

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF THE SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: Nursing Home Administrators Licensing Board TITLE NUMBER: 21

CITE AUTHORITY: 30-25-5

AMENDMENT TO AN EXISTING RULE: YES  NO

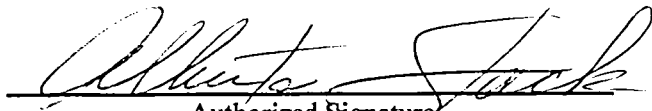
IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: 21-1-3. Felony Conviction, Record Checks, 21-1-5. Inactive Licensure Status  
21-1-6 Sub-standard Quality of Care Policy, Hearing Notices to be published  
21-1.7. Federal Health Integrity Protection Data Bank Queries

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULES, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE, IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Authorized Signature

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OFFICE OF THE ATTORNEY GENERAL  
SECRETARY OF STATE

TITLE 21  
LEGISLATIVE RULE  
WEST VIRGINIA NURSING HOME ADMINISTRATORS  
LICENSING BOARD

SERIES 1  
NURSING HOME ADMINISTRATORS

§21-1-1. General.

1.1. Scope. -- This rule establishes the requirements for licensing as a Nursing Home Administrator.

1.2. Authority. -- W. Va. Code ~~§30-25-7~~ §30-25-8.

1.3. Filing Date. -- ~~March 31, 2008~~.

1.4. Effective Date. -- ~~March 31, 2008~~.

§21-1-2. Definitions.

Whenever used in this Rule, unless the context or subject matter requires a different meaning, the following terms have their respective meanings:

2.1. "Applicant" means ~~the~~ any person who ~~an~~ making application for a an original or renewal license or a temporary or emergency permit ~~pursuant to this Rule under the provisions of this article;~~

2.2. "Board" means the West Virginia Nursing Home Administrators Licensing Board as created in W. Va. Code ~~§30-25-2~~ §30-25-4;

2.3. "Examination" means ~~both~~ the national test and the state test that applicants are required to pass, unless specified otherwise;

2.4. "License" means the document issued by the Board ~~which authorizes a person to perform the functions of a nursing home administrator as defined in §21-1-5. and directed in this Rule;~~

2.5. "Nursing Home Administrator-in-Training" (AIT) means an individual registered

with the Board, under subsection 4.3. of this Rule;

2.6. "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 the total management of a nursing home; that any performance of any act or the making of any decision involved in the planning, organizing, directing and/or control of the operation of a nursing home;

2.7. "Reexamination" is a process whereby the applicant may petition the Board to retake either the National and/or State examination if the applicant has not passed the licensure exams;

2.8. "Violation" means a failure to comply with W. Va. Code §§ 30-1-1 et seq. or any provision of this Rule.

2.9. "Emeritus Status" means a retired nursing home administrator duly recognized by the Board to have at least twenty (20) years of practice, with the last ten (10) years of practice being consecutive years in West Virginia;

2.10. "Substandard Quality of Care Policy" means the procedures the Board follows upon receipt of notice by the Office of Health Facility Licensure and Certification (OHFLAC) citing a Medicare/Medicaid certified nursing facility with providing substandard quality of care.

~~2.10.~~ 2.11. "Code of Ethics" means the code of ethics developed by the American College of Health Care Administrators (ACHCA), Alexandria, Virginia (1989) and recommended by the National Association of Boards (NAB), Washington, D.C.; and

~~2.11~~ 2.12. “Professional misconduct or unprofessional conduct” means any conduct by a licensed nursing home administrator (NHA) or permittee, including, but not limited to, any of the following:

2.12.a. obtaining a license or emergency permit by means of fraud, deceit or intentional misrepresentation;

2.12.b. engaging in deceit, fraud, or intentional misrepresentation in the course of providing professional services or engaging in professional activities;

2.12.c. failing to exercise a professional regard for the safety, health and life of the patient;

2.12.d. discriminating in respect to patients, employers, or staff on account of race, religion, color, national origin or sex; and

2.12.e. failing to comply with the Code of Ethics.

### **§21-1-3. Examinations.**

3.1. Scheduling of examinations and reexaminations.

3.1.1. Applicants for examination shall meet all pre-requirements for taking the examinations as specified in this rule. Upon Board approval, applicants may apply to test on line for the NAB National Examination through the National Association of Boards of Examiners of Long Term Care Administrators website – [www.nabweb.org](http://www.nabweb.org). All costs or fees charged by the testing agency for the national examination are not covered in the initial application fee. An applicant shall pay all testing fees directly to the testing agency.

3.1.2. Upon Board approval, applicants may sit for the WV State Examination. This examination is administered once a month. The initial application fee covers an applicant’s first time taking the examination, Fifty Dollars (\$50.00) is charged for each additional testing. Applicants shall contact the Board office to schedule the examination.

3.1.3. Applicants may take the national and state examination up to four (4) times within one year from the date they receive Board approval. If an applicant fails either examination for the fourth time, the applicant shall appear before the Board and present evidence of further education before the Board may consider that person eligible for reexamination.

3.1.4. The Board shall keep a record stating in detail the results of the examination for each applicant as a permanent record.

### 3.2. Pre-examination requirements:

3.2.1. The pre-examination requirements in this section do not apply to any person licensed as a nursing home administrator prior to May 10, 1986, who has maintained continuous licensure since that time.

3.2.2. The Board shall not admit or permit any person to take an examination for licensure as a nursing home administrator unless that person has submitted thirty (30) days prior to the examination day, an application for Board approval. The Board shall consider the application an application for licensure and also for examination and qualification. The application shall be in writing on forms provided by the Board and shall furnish evidence satisfactory to the Board that the applicant is:

3.2.2.a. over twenty-one (21) years of age; and

3.2.2.b. suitable and fit to be licensed and to practice as a nursing home administrator. A licensed physician shall submit evidence of the applicant's fitness and suitability directly to the Board on forms provided by the Board and shall include, among other things, evidence of the:

3.2.2. B (1) Absence of physical impairments to perform the duties of a nursing home administrator, which include good health and freedom from contagious disease; and

3.2.2. B (2) Absence of any mental impairment that would appear to the

Board to be likely to interfere with the performance of the duties of a nursing home administrator.

3.2.3. The Board applicant shall provide ~~obtain~~ letters of satisfactory performance covering at least the calendar year preceding the date of application relating to the applicants ability to:

3.2.3.a. Understand and communicate general and technical information necessary to the administration and operation of a nursing home (i.e., applicable health and safety rules);

3.2.3.b. Assume responsibilities for the administration of a nursing home as evidenced by prior accredited activities and evaluations of prior services; and

3.2.3.c. ~~R~~elate the physical, psychological, spiritual, emotional and social needs of ill and/or aged individuals to the nursing home administration and create the compassionate climate necessary to meet the needs of the patients in the nursing home.

3.2.4. In addition to the completion of high school or secondary school education, the applicant shall have successfully completed a course of study in and been awarded a baccalaureate degree in:

3.2.4.a. nursing home administration, hospital administration, or other related field as determined by the Board. The applicant shall also have at least (1000) hours experience in an administrative position in a long term care setting. Related health administration fields include nursing, medicine, osteopathy, social work with a concentration in gerontology, psychology, etc. When an applicant has an approved degree, he or she shall verify with the Board that a minimum of twelve (12) college hours were earned in subjects specifically designated as health care management and/or health care administration. Verification allows the Board the flexibility to consider waiver of the Administrator-In-Training (AIT) program prior to approval of the applicant to take the national and state examinations leading to licensure as a Nursing

Home Administrator. If the applicant fails to produce documentation satisfactory to the Board, he or she shall complete an Administrator-In-Training (AIT) program as specified in subsection 4.3. of this rule; or

3.2.4.b. a non-health administration field. The applicant shall also complete a one (1) year Administrator-In-Training (AIT) program as specified in subsection 4.3. of this rule. The Board may waive the Administrator-In-Training (AIT) program and approve the applicant to take the national and state examinations if:

3.2.4.c. the applicant possesses a baccalaureate degree in a non-related health care field (i.e., secondary education, accounting, marketing, etc.) but has worked in long-term care in the role of an assistant administrator or an equivalent position such as Director of Nursing, Assistant Director of Nursing, or Social Services Director, for a period of three (3) years.

3.2.5. The applicant may not acquire his or her (1000) hour administrative work experience specified in subsection 3.2 of this section, by working on an emergency permit or by participation in an Administrator-In-Training Program.

3.2.6. The applicant shall provide to the Board a completed criminal record fingerprint card.

~~3.2.67. The Board shall not permit an applicant for examination who has been convicted of a felony by-in any court in West Virginia jurisdiction within ten years preceding the date of application for license which conviction remains unreversed, or by any court of the United States, to take the licensure examination. The Board shall request a criminal identification Bureau Report from the West Virginia State Police- and a fingerprint criminal history background check by the Federal Bureau of Investigation (FBI).~~

3.2.67.a. The Board shall not permit an applicant for examination who has 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;

3.2.78. The Board considers the pre-examination requirements for licensure set forth in this section as minimal and shall not waive them.

3.2.89. The Board may designate a time and place at which an applicant may be required to present himself or herself for inquiry as to his or her suitability for licensure.

3.3. Disqualification: Reexamination.

3.3.1. An applicant for examination who does not meet pre-examination requirements shall be given written notification by the Board by certified mail return receipt requested, of his or her disqualification and the reasons for the disqualification and of his or her right to a hearing within thirty (30) days.

3.3.2. An applicant for examination who does not meet pre-examination requirements may petition the Board in writing for a hearing and a review of his or her application within thirty (30) days of receipt of the notification of disqualification.

3.3.3. Where an applicant for examination has not met pre-examination requirements, he or she may submit a new application for qualification for examination. The applicant shall meet the requirements for licensing that are in force at the time of the reapplication.

3.4. Subjects for national examination.

~~3.4.1. 3.3.4. Every applicant for licensure as a nursing home administrator, after meeting the requirements for qualification for licensure and examination shall successfully pass a written national and state examination, which may include, but not be limited to;~~

~~3.4.1.a. Resident Care and Quality of Life~~

~~3.4.1.a.1. The applicant shall have a working knowledge of:~~

~~3.4.1.a.1.A. nursing services to maximize a resident's quality of life;~~

~~3.4.1.a.1.B. social service programs to maximize a resident's quality of life;~~

~~3.4.1.a.1.C. food service programs which meet the nutritional needs of residents, to maximize a resident's quality of life;~~

~~3.4.1.a.1.D. medical services to meet resident medical care needs, to maximize a resident's quality of life;~~

~~3.4.1.a.1.E. therapeutic recreational and activity programs to meet the needs, wants, and interests of residents, to maximize a resident's quality of life;~~

~~3.4.1.a.1.F. medical records programs to meet documentation requirements;~~

~~3.4.1.a.1.G. pharmaceutical programs to support medical care for residents to maximize a resident's quality of life; and~~

~~3.4.1.a.1.H. rehabilitation programs to maximize a resident's optimal level of functioning~~

~~3.4.1.b. Human Resources~~

~~3.4.1.b.1. The applicant shall have a working knowledge of:~~

~~3.4.1.b.1.A. the process of communication between management and all staff;~~

~~3.4.1.b.1.B. the recruitment, evaluation, and retention of individuals to provide resident's care and services;~~

~~3.4.1.b.1.C. personnel policies, which are planned, implemented, and evaluated to comply with governmental entities, laws, rules and regulations; and~~

~~3.4.1.b.1.D. employee health and safety programs.~~

~~3.4.1.e. Finance~~

~~3.4.1.e.1. The applicant shall have a working knowledge of:~~

~~3.4.1.e.1.A. the budget process for facilities to allocate fiscal resources;~~

~~3.4.1.e.1.B. systems to monitor financial performance; and~~

~~3.4.1.e.1.C. financial audits and reporting systems.~~

~~3.4.1.d. Physical Environment and Atmosphere~~

~~3.4.1.d.1. The applicant shall have a working knowledge of:~~

~~3.4.1.d.1.A. systems for maintaining and improving buildings, grounds and equipment;~~

~~3.4.1.d.1.B. programs that provide a clean, attractive, and home like environment for residents, staff and visitors;~~

~~3.4.1.d.1.C. environmental safety programs that ensure the health, welfare, and safety of residents, staff, and visitors; and~~

~~3.4.1.d.1.D. emergency programs to protect the safety and welfare of residents, staff, and property.~~

~~3.4.1.e. Leadership and Management~~

~~3.4.1.e.1. The applicant shall have a working knowledge of:~~

~~3.4.1.e.1.A. policies and procedures which maintain compliance with directives of governing entities;~~

~~3.4.1.e.1.B. the need to observe, monitor, and evaluate outcomes of all facility programs, policies, and procedures, to ensure effectiveness~~

~~3.4.1.e.1.C. the need to monitor and evaluate resident satisfaction with quality of care and quality of life, through communications with the resident, the resident's representatives or family, staff, volunteers, and governing entities to, maximize the resident's quality of life;~~

~~3.4.1.e.1.D. the need to implement, monitor and ensure the integration of resident rights with all aspects of operation;~~

~~3.4.1.e.1.E. the need to plan, implement and evaluate risk management programs;~~

~~3.4.1.e.1.F. the need to plan, implement and evaluate programs which inform residents and the community of the services offered; and~~

~~3.4.1.e.1.G. the need to plan, implement and promote integration between a facility and other community resources (e.g., educational institutions, hospitals, vendors).~~

~~3.5. Subjects for State examination.~~

~~3.5.1. Every applicant for licensure as a nursing home administrator after meeting the requirements for qualification for licensure and examination shall successfully pass a written state examination which may include, but not be limited to, the following subjects:~~

~~3.5.1.a. Physical Equipment and Facilities;~~

~~3.5.1.b. Facility Governance and Management;~~

~~3.5.1.c. General Health and Safety;~~

~~3.5.1.d. General Residents Rights, Policies and Procedures;~~

~~3.5.1.e. Medical and Dental Service;~~

~~3.5.1.f. Nursing Service;~~

~~3.5.1.g. Dietetic Service;~~

~~3.5.1.h. Pharmaceutical Service;~~

~~3.5.1.i. Social Services and Activities; and~~

~~3.5.1.j. Plans for Care and Medical Records.~~

**§21-1-4. Education, Training and Experience.**

4.1. Registration of licensed and/or accredited education institutions and courses of study.

4.1.1. A licensed or accredited educational institution offering any courses of study for the purpose of qualifying applicants for licensure as a nursing home administrator shall first submit the courses of study to the Board for approval. In order for a course of study to be approved, it shall cover those subjects contained on the written national examination as provided for in subsection 3.4. of this rule.

4.2. Registration of continuing education programs.

4.2.1. Every licensed administrator shall obtain annually, at least twenty (20) clock hours of continuing education, through programs approved by the Board or by the National Association of Boards of Examiners of Long Term Care Administrators National Continuing Education Review Service (NCERS).

4.2.1.a. Emeritus Status Administrators shall obtain annually at least ten (10) clock hours of continuing education approved as provided in subsection 4.2.1. of this rule.

4.2.2. A Licensee seeking continuing education hours for completion of a college course in health care administration may submit to the Board the syllabus of the completed course along with a copy of the official transcript verifying the final grade received. The Board may approve One (1) credited college course hour, to be applied as ten (10) continuing education hours.

4.3. Practical training and experience one (1) year Administrator-In-Training (AIT) Program.

4.3.1. An applicant has the option of acquiring his or her Administrator-In-Training Program under this rule or under the Board's approved program sponsored by the WV Chapter off the American College of Health Care Administrators (WV ACHCA).

4.3.2. Prior to entering the one (1) year nursing home Administrator-in-Training (AIT) program for the purpose of obtaining practical training and experience, the applicant shall apply for the Administrator-in-Training (AIT) permit on a form prescribed by the Board, and submit a fee of Six Hundred Dollars (\$600.00) payable by certified check or money order to the Board.

4.3.3. The Board shall not approve an application for an Administrator-in-Training (AIT) permit unless the applicant submits evidence satisfactory to the Board that he or she meets all pre-examination requirements under this rule and that:

4.3.3.a. the training will be under the full-time supervision of a fully licensed nursing home administrator who has been licensed for at least three (3) years and licensed and practicing in West Virginia for at least the preceding year. The nursing home administrator must be approved by the Board as a preceptor, and accept the responsibility of training the applicant;

4.3.3.b. the training is of a grade and character satisfactory to the Board;

4.3.3.c. the training is to be obtained in a duly-licensed nursing home which has been approved by the Board;

4.3.3.d. the training is to be served during eight (8) consecutive hours daily, except for regular days off, with a minimum of forty (40) hours weekly;

4.3.3.e. the trainee agreement form provided by the Board is signed by the nursing home Administrator-in-Training (AIT) and the

preceptor and submitted to the Board for approval; and

4.3.3.f. the nursing home Administrator-in-Training (AIT) has no outside employment during training hours or thereafter unless the employment is known of and approved by the preceptor.

#### 4.3.4. Progress report

4.3.4.a. Every preceptor of every Administrator-in-Training (AIT) shall file quarterly forms provided by the Board and shall set forth an accurate record of the duties performed by the ~~Administrator-in-Training~~ (AIT) during the period covered by the report.

4.3.4.b. Every report filed by the preceptor of the nursing home ~~Administrator-in-Training~~ (AIT) shall be approved and signed by the preceptor and by the ~~Administrator-in-Training~~ (AIT).

4.3.4.c. If a preceptor of an ~~nursing home Administrator-in-Training~~ (AIT) fails to file quarterly reports for a period of two (2) years from the date of issuance of the in-training permit, the Board shall consider that the ~~Administrator-in-Training~~ (AIT) has abandoned his or her practical training and experience. In the event the ~~Administrator-in-Training~~ (AIT) thereafter seeks to qualify for a nursing home administrator license, the Board shall consider him or her as a new applicant, with no portion of training completed. The applicant shall meet the requirements for qualification for training, examination, and licensure that exist at the time of the new application.

4.3.4.d. A nursing home ~~Administrator-in-Training~~ (AIT) may take two (2) weeks leave for compulsory military training, vacation or sick leave each year without loss of credit for his or her required practical training and experience.

4.3.4.e. If an ~~Administrator-in-Training~~ (AIT) discontinues his or her training, the Preceptor and the Administrator-in-Training (AIT) shall report the discontinuance of the Administrator-in-Training Program to the Board, within 30 days after the discontinuance.

4.3.4.f. A change of preceptor of the nursing home ~~Administrator-in-Training~~ (AIT) in any nursing home shall be reported to the Board in writing by the preceptor and the Administrator-in-Training (AIT) within ten (10) days after the change of the supervision. The new administrator of the nursing home, if willing to continue the training program of the ~~Administrator-in-Training~~ (AIT), shall obtain Board approval for preceptorship.

4.3.4.g. The Board shall allow any person who was a duly authorized nursing home ~~Administrator-in-Training~~ (AIT) whose training and experience is interrupted by service in the Armed Forces of the United States, to resume his or her training and experience at any time within one (1) year after the date of his or her honorable discharge from active service.

4.3.4.h.. The period for the training program as an ~~Administrator-in-Training~~ (AIT) shall last for a period of not more than one (1) year and shall be under the supervision of a preceptor who has been approved by the Board.

4.3.4.i. Alternating and rotating shifts of eight (8) working hours may be approved by the Board as being acceptable upon request by the ~~Administrator-in-Training~~ (AIT); provided, that at least fifty percent (50%) of the training hours will be served between the hours of 7:00 a.m. and 10:00 p.m. in regular steady, full time employment under the personal supervision of the nursing home administrator preceptor at the nursing home in which the nursing home ~~Administrator-in-Training~~ (AIT) is employed; and

4.3.4.j. the preceptor will provide full-time supervision for the ~~Administrator-in-Training~~ (AIT) and the supervision is provided in the nursing home where the trainee is employed.

4.3.4.k. In the event that the Board determines that a preceptor has failed to provide the ~~Administrator-in-Training~~ (AIT) with the opportunity to adequately train himself or herself under the proper supervision in the administrative and operating functions of the nursing home, the Board shall cancel the

preceptor's authorization to serve as preceptor, for a period of time prescribed by the Board.

4.3.4.l. When the preceptor's authorization is cancelled, the ~~Administrator In-Training~~ (AIT)'s program shall be suspended or a partial program shall be accepted until such time as the ~~Administrator in-Training~~ (AIT) locates another preceptor who is approved by the Board; after which time the ~~Administrator in-Training~~ (AIT)'s training shall continue.

4.3.4.m. After an applicant for licensure completes the ~~Administrator in-Training~~ (AIT) program, and before he or she sits for the licensing examination, the Board may appoint a committee to determine if the applicant has received training consistent with the guidelines established by the Board.

4.3.4.n. After completion of the ~~Administrator In-Training~~ (AIT) Program, the ~~Administrator In-Training~~ (AIT) shall pay all additional fees referred to in subdivision 3.1.3. of this rule.

## §21-1-5. Licenses.

### 5.1. Qualifications for licenses

5.1.1. To be eligible for a license as a nursing home administrator an applicant shall:

5.1.1.a. meet all pre-examination requirements as set forth in subsection 3.2. of this Rule, as well as meet requirements of all other applicable Rules; and

5.1.1.b. pass the national and state examinations prescribed by the Board in the subject of nursing home administration.

5.2. Application for and issuance of license, renewal of licenses and display.

5.2.1. Any applicant for a nursing home administrator license shall submit an application, on forms prescribed by the Board containing information the Board may determine reasonable under this Rule, and pay the Board a license fee of Six Hundred Dollars (\$600.00) in the form of a certified check or money order. The Board shall return the fee, minus any costs incurred by

the Board (i.e. processing fee), if it denies a license to the applicant.

5.2.2. An applicant for emeritus administrator status shall submit an application on the forms prescribed by the Board and pay the Board a fee equivalent to one third (1/3) of the renewal fee for other licenses in the form of a certified check or money order.

5.2.3. Whenever the Board finds that an applicant meets all of the requirements of this Rule for a license as a nursing home administrator, it shall immediately issue a license to the applicant. If the Board finds the applicant does not meet the requirements, the Board shall contact the applicant in writing and give reasons for the denial of the license.

5.2.4. The license is valid for a period ending on June 30 each year and may be renewed without formal examination upon timely application for renewal on a form prescribed by the Board and payment to the Board of the renewal fee of Three Hundred Dollars (\$300.00) in the form of a certified check or money order. The Board may deny an application for renewal for any reason which would justify the denial of an original application for a license, or for failure to provide written verification of satisfactory attendance and completion of relevant continuing education as specified in subsection 4.2. of this rule.

5.2.5. The nursing home administrator license certificate shall be conspicuously displayed by the licensee at each nursing home for which he or she is the administrator.

5.2.6. Only a person who has qualified as a licensed nursing home administrator and who hold a valid current license certificate pursuant to the provisions of this Rule may use the title "Nursing Home Administrator" and the abbreviation of "N.H.A." after his or her name. No other person shall use or shall be designated by this title or this abbreviation or any other words, letters, etc., to, indicates he or she is licensed as a nursing home administrator.

5.2.7. A licensee desiring to cease engaging in the practice of nursing home administration temporarily shall send written

notice to the Board. Upon receipt of the notice, the board shall place the licensee on an inactive list. While his or her name remains on this list the licensee shall not be subject to the payment of any fee and shall not engage in the practice of nursing home administration or act as a nursing home administrator, as the case may be, in this State. When the person again desires to engage in the practice of nursing home administration or to act as a nursing home administrator in this State, the person shall apply for renewal of his or her license by submitting the current renewal application and fee, and verification of all required continuing education hours for every licensure year the licensee was on inactive status.

~~5.2.7.~~ 5.2.8. A person who is a holder of an emergency permit or of an Administrator-in-Training (AIT) permit shall not be considered as meeting the requirements for licensure as a nursing home administrator and, therefore, may not use the title "Nursing Home Administrator" or the abbreviation of "N.H.A."

~~5.2.8~~ 5.2.9. No person shall be or act as a nursing home administrator, except as provided by W. Va. Code §30-25-9, unless they hold a current valid license or permit issued pursuant to this Rule;

~~5.2.9~~ 5.2.10. A listing of West Virginia's Nursing Home Administrators is available from the Board for a fee of \$50.00.

~~5.2.10~~ 5.2.11. Every person holding a license or permit from this Board shall report to the Board any known or observed violation of W. Va. Code ~~§30-25-8~~ §30-25-14 et seq., or the Board's rules. Any person holding a license or permit issued by the Board (including self-reporting) shall report such occurrence within thirty (30) days.

### 5.3. License Restrictions

5.3.1. The following restrictions apply to licensed nursing home administrators:

5.3.1. a. A licensed nursing home administrator shall not direct more than two (2) nursing homes at one time. An administrator may direct two (2) nursing homes which are

within reasonable proximity. For the purposes of this section, reasonable proximity is defined as thirty (30) minutes driving time. An administrator may not direct more than a total of one hundred twenty (120) beds.

5.3.1.b. the administrator of two (2) nursing homes shall average not less than twenty (20) hours per week at each nursing home. The administrator shall have a competent and experienced assistant at each nursing home. The nursing home administrator shall document each period of service. The documentation shall be available to the Board upon request;

5.3.1.c. a nursing home administrator who is a registered professional nurse cannot serve the same nursing home both as a director of nursing services and administrator unless the nursing home has a licensed capacity of thirty (30) beds or less;

5.3.1.d. any administrator who is also director of nursing services or who has any other dual capacity in any other nursing home regardless of whether or not the second home is within reasonable proximity shall obtain prior Board approval to serve in that dual capacity;

5.3.1.e. the nursing home administrator, upon receipt of a license, is responsible for any nursing home which he or she administers, while meeting all applicable state and federal laws and rules and regulations; and

5.3.1.f. any emeritus status administrator, upon approval of the Board, shall be permitted the privilege of limited practice not to exceed an average of forty (40) hours per week for up to six (6) cumulative months per year.

### 5.4. Emergency permit

5.4.1. If a licensed nursing home administrator dies or is unable to continue as the administrator for an unexpected cause, the owner or governing body or other appropriate person in charge of the nursing home involved may designate an acting authority as administrator. The Board may issue an emergency permit to the acting administrator if

it finds the appointment will not endanger the safety of the occupants of the nursing home.

5.4.2. An emergency permit is valid for a maximum of six (6) months and is not renewable.

5.4.3. The fee for an emergency permit is Three Hundred Dollars (\$300.00) and shall be submitted in the form of a certified check or money order, and is non-refundable.

### 5.5. Temporary Permit.

5.5.1. The Board may issue a temporary permit for a period of ninety (90) days, to an applicant for a reciprocity license who has accepted employment in the State of 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.

5.5.2. The fee for a temporary permit is Three Hundred Dollars (\$300.00) and shall be submitted in the form of a certified check or money order, and is non-refundable.

### 5.6. Lost, mutilated or destroyed licenses

5.6.1. Upon receipt of satisfactory evidence that a license has been lost, mutilated or destroyed, the Board shall issue a duplicate license upon payment of a fee of Five Dollars (\$5.00).

### 5.7. Return of license

5.7.1. The administrator shall return the license certificate and/or duplicate copies to the Board immediately upon revocation of the license or request by the Board.

## **§21-1-6. Suspension or Revocation, Hearing and Judicial Review.**

6.1. Suspension or revocation of license or permits.

6.1.1. The Board may at any time upon its own motion and shall upon 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 permit issued pursuant to this Rule.

6.1.2. The Board shall suspend or revoke any license or permit when it finds the licensee or holder of a temporary permit has:

6.1.2.a. obtained a license or permit by means of fraud or deceit;

6.1.2.b. failed or refused to comply with the provisions of this Rule, or with the provisions of W. Va. Code §16-5C-1, et seq.; or

6.1.2.c. failed or refused to comply with the expectations contained in the Code of Ethics of the American College of Health Care Administrators, (1989).

6.1.3. When the Board suspends or revokes a license of a licensee, it shall notify the Office of Health Facility Licensure and Certification (OHFLAC) of its actions.

## 6.2. Complaints and hearing procedures

### 6.2.1. Complaints

6.2.1.a. Any person, public officer, association or the Board may register a complaint against any licensee, Administrator-in-Training (AIT) or holder of an emergency or temporary permit for any of the reasons specified in subsection 6.1. of this Rule. The complaint, submitted to the Board shall be in writing and duly verified.

6.2.1.b. When the Board receives a notice by the Office of Health Facility Licensure and Certification (OHFLAC) citing a Medicare/Medicaid certified nursing facility of providing substandard quality of care, the Board shall take immediate action in accordance with the Substandard Quality of Care Policy.

6.2.1.c. Substandard Quality of Care Policy:

As a result of sections 1819(a), (b), (c), (d), and 1919(a), (b), (c), and (d) of The Social Security Act, state survey agencies like the West Virginia Department of Health and Human Resources (DHHR), Office of Health Facility Licensure and Certification (OHFLAC) are required to advise state boards responsible for

licensing nursing home administrators when a Medicare/Medicaid certified nursing facility is cited for deficiencies which constitute substandard quality of care. Inasmuch as there are no further directives for interpretation as to how state licensing boards will manage such notifications, it is the prerogative of each state's board to define its policy.

In view of the aforementioned circumstance, effective September 8, 2005; It will be the policy of the West Virginia Nursing Home Administrators Licensing Board to pursue the following plan in discharging its duties:

Upon notification from OHFLAC, a certified letter will be sent to the administrator of record\* for the facility alleged to have offered substandard quality of care indicating same and requesting a response from the administrator to each of the allegations. The administrator's reply must be post marked no later than thirty (30) days after receipt of the board's letter. (Refer to Exhibit A.)

Upon receipt of the response from the administrator and within ninety (90) days of the day the board receives notification from OHFLAC, under the direction of the chair of the West Virginia Nursing Home Administrators Licensing Board, an assessment by staff, members of the board, a hearing officer, and/or a representative from the Attorney General's Office will be made of all documents received (i.e., HCFA-2567 Statements of Deficiency and Plans of Correction, administrator's response, etc.). From that point a brief written assessment of the facts will be made and filed with the chairman of the board indicating whether or not it is believed nursing home administrator licensing regulations were violated. If the written assessment establishes that the nursing home administrators licensing regulations were violated, the chair of the board will be responsible for seeing that an interview is scheduled with the administrator to assess his/her knowledge and soundness of judgment in being able to adequately discharge the functions of a nursing home administrator (NHA). If it is shown by a preponderance of the evidence that nursing home administrator licensure rules were violated, a written order with findings of fact and conclusions of law will be sent to the

administrator with a copy filed in the person's record defining the course of action that will follow. Likewise, if it is shown by a preponderance of the evidence that there were no violations of nursing home administrator licensure rules, a letter will be sent to the administrator so advising with a copy of the correspondence to be retained in the licensee's file.

Related to the aforementioned point and establishment of grounds for potential action against a nursing home administrator for violation of nursing home administrators licensure rules, with legal guidance, ie., the West Virginia Attorney General's Office, private counsel, etc., section 6.1 of Title 21, legislative rule effective July 3, 2003 will be implemented pertinent to suspension, revocation, hearing, and judicial review. Final disposition of the review will be completed as quickly as possible but not to exceed 150 days from date of the first notification of substandard quality of care by the OHFLAC. Proceedings in regard to final disposition will be made in the record and retained in the board's file for the NHA under review.

If within twenty-four months of first being advised by the OHFLAC a second notice is received by the Nursing Home Administrators Licensing Board alleging substandard quality of care in a facility under the direction of the same licensed nursing home administrator, within the same time lines as previously described, at the direction of the chair of the board, the board will conduct a second interview on the issue of substandard quality of care. Facts from the first review will be revisited along with all new allegations of repeat deficiencies. The process identified in previous points 2 and 3 will be replicated relative to section 6.1. Final disposition of the board's action will be recorded and retained in appropriate NHA and/or board files.

From the time the West Virginia Nursing Home Administrators Licensing Board is first advised by OHFLAC of alleged substandard quality of care in a West Virginia licensed nursing facility, all correspondence and records pertinent to the administrator and/or administrators in question will be retained for

thirty months. During this period if follow up reviews by OHFLAC do not result in subsequent referrals to the Nursing Home Administrators Licensing Board for matters of substandard quality of care, the board at its discretion may order cases closed with files destroyed. If this occurs, such action will be considered at a duly called board meeting with the decision recorded in board minutes.

\*If the administrator of record has been at the facility for less than one year, the previous administrator of record will also be contacted to address in writing each allegation of substandard quality of care.

#### 6.2.2. Preliminary hearings.

6.2.2.a. The Board, or any person or persons appointed by it, may hold a preliminary hearing to determine whether a formal hearing on the charges is necessary. The Board shall give the person against whom the complaint has been registered, written notice of the date, time and place of the preliminary hearing.

6.2.2.b. The Board may dismiss the complaint and take no action on the complaint, by formal hearing or otherwise. In that event the Board shall file and make a part of its record the complaint and the order dismissing the complaint. If the Board does not dismiss the complaint, it shall hold a formal hearing in accordance with subsection 6.3. of this Rule.

#### 6.3. Procedures for hearing.

6.3.1. The Board may deny a license, renewal of a license or permit pursuant to W. Va. Code §§30-25-1 et seq and 30-1-1 et seq.

6.3.2. Whenever the Board denies an application for any original or renewal license or denies an application for an emergency permit it shall make and enter an order to that effect and serve a copy of the order on the applicant licensee, or permittee as the case may be, by certified mail, return receipt requested. If the applicant desires to challenge the Board's order denying the application, the applicant shall request a hearing. The request shall be made in writing to the Board within twenty (20) days after receipt of the order. Whenever the Board

determines that there is probable cause to believe a permit holder or licensee has violated W. Va. Code §30-25-1 et seq. or any provision of this rule the Board shall serve upon the licensee, by certified mail, return receipt requested, a copy of the notice of hearing. The notice of hearing shall provide the licensee with notice of the charges being brought against him or her.

6.3.3. All of the pertinent provisions of W. Va. Code §§29A-5-1, and §30-1-1 et seq., apply to and govern the hearing and the administrative procedures in connection with and following the hearing.

6.3.4. Upon conclusion of the hearing, the Board may revoke the license of the licensee, or an emergency or temporary permit, or take other disciplinary action or dismiss the charges.

6.3.5. An order of suspension made by the Board may contain provisions regarding reinstatement of the license or permit.

6.3.6. The Board, in its discretion, may direct a rehearing or take additional evidence, and may rescind or affirm the prior order after the rehearing, but nothing in this section precludes appropriate relief under and pursuant to the laws providing for the review of an administrative determination by the courts of the state.

6.3.7. All disciplinary hearings shall be published within the Nursing Home Administrators Licensing Board website to allow the public communities, resident's families and facility staff access to the date, time and location of hearing.

~~6.3.7.~~ 6.3.8. The order of the Board is final unless reversed, vacated or modified upon judicial review of the order in accordance with the provisions of subsection 6.4. of this Rule.

6.4. Judicial review; Appeal to Supreme Court of Appeals.

6.4.1. Any person adversely affected by an order of the Board rendered after a hearing held in accordance with the provisions of subsection 6.3. of this Rule, is entitled to judicial

review of the decision. All of the pertinent provisions of W. Va. Code §29A-5-1, et seq. apply to and govern the judicial review.

6.4.2. The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of W. Va. Code §29A-6-1, et seq.

#### **§21-1-7. Reciprocity.**

7.1. The Board in its discretion, and subject to W. Va. Code ~~§30-25-4~~ §30-25-9 prescribing the qualifications for a nursing home administrator license, may grant a nursing home administrator license to an individual licensed in another state, who possesses the qualifications and meets the reasonable standards prescribed by the Board pursuant to W. Va. Code ~~§30-25-7(a)~~ §30-25-8 and upon payment of a fee of Six Hundred Dollars (\$600.00).

7.1.1. Applicants who hold certification from the American College of Health Care Administrator's and are in good standing with the College, shall have their applications acted upon immediately upon receipt, therefore, expediting the reciprocity process.

7.1.2. Additionally, the following conditions shall be met:

7.1.2.a. the other state maintains a system and standard of qualification and examination for a nursing home administrator license, which is at least as great as those required in West Virginia;

7.1.2.b. the other state gives similar recognition and reciprocity to nursing home administrators licenses of West Virginia; and

7.1.2.c. the applicant for reciprocity holds a current license as a nursing home administrator which has not been revoked or suspended.

7.1.2. d.the applicant for reciprocity must pass a Federal query investigation by the Health Integrity Protection Data Bank (HIPDB).

7.1.3. A nursing home administrator licensed in this state seeking reciprocity or endorsement into another state and requiring Board verification of licensure, shall submit a fee of one hundred dollars (\$100.00) to the Board for this verification.

#### **§21-1-8. Restoration.**

8.1. The Board may restore a license after revocation upon submission of evidence satisfactory to the Board that the applicant for the restoration of a license has removed the disability.

8.2. Restoration after lapse.

8.2.1. The Board may reinstate a license which has lapsed during the first year immediately following the expiration date of a valid permanent administrator license. The Nursing Home Administrator with a lapsed license shall submit a formal request as well as an application for licensure along with the proper fee and meet the requirements for continuing education hours.

8.2.2. The nursing home administrator seeking reinstatement shall pay a late charge for reinstatement of license, in addition to the licensure renewal fee.

8.2.2.a. The Board shall impose the following reinstatement fees:

8.2.2.a.1. July 1, through September 30<sup>th</sup> - one hundred dollars (\$100.00).

8.2.2.a.2. July 1, through December 31<sup>st</sup> - two hundred dollars (\$200.00).

8.2.2.a.3. July 1, through March 31<sup>st</sup> - three hundred dollars (\$300.00).

8.2.2.a.4. July 1, through June 30<sup>th</sup> - four hundred dollars (\$400.00).

8.2.3. After one (1) year from the expiration date of his or her license, the Board shall consider the nursing home administrator in question as a new applicant and the applicant is subject to all of the provisions of this Rule.

**§21-1-9. Refunds.**

9.1. The Board shall refund to all applicants that choose to withdraw from the application process their entire application fee minus any processing fee. Refunds are applicable to fees for the following:

9.1.a. An Administrator-in-Training (AIT) application;

9.1.b. A licensure examination application; and

9.1.c. A reciprocity application.