

**STATE OF WISCONSIN  
BOARD OF NURSING**

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<b>IN THE MATTER OF RULEMAKING</b>	<b>:</b>	
<b>PROCEEDINGS BEFORE THE</b>	<b>:</b>	<b>REPORT TO THE LEGISLATURE</b>
<b>BOARD OF NURSING</b>	<b>:</b>	<b>CR 24 - 031</b>
	<b>:</b>	
	<b>:</b>	

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**I. THE PROPOSED RULE:**

The proposed rule, including the analysis and text, is attached.

**II. REFERENCE TO APPLICABLE FORMS: N/A**

**III. FISCAL ESTIMATE AND EIA:**

The Fiscal Estimate and EIA is attached.

**IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:**

Section N 6 contains the standards of practice for registered nurses and licensed practical nurses, which includes delegated acts. The Board of Nursing has reviewed and updated ch. N 6 with the following changes:

- Extension of the definition of “delegated acts”.
- More general definition of “provider” to broaden the range of professionals who are authorized to delegate acts.
- Addition of a definition of “unlicensed assistive personnel (UAP)”.
- Inclusion of UAPs as staff who could be performing interventions under the directing or supervision of registered nurses.
- Replacement of the term “assignments” to “delegated acts” under standards of practice for licensed practical nurses.

**V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:**

The Board of Nursing held a public hearing on May 9, 2024. The following people either testified at the hearing, or submitted written comments:

- Hannah Rowe, RN, Waupaca School District.

- Kimberly Hess, RN, Parkway – Glen Hills School District and Maple Dale – Indian Hill School District.
- Bonnie Baranczyk, RN, Green Bay Area Public School District.
- Tiffany Jothan, RN, Westby School District.
- Suzanne Brinkman, RN, Boscobel School District and Wisconsin Association of School Nurses (WASN) District 3 Director.
- Jayne Lindsey, RN, Mineral Point Unified School District.
- Melissa Guay, RN, Marinette School District.
- Jennifer Hinz, RN, Manitowoc Public School District.
- Jaime Rietveld, RN, Clintonville School District.
- Jamie Trzebiatowski, RN, Waupaca School District and Wisconsin Association of School Nurses President.
- Michelle Neumann, RN, West De Pere School District.
- Amanda Dehli, RN, St Francis School District.
- Laurie Walker, RN, Lancaster Community Schools.
- Dr. Kerri Kliminski, RN, Dean of Madison College School of Nursing.
- Louise Wilson, RN, School Nursing and Health Services Consultant.
- Gina Dennik-Champio on behalf of the Wisconsin Nurses Association (WNA).
- R.J. Pirlot on behalf of the Wisconsin Academy of Physician Assistants (WAPA).
- Kristen Kelm, Public Health Nurse.
- Janet Kazmierczak, Public Health Nurse and past School Nurse.
- Ann Zenk, Wisconsin Hospital Association.
- Laura Hieb, Emplify-Bellin Health.
- Shonda Helgeson, Western Wisconsin Health.
- Rudy Jackson, UW Health.

The Board of Nursing summarizes the comments received either by testimony or by written submission as follows:

- Multiple school nurses expressed their concern about the broader definition of “provider” and suggested keeping the list as is but adding physician assistants to the list.
- WNA expressed support for the modifications the rule project proposes except for the definition of “provider” and suggested to keep the list as is but include physician assistants.
- WAPA commented in support of the new definition of “provider”, however, after hearing the multiple concerns from school nurses during the public hearing, they amended their comment to support any changes the board may consider as long as it clarifies the role physician assistants have in delegating acts to nurses.
- Ms. Kelm and Ms. Kazmierczak suggested revising the definition of “patient” to be more inclusive for public health nursing. Ms. Kelm suggested adjusting the N 6 definition of “patient” to be more like Minnesota’s definition, which better reflects public health nursing work.

- Dr. Kliminski commented on the concern that the age requirement for UAPs could create unintended consequences for some CNAs who are younger than 18 years old.
- Ms. Zenk, Ms. Hieb, Ms. Helgeson, and Mr. Jackson presented their arguments against adding an age requirement to the definition of UAPs, though they supported the creation of the definition.

The Board of Nursing explains its discussion about its rule-making proposal prompted by public comments as follows:

- N 6.02 (10m) was amended to read: “‘provider’ means a physician, podiatrist, dentist, optometrist, advanced practice nurse prescriber, pharmacist, physician assistant, or any licensed professional who is legally authorized to delegate acts within the scope of their practice.”
- The board considered modifying the definition of “patient” to be more like the Minnesota definition. However, upon further consideration, the board does not consider it necessary to modify it at this time because of concerns of unintended consequences for other nurses that are not working as public health nurses.
- The definition of UAP created under N 6.02 (13) is modified to read: “‘Unlicensed Assistive Personnel (UAP)’ means any person who is not licensed under ch. 441, Stats. to whom nursing acts may be delegated and has received the appropriate education and documented training required to perform the delegated acts. An UAP must be at least 18 years old if the delegated act involves medication administration.”

## **VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:**

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

## **VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:**

This rule does not have an effect on small business.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date 02/26/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) N 6	
4. Subject Delegated Acts	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected s.20.165(1)(g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input checked="" type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input checked="" type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule Section N 6 contains the standards of practice for registered nurses and licensed practical nurses, which includes delegated acts. The Board of Nursing has reviewed and updated ch. N 6 with the following changes: <ul style="list-style-type: none"><li>• Extension of the definition of “delegated acts”.</li><li>• More general definition of “provider” to broaden the range of professionals who are authorized to delegate acts.</li><li>• Addition of a definition of “unlicensed assistive personnel (UAP)”.</li><li>• Inclusion of UAPs as staff who could be performing interventions under the directing or supervision of registered nurses.</li><li>• <u>Replacement of the term “assignments” to “delegated acts” under standards of practice for licensed practical nurses..</u></li></ul>	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local governmental units, and individuals.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) DSPS estimates a total of \$4,250 in one-time costs for implementing the provisions of this rule. The estimated one-time costs include \$3,400 for the equivalent of a 0.1 limited term employee and associated overhead for activities including rulemaking, website, form, and reference document modifications. An additional \$850 is for 10 hours of credentialing system update work. The one-time costs cannot be absorbed in the currently appropriated agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule	

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The benefit of implementing this rule is that nurses will have more clarity about the delegation of nursing acts or activities to unlicensed assistive personnel.

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16. Long Range Implications of Implementing the Rule

The long range implications of implementing this rule are improved practice standards for nurses in Wisconsin and better overall patient care.

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17. Compare With Approaches Being Used by Federal Government

None.

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18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

The Illinois Nurse Practice Act in their Compiled Statutes do not mention a definition of “delegated act”, “delegation”, or “unlicensed assistive personnel”. However, a definition of “delegation” can be found in the Illinois Administrative Code Section 1300.20, and it states that “‘delegation’ means transferring to a specific individual the authority to perform a specific nursing intervention, in a specific situation”. The section indicates that a registered nurse can delegate medication administration to other licensed nurses or to unlicensed personnel in community-based or in-home care settings as long as certain parameters established in the section have been met. The section also specifies the actions that are prohibited to delegate, such as delegating medication administration to unlicensed personnel in any institutional or long-term facility.

Iowa:

Neither Iowa’s Statutes nor Administrative Code contain a definition of “delegated acts” or “delegation”. The Administrative Code contains a definition of “unlicensed assistive personnel” as “an individual who is trained to function in an assistive role to the registered nurse and licensed practical nurse in the provision of nursing care activities as delegated by the registered nurse or licensed practical nurse” [655 IAC 6.1(152)].

Iowa’s Administrative Code specifies the parameters that a registered nurse must comply with when delegating tasks to another registered nurse or licensed practical nurse. The Code also specifies that a registered nurse can delegate tasks to unlicensed assistive personnel (UAP) under certain circumstances, which include ensuring that the UAP has appropriate education and training and has demonstrated competency to perform the delegated tasks, that the task does not exceed the UAP scope of employment and that the tasks pose minimal risk to the patient [655 IAC 6.2(7)].

Michigan:

Michigan does not have a specific Nurse Practice Act in its Statutes. Instead, Michigan has an act that regulates the practice of nursing along with other health professions, which is part of the Michigan Public Health Code contained within the Statutes. In this act, there is a definition of “delegation” as “authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions that fall within the scope of practice of the delegator and that are not within the scope of practice of the delegatee and that, in the absence of the authorization, would constitute illegal practice of a licensed profession” [333 MCL Section 16104]

Delegation parameters are detailed in the Michigan’s Administrative Code and state that a registered nurse may delegate tasks only within the registered nurse’s scope of practice and that the registered nurse holds ultimate responsibility for the delegated acts performed by the delegatee within the scope of the delegation. It also states that the registered nurse has to determine the qualifications, knowledge, and skills of the delegatee before the delegation, and that the registered nurse is responsible for supervising and evaluating the performance of the delegatee. [MI Admin. Code R 338.10104]

Minnesota:

The Minnesota Statutes contains the Nurse Practice Act that provides a definition of “delegation” as a “transfer of authority to another nurse or competent, unlicensed assistive person to perform a specific nursing task or activity in a specific situation” [MN Stats. 148.171 Subd. 7a.] and also provides a definition of “unlicensed assistive personnel” as “any unlicensed person to whom nursing tasks or activities may be delegated or assigned, as approved by the board”

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**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

[MN Stats. 148.171 Subd. 24.] The Nurse Practice Act in Minnesota does not mention parameters for delegation outside of the basic practice standards of professional nurses, though the Statutes mention that “delegating or accepting delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care” is considered unprofessional conduct. [MN Stats. 148.261 (8)]

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19. Contact Name

Sofia Anderson, Administrative Rules Coordinator

20. Contact Phone Number

608-261-4463

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This document can be made available in alternate formats to individuals with disabilities upon request.

**ADMINISTRATIVE RULES**  
**Fiscal Estimate & Economic Impact Analysis**

**ATTACHMENT A**

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
  - Less Stringent Schedules or Deadlines for Compliance or Reporting
  - Consolidation or Simplification of Reporting Requirements
  - Establishment of performance standards in lieu of Design or Operational Standards
  - Exemption of Small Businesses from some or all requirements
  - Other, describe:
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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

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5. Describe the Rule's Enforcement Provisions

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes    No
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STATE OF WISCONSIN  
BOARD OF NURSING

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : BOARD OF NURSING  
BOARD OF NURSING : ADOPTING RULES  
: (CLEARINGHOUSE RULE 24-031)

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PROPOSED ORDER

An order of the Board of Nursing to **repeal** N 6.02 (10m) (Note); to **amend** N 6.02 (5), (10m), 6.03 (1) (c), (2) (d), 6.04 (1) (a), (e), (2) (b); to **create** N 6.02 (13); and to **repeal and recreate** N 6.02 (10m), relating to delegated acts.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Subchapter I of ch. 441, Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) (a), and 441.01 (3), Stats.

**Explanation of agency authority:**

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 227.11 (2) (a), Stats., “[e]ach agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the agency considers it necessary to effectuate the purpose of the statute...”

Section 441.01 (3), Stats., provides “[t]he board may (...) establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227.”

**Related statute or rule:**

Subchapter I of ch. 441, Stats.

**Plain language analysis:**

Section N 6 contains the standards of practice for registered nurses and licensed practical nurses, which includes delegated acts. The Board of Nursing has reviewed and updated ch. N 6 with the following changes:

- Extension of the definition of “delegated acts”.



- More general definition of “provider” to broaden the range of professionals who are authorized to delegate acts.
- Addition of a definition of “unlicensed assistive personnel (UAP)”.
- Inclusion of UAPs as staff who could be performing interventions under the directing or supervision of registered nurses.
- Replacement of the term “assignments” to “delegated acts” under standards of practice for licensed practical nurses.

**Summary of, and comparison with, existing or proposed federal regulation:**

None.

**Comparison with rules in adjacent states:**

**Illinois:**

The Illinois Nurse Practice Act in their Compiled Statutes do not mention a definition of “delegated act”, “delegation”, or “unlicensed assistive personnel”. However, a definition of “delegation” can be found in the Illinois Administrative Code Section 1300.20, and it states that “‘delegation’ means transferring to a specific individual the authority to perform a specific nursing intervention, in a specific situation”. The section indicates that a registered nurse can delegate medication administration to other licensed nurses or to unlicensed personnel in community-based or in-home care settings as long as certain parameters established in the section have been met. The section also specifies the actions that are prohibited to delegate, such as delegating medication administration to unlicensed personnel in any institutional or long-term facility.

**Iowa:**

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**Michigan:**

Michigan does not have a specific Nurse Practice Act in its Statutes. Instead, Michigan has an act that regulates the practice of nursing along with other health professions, which is part of the Michigan Public Health Code contained within the Statutes. In this act, there is a definition of “delegation” as “authorization granted by a licensee to a licensed or unlicensed individual to perform selected acts, tasks, or functions that fall within the scope

of practice of the delegator and that are not within the scope of practice of the delegatee and that, in the absence of the authorization, would constitute illegal practice of a licensed profession” [333 MCL Section 16104]

Delegation parameters are detailed in the Michigan’s Administrative Code and state that a registered nurse may delegate tasks only within the registered nurse’s scope of practice and that the registered nurse holds ultimate responsibility for the delegated acts performed by the delegatee within the scope of the delegation. It also states that the registered nurse has to determine the qualifications, knowledge, and skills of the delegatee before the delegation, and that the registered nurse is responsible for supervising and evaluating the performance of the delegatee. [MI Admin. Code R 338.10104]

**Minnesota:**

The Minnesota Statutes contains the Nurse Practice Act that provides a definition of “delegation” as a “transfer of authority to another nurse or competent, unlicensed assistive person to perform a specific nursing task or activity in a specific situation” [MN Stats. 148.171 Subd. 7a.] and also provides a definition of “unlicensed assistive personnel” as “any unlicensed person to whom nursing tasks or activities may be delegated or assigned, as approved by the board.” [MN Stats. 148.171 Subd. 24.] The Nurse Practice Act in Minnesota does not mention parameters for delegation outside of the basic practice standards of professional nurses, though the Statutes mention that “delegating or accepting delegation of a nursing function or a prescribed health care function when the delegation or acceptance could reasonably be expected to result in unsafe or ineffective patient care” is considered unprofessional conduct. [MN Stats. 148.261 (8)]

**Summary of factual data and analytical methodologies:**

The proposed rules were developed by reviewing the provisions of chapter N 6 and nursing practice standards from the adjacent states (Illinois, Iowa, Michigan, and Minnesota). The Board provided input and feedback to determine any changes or updates needed in addition to reviewing comments from subject matter experts from the Department of Health Services, Department of Public Instruction, and Wisconsin Nurses Association.

**Fiscal estimate and economic impact analysis:**

The fiscal estimate and economic impact analysis are attached.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The proposed rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local governmental units, and individuals. No comments were received.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at [Jennifer.Garrett@wisconsin.gov](mailto:Jennifer.Garrett@wisconsin.gov), or by calling (608) 266-2112.

**Agency contact person:**

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at [DSPSAdminRules@wisconsin.gov](mailto:DSPSAdminRules@wisconsin.gov).

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TEXT OF RULE

SECTION 1. N 6.02 (5) is amended to read:

**(5)** “Delegated act” means acts delegated to a registered nurse or licensed practical nurse or acts delegated by a registered nurse.

SECTION 2. N 6.02 (10m) is amended to read:

**(10m)** “Provider” means a physician, podiatrist, dentist, optometrist ~~or~~, advanced practice nurse ~~provider~~ prescriber, pharmacist, physician assistant, or any licensed professional who is legally authorized to delegate acts within the scope of their practice.

SECTION 3. N 6.02 (10m) (Note) is repealed.

SECTION 4. N 6.02 (13) is created to read:

**(13)** “Unlicensed Assistive Personnel (UAP)” means any person who is not licensed under ch. 441, Stats. to whom nursing acts may be delegated and has received the appropriate education and documented training required to perform the delegated acts. An UAP must be at least 18 years old if the delegated act involves medication administration.

SECTION 5. N 6.03 (1) (c) is amended to read:

**(c)** *Intervention.* Intervention is the nursing action to implement the plan of care by directly administering care or by directing and supervising nursing acts delegated to ~~L.P.N.'s~~ L.P.N.s or less skilled assistants UAPs.

SECTION 6. N 6.03 (2) (d) is amended to read:

**(d)** Perform delegated acts under the general supervision or direction of the provider who delegated the act.

SECTION 7. N 6.04 (1) (a) is amended to read:

**(a)** Accept only patient care ~~assignments~~ delegated acts which the L.P.N. is competent to perform.

SECTION 8. N 6.04 (1) (e) 3. is amended to read:

**3.** Reinforce the teaching provided by an R.N. or other provider and provide basic health care instruction.

SECTION 9. N 6.04 (2) (b) is amended to read:

**(b)** Perform delegated acts beyond basic nursing care under the direct supervision of an R.N. or provider. An L.P.N. shall, upon request of the board, provide documentation of his or her nursing education, training or experience which prepares the L.P.N. to competently perform these ~~assignments~~ delegated acts.

SECTION 10. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

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(END OF TEXT OF RULE)

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This Proposed Order of the Board of Nursing is approved for submission to the Governor and Legislature.

Dated 8/19/2024

Agency   
Chairperson  
Board of Nursing