



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**JOHN L. HILL  
ATTORNEY GENERAL**

October 25, 1973

The Honorable Waldeen D. Wilson, R. N.  
Executive Secretary, Board of  
Vocational Nurse Examiners  
406 Sam Houston State Office Bldg.  
Austin, Texas 78701

Opinion No. H- 136

Re: Authority of Board of  
Vocational Nurse Examiners  
to administer a proficiency  
examination to practical/  
vocational nurses licensed  
by waiver.

Dear Ms. Wilson:

You have requested an opinion from this office which reads in part as follows:

"The State Board of Vocational Nurse Examiners have been contacted by the Department of Health, Education and Welfare, Bureau of Health Insurance, Social Security Administration, to administer a proficiency examination for practical-vocational nurses who have received State licensure by waiver.

"The examination will in no way affect the licensure status of the L. V. N.

"The Board would like an opinion regarding its responsibility in the administration of a proficiency examination. Statutorily can the Board administer the examination? How should the cost be computed?"

The examination for vocational nurses is occasioned by regulations of the Social Security Administration of the Department of Health, Education and Welfare, Title 20, C. F. R. and particularly § 405.1010 providing for the special certification of hospitals for medical benefits.

Section 405.1024 of Title 20, C. F. R. , generally requires as a

"Condition of Participation" that a hospital have a licensed registered professional nurse on duty at all times. Section 405.1010 provides exceptions. Subsection c authorizes the Secretary of Health, Education and Welfare to waive the requirement of § 405.1024 upon findings, certified by the State agency (see § 405.1004) that, among other things:

"There is present on the premises to render or supervise the nursing service provided throughout all tours of duty not covered by a registered nurse: (i) A licensed practical (vocational) nurse who is a graduate of a State-approved school of practical (vocational) nursing, or (ii) a licensed practical (vocational) nurse who has successfully participated in a proficiency examination approved by the Secretary, or (iii) prior to the time such an examination is available, a waived licensed practical (vocational) nurse (A waived licensed practical nurse is one whose license was granted after waiver by the State of the requirement that she be a graduate of an approved school.)" (Emphasis added)

In connection with the giving of such examination, the Director of Bureau of Health Insurance of the Department of H. E. W. , under date of June, 1973, issued a letter which set out the guidelines for proficiency examination for practical nurses licensed by waiver.

The letter states:

"The State agency responsible for Medicare certification activities, or another State agency with which the certification agency makes arrangements, will conduct the actual administration of the examination." (Emphasis added)

And:

"State expenses for conducting the examination are legitimate expenditures of Medicare funds available to the State agency."

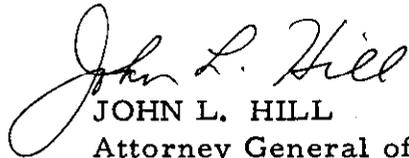
Section 5 of Article 4528c, Vernon's Texas Civil Statutes provides for examination and licensing of vocational nurses by your Department. Sections 6 and 7, provide for licensure by waiver. Your Department would be the agency most interested in administering this examination by which individuals will be qualified to obtain employment at hospitals that care for Medicare patients. In our opinion, Article 4528c authorizes your Board to administer the examination in question.

With regard to your second question, it is our opinion that you should determine the actual expense the Board incurs in offering the examination and submit this to H. E. W. for reimbursement. We further believe that Article V, §19 of the Appropriations Act for fiscal 1974 and 1975 (House Bill 139, 63rd Leg. ) will authorize the acceptance and use of federal funds for this purpose.

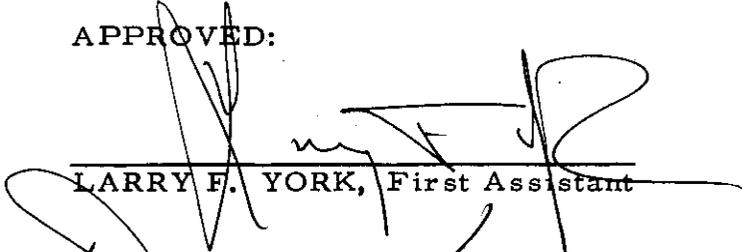
S U M M A R Y

The Texas Board of Vocational Nurse Examiners is authorized to administer a test to vocational nurses licensed by waiver in order to meet the requirements of Federal Medicare rules with reference to participating hospitals, and to be reimbursed its expenses.

Very truly yours,

  
JOHN L. HILL  
Attorney General of Texas

APPROVED:

  
LARRY F. YORK, First Assistant

  
DAVID M. KENDALL, Chairman  
Opinion Committee