WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED

HOUSE BILL No. 839

(By Mr. Originating in the Committee on the Judiciary)

PASSED March 26, 1969

In Effect Ninety days from Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 3-12-69
AN ACT to amend and reenact sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said chapter by adding thereto a new article, designated five-d, all relating to nursing homes and nursing home administrators; definitions; powers, duties and rights of the West Virginia nursing home licensing board; the license of nursing home administrators; qualifications for licenses; procedures; provisional licenses; emergency permits; judicial review; the nursing home administrators advisory council, its members, powers, duties and procedures; and severability.
Be it enacted by the Legislature of West Virginia:

That sections two and four, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, and that said chapter be further amended by adding thereto a new article, designated five-d, all to read as follows:

ARTICLE 5C. NURSING HOMES AND SIMILAR INSTITUTIONS.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning appears from the context:

2 (a) The term "nursing home" means and shall be construed to include any building, structure, agency, institution, or other place, for the reception, accommodation, board, care or treatment of not less than twenty-four hours in any week in which an accommodation of three or more beds is maintained, furnished or offered for patients or individuals, who are unable sufficiently or properly to care for themselves, and for which reception, accommodation, board, care or treatment a charge is made: Provided, That the reception, accommodation, board, care or treatment in a household or family, for
compensation, of a person or persons related by blood or marriage to the head of such household or family, or to his or her spouse or family, within the degree of consanguinity of first cousins, shall not be deemed to be a nursing home. The term “nursing home” shall include, but not be limited to, homes for the aged, convalescent homes, and extended care facilities not operated in connection with a hospital. The term “nursing home” shall not include institutions operated by the federal or state governments, or institutions for the treatment and care of psychiatric or alcoholic patients, boarding homes for children, day nurseries, child-care institutions, children’s homes and child-placing agencies, as defined under the laws of this state, nor hotels or offices of physicians. (b) The term “person” means any individual, firm, partnership, corporation, company; association, or joint-stock association and the legal successor thereof. (c) The term “board” shall mean the West Virginia nursing home licensing board as herein created. (d) The term “aged” relates to any individual who has attained the age of sixty-five years.
§16-5C-4. Powers, duties and rights of board.

1 In the administration of this article, the board shall have the following powers, duties and rights:

3 (a) To adopt, promulgate, amend, modify and enforce regulations and standards for nursing homes.

5 (b) To exercise as sole authority all powers relating to the issuance, suspension and revocation of licenses of nursing homes.

8 (c) To adopt, promulgate, amend and modify rules and regulations governing the qualifications of applicants for nursing home licenses including but not limited to educational requirements, financial requirements, moral, personal and ethical requirements.

14 (d) To adopt, promulgate, amend and modify such other reasonable rules and regulations to carry out the intent and purpose of this article.

17 (e) To receive and disburse funds from appropriations made by the Congress of the United States and to take whatever action not contrary to law as may be
proper and necessary to comply with the requirements and conditions for the receipt of such federal funds.

(f) To receive and disburse for authorized purposes any moneys appropriated to it by the Legislature.

(g) To receive and disburse for purposes authorized by this article, any funds that may come into its hands by gift, grant, donation, bequest or devise, according to the terms thereof, as well as funds derived from its own operation, or otherwise.

(h) To make contracts, and to execute all instruments necessary or convenient in carrying out its functions and duties; and all such contracts, agreements and instruments shall be executed by the chairman of the board on and in behalf of the board.

(i) To appoint officers, agents, employees and other personnel and fix their compensation.

(j) To offer and sponsor educational and training programs for nursing home administrative, management and operational personnel.

(k) To undertake survey, research and planning projects and programs relating to administration and oper-
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41 ation of nursing homes, and to the health, care, treat-
42 ment and service in general of patients of such homes.
43 In addition, the board may classify nursing homes into
44 care categories such as homes for the aged, convalescent
45 homes, and extended care facilities not operated by hos-
46 pitals, and other comparable categories under the terms
47 of this article, if, in the opinion of the board, the best
48 interest of the public is served by so doing. Such classi-
49 fication shall be by rules and regulations duly promul-
50 gated and adopted in accordance with the requirements
51 hereinafter set out.

ARTICLE 5D. NURSING HOME ADMINISTRATORS.
§16-5D-1. Definitions.

1 As used in this article, unless a different meaning ap-
2 pears from the context:
3 (1) The term "nursing home" means a nursing home
4 (as that term is defined in subdivision (a), section two,
5 article five-c of this chapter) which offers professional
6 or a skilled nursing care, but shall not include personal
7 care homes, rest homes and homes for the aged.
8 (2) The term "nursing home administrator" means an
individual responsible for planning, organizing, directing
and controlling a nursing home, or who in fact performs
such functions, whether or not such individual has an
ownership interest in the nursing home and whether or
not such functions are shared with one or more other
persons.

(3) The word "board" shall mean the West Virginia
nursing home licensing board created by section three,
article five-c of this chapter.

(4) The word "person" shall mean any individual,
firm, partnership, corporation or association.

(5) The word "council" shall mean the state nursing
home advisory council created by section eleven of this
article.

§16-5D-2. Administrators license required.

On and after July one, one thousand nine hundred
sixty-nine, no person shall be or act as a nursing home
administrator, except as provided in section nine hereof,
unless he is a holder of a currently valid license or pro-
visional license issued pursuant to this article.
§16-5D-3. Qualifications for license; exceptions; application; fees.

(a) To be eligible for a license as a nursing home administrator a person must

1. Be of good moral character;
2. Possess such qualifications and meet such reasonable standards as the board may prescribe pursuant to subdivision (a), section seven of this article;
3. Pass the examination prescribed by the board in the subject of nursing home administration; and
4. Have sufficient knowledge and soundness of judgment to be able to adequately discharge the functions of a nursing home administrator.

(b) Any person who holds a license or certificate as a nursing home administrator issued by any other state, the requirements for which license or certificate are found by the board to be at least as great as those provided in this article may be granted a license without examination if he meets all of the other requirements for licensing in this state.

(c) Any applicant for any such license shall submit an application therefor at such time, in such manner,
on such forms and containing such information as the
board may from time to time by reasonable rule and
regulation prescribe, and pay to the board a license fee of
one hundred dollars, which fee shall be returned to the
applicant if he is denied a license.

§16-5D-4. Issuance of license; renewal of license; renewal fee;
display of license.

Whenever the board finds that an applicant meets all
of the requirements of this article for a license as a
nursing home administrator, it shall forthwith issue to
him such license; and otherwise the board shall deny the
same. The license shall be valid for a period ending on
June thirty next ensuing and may be renewed without
examination upon application for renewal on a form
prescribed by the board and payment to the board of a
renewal fee of fifty dollars: Provided, That the board may
deny an application for renewal for any reason which
would justify the denial of an original application for a
license. The board shall prescribe the form of licenses and
each such license shall be conspicuously displayed by the
licensee at the nursing home which he administers.
§16-5D-5. Provisional license.

1 Persons actively engaged as nursing home administra-
2 tors prior to June thirty, one thousand nine hundred
3 sixty-nine, and who fail to meet any of the requirements
4 of subdivision (2) or (3), subsection (a), section three
5 of this article may nevertheless be issued a provisional
6 license as a nursing home administrator if application
7 is made therefor prior to July one, one thousand nine
8 hundred sixty-nine. No provisional license shall be re-
9 newed after July one, one thousand nine hundred seven-
10 ty-two.

§16-5D-6. Emergency permit.

1 If a licensed nursing home administrator dies or is
2 unable to continue as such for an unexpected cause, the
3 owner, governing body or other appropriate authority
4 in charge of the nursing home involved may designate
5 an acting administrator to whom the board may im-
6 mediately issue an emergency permit if it finds such
7 appointment will not endanger the safety of the occu-
8 pants of such nursing home. Such emergency permit
9 shall be valid for a period determined by the board not
to exceed six months and shall not be renewed. The fee for an emergency permit shall be fifty dollars.

§18-5D-7. Powers and duties of the board.

(a) The board shall:

(1) Examine applicants and determine their eligibility for a license or emergency permit as a nursing home administrator;

(2) Prepare, conduct and grade an apt and proper examination of applicants for a license and determine the satisfactory passing score thereon;

(3) Promulgate reasonable rules and regulations implementing the provisions of this article and the powers and duties conferred upon the board hereby, all of which reasonable rules and regulations shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code;

(4) Issue, renew, deny, suspend or revoke licenses and emergency permits in accordance with the provisions of this article and, in accordance with the administrative procedures hereinafter provided, may re-
(5) Develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(6) Employ, direct, discharge and define the duties of personnel necessary to effectuate the provisions of this article;

(7) Keep accurate and complete records of its proceedings, certify the same as may be appropriate, and prepare, from time to time, a list showing the names and addresses of all licensees;

(8) Approve courses of study or training in the field of nursing home administration as sufficient to meet education and training requirements for nursing home administrators established by this article;
(9) Conduct a course of study or training of the type referred to in subdivision (8) of this subsection if such courses are not otherwise reasonably available to residents of this state; and

(10) Take such other action as may be reasonably necessary or appropriate to effectuate the provisions of this article.

(b) All moneys paid to the board shall be accepted by a person designated by the board and deposited by him with the treasurer of the state and credited to an account to be known as the “West Virginia nursing home licensing board fund”. All of the reimbursement of all reasonable and necessary expenses actually incurred by members and all other costs and expenses incurred by the board in the administration of this article shall be paid from such fund.

§16-5D-8. Suspension or revocation of license or emergency permit.

(a) The board may at any time upon its own motion and shall upon the verified written complaint of any person, conduct an investigation to determine whether there are any grounds for the suspension or revocation
of a license or emergency permit issued under the provisions of this article.

(b) The board shall suspend or revoke any license or emergency permit when it finds the holder thereof has:

(1) Obtained a license or emergency permit by means of fraud or deceit; or

(2) Failed or refused to comply with the provisions of this article, article five-c of this chapter, or any reasonable rule and regulation promulgated by the board or any order or final decision of the board.

(c) The board shall also suspend or revoke any license or emergency permit if it finds the existence of any ground which would justify the denial of an application for such license or permit if application were then being made for it.


(a) Whenever the board shall deny an application for any original or renewal license or deny an application for an emergency permit or shall suspend or revoke any license or emergency permit, it shall make and enter an order to that effect and serve a copy thereof on the ap-
plicant or licensee, as the case may be, by certified mail, return receipt requested. Such order shall state the grounds for the action taken and shall require that any license or emergency permit suspended or revoked thereby shall be returned to the board by the holder within twenty days after receipt of said order.

(b) Any person adversely affected by any such order shall be entitled to a hearing thereon (as to all issues not excluded from the definition of a "contested case" set forth in article one, chapter twenty-nine-a of this code) if, within twenty days after receipt of a copy thereof, he files with the board a written demand for such hearing. A demand for hearing shall operate automatically to stay or suspend the execution of any order suspending or revoking a license or emergency permit or denying an application for a renewal license. The board may require the person demanding such hearing to give reasonable security for the costs thereof and if such person does not substantially prevail at such hearing such costs shall be assessed against him and may be collected by an action at law or other proper remedy.
Upon receipt of a written demand for such hearing, the board shall set a time and place therefor not less than ten and not more than thirty days thereafter. Any scheduled hearing may be continued by the board upon its own motion or for good cause shown by the person demanding the hearing.

(d) All of the pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in this subsection.

(e) Any such hearing shall be conducted by a quorum of the board. For the purpose of conducting any such hearing any member of the board shall have the power and authority to issue subpoenas and subpoenas duces tecum which shall be issued and served within the time, for the fees and shall be enforced, as specified in section one, article five of said chapter twenty-nine-a.

(f) At any such hearing the person who demanded the same may represent himself or be represented by an
attorney at law admitted to practice before any circuit court of this state. Upon request by the board, it shall be represented at any such hearing by the attorney general or his assistants without additional compensation.

(g) After any such hearing and consideration of all of the testimony, evidence and record in the case, the board shall render its decision in writing. The written decision of the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the person demanding such hearing, and his attorney of record, if any.

(h) The decision of the board shall be final unless reversed, vacated or modified upon judicial review thereof in accordance with the provisions of section ten of this article.

§16-5D-10. Judicial review; appeal to supreme court of appeals; legal representation for board.

Any person adversely affected by a decision of the board rendered after a hearing held in accordance with
the provisions of section nine of this article shall be entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such judicial review with like effect as if the provisions of said section four were set forth in this section.

The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code.

Legal counsel and services for the board in all appeal proceedings in any circuit court and the supreme court of appeals shall be provided by the attorney general or his assistants and in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

§16-5D-11. Creation of state nursing home administrators advisory council; members, terms, meetings, officers; general provisions; powers and duties.

(a) There is hereby created the state nursing home administrators advisory council which shall be composed
of five members appointed by the governor of which members, three shall be nursing home administrators, one shall be a hospital administrator and one shall be the chairman of the board.

(b) The members of the council, other than the chairman of the board (who shall serve for the term of his office) shall be appointed for overlapping terms of four years each and until their respective successors have been appointed and qualified, except that the original appointments shall be for terms of four, three, two and one year respectively. Vacancies shall be filled by appointment by the governor for the unexpired term of the member whose office shall be vacant and such appointment shall be made within sixty days of the occurrence of such vacancy.

(c) The council shall elect annually from its members, a chairman and vice-chairman. Meetings may be held as frequently as its business may require, at the call of the chairman upon the request of a majority of members of the council, or as requested by the chairman of the board. A quorum of the council shall consist of not less than three members.
(d) Members of the council shall receive no compensation, but each shall be entitled to receive his reasonable and necessary expenses actually incurred in the performance of his duties, such expenses to be paid from the special fund provided for in subsection (b), section seven of this article.

(e) The board may request the council, and upon such request, the council shall, or upon its own initiative the council may:

(1) Consider any matters relating to the practice of nursing home administration including any matter pertaining to the administration and enforcement of this article and advise the board thereon;

(2) Recommend the enactment or amendment of laws as may be deemed necessary in respect to the practice of nursing home administration;

(3) Recommend to the board the promulgation of rules and regulations, not inconsistent with law, as may be deemed necessary, and the amendment or repeal thereof; and
(4) Recommend to the board the commencement of an investigation into improper practices of licensees.

§16-5D-12. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the article, and to this end the provisions of this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Tempest
Chairman Senate Committee

Clayton C. Houseman
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. Courvoisier
Clerk of the Senate

O A. Blankenship
Clerk of the House of Delegates

Leager D. Jackson
President of the Senate

J. H. D. Bunn
Speaker House of Delegates

The within approved this the 14th day of March, 1969.

Archibald Shuman Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 3/13/69
Time 3:15 p.m.