WEST VIRGINIA CODE CHAPTER 30 ARTICLE 25

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§30-25-1. Unlawful acts.

(a) It is unlawful for any person to practice or offer to practice nursing home administration in this state without a license or permit issued under the provisions of this article, or advertise or use any title or description tending to convey the impression that they are a nursing home administrator unless the person has been duly licensed or permitted under the provisions of this article.

(b) A business entity may not render any service or engage in any activity which, if rendered or engaged in by an individual, would constitute the practice of nursing home administration, except through a licensee or permittee.

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§30-25-2. Applicable law.

The practice licensed under the provisions of this article and the West Virginia Nursing Home Administrators Licensing Board is subject to article one of this chapter, the provisions of this article, and any rules promulgated hereunder.

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§30-25-3. Definitions.

As used in this article:

(1) "Applicant" means any person making application for an original or renewal license or a temporary or emergency permit under the provisions of this article.

(2) "Board" means the West Virginia Nursing Home Administrators Licensing Board created by this article.

(3) "License" means a license to practice nursing home administration under the provisions of this article.

(4) "Licensee" means a nursing home administrator licensed under this article.

(5) "Nursing home" means a nursing home as that term is defined in subdivision (c), section two, article five-c, chapter sixteen of this code.

(6) "Nursing home administrator" means a person who performs or is responsible for planning, organizing, directing and controlling a nursing home, whether or not such the person has an ownership interest in the nursing home or shares the functions.

(7) "Permit" means a temporary permit or emergency permit issued under the provisions of this article.

(8) "Permittee" means any person holding a permit issued pursuant to the provisions of this article.

(9) "Practice of nursing home administration" means any service requiring nursing home administration education, training, or experience and applying such to planning, organizing, staffing, directing, and controlling of the total management of a nursing home.

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§30-25-4. West Virginia Nursing Home Administrators Licensing Board.

(a) The West Virginia Nursing Home Administrators Licensing Board terminates on June 30, 2010. The terms of the members of the board serving on June 1, 2010, terminate on June 30, 2010.

(b) Prior to July 1, 2010, the Governor shall appoint, by and with advice and consent of the Senate:

(1) Two persons who are licensed nursing home administrators, each for a term of five years;

(2) One person who is licensed as a nursing home administrator for a term of four years;

(3) One person who is licensed as a nursing home administrator for a term of three years;

(4) One person who is licensed as a nursing home administrator for a term of two years; and

(5) Two citizen members, who are not licensed under the provisions of this article and who do not perform any services related to the practice of the profession regulated under the provisions of this article, one for a term of four years, and one for a term of three years.

(c) After the initial appointment, the term shall be for five years. All appointments to the board shall be made by the Governor by and with the advice and consent of the Senate.

(d) Commencing July 1, 2010, the board is created and shall consist of the following seven voting members and one ex-officio nonvoting member:

(1) Five members who are licensed nursing home administrators;

(2) Two citizen members, who are not licensed under the provisions of this article and who do not perform any services related to the practice of the professions regulated under the provisions of this article, for a term of three years; and

(3) The Commissioner of the Bureau for Public Health or his or her designee is an ex-officio nonvoting member.

(e) Each licensed member of the board, at the time of his or her appointment, must have held a license in this state for a period of not less than five years immediately preceding the appointment.

(f) Each member of the board must be a resident of this state during the appointment term.

(g) A member may not serve more than two consecutive full terms. A member may continue to serve until a successor has been appointed and has qualified.

(h) A vacancy on the board shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty

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days of the vacancy.

(i) The Governor may remove any member from the board for neglect of duty, incompetency or official misconduct.

(j) A member of the board immediately and automatically forfeits membership to the board if his or her license to practice is suspended or revoked, he or she is convicted of a felony under the laws of any jurisdiction, or he or she becomes a nonresident of this state.

(k) The board shall elect annually one of its members as a chairperson and one of its members as a secretary who serve at the will of the board.

(l) Each member of the board is entitled to compensation and expense reimbursement in accordance with article one of this chapter.

(m) A majority of the members of the board constitutes a quorum.

(n) The board shall hold at least two meetings each year. Other meetings may be held at the call of the chairperson or upon the written request of two members, at the time and place as designated in the call or request.

(o) Prior to commencing his or her duties as a member of the board, each member shall take and subscribe to the oath required by section five, article four of the Constitution of this state.

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§30-25-5. Powers and duties of the board.

(a) The board has all the powers and duties set forth in this article, by rule, in article one of this chapter and elsewhere in law.

(b) The board shall:

(1) Hold meetings, conduct hearings and administer examinations;

(2) Establish requirements for licenses and permits;

(3) Establish procedures for submitting, approving and rejecting applications for licenses and permits;

(4) Determine the qualifications of any applicant for licenses and permits;

(5) Prepare, conduct, administer and grade examinations for licenses;

(6) Determine the passing grade for the examinations;

(7) Maintain records of the examinations the board or a third party administers, including the number of persons taking the examinations and the pass and fail rate;

(8) Hire, discharge, establish the job requirements and fix the compensation of the executive director;

(9) Maintain an office, and hire, discharge, establish the job requirements and fix the compensation of employees, investigators and contracted employees necessary to enforce the provisions of this article;

(10) Investigate alleged violations of the provisions of this article, legislative rules, orders and final decisions of the board;

(11) Conduct disciplinary hearings of persons regulated by the board;

(12) Determine disciplinary action and issue orders;

(13) Institute appropriate legal action for the enforcement of the provisions of this article;

(14) Maintain an accurate registry of names and addresses of all persons regulated by the board;

(15) Keep accurate and complete records of its proceedings, and certify the same as may be necessary and appropriate;

(16) Establish the continuing education requirements for licensees;

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(17) Issue, renew, combine, deny, restrict, suspend, restrict, revoke or reinstate licenses and permits;

(18) Establish a fee schedule;

(19) Propose rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this article; and

(20) Take all other actions necessary and proper to effectuate the purposes of this article.

(c) The board may:

(1) Contract with third parties to administer examinations required under the provisions of this article;

(2) Sue and be sued in its official name as an agency of this state; and

(3) Confer with the Attorney General or his or her assistant in connection with legal matters and questions.

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§30-25-6. Rulemaking.

(a) The board shall propose rules for legislative approval, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article, including:

(1) Standards and requirements for licenses and permits;

(2) Procedures for examinations and reexaminations;

(3) Requirements for third parties to prepare and/or administer examinations and reexaminations;

(4) Educational and experience requirements;

(5) The passing grade on the examinations;

(6) Standards for approval of courses and curriculum;

(7) Procedures for the issuance and renewal of licenses and permits;

(8) Procedures to address substandard quality of care notices from the West Virginia Office of Health Facility Licensure;

(9) A fee schedule;

(10) Procedure to publish a notice of a disciplinary hearing against a licensee;

(11) Continuing education requirements for licensees;

(12) The procedures for denying, suspending, restricting, revoking, reinstating or limiting the practice of licensees and permittees;

(13) Adoption of a standard for ethics;

(14) Requirements for inactive or revoked licenses or permits; and

(15) Any other rules necessary to effectuate the provisions of this article.

(b) All of the board's rules in effect on July 1, 2010, shall remain in effect until they are amended or repealed, and references to provisions of former enactments of this article are interpreted to mean provisions of this article.

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§30-25-7. Fees; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury designated the West Virginia Nursing Home Administrators Licensing Board Fund", which is continued. The fund is used by the board for the administration of this article. Except as may be provided in article one of this chapter, the board retains the amount in the special revenue account from year to year. No compensation or expense incurred under this article is a charge against the General Revenue Fund.

(b) Any amount received as fines, imposed pursuant to this article, shall be deposited into the General Revenue Fund of the State Treasury.

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§30-25-8. Qualifications for license; exceptions; application; fees.

(a) To be eligible for a license to engage in the practice of nursing home administration, the applicant must:

(1) Submit an application to the board;

(2) Be of good moral character;

(3) Obtain a baccalaureate degree;

(4) Pass a state and national examination as approved by the board;

(5) Complete the required experience as prescribed by the board;

(6) Successfully complete a criminal background check, through the West Virginia State Police and the National Criminal Investigative Center;

(7) Successfully complete a Health Integrity Protection Data Bank check;

(8) Not be an alcohol or drug abuser as these terms are defined in section eleven, article one-a, chapter twenty-seven of this code: Provided, That an applicant in an active recovery process, which may, in the discretion of the board, be evidenced by participation in a twelve-step program or other similar group or process, may be considered;

(9) Not have been convicted of a felony in any jurisdiction within ten years preceding the date of application for license which conviction remains unreversed;

(10) Not have been convicted of a misdemeanor or felony in any jurisdiction if the offense for which he or she was convicted related to the practice of nursing home administration, which conviction remains unreversed; and

(11) Has fulfilled any other requirement specified by the board.

(b) A license issued by the board prior to July 1, 2010, shall for all purposes be considered a license issued under this article: Provided, That a person holding a license issued prior to July 1, 2010, must renew the license pursuant to the provisions of this article.

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§30-25-9. License to practice nursing home administration from another jurisdiction.

The board may issue a license to practice to an applicant of good moral character who holds a valid license or other authorization to practice nursing home administration from another state, if the applicant:

(1) Holds a license or other authorization to practice in another state which was granted after the completion of educational requirements substantially equivalent to those required in this state and passed examinations that are substantially equivalent to the examinations required in this state;

(2) Does not have charges pending against his or her license or other authorization to practice, and has never had a license or other authorization to practice revoked;

(3) Has not previously failed an examination for licensure in this state;

(4) Has paid the applicable fee;

(5) Is a citizen of the United States or is eligible for employment in the United States; and

(6) Has fulfilled any other requirement specified by the board.

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§30-25-10. Temporary and Emergency Permits.

(a) The board may issue a temporary permit for a period of ninety days, to an applicant seeking licensure pursuant to section nine of this article who has accepted employment in West Virginia, but who must wait for the board to meet to act on his or her application. The temporary permit may be renewed at the discretion of the board.

(b) The board may issue an emergency permit to a person who is designated as an acting nursing home administrator, if a licensed nursing home administrator dies or is unable to continue due to an unexpected cause. The board may issue the emergency permit to the owner, governing body or other appropriate authority in charge of the nursing home, if it finds the appointment will not endanger the safety of the occupants of the nursing home. A emergency permit is valid for a period determined by the board not to exceed six months and shall not be renewed.

(c) The board shall charge a fee for the temporary permit and emergency permit.

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§30-25-11. Renewal requirements.

(a) All persons regulated by the article shall annually before June 30, renew his or her license by completing a form prescribed by the board and submitting any other information required by the board.

(b) The board shall charge a fee for each renewal of a license or permit and shall charge a late fee for any renewal not properly completed and received with the appropriate fee by the board before June 30.

(c) The board shall require as a condition for the renewal that each licensee complete continuing education.

(d) The board may deny an application for renewal for any reason which would justify the denial of an original application for a license.

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§30-25-12. Inactive license requirements.

(a) A licensee who does not want to continue in active practice shall notify the board in writing and be granted inactive status.

(b) A person granted inactive status is exempt from fee requirements and continuing education requirements, and cannot practice in this state.

(c) When an inactive licensee wants to return to active practice, he or she must complete all the continuing education requirements for every licensure year the licensee was on inactive status and pay all the applicable fees as determined by the board.

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§30-25-13. Display of license.

(a) The board shall prescribe the form for a license and permit, and may issue a duplicate upon payment of a fee.

(b) Any person regulated by the article shall conspicuously display his or her license or permit at his or her principal business location.

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§30-25-14. Complaints; investigations; due process procedure; grounds for disciplinary action.

(a) The board may upon its own motion based on credible information, and shall upon the written complaint of any person, cause an investigation to be made to determine whether grounds exist for disciplinary action under this article or the legislative rules promulgated pursuant to this article.

(b) Upon initiation or receipt of the complaint, the board shall provide a copy of the complaint to the licensee or permittee.

(c) After reviewing any information obtained through an investigation, the board shall determine if probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or permittee has violated subsection (g) of this section or rules promulgated pursuant to this article, the board may enter into a consent decree or hold a hearing for the suspension or revocation of the license or permit or the imposition of sanctions against the licensee or permittee. Any hearing shall be held in accordance with the provisions of this article.

(e) Any member of the board or the executive director of the board may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person regulated by the article.

(f) Any member of the board or its executive director may sign a consent decree or other legal document on behalf of the board.

(g) The board may, after notice and opportunity for hearing, deny or refuse to renew, suspend or revoke the license or permit of, impose probationary conditions upon or take disciplinary action against, any licensee or permittee for any of the following reasons once a violation has been proven by a preponderance of the evidence:

(1) Obtaining a license or permit by fraud, misrepresentation or concealment of material facts;

(2) Being convicted of a felony or other crime involving moral turpitude;

(3) Being guilty of unprofessional conduct which placed the public at risk, as defined by legislative rule of the board;

(4) Intentional violation of a lawful order or legislative rule of the board;

(5) Having had a license or other authorization revoked or suspended, other disciplinary action taken, or an application for licensure or other authorization revoked or suspended by the proper authorities of another jurisdiction;

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(6) Aiding or abetting unlicensed practice; or

(7) Engaging in an act while acting in a professional capacity which has endangered or is likely to endanger the health, welfare or safety of the public.

(h) For the purposes of subsection (g) of this section, disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative fine, not to exceed $1,000 per day per violation;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or permittee to report to the board for periodic interviews for a specified period of time; or

(7) Other corrective action considered by the board to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk.

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§30-25-15. Procedures for hearing; right of appeal.

(a) Hearings shall be governed by the provisions of section eight, article one of this chapter.

(b) The board may conduct the hearing or elect to have an administrative law judge conduct the hearing.

(c) If the hearing is conducted by an administrative law judge, at the conclusion of a hearing he or she shall prepare a proposed written order containing findings of fact and conclusions of law. The proposed order may contain proposed disciplinary actions if the board so directs. The board may accept, reject or modify the decision of the administrative law judge.

(d) Any member or the executive director of the board has the authority to administer oaths, examine any person under oath and issue subpoenas and subpoenas duces tecum.

(e) If, after a hearing, the board determines the licensee, or permittee has violated any provision of this article or the board's rules, a formal written decision shall be prepared which contains findings of fact, conclusions of law and a specific description of the disciplinary actions imposed.

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§30-25-16. Judicial review.

Any licensee or permittee adversely affected by a decision of the board entered after a hearing may obtain judicial review of the decision in accordance with section four, article five, chapter twenty-nine-a of this code, and may appeal any ruling resulting from judicial review in accordance with article six, chapter twenty-nine-a of this code.

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§30-25-17. Criminal proceedings; penalties.

(a) When, as a result of an investigation under this article or otherwise, the board has reason to believe that a licensee has committed a criminal offense under this article, the board may bring its information to the attention of an appropriate law-enforcement official.

(b) A person violating section one of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 not more than $1,000 or confined in jail not more than six months, or both fined and confined.

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§30-25-18. Single act evidence of practice.

In any action brought or in any proceeding initiated under this article, evidence of the commission of a single act prohibited by this article is sufficient to justify a penalty, injunction, restraining order or conviction without evidence of a general course of conduct.

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