

June 23, 1983

This is in reply to your letter of May 6, 1983, in which you request an opinion as to the application of the minimum wage and overtime pay exemption contained in section 13(a)(1) of the Fair Labor Standards Act (FLSA) to Licensed Practical Nurses (LPN) employed as charge nurses.

You state that you are concerned with the exempt status of LPNs employed in a nursing home as charge nurses with full responsibility for the supervision of two employees in a separate and distinct part of the establishment. You say we are to assume that the employees in question spend 30 percent of their time in duties identical to those performed by registered nurses (RNs) in the same position. It is your opinion that the position of a charge nurse, whether filled by a LPN or a RN, is an exempt position since the employee spends a majority of his or her time performing exempt functions requiring the use of discretion.

Although your letter does not contain sufficient detail for us to make a definite determination concerning the application of section 13(a)(1) of the FLSA to the employees you have in mind, the following should be of assistance to you. Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Regulations, Part 541, a copy of which is enclosed. An employee, such as a charge nurse or supervising nurse, may qualify for exemption if all the pertinent tests relating to duties, responsibilities, and salary, as discussed in the appropriate section of the regulations, are met. Generally, such an employee may qualify for exemption as a bona fide executive employee as discussed in section 541.1 of the regulations, or as a bona fide professional employee if all the requirements of section 541.3 of the regulations are met.

One test for exemption as a bona fide professional employee requires that the employee's primary duty consist of the performance of work requiring knowledge of advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental or physical processes. See section 541.3(a)(1) of the regulations. The fact that some of the duties performed by the LPNs are the same as those performed by the RNs in the same job does not negate the requirement that the professional training be acquired by a prolonged course of specialized intellectual instruction and study. Of course, the typical symbol of this professional training and the best prima facie evidence of its possession is the appropriate academic degree. Although RNs have traditionally been found to meet this requirement, LPNs, generally do not.

Whether or not the employees you have in mind would qualify for exemption as bona fide executive employees would depend, in part, on whether the employee has management as his or her primary duty, as required by section 541.1(a) of the

regulations. From the information provided, it appears that the primary duty of these employees is nursing rather than management.

Where an employee does not qualify for exemption under section 13(a)(1) of the FLSA, either as a bona fide executive or professional employee, or a combination thereof, he or she must be paid in accordance with the minimum wage and overtime pay provisions of the FLSA. If you have any further questions on this matter please do not hesitate to let us know.

Sincerely,

William M. Otter

Administrator

Enclosure