



# Professional regulation, public protection and nurse migration

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## KEYWORDS

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**Summary** Nurse mobility, developments such as health tourism and the rapid expansion of health systems have increased the need for regulatory bodies to reach beyond their normal stakeholder groups so as to familiarize themselves with the legislation of other jurisdictions.

**Purpose:** A systematic examination of a cross-section of nursing legislation, to ascertain the degree of consistency in the number of definitions specified as well as their underlying structure, was conducted to identify opportunities to strengthen public protection and reduce barriers to freedom of movement.

**Method:** A purposeful sample of legislation, drawn to maximize differences, was subjected to documentary analysis to identify possible relationships between the variables of interest and the way terms and processes were defined in fourteen nurse practice acts.

**Results:** Potential relationships were identified between factors such as geographic region, legal tradition, administrative approach, regulatory model and economic status and the number and approaches used to specify definitions. A major weakness in the precision of definitions was discovered.

**Discussion:** Several international organizations have started to develop lexicons but all have weaknesses. By drawing upon these lexicons a more comprehensive and precise dictionary could be formulated to support the development of next-generation nurse practice acts.

**Conclusions:** Current legislation lacks precision and, within the context of increased mobility of nurses, there is an urgent need to develop an authoritative source of definitions that can contribute to increasing public safety as well as reducing delays in the freedom of movement of nurses from one jurisdiction to another.

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Nursing legislation has been in place in some countries since the turn of the twentieth century although in other jurisdictions it is a relatively recent development (Benton, 2011). Such legislation defines and establishes mechanisms that provide the basis upon which regulatory bodies can

discharge their duty of protecting the public (Benton & Morrison, 2009a). However, this paper will present evidence from a variety of legislative sources documenting a specific weakness. This weakness – poorly described terms and functions – may not only impede timely migration of nurses but also undermine the ability of the regulatory body to discharge its prime function of public protection.

## A changing global landscape

Nurse migration is not a new phenomenon. For many decades, steady flows of nurses have moved from one country to another (International Council of Nurses, 2004; Kingma, 2008). The pattern of these movements tended to follow relatively fixed routes based on linguistic commonality or well-established political alliances. Nurses from the United Kingdom might move to Australia or Canada and nurses from Latin America would go to Spain or Portugal. However, as health systems expanded during periods of economic growth, self-sufficiency in the education of nurses, in a number of mainly high-income countries, came under enormous pressures. One consequence of this has been that the output of nurse education has, in some countries, failed to keep pace with the expanding demands of services (Affara, 2010). As a result, a number of countries started actively encouraging migration to their shores. The United States, the United Kingdom and some countries in the Middle East became favoured destinations for increasing numbers of nurses from India, the Philippines and some African countries (International Council of Nurses, 2004). In the case of Spanish and Portuguese speaking nurses, the flows tended to be into Spain and Portugal from South America. The International Council of Nurses and the World Health Organization tried to map these movements both globally and regionally (ICN, 2004; Malvarez & Agudelo, 2005; WHO, 2006; WHO Western Pacific Region, 2004). These mappings illustrated the direction and magnitude of the various flows of nurses from one country to the next. At the peak of these movements in the late nineties and in the first few years of the turn of the twentieth century, a number of authors reported delays that migrant nurses experienced in getting their qualifications recognized (Aiken, Buchan, Sochalski, Nichols, & Powell, 2004; Kingma, 2008; Woodbridge & Bland, 2010).

With the advent of the economic crisis in 2008 this situation has changed. Established patterns of flows are no longer the same in number or direction. As economies tightened and governments curtailed public spending, recruitment from overseas has declined and in some cases reversed. Iceland, which up until August of 2008 was in the market to recruit nurses, suddenly within twelve weeks, found they had to lay-off staff (International Centre for Human Resources in Nursing, 2010). Countries, who traditionally were mass exporters of nurses, found there were few jurisdictions looking to recruit their newly qualified nurses. As a result enormous numbers of newly qualified nurses flooded the local health systems. These systems were unable to absorb them and accordingly unemployment has increased (ICN, 2011). Naturally, these newly qualified individuals eager to commence their careers have started to look to

other parts of the world for work. As a result regulators have been faced with having to review applicants for recognition of qualifications of nurses qualified in jurisdictions where they had very little prior information. Benton and Morrison (2009a, 2009b) identified that in some cases the regulatory authority of the recipient jurisdiction did not even know the identity or structure of the regulatory body from which the nurse was applying – part of government, an autonomous body or part of the professional associations responsibilities. Casey (2008), acknowledging that regulators are having to relate to an increasingly global environment, asserted that, in addition to communication with local registrants and country-based stakeholders, there is a demonstrable need to reach out to regulatory structures in other jurisdictions. Benton (2011), in his analysis of emerging regulatory trends, noted that these changes meant that regulators who previously solely focused on how things were done in their own jurisdiction now need to have a better understanding of the source legislation pertinent to the applicants who are applying for entry onto their register.

Casey (2008) contends that by reaching out to other regulatory bodies a shared understanding can be developed. However Norman (2002) and Benton (2011) caution that there is a need to be aware of and to respect the fact that the manner by which a particular regulatory issue may be addressed can differ from one jurisdiction to the next. Cutcliffe, Bajkay, Forster, Small, and Travale (2011) took a different position and postulated that if regulators are to perform their duties effectively in an era when we have an increasingly mobile nursing workforce then there is a need or, at least, a desire for greater consistency in regulation across provinces, states, territories and countries.

Lack of consistency and clarity has been identified by a number of researchers as being problematic (Benton & Morrison, 2009b; Pew Health Professions Commission, 1995a). These variations can – according to the same authors – not only place patients at risk but also introduce delays in processing applications for assessment and recognition of credentials. The International Council of Nurses, seeking to address this issue, developed a rudimentary lexicon of terms where definitions were stated, and when differences exist in usage across jurisdictions these were highlighted (ICN, 2005). ICN (2005) contend that not only does this help bring clarity of terms but also can facilitate dialogue between jurisdictions thereby helping to identify potential risk as well as streamline administrative processes. However, up until this point no empirical work on this topic has been published, although Russell (2012) clearly asserts that for legislation to be useful the terms and phrases used must be clear and unambiguous. Accordingly, this study addresses a major gap in the understanding of the comparability of nursing regulation.

## Aim

The aim of this paper is to systematically examine a cross-section of nursing legislation to ascertain the degree of consistency both relating to the numbers of terms and process specified, as well as their definitional structure.

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