the practice of nursing in this state by nonresidents.

Discipline:

In evaluating the risk to clients, the Board faces the problem of disciplining a nurse with a multistate license. If the problem occurs in Kansas, the Board can only issue an order to the nurse to cease practice in Kansas and then refer the problem to the state where the nurse is licensed. The Board in the state of licensure then has to investigate, probably with help of the state where the incident occurred. A legal issue is that only the state of licensure can take action on the license. The Board also believes that mobility of the licensee becomes a problem when trying to locate the person who is involved in a discipline case. *The cost and effectiveness of disciplining nurses with multistate licenses would be greatly effected.*

Information sharing:

Currently NCSBN has a disciplinary data bank which most states send information to when discipline has been completed. Board staff has questioned the accuracy and completeness of that information. Summaries provided by NCSBN indicate some states have not sent disciplinary information. Also, there are discrepancies in what Kansas has reported and what NCSBN has put in the data bank.

With multistate regulation (MSR), the disciplinary data bank will be expanded to a Coordinated Licensure Information System. While NCSBN has promised a verification of licensure system for an extended period of time, such a system has not been implemented. We believe that a verification system would significantly decrease the time required for nurses to become licensed, thus supporting mobility and decreasing the need for MSR. *The use of generic forms would also help achieve this goal.*

Another element of the Coordinated Licensure Information System would expand what is now in the disciplinary data bank to include investigative information. During the investigative phase, a nursing board has proven nothing concrete against a licensee, yet this information could be shared with other boards. *This affords little protection for the licensee who may be innocent of the allegations.* While much information about licenses may be obtained through open records requests, there is oversight of where the information goes. The expansion of sharing confidential information, especially on a national basis, raises new questions about privacy. The Board shares this concern with many national nursing organizations.

Administration of the Compact:

One major job in the administration of a MSR compact will be in providing information to licensees. First, licensees will need to know which states are and which are not compact states. A nurse may move from state to state believing that a new license is not needed and be disciplined for not being licensed. Also, licensees will need to know the laws of each state they practice in. While we believe boards of nursing will be instrumental in providing this information, there is also the reality the boards do not have *the resources to accomplish this task. This could also require a nurse to "register" with the state, to be able to provide a current copy of the Nurse Practice Act.*

Part of administration will be education of employers. There will be an increased burden for employers to check licensure with other states when hiring a nurse. *The employer may not be assured that the licensee has current knowledge of the scope of practice in Kansas. While this may help employers with the increased mobility of licensees, it can also create a new burden. Employers will look to the Board of Nursing to support them in the administration of the new system.*

While other states may be less effected financially, the Kansas Board will face over a 20 percent loss in revenue for the agency. In addition, disciplinary costs may increase if there are cases in other states from which information and witnesses may be needed. With a decrease in revenue, the Board faces an increase in licensure fees. There is the continued unanswered question, “Why should the majority of nurses, who only desire to have one nursing license, have to pay a higher fee for that license in order to create a system for the few nurses who are in telehealth or have positions which require mobility?”

Summary:

The Kansas State Board of Nursing cannot support multistate licensure under the current interstate compact language. Because each state determines the qualifications for the practice of nursing, the Kansas Attorney General believes the nurse licensure compact in its present form would be an unconstitutional delegation of legislative authority. Other practical issues of concern are the privacy and confidentiality of shared information, the ability to discipline licenses, the Board’s ability to provide the information needed for the operation of the system, and lastly the cost to all licensees.

The Board would suggest the goals of increasing mobility and decreasing costs for nurses involved in interstate practice, could be achieved nu changing the present endorsement system. This would involve: continuing to develop and improve the disciplinary data bank so that information contained within it is accurate and complete; completing the verification if licensure system so that rapid endorsement of licensees could be accomplished; and developing generic forms for licensure. It would also require all states to issue temporary permits to practice and establish a separate licensing cost for nurses practicing telehealth. This would achieve the same objectives as multistate licensure, delete the problems the Kansas Board has identified with the system, and be more cost effective for states and the NCSBN.