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**MEMORANDUM**

**TO:** Wisconsin Board of Nursing

**FROM:** Colleen M. Baird  
Board Legal Counsel

**SUBJECT:** Marquette University Direct Entry Graduate Nursing Program

**DATE:** October 4, 2007

This memorandum has been prepared in response to the claims made by Lydia Bertrand concerning the Marquette University College of Nursing's Master of Science in Nursing for Non-Nursing Graduates Program (hereinafter referred to as "Direct Entry Program"). Ms. Bertrand has challenged the Wisconsin Board of Nursing's (hereinafter referred to as "Board") approval of the Direct Entry Program on the basis that it violates the Nurse Practice Act, Wis. Stat., § 441.04, and has requested that the Board of Nursing take the following action:

- 1) dissolve the "Special Agreement" with Marquette University regarding the Direct Entry Graduate Program;
- 2) instruct the Department to stop issuing nursing licenses to students who have completed the pre-MSN phase of the Direct Entry Graduate Nursing Program and received a Certificate of Completion from Marquette University; or,
- 3) require that Marquette University School of Nursing place a graduation date on her official transcript or grant her a diploma of graduation.

It is my opinion as legal counsel for the Board, set forth more fully herein, that the Board's approval of the Direct Entry Program at Marquette University does not contravene the legal requirements for examination and licensure. The Board's approval of the Direct Entry Program is consistent with the statutory authority of the Board to approve nursing school programs and is in conformity with the applicable law governing NCLEX examination and RN licensure.

#### APPLICABLE LAW

Wis. Stat. §441.04, Wis. Stat., Requisites for Examination as a Registered Nurse. Any person who has graduated from high school or its equivalent as determined by the board, does not have an arrest or conviction record, subject to ss111.321, 111.322 and 111.335, holds a diploma of graduation from an accredited school of nursing, and if the school is located outside this state, submits evidence of general and professional educational qualifications comparable to those required in this state at the time of graduation may apply to the department for licensure by the board as a registered nurse, and upon payment of the fee specified under s. 440.05(1) shall be entitled to examination.

Wis. Admin. Code N2.03(1), Registered Nurse Applicants. An applicant is eligible for examination for registered nurses if the applicant: (a) Does not have an arrest or conviction record, subject to ss.111.321, 111.322 and 111.335, Stats.; (b) Has graduated from high school or its equivalent; and (c) Has graduated from a board-approved school of professional nursing.

#### BACKGROUND OF THE DIRECT ENTRY PROGRAM

The Direct Entry Program at Marquette University was approved by the Board in 1999. It is designed as a master's program for individuals who hold baccalaureate degrees in fields other than nursing who wish to become nurses. (Attachment 1) The Direct Entry Program is a rigorous program in high demand as shown by the number of students who have applied for admission and are accepted into the Program.<sup>1</sup> The Program builds upon

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<sup>1</sup> In the current class of 2007-08, only 48 students were admitted from an applicant pool of 886, with no students leaving the Program. In the class of 2006-07, only 35 were admitted from an applicant pool of 852, with only one student leaving the Program. (Attachment 2) There are approximately 60 similar programs offered by nursing schools throughout the country. The majority do not require the award of a second undergraduate degree in nursing prior to completing the graduate level courses. (Attachment 3)

the student's broad education by providing an intense, accelerated curriculum leading to a master's degree in nursing. The student is required to complete 61 credits in basic nursing curriculum, known as the pre-MSN phase, within the first 15 months. Students who successfully complete the pre-MSN basic nursing curriculum receive a Certificate of Completion which verifies that they have completed the undergraduate nursing objectives; they do not receive another bachelor's degree.

In order to progress into graduate coursework, and obtain the MSN degree, the student in the Direct Entry Program is required to successfully take the licensing examination for registered nurses, known as the NCLEX. Eligibility to sit for the NCLEX is based upon receipt of a Certificate of Completion from Marquette University School of Nursing which verifies that the student has satisfied the nursing education objectives for examination. Upon passage of the NCLEX, the student is eligible for licensure as a registered nurse (hereinafter referred to as "RN"). The granting of RN licensure enables the student to complete the graduate courses and provide direct patient care in the required clinical component of the Program.

After completion of the pre-MSN phase and RN licensure, the students complete two academic years of graduate level coursework and clinical training in a nursing specialty. Upon completion of the entire Program, the student is awarded a Masters of Science Nursing (MSN) degree and is eligible to take the appropriate certification examination administered by the American Nurses Credentialing Center or other specialty certification body. When the student obtains the MSN degree, he or she is not only eligible for specialty certification, but also for licensure as an advance practice nurse in Wisconsin and other jurisdictions.

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Instead, such programs serve important public interests; they increase the number of advance practice nurses and are premised upon the concept that the student does not have to first obtain an undergraduate degree in nursing.

## LEGAL ANALYSIS OF THE PROGRAM

In response to the complaints by Lydia Bertrand, and her father, Michael Bertrand, the Office of Legal Counsel for the Department conducted an in-depth review and analysis of the legal basis for the Board's approval of the Direct Entry Program. This research began with an initial review of statutory language for nurse licensure examination in the Nurse Practice Act, Wis. Stat. § 441.04. The language at issue is the provision in Wis. Stat. § 441.04, which indicates that one of the requisites for examination as a registered nurse is that a person "holds a diploma of graduation from an accredited school of nursing." The other provision at issue is Wis. Admin. Code N2.03(1)(c) which, as one of the prerequisites for licensure examination, includes the phrase "graduated from a board-approved school of professional nursing."

### A) Statutory Interpretation

The interpretation of a statute begins with the language of the statute; it is assumed that the intent of the provision is expressed in the words it uses. *Orion Flight Serv. v. Basler Flight Serv.*, 2006 WI 51, ¶ 16, 290 Wis. 2d 421, 714 N.W.2d 130. Words that are not defined in a statute are given their common, ordinary and accepted meaning, as explicated in a recognized dictionary. *Id.*, ¶¶ 16, 24. Words used in a statute are also considered in the context in which they are used, including related provisions. *Id.*, ¶ 16. Thus, if the meaning of a provision is plain, the inquiry ends. *Id.*, ¶ 17.

The words "diploma" and "diploma of graduation" are not defined in Wis. Stat. § 441.04. As result, in the absence of a statutory definition, the common dictionary definition of the words is controlling. The American Heritage Dictionary (3d ed. 1996) defines "diploma" as a document issued by an educational institution signifying that the recipient has earned a degree or successfully completed a course of study. *Id.* at 526. Webster's Third New International Dictionary (unabridged ed. 1986) defines "diploma" as a document conferring an honor or privilege, or evidencing graduation from an educational institution. *Id.* at 638. The Certificate of Completion is a "diploma" under the second

American Heritage definition since it is a document issued by a college indicating that the recipient has successfully completed the course of study in basic nursing training. The Certificate of Completion is a “diploma” under Webster’s first definition since it confers the privilege of taking the registered nurse exam and of entering the next phase of the Direct Entry Program if the student passes the NXLEX.

In addition, the Certificate of Completion is a “diploma” under a related definition of the phrase “graduate”. The American Heritage Dictionary defines “graduate” as being granted an academic degree or diploma, or advancing to a new level of skill or activity. *Id.* at 785. Webster’s Third New International Dictionary defines “graduate” as being granted an academic degree, diploma or certificate, or to qualify as proficient or learned in a particular field at the completion of a course. *Id.* at 985. When a student completes the basic training phase of the Program, the student in effect “graduates” under the second American Heritage Definition since he or she advances to a new level of skill and activity in nursing, from the basic to the graduate level. A student who completes the basic training phase in effect, “graduates” under the second Webster’s definition since she or he now qualifies as proficient in the practice of nursing at the completion of the basic training course. The issuance of a Certificate of Completion to a student who has successfully completed the pre-MSN phase of the Program, therefore, fulfills the requirement that an applicant has “graduated from a board-approved school of nursing which appears in Wis. Admin. Code N2.03(1)(c).

#### B) Legislative History

In conducting its analysis of the legal basis for the Board’s approval of the Program, the Department reviewed the legislative history of Wis. Stat. § 441.04 and its predecessor statutes. The history begins with 1911 Wis. Laws, ch. 346, § 1, a session law which created Wis. Stat. § 1409a-5, and provided that a person could apply for registration as a registered nurse if she or he “graduated” from a training school associated with a hospital after at least two years of training. The 1911 session law first used the words “diploma of graduation,” a document that was issued by accredited hospitals which were the exclusive

providers of nursing education and training at the turn of the century. This is further supported by a review of Chapter 365, published June 17, 1921, which refers to the “diploma of graduation from an accredited school of nursing as a course of not less than two years for nurses within four months following the date of application.” Wis. Stat. § 38.22(1) provided that a nurse who had attended high school for at least one year and who held a “diploma of graduation from an accredited school of nursing” after completing a course at least two years long could take the registered nurse exam. The statute was not referring to a college degree since a person with only a year of high school could not even get into college.

A combination of the words “diploma” and “graduation” next appeared in 1915 Wis. Laws, ch. 438, which created a new statute which provided that a person could apply for certification as a registered nurse if she or he had “a diploma or other certificate of graduation” from a reputable training school. This provision made clear that a diploma was not a college degree but again was merely some kind of certificate that a person had completed a nursing training program. Shortly thereafter, the 1915 Wis. Laws, ch. 595, §§ 2 & 3, was repealed and the 1911 version of the law was reinstated. The law was finally revised again by 1921 Wis. Laws, ch. 365, § 2. This session law created a statute that first used the phrase “diploma of graduation” which continues to be used in the present law. There is no reference to the meaning of those words or phrases. Rather, in accord with the earlier 1915 provision, the “diploma of graduation” was merely a term to describe a kind of certificate indicating that a nurse had successfully completed a nursing training program.

Although the law has been amended in various ways since 1921, the phrase “diploma of graduation from an accredited school of nursing” has remained the same through all these revisions. Present Wis. Stat. § 441.04 uses verbatim the same language as former Wis. Stat. § 38.22(1). The various amendments offer no reason to believe that the Legislature intended the meaning of this phrase to change over the years when its language remained the same. However, there is a significant difference between the old and new statutes. Present § 441.04 does not contain the former requirement that the diploma of graduation



be issued after completion of a nursing training course that is at least two years long. The origin of the “diploma of graduation” also counters the argument that it is synonymous with present day academic degrees offered by universities or other post-secondary institutions.<sup>2</sup> The term “diploma of graduation” or “graduated” did not mean earning a bachelors degree in nursing after four years in college; or receiving an academic degree; it simply meant completing an approved training program in nursing.

Accordingly, based upon its research, the Office of Legal Counsel for the Department has determined based upon both the tenants of statutory construction and the legislative history that the Certificate of Completion which is awarded to students upon completion of the basic training phase of the Program is, in fact, a “diploma of graduation” from an accredited school of nursing within the meaning of Wis. Stat. § 441.04, and that, as such, the Program does not violate the law. Applying the common dictionary definitions of the terms, the Certificate of Completion is a “diploma of graduation” and is evidence of “graduation” because it is a document issued by a school of nursing to evidence the fact that the recipient has successfully completed the course of study in basic nursing training, is proficient as a nurse, and is qualified to go on to the next level of training. The Department has consulted with the Attorney General’s Office regarding the legality of the issuing of RN licenses to students who have completed the basic nursing curriculum portion of the Program but who have not received the MSN degree. A legal memorandum provided by the Attorney General’s Office concurs in this position.

#### APPROVAL OF THE DIRECT ENTRY PROGRAM

The Department and the Board of Nursing, since the inception and approval of the Direct Entry Program in 1999, have allowed students who complete the basic nursing pre-MSN phase to take the NCLEX and, upon passage of the exam, to receive licensure as a registered nurse. When the Direct Entry Program was initially proposed in 1998, the

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<sup>2</sup> The unique origin and status of the diploma of graduation is also shown by the acknowledgement of this as a separate category for RN licensure on the DRL form for RN examination, referenced as DIP, an acronym which stands for “diploma” for those applicants who are applying with a diploma of graduation.

Dean of the College of Nursing at Marquette University, Marilyn Wake, wrote to Wayne Austin, the Legal Counsel for the Board of Nursing, and asked the following question:

Please confirm in writing that students who completed the nursing requirement of basic nursing education and progress to the MSN phase of the program would meet the intent of Chapter N2.03 *"Has graduated from a board-approved school of professional nursing"* and be eligible to sit for the examination for registered nurses.

The letter from Dean Wake indicated that the Marquette University Nursing School interpreted the term *"graduated"* to include progression to the MSN phase. (Attachment 4) On February 1, 1999, Wayne Austin drafted a response to Dean Wake confirming her understanding that students who completed the basic nursing coursework would meet the intent of Chapter N2.03 and, therefore, would be eligible both to take the NCLEX and for licensure as an RN. (Attachment 5) Mr. Austin's letter indicates that the Board of Nursing considered his response on January 28, 1999, and concurred with his opinion.<sup>3</sup>

The Department's review of the approval and implantation of the Direct Entry Program with respect to the applicant's eligibility to take the NCLEX, and to obtain licensure upon passage of the examination, is appropriate and consistent with the law. The Certificate of Completion issued to a student who completes the pre-MSN basic nursing phase of the Direct Entry Program is a "diploma of graduation" from an accredited school of

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<sup>3</sup> There is a prior signed February 1, 1999, version of Mr. Austin's February 1, 1999, letter to Dean Wake. Dr. Wake, the current Provost of Marquette University, who in 1999 was the Dean of the College of Nursing, requested that Mr. Austin revise the last paragraph of page 2 of the February 1, 1999, original letter to clarify that a degree was not required to enable a student who completed the Pre-MSN basic nursing requirements to sit for the NCLEX and to obtain RN licensure. (Attachment 6) Dean Wake had requested confirmation in her December 15, 1998, letter to Mr. Austin regarding *whether "... students who complete the nursing requirements of basic nursing education and progress to the MSN phase of the program would meet the intent of Chapter N2.03 'Has graduated from a board-approved school of professional nursing,' and be eligible to sit for the examination for registered nurses. We interpret 'graduated' to include progression to the MSN phase. At that time, the student will have met all requirements for basic nursing education."* (Emphasis added. See Attachment 4). Accordingly, Mr. Austin revised the last paragraph of page 2 of his original letter by replacing the term "graduate" with the term "participant", perhaps in an effort to avoid the misconception that the definition of the word "graduate" requires possession of a degree. Notwithstanding the fact that there is a prior version of the February 1, 1999, Austin letter, the Office of Legal Counsel's interpretation and analysis (including the Attorney General's Office memorandum) regarding the legality of the Program remains the same; the word "graduate" includes students who complete the basic training pre-MSN phase of the Program since they advance to a new level of skill and activity in nursing education.



professional nursing within the meaning of the Wisconsin Nurse Practice Act, Wis. Stat. § 441.04, and qualifies the applicant to sit for examination under Wis. Admin. Code § N 2.03(1) (c).

### CONCLUSION

The Wisconsin Nurse Practice Act authorizes the Board to establish minimum standards for schools of professional nursing, to approve schools of nursing and the programs which are offered by board-approved schools. Pursuant to this authority, the Board approved the Direct Entry Program in 1999; a nursing program submitted for approval by Marquette University School of Nursing, which was, and continues to be, a board-approved school of nursing. The Board's approval in 1999 was made in full conformance with the provisions of the Wisconsin state law and administrative code. Accordingly, the Board should not grant the request by Ms. Bertrand to dissolve the so-called "Special Agreement" with Marquette University approving the Direct Entry Program.

Nor should the Board direct the Department to stop issuing nursing licenses to students who have completed the pre-MSN phase, received a Certificate of Completion, and passed the NCLEX. The Certificate of Completion issued by Marquette University School of Nursing to students who completed the pre-MSN phase is a "diploma of graduation" from an accredited school of nursing within the meaning of the Wisconsin Nurse Practice Act, Wis. Stat. § 441.04. The Certificate of Completion verifies that the applicant has met the objectives of nursing education, advanced to a new level of skill or activity and has, therefore, "graduated" within the meaning of Wis. Admin. Code. § N2.03 (1)(c).

Finally, the Board has no authority, jurisdiction, nor even any necessity to require that Marquette University School of Nursing place a graduation date on Ms. Bertrand's official transcript or grant her an academic degree in order to qualify her to sit for the NCLEX and obtain RN licensure. Again, the Certificate of Completion issued by

Marquette University School of Nursing to students who completed the pre-MSN phase is a “diploma of graduation” from an accredited school of nursing within the meaning of the Wisconsin Nurse Practice Act, Wis. Stat. § 441.04 and verifies that the applicant has “graduated” within the meaning of Wis. Admin. Code. § N2.03 (1)(c), therefore, meeting the requirements for examination and licensure.