

1974 S.C. Op. Atty. Gen. 87 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3729, 1974 WL 21247

Office of the Attorney General

State of South Carolina

Opinion No. 3729

March 8, 1974

***1 RE: Qualifications of Nursing Applicants**

State Board of Nursin for South Carolina
Suite 216
2711 Middlebur Drive
Columbia, S. C. 29204

Dear Board Members:

By letter dated January 17, 1974, you have requested an opinion as to the requirements specified in Sections 56–983 and 993, S. C. Code of Laws, as amended, that registered nurse applicants and licensed practical nurse applicants submit evidence satisfactory to the Board that he/she is of good moral character. Specifically, you ask: 1) what the law considers to be ‘good moral character; 2) what the Board's responsibility is for deciding whether or not an applicant is of good moral character; 3) what the Board's authority is to require nursing school deans/directors to assume responsibility for this decision; and 4) what the existing legal responsibilities are of nursing school deans and directors who at present certify that various applicants are ‘of good moral character’.

Considering first the question, regarding a legal definition for ones being of ‘good moral character’ it can be said initially that there does not exist in the law any ordered listing of desirable personal traits and habits which can be said to have he sanction of law as representative of good moral character. Rather it is to be presumed that a person is of ‘good moral character’ until proved otherwise. Conseouently, a more direct approach to the question is to ascertain what, from a legal standpoint, constitutes immoral character.

Acts and conditions which are generally recognized by the law as indicative of immoral character include such things as the commission of felonious crimes or certain high misdemeanors, and drug or alcohol abuse. Provisions for the administrative revocation of professional licenses for such acts and conditions exist in most, if not all, laws governing professional persons. And it is the opinion of this office that any act or condition which by statute is sufficient to revoke a previously issued license, is also a sufficient basis to deny a persons right to the initial issuance of a license on the basis of ‘immoral character’, if no more specific grounds are stated.

Looking then at the Nurse Practice Act it appears that an immoral character would be exhibited by any conduct described in Section 56–1004, S. C. Code of Laws, as amended, capable of commission prior to licensure. The would include as a minimum: 1) commission of any felony; 2) violation of federal or state laws or municipal ordinances relating to narcotic drugs; or 3) addiction to alcohol or drugs. This is not an inclusive listing, however, and an immoral character could be evidenced by other unspecified acts as well. In defining what type of activity, not specified by statute, could legally give rise to finding an applicant unqualified, it is proper to recall the general legislative intent which is behind the Nurse Practice Act and all medical-type laws in general. As stated in [Dantzler v. Callison](#), 230 S.C. 75, 94 S.E.2d 177 (1956);

***2** A state may not prohibit the practice of medicine or surgery, yet it is very generally held that a state, under its police power, may regulate, within reasonable bounds, for the protection of the public health the practice of either by defining the qualifications which one must possess before being permitted to practice the same. And of course, it naturally follows that a legislature in defining the required qualifications cannot prescribe, as a condition to the right to practice, knowledge which bears no relation to the profession in question. 230 S.C. at 92–93 (citations omitted).

Accord, [South Carolina State Board of Dental Examiners v. Breeland](#), 208 S.C. 469, 476, 38 S.E.2d 644 (1946). In [Dantzler](#) the South Carolina Supreme Court was concerned with the practice of medicine but the reasoning is clearly applicable to the practice of nursing. The rationale stated is that the purpose of these acts is to protect the public health and therefore official acts by the legislature (and administrative boards) taken under these laws must bear a reasonable relationship to that stated purpose. Consequently, when considering what types of non-statutorily specified acts may be considered as showing an immoral character, the Board of Nursing should consider that its authority only extends to those activities of nurse applicants which could reasonably pose a threat to the public health, i.e., to their patients. See Annot. 93 [A.L.R.2d](#) 1398, 1429 (1964). Beyond that there is a world of activity, which although perhaps being personally reprehensible, yet remains essentially private conduct and not the concern of the Board. This point of law has never been addressed on a clear set of facts by the South Carolina Supreme Court. However, the recent case of the [State Board of Medical Examiners v. Gandy](#), 258 S.C. 349, 188 S.E.2d 846 (1972) indicates that the present Court distinguishes between activities affecting ones professional abilities and solely private conduct. In [Gandy](#) the South Carolina Supreme Court was afforded an opportunity to say that public drunkenness on the part of a dentist amounted to 'gross immorality', but chose to avoid the issue. In summary, in the opinion of this office, 'good moral character' insofar as nursing applicants are concerned is that character which does not manifest acts or conditions which pose a reasonable threat to the applicant's ability to properly perform his/her professional duties.

Secondly, the Board inquires as to its responsibility for deciding whether or not an applicant is of good moral character. In the opinion of this office, the responsibility for passing upon the fitness of registered nurse and licensed practical nurse applicants rests entirely upon the Board. See Sections 56–982 and 992, [S. C. Code of Laws](#), as amended. This responsibility clearly embraces the duty to decide whether or not, in the Board's sound judgement, an applicant is of 'good moral character'.

Thirdly, the Board inquires if it can require nursing school deans or directors to assume this responsibility. In the opinion of this office, the Board has the ultimate responsibility for the decision as to an applicant's character which it has no authority to delegate. The Board can, of course, accept any evidence satisfactory to itself of good moral character and for the purpose of satisfying itself can require an applicant to provide as much information as it believes is relevant to the question. The Board is not required to accept at face value a mere paper certification of an applicant's character but may make further inquiry.

*3 Finally, the Board inquires what the existing legal responsibilities are of nursing school deans and directors who do at present certify as to the 'good moral character' of nursing applicants. In cases where the applicants character is later shown to be unsatisfactory, assuming that a dean or director offered their certification in good faith, there would be no criminal responsibility. The question of civil liability for a negligent certification of an applicant's character cannot be properly addressed in the abstract but only on a concrete set of facts, and is beyond the scope of this opinion.

If there are questions, please correspond.

Very truly yours,

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