



## Ohio Board of Nursing

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December 7, 2020

The Honorable Kirk Schuring  
Ohio Senate  
Chair, Senate Government Committee  
Senate Building  
1 Capitol Square  
Ground Floor  
Columbus, Ohio 43215

Chairman Schuring and members of the Senate General Government and Agency Review Committee:

Thank you for the opportunity to provide testimony on behalf of the Ohio Board of Nursing as an interested party to House Bill 673, sponsored by Representative Bill Roemer. While we are testifying as an interested party, our testimony can be characterized as raising strong concerns and numerous reservations regarding the nursing related language in the bill. We believe that extensions to nursing licenses provided for in recently passed HB 404, effective November 23, 2020, having effectively addressed the safety and needs of Ohio's citizens.

The Ohio Board of Nursing recognizes that HB 197, effective March 27, 2020, permitted nursing applicants to obtain temporary nursing licensure after showing they meet all the qualifications for full licensure, except for successfully completing the NCLEX, standardized, national licensing examination for nursing. Successfully completing the NCLEX is a core aspect of the licensing process. Testing acts as an assurance to employers and the public that the nurse is ready and competent to practice. The current exemption is specified to last through March 1, 2020.

The Board understood that the HB 197 NCLEX exemption and this special license exemption was intended address a situation in which, due to Covid-19, NCLEX test sites were temporarily shut down. This is no longer the case and since at least June, and NCLEX test sites are fully operational, some

testing 24 hours per day. A secondary rationale for the testing exemption was to allow applicants who had not passed the licensing exam to practice, thus addressing an anticipated staffing shortage. To date, we have not read any testimony from nursing employers requesting an extension of HB 197 special licensure. We think this may be a result of greater understanding of existing Ohio law that authorizes nursing practice in this State with a valid license from another State during the declared emergency. *Specifically, the Nurse Practice Act, Section 4723.32(G)(7), Ohio Revised Code (ORC), allows nurses who hold an active, valid license in another state to practice in Ohio without an Ohio nursing license for the duration of any declared disaster of this type, including the current COVID-19 declared emergency (emphasis added).*

HB 404 recently amended Sections 10 and 11 of HB 197 related to licensing. It did **not** amend Section 30, which is the section that authorizes the Board of Nursing to issue temporary licenses without the applicant having passed a licensing exam (NCLEX). Section 30 is unique to these specific licenses. Those HB197 licenses that granted an NCLEX exception during the emergency will expire 90 days after December 1, 2020 (after March 1, 2020).

What the Board has heard and experienced regarding any extension of the temporary HB 197 NCLEX exception are significant concerns and issues raised both in state and nationally. These questions and concerns include reports that there are Ohio HB 197 licensees who had not yet taken the NCLEX and immediately obtained licenses in other states who did not realize Ohio had not required them to have passed the license exam. Three Thousand (3,000) of the fourteen thousand (14,000) LPN and RN applications that the Board has received to date from March 2020, have been from students educated by Florida programs. The Florida Board of Nursing does not have jurisdiction over these nursing programs, including programs that also may not be nationally accredited. Why are 3,000 Florida nursing graduates leaving their warm, tax free home State to get licensed in Ohio? That question concerns the Board. We really don't have the authority to ask, but it is an extreme anomaly from past years and other states this year.

We've had applicants who failed the NCLEX several times in years past contact the board to apply for the temporary license. The Board has heard from many employers who for public safety reasons will not hire HB 197

licensees who have not passed the exam. In addition, the added work for issuing a new type license to thousands of applicants has negatively impacted licensure processes at the Board during this emergency. In addition to authorizing these recent grads separately to sit for examination, we were then tasked with implementing a new system to inform employers whether or not the HB 197 licensee had passed the NCLEX (a fact that seems to be of great importance to Ohio employers with NCLEX passage appearing to be a prerequisite to employment). COVID limitations and the newly created HB 197 served to add significant barriers and time to a licensure process that includes new grads and endorsement applicants with licenses in other states.

The HB 673 granting authority for the Board to remove the HB 197 for the thousand plus (1,000 +) licensees who have failed the NCLEX since March 2020 is not an adequate response to these concerns, and it is a response that generates even more duplication in licensure processes and work. As of October 31, 2020, 8,778 temporary licenses were issued, twice as many as anticipated. These temporary licenses resulted in more manual processes. Unlike initial licenses that are issued through automated processes using a Pearson Vue interface, these additional, duplicative HB 197 temporary licenses require several manual steps. The added work for issuing a new type license to thousands of applicants has negatively impacted licensure processes at the Board during this emergency.

As indicated above, the HB197 temporary licenses will expire 90 days after December 1, 2020. After March 1, 2020, we will stop issuing temporary licenses to applicants who have not passed the license exam. This should help processing times for all licenses and we believe will not cause any hardship to the fight against COVID as a result.

Having stated the Board's concerns and provided facts and experiences since March, the Board would like to address the nature of the clinical education arguments made in support of the need of extending the HB 197 special license. Initially, it should be understood why Ohio's nursing programs are the main proponents (seemingly the only ones, see HB 673 testimony and HB 404) to a HB 197 extension. Ohio's nursing programs are required by HB 197 and by any language in HB 673 to certify to the Board that all education requirements by Ohio law and rule have been met. The provision in HB 673 requiring the Board to approve clinical education provided by employers after the applicant has been granted licensure and

after the nursing program has no legal or practical consequences since clinical is already completed at the time of the license application.

The Board's response to a letter from the Ohio Council of Deans and Directors of Baccalaureate and Higher Degree Nursing Programs (OCDD) in April 2020 is the last communication to my knowledge with that association dealing with clinical education concerns (please see the attached link <https://nursing.ohio.gov/wp-content/uploads/2020/04/OCDD-Response-April-2020.pdf>). I encourage you to read the policy briefs that consistently address clinical education issues on a national and state basis (<https://nursing.ohio.gov/wp-content/uploads/2020/04/Policy-Brief-US-Nursing-Leadership-COVID19.pdf> and <https://nursing.ohio.gov/wp-content/uploads/2020/04/Practice-Academic-Partnerships.pdf>). The Board communicated this important message to Ohio's nursing programs as early as March 25, 2020, "The Board will not penalize programs in the future based on your decisions to adapt your nursing education curriculum to address these unprecedented times. No law or administrative rule change is needed for the Board to do this." Nursing Board communications on clinical education issues during the emergency have been specific, responsive, and encompassing.

Perhaps the nursing education programs who have testified are most concerned with a related, but as yet not directly mentioned board program rule that may be affected by COVID concerns. Ohio Nursing Programs are evaluated in part based on the pass rate of their graduates. The longer graduates defer taking the NCLEX, the lower the test scores. Ohio rules do not count test scores taken 6 months after graduation (OAC 4723-5-23). Because of this, it is advantageous to education programs to extend the temporary HB 197 licenses to July anticipating that many of the individuals will fail the NCLEX due to the extended passage of time. If this is their unspoken concern here, the Board would be willing to discuss this issue further as early as their next meeting in January, but an education program rule should not be the determining factor in support of an HB 197 special license extension – as the education program rule has nothing to do with the nursing workforce.

The Board will always remain open to hearing the concerns of the legislature and its nursing programs on behalf of Ohio's patients, nursing students, and licensees; hearing everyone's questions and concerns is especially important during this state of emergency. Toward that end, faculty and Deans

from Ohio nursing schools are members of the Board and we have an Advisory Group on Nursing Education with members who are education program administrators, faculty, and nursing practice representatives. This Committee has met several times in 2020 and **no member has requested any further changes to Board rule affecting a school's ability to operate during the pandemic, including no requests for an extension of the HB 197 NCLEX exemption and grant of special license.** The Board believes that it is apparent that the HB 197 special license and extension of that authorization is not a nursing program matter. Language in the bill that has no legal or practical effect on providing clinical nursing education looks to be a red herring of sorts in an attempt to link the subject matter to the extension.

The inverse to the clinical education arguments submitted by nursing programs as written testimony in HB 673 should raise some concern with their proposed solution. If a small number of Ohio's over 200 nursing programs are concerned about their abilities to provide adequate clinical nursing education to their students during the pandemic, why would anyone consider the response to be waiving the national licensure examination that is an important measurement of the applicant's clinical competency? Public safety would seem to argue for this important competency check.

We appreciate that no one's life is made easier by the threat of COVID-19 and are thankful that our law and rules as they apply to our licensees and programs provide the necessary discretion to operate and make necessary adjustments when necessary.

Issuing licenses without completion of the NCLEX may have served a purpose early in the pandemic when NCLEX testing sites were closed, but testing sites have re-opened, and Ohio's issuance of licenses without exam completion has caused many unintended consequences for Ohio and other states and places Ohio patients in the hands of nurses who have not passed an exam demonstrating basic knowledge and competence. The Board wants to help and do whatever we can to help fight COVID. However, given time to reflect on what has resulted from the HB 197 license thus far, the costs appear to have clearly outweighed the benefits.

Sincerely,

Thomas A, Dilling  
Public and Government Affairs Officer  
Ohio Board of Nursing

Cc: Betsy Houchen, Executive Director, Ohio Board of Nursing  
Members, Ohio Board of Nursing