

The Validity of Public Response to the Proposed Nursing Act in the Republic of Korea

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ABSTRACT

How can we protect the rights and interests of nurses? This question led the National Assembly of the Republic of Korea to propose the Nursing Act that has been praised and condemned. The bill has honorable goals: to promote the rights and interests of nurses. Opponents view the act as "a law only for nurses," criticizing the potential for the act to benefit nurses only at the expense of other healthcare professionals. This paper reviews the provisions of the Nursing Act and analyzes the arguments used by both sides in the legal context of the Constitution and the Medical Service Act. This result reveals that the pro-Nursing Act constituency leverages more valid pieces of evidence than the opposition.

Introduction

The Nursing Act has been hotly debated since its initial proposal in 2015. Many interest groups—motivated by individual rights and personal interests—argue for and against the law using what appear to be rational reasons. This paper delves into the validity of these arguments in a legal context.

Extensive research has been conducted on the need for the Nursing Act. In 2015, Dr. Kim Jong-Ho argued for the necessity of this new law, basing his premise on the limitations of the existing Medical Service Act. In June 2023, Lee Man-woo's "Direction of Development of Discussion on the Enactment of Nursing Act" highlighted the shortcomings of the proposed Nursing Act and suggested possible alternatives. This latter work specifically examines the legal validity of the opinions for and against the proposed Nursing Act.

To evaluate both the proponent and opponent arguments of the Nursing Act, a variety of data from different sources were collected and analyzed and the results are summarized in this review paper. Opinions arose from each bloc as expressed in South Korean media, news, and promotional videos of international groups are collected to be analyzed as the main argument of each bloc. These data and the version of the Nursing Act passed in the plenary session are analyzed with respect to the Constitution and the Medical Service Act of South Korea.

Several versions of the Nursing Act have been proposed by members of the National Assembly of the Republic of Korea (hereafter referred to as the National Assembly). On April 27th, 2023, the alternative version by Wi Seonggon and 169 supporters was passed at the Plenary Session [15]. The medical and political fields were divided into the opposing group — the Korea Medical Association (KMA), the Korean Licensed Practical Nurses Association (KLPNA), and the People Power Party (PPP) — and the supporting group — the Korea Nurses Association (KNA) and the Democratic Party of Korea (DPK) [10]. On May 30th, 2023, President Yoon vetoed the act, citing five reasons:

1. the nursing bill will negatively affect people's health by hindering trust and cooperation among professional medical personnel;
2. a concern that the rights of the people will be restricted if nursing is separated from medical care;
3. the need to design advanced care systems in the age of aging carefully;
4. the proposed Nursing Act is a law that discriminates against certain occupations; and
5. the greater the social conflict, the more prudent legislation must be [16].

Table 1. Issues in the Nursing Act

Statute	Content
Article 1 (General Rule)	The purpose of this Act is to contribute to the improvement of the quality of medical care and patient safety by prescribing necessary matters concerning nursing so that all citizens can receive high-quality nursing benefits in medical institutions and local communities .
Article 5 (Practical Nurse Personnel Qualification)	A person who intends to become a practical nurse shall be recognized by the Minister of Health and Welfare after completing the curriculum prescribed by the Ordinance of the Ministry of Health and Welfare and passing the national examination for practical nurses under Article 7. A person who graduated from a nursing department of a specialized high school under the Elementary and Secondary Education Act (including those scheduled to graduate within six months of taking the national exam for practical nurses). A high school graduate (including a person scheduled to graduate within six months from the date of taking the national examination for nursing assistants) under Article 2 of the Elementary and Secondary Education Act or a person deemed to have the same level of education.
Article 10 (Duty of Nurse)	Nursing for observation, data collection, nursing judgment, and medical care. Medical assistance under the guidance of doctors, dentists, and oriental doctors. Planning and carrying out activities for education, counseling, and health promotion for nursing needs, and other health activities prescribed by Presidential orders . Guidance on an assistant nurse's conducting related from clauses 1 to 3.

Source: The National Assembly

Analysis of the Opinions

Opinions: Anti-Nursing Act

KMA's opposition to the Nursing Act is explained in two words: "local communities" [6]. The KMA argues that these two words, contained in Article I of the Nursing Act, can be interpreted as allowing nurses to open medical institutions without doctors. Article 33 of the Medical Service Act explicitly forbids the establishment of medical institutions by anyone besides a doctor, dentist, oriental doctor, or midwife [13]. However, the KMA remains concerned that ratifying the Nursing Act could lead to an amendment of the Medical Service Act so that nurses could open medical institutions without doctors in the future. The argument of the KMA is valid since the majority party of the National Assembly is the DPK, which supports the KNA. As President Yoon states, the reason for the veto of the advanced care systems for the aging society must be carefully established. Since nurses mainly focus on nursing tasks, they do not have the special medical knowledge of physicians. This is a valid concern should the Nursing Act become law.

Article 10 of the Nursing Act prescribed the responsibilities of nurses. Several medical workers, including medical and radiological technologists, raised the issue that nurses' duties can be extended to perform duties of other medical occupations beyond the duties described in nurse licensing. The Nursing Act did not expressly prescribe the clear duties of nurses. In particular, the phrase, "other health activities prescribed by Presidential orders," can be

improperly used to guarantee the duties of other healthcare professionals. The President of the Korea of Association Emergency Medical Technician (KAEMT), Kang Yongsu, argued that there could be an ‘emergency medical nurse,’ who can violate the duties of Emergency Medical Technicians in the future by promulgating an enforcement ordinance or enacting Presidential orders [8].

The Nursing Act is also faulted for violating the constitutional freedom of occupation in the Constitution’s own Article 15 [2]. The KLPNA argues that Article 10 of the Nursing Act violates Article 15 of the Constitution by setting an upper educational limit —high school graduate— for practical nurses. In other words, the Nursing Act prohibits graduates of higher education institutions —such as colleges and universities— from being practical nurses [7]. The KLPNA also mentions Article 31 of the Constitution, which asserts that everyone is equal to an education based on his or her ability [3]; however, the opponents argue that the Nursing Act prohibits practical nurses from seeking higher education. This provides a sound constitutional argument for opposing the Nursing Act.

Opinions: Pro-Nursing Act

The KNA argues that stories about nurses establishing medical institutions without doctors are merely fake news [6]. The current Nursing Act prohibits nurses from both conducting medical activities and opening medical institutions, limiting their duties to “medical assistance under the guidance of doctors, dentists, and oriental doctors.” As the president of KNA said, arguments are “imagination” and “doubt,” merely concerns about a hypothetical situation that has not been ratified by law yet (This argument is proposed before the act is ratified and then vetoed) [6].

Figure 1 shows the legislative process of the National Assembly. Even if the nurses force the National Assembly to amend the Medical Service Act and other laws to allow them to establish medical institutions, it will take a long time to pass all of the individual legislative steps to ratify and respond to the political offensive of other parties. Therefore, it is possible to conclude that the concerns expressed by KMA are unfounded.

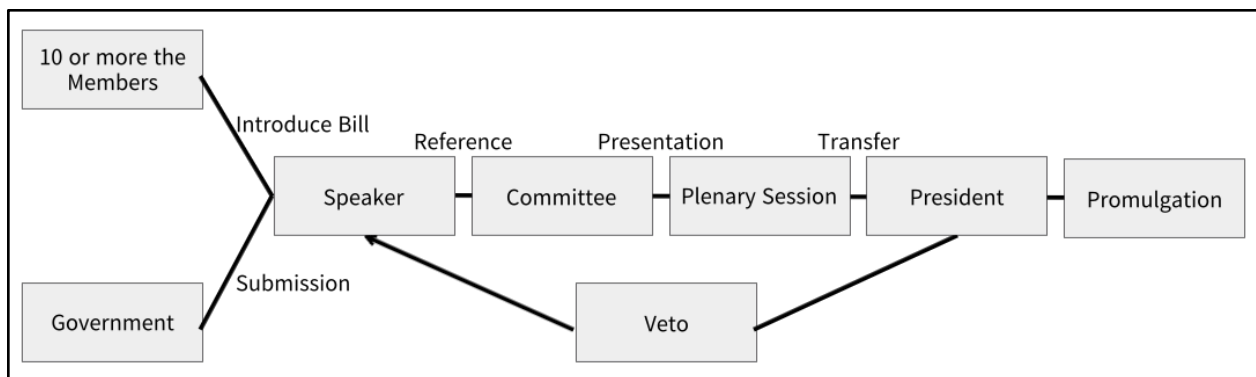


Figure 1. The Legislative Process of the National Assembly. The figure shows the total of six main steps (in order of Introduce Bill/Submission, Speaker, Committee, Plenary Session, President, and Promulgation) and one additional step (Veto).

The KNA argues that the Nursing Act, which follows the Medical Service Act in some parts, restricts nurses’ duties to those within the scope of their license. In actuality, the KNA claims that many nurses get illegally coerced into performing medical activities outside those licensed by individuals in higher positions. Figure 2 shows the illegal activities reported to the Illegal Medical Report Center since President Yoon’s veto. As of July 17th, 2023, a total of 25,046 reports had been received. The most reported types of illegal medical activities were checkups (36.23%) [9], which are usually duties of medical technologists and doctors [1]. Since there are no legal and institutional positions for Physician Assistants (PA) in South Korea, some nurses are selected by the director of a hospital or doctor to function as PAs. With no legal protection, PA nurses are expected to perform medical activities that fall outside their

training and licensed expertise. This leaves them feeling anxious and confused about their identities and role in the healthcare system [17]. Therefore, the Nursing Act, especially Chapter 5: *Improvement of Rights and Treatment of Nurses et cetera*, is expected to be a valid law protecting nurses' rights and interests by ensuring improvement and that they cannot be coerced to perform the duties of other healthcare professionals.

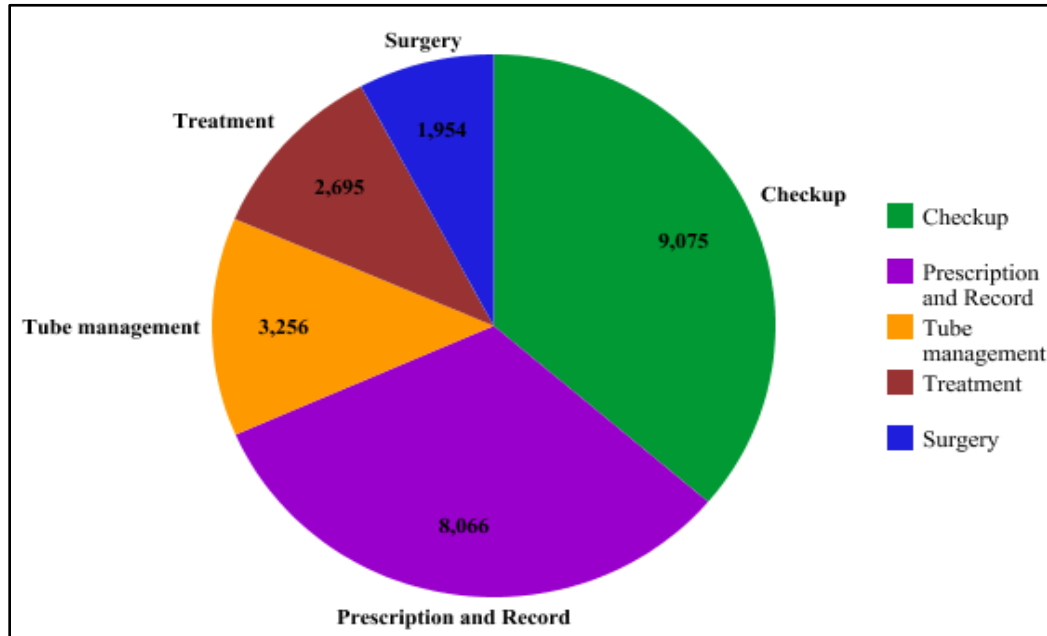


Figure 2. Numbers of Reported Illegal Medical Activities. The data is originally from the Korea Nurse Association. The figure, created by the author, reveals that the most common illegal medical activity forced by superiors is Checkup, with 9,075 reports, followed by Prescription and Record (8,066), Tube management (3,256), Treatment (2,695), and Surgery (1,954).

KNA also challenges the critics of practical nurse qualifications, arguing that Article 5 of the Nursing Act is the same as Article 80 of the Medical Service Act. In fact, several phrases related to the qualification of practical nurses in the Medical Service Act are identical to those in the Nursing Act [14]. For example, the upper educational limit for practical nurses already existed in the Medical Service Act. Also, the Constitutional Court of the Republic of Korea (hereafter the Constitutional Court) ruled that Article 80 of the Medical Service Act—banning graduates of junior colleges from taking a National Practical Nursing Examination—is not unconstitutional [5]. It is judged that the validity of the KNA's argument has been verified through the legal judgment of the Constitutional Court.

Analysis and Final Evaluation of Opinions of Two Blocs

The first question is whether the opinions of the two blocs about the meaning of the phrase "local communities" are valid. The opinion of the opposition bloc presupposes a time when the Medical Service Act has been revised. One of the arguments of the anti-Nursing Act is that the DPK, the main opposition party that has 169 out of a total of 300 seats, can revise the Medical Service Act to allow nurses to open medical institutions alone [11]; however, this argument is easily overturned due to the lack of de facto possibility.

In order to prove it, the political possibility should be examined. South Korea is scheduled to elect the 22nd National Assembly through a general election in April 2024 [12]. As shown in Figure 3, the DPK's approval rating was 30% as of the third week of July 2023. Even if it includes the pan-progressive parties, such as Justice Party, this

percentage will not exceed 50%. This evidence suggests that the Democratic Party of Korea will not win the PPP by a wide margin in the next congressional election. Even if pan-progress wins more than 150 seats in the next general election, the possibility of a revision of the Medical Service Act is low; South Korea's lengthy legislative process and the activities of opposition parties can block its amendment. In addition, the president can still veto the revised Medical Service Act, as President Yoon did, further lowering the likelihood that the act law will be amended. As the pros argue, the "local communities" of the Nursing Act is code for nurses working in various communities, and there remain legal obstacles for nurses to establish medical treatment facilities without doctor sponsorship. Therefore, the arguments of the opposition bloc that take issue with the "local communities" are considered less valid than those in favor.

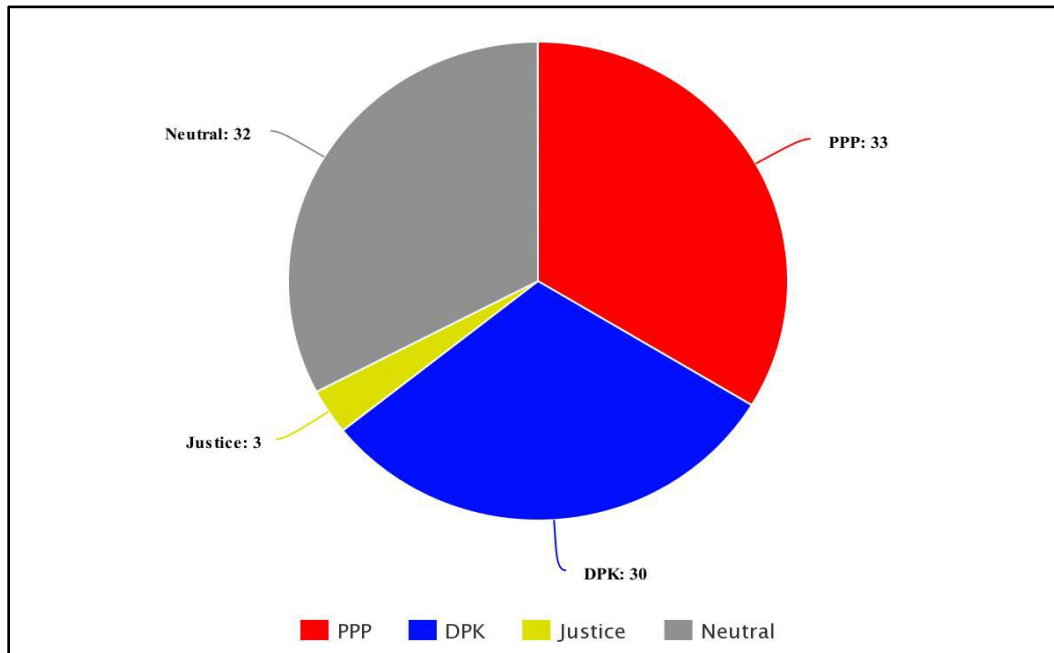


Figure 3. The Approval Rates of Each Party in the Third Week of July 2023. The data is originally from the Gallup Korea. The figure shows the approval rate of the three main parliamentary parties in the third week of July. The unit is a percentage (%).

Given that there is a provision that the Nursing Act determines other tasks through the Presidential Orders, it is valid to argue that nurses can violate duties of other medical positions through the Presidential Order if a pro-nurse president is elected. However, the leading cause of nurses' current infringement on the work of other occupations is pressure from their superiors or hospitals. In other words, nurses do not arbitrarily choose to infringe on the work of other occupations but are induced to by the pressure of their senior leadership. In addition, Article 24 of the Nursing Act states that it is a human rights violation if nurses suffer mental and physical damage when required to perform duties beyond those they are licensed to perform [15]. Through this, the Nursing Act proves that nurses can refuse to do anything other than normatively set tasks based on the scope of the nurse's license. Therefore, it can be judged that the opinion of the pros is more convincing in that the Nursing Act blocks the concerns of the opposition bloc in advance.

Since the current Medical Service Act introduces an upper limit on the educational background of practical nurses, the logic that the Nursing Act is also acceptable is valid until such time as the Medical Service Act is overturned or amended. The question remains: Is this basis for the opposition's argument valid? Figure 4 shows the educational institutions of students who passed the Practical Nurse Exam from 2020 to 2023. Of the total 122,513 students, 61.0%

were in high schools, 38.4% were in ‘undergraduate and graduate colleges,’ 0.1% were in ‘junior colleges,’ and 0.4% were in ‘others.’ What is important here is that there are successful candidates from universities, graduate schools, and junior colleges. Most of them completed their education at the practical nurse academy and qualified and took the test. In other words, it is difficult to accept the claim that the Nursing Act or the Medical Service Act sets the upper limit on academic background because they are given the right to take the test when completing education at the practical nurse academy. Article 37 (2) of the Constitution prescribes that the government can restrict all rights of the people by law, if necessary for public welfare [4]. In other words, the Nursing Act or the Medical Service Act should set the *minimum* requirements for qualification for the Practical Nurse Exam, and they have never excessively restricted academic background. Therefore, it is difficult to accept the claim that the Nursing Act discriminates against practical nurses.

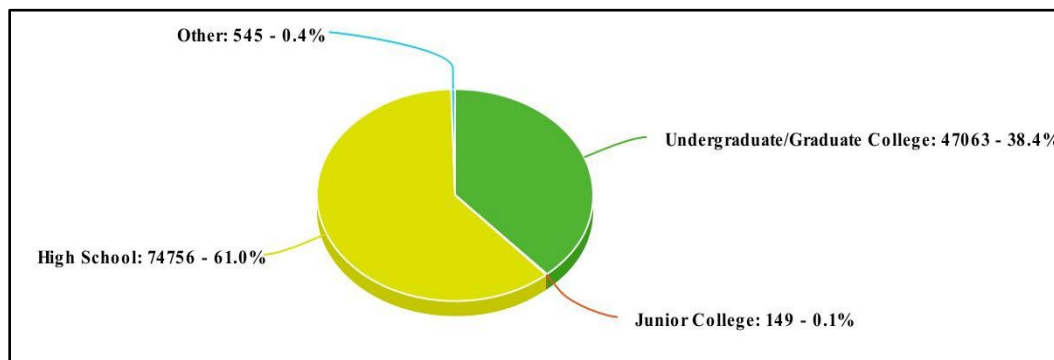


Figure 4. 2020-2023 Graduation School for Those Who Passed the Practical Nurse Qualification Exam. The data is originally from the South Korea Government issued data website, Public Data Portal. As seen in the figure, 38.5% of the total successful candidates have a final academic degree in College, both Undergraduate/Graduate College and Junior College.

Conclusion

By organizing the main issues within the Nursing Act and evaluating opinions of the anti- and pro-Nursing Act bloc, this paper summarizes and explains the origins of those opinions and highlights the validity of each bloc’s arguments. This paper evaluates each opinion from legal, political, and practical perspectives. This led the author to the conclusion that pro-Nursing Act arguments are more valid than those of the Anti-Nursing bloc. On a practical level, the opposing side’s “local communities” argument was found to be highly unlikely. In addition, in the controversy related to the duties of nurses, the need for the Nursing Act is highlighted since the Nursing Act creates a legal mechanism to prevent nurses from infringing on other occupational duties. In particular, the fact that senior leadership has forced nurses to perform other duties plays a major role, further highlighting the importance of the Nursing Act. Finally, claims that the nursing law promotes discrimination and violates the Constitution are dismissed based on the educational background of current practical nurses. The author hopes that legislative discussions and procedures on the Nursing Act will be implemented again as soon as possible since it aims to promote the rights and interests of nurses.

Limitations

This paper needs to reflect the position of each camp more accurately because data were collected from media articles. In particular, the articles are written based on each camp’s position statements, and these statements may not fully reflect the diversity of opinions. Since the author lives in the United States, the author could not retain the diverse and

in-depth content of claims and opinions because interviews with various characters were not held due to physical restrictions. In addition, since this paper analyzes the position of each camp, it is difficult to objectively evaluate the Nurse Act because it does not compare it with the Nursing Acts of other countries. The limitations of this paper can be solved by obtaining more in-depth information through direct interviews with each camp or by conducting future research in a direction in which nursing methods can be objectively evaluated.

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