

06-11-15

STATE OF TENNESSEE
DEPARTMENT OF HEALTH

IN THE MATTER OF:)	TENNESSEE BOARD
)	OF EXAMINERS FOR
)	NURSING HOME
)	ADMINISTRATORS
VICKY N. GROCE,)	
PETITIONER)	DOCKET NO.: 17.14-131004A
)	
FAYETTEVILLE, TN)	
)	
)	

PETITION FOR DECLARATORY ORDER
NOTICE OF HEARING

Comes now the Department of Health, Division of Health Related Boards (hereinafter "the Department"), by and through counsel and gives notice that a Petition for Declaratory Order, attached hereto as Exhibit A, has been received from Vicky N. Groce (hereinafter "Petitioner") requesting that the Board declare that Petitioner has met the requirements of Tenn. Comp. R. & Regs. 1020-01-.07, which outlines the qualifications for licensure as a nursing home administrator.

JURISDICTION

1. The Board of Examiners for Nursing Home Administrators has the authority to develop, impose, and enforce standards that must be met by individuals in order to receive a license as a nursing home administrator. Tenn. Code Ann. § 63-16-103(1). Those standards are designe to ensure that nursing home administrators are individuals who are of good character and otherwise suitable and who, by training or experience in the field

of institutional administration, are qualified to serve as nursing home administrators. Id.

2. When an agency is petitioned for a declaratory order, that agency shall:
 1. Submit electronically to the secretary of state the notice of hearing for publication in the notice section of the administrative register web site and, if a statute applicable to the specific agency or a specific rule or class of rules under consideration requires some other form of publication, publish notice as required by that statute in addition to publication in the notice section of the administrative register web site; and
 2. Take such other steps as it deems necessary to convey effective notice to other agencies and professional associations that are likely to have an interest in the declaratory order proceedings. Tenn. Code Ann. § 4-5-224(a)(1),(2)
3. Notice shall include specific information relating to the declaratory order request, including, but not limited to:
 1. Name of petitioner and an explanation of whom such person or entity purports to represent;
 2. A summary of the relief requested, including the specific nature of the requested order, and the conclusion or conclusions the petitioner requests that the agency reach following the declaratory proceeding; and
 3. A detailed outline and summary of the statutes or regulations that the agency is called upon to interpret or upon which it is to rule. Tenn. Code Ann. § 4-5-224(b)

BACKGROUND

4. Petitioner is an individual who submitted an application for licensure to the Board. The Board's approval of the application would allow Petitioner to sit for the national exam administered by the National Association of Boards of Examiners for Long Term Care Administrators (hereinafter "NAB exam").
5. During its November 3, 2014 meeting, the Board denied Petitioner's application for licensure. The Board's decision was based on Petitioner's failure to meet the definition of "acceptable management experience" as defined in Tenn. Comp. R. & Regs. 1020-01-.07(1).
6. Petitioner reappeared before the Board during its February 26, 2015 meeting and was able to present sufficient documentation to meet the aforementioned definition of "acceptable management experience."
7. The Board initially approved the Petitioner's request to sit for the NAB exam, but rescinded its decision after the Board's attorney, at that time, advised it that the Petitioner did not meet the qualifications outlined in Tenn. Comp. R. & Regs. 1020-01-.07 in that the Petitioner had not completed an Administrator-in-Training (A.I.T.) program.
8. Petitioner claims that other similarly situated applicants were allowed to sit for the NAB exam without having first completed an A.I.T. program.
9. The Department submits that the application completed by Petitioner as part of her application for licensure was an outdated application that did not accurately reflect the requirements for licensure as outlined in Tenn. Comp. R. & Regs. 1020-01-.07.
10. Petitioner filed a petition for a declaratory order on March 23, 2015.
11. On April 23, 2015, the Board met telephonically to decide whether to hear the petition and set the matter for a contested case hearing. The Board voted to allow Petitioner to

move forward with her petition and hold a contested case hearing.

12. The contested case was set for June 1, 2015, but due to an error in the filing, the hearing was reset by the assigned administrative law judge to the next scheduled Board meeting, which is August 3, 2015.

SUMMARY OF RELIEF REQUESTED AND REGULATION IN QUESTION

13. Petitioner states that the application that she completed listed five (5) options under education and/or experience requirements. Option 1 requires an internship, options 2-4 specifically state requirements for an Administrator-In-Training (A.I.T.) program. Option 5, which was chosen by Petitioner, requires administrative work experience but does not mention any type of training program.
14. Petitioner seeks a declaratory order from the Board stating that she has met the requirements of Tenn. Comp. R. & Regs. 1020-01-.07. Petitioner holds a master's degree and meets the definition of acceptable management experience. Petitioner has not completed an internship or an A.I.T. program.
15. Tenn. Comp. R. & Regs. 1020-01-.07 outlines six (6) pathways to licensure: 1) licensure by examination; 2) licensure by experience and education as a hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program; 3) licensure by experience and education as an assistant/associate hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program; 4) licensure by education combined with an Administrator-In-Training (A.I.T.) program; 5) licensure by education and experience combined with an Administrator-In-Training (A.I.T.) program; and 6)

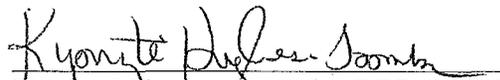
licensure by reciprocity.

16. The Board must determine whether Petitioner has met the requirements for licensure as defined by Tenn. Comp. R. & Regs. 1020-01-.07.

NOTICE

17. This matter shall be heard on August 3, 2015 at 9:00 a.m., or as soon thereafter as the Board may take up this matter, at 665 Mainstream Drive, First Floor, Iris Conference Room, Nashville, Tennessee.
18. By agreement of Petitioner, the costs of this cause shall be taxed to the Petitioner.

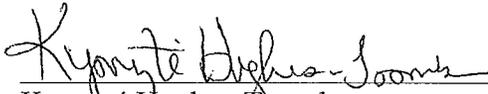
Respectfully submitted this 11th day of June, 2015.


Kyonzie Hughes-Toombs, BPR # 023702
Assistant General Counsel
Tennessee Department of Health
Office of General Counsel
665 Mainstream Drive – Second Floor
Nashville, Tennessee 37243
(615) 741-1611

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the foregoing has been served upon Respondent, Vicky N. Groce, 1005 Covemont Drive, Fayetteville, Tennessee 37334, by United States mail, First Class, and United States certified mail, number 70141820000204344424, return receipt requested, with sufficient postage thereon to reach its destination.

This 11th day of June, 2015.


Kyonzie Hughes-Loombs
Assistant General Counsel

RECEIVED
2015 JUN 11 PM 3:19
SECRETARY OF STATE
PUBLICATIONS

Tennessee Rule and Regulation: Currentness
1360-04-01-07 Department of State
1360-04-01-07 Administrative Procedure Division
Chapter 1360-04-01-07 Tenn. Rules of Procedure for Hearing Contested Cases Before State
Administrative Agencies

Tenn. Comp. R. & Regs. 1360-04-01-07

1360-04-01-07. DECLARATORY ORDERS.

(1) Any affected person may petition an agency for a declaratory order as to the validity or the applicability of a statute, rule or order within the primary jurisdiction of the agency.

(2) The petition seeking a declaratory order shall be filed in writing with the agency.

(3) The form of such petitions shall be substantially as follows:

Petition for Declaratory Order Before the (Division) of the (Agency).

1. Name of Petitioner Vicky N. Groce

2. Address of Petitioner 1005 Covemont Dr. Fayetteville, TN 37334

3. Agency rule, order, or statutory provision on which declaratory order is sought Rule 1020-01-07 (1)

4. Statement of the facts of the controversy and description of how this rule, order or statute affects or should affect the Petitioner. Please see response on attached page.

5. Description of requested ruling

5. I would request that based upon my education and experience in the nursing home field, that I be approved to take the NAB exam without the requirement of an Administrator-In-Training program.

Signature of Petitioner

Vicky N. Groce

Address

3/23/2015

Date

(4) In the event the agency convenes a contested case hearing pursuant to this rule and T.C.A. § 4-5-223, then the Administrative Procedures Division shall be notified immediately and shall be provided originals or legible copies of all pleadings, motions, objections, etc.



Credits

Authority: F.C. 508.01-5.019 and 4-5-022

Administrative History: Original rule filed November 22, 1978; effective January 8, 1979. Amendment filed May 23, 1984; effective June 22, 1984. Repeal and new rule filed November 25, 1986; effective January 9, 1987.

Current through Regulations in effect as of March 21, 2015 and Emergency Regulations in effect as of September 27, 2013.

Tenn. Comp. R. & Regs. 1360-04-01-.07, TN ADC 1360-04-01-.07

Response to item 4 on page 1:

My original request to take the NAB exam was presented at the November 3, 2014 Board of Examiners for Nursing Home Administrator meeting and was denied based on the determination that I did not meet the work and/or qualifications as required in Rule 1020-01-07 (1), qualifications for Licensure, which states in part the following:

(1) "Acceptable Management Experience," as used in this rule, means the actual practice of health care facility administration in an inpatient health care facility with guidance and sharing of responsibility from the administrator and not related to the role of an administrative clerk. "Acceptable management experience" contemplates experience in all departments or areas of the facility, provided, however, the applicant is not required to have spent the entire five (5) years in the capacity of an assistant administrator. Responsible supervisory experience in various departments within the facility may be applied to meet the requirements of paragraph (6) of this rule, and the time spent in a board approved Administrator-In-Training (A.I.T.) program may also be counted toward these requirements. However, no more than two-thirds (2/3) of the required "acceptable management experience" can be obtained in any one area of the facility, e.g., in dietary, nursing, financial, etc.

Upon additional clarification of work history along with additional information presented at the February 26th, 2015 board meeting, I satisfied the board that my "management experience" met the definition of the requirement. The board approved me and then reseeded their decision based on the advice of the attorney that the law stated I had not had an Administrator-In-Training (A.I.T.) program.

First, I would like to state that the application list five (5) options under education and/or experience requirements. Option 1 requires an internship, options 2-4 specifically state requirements for an Administrator-In-Training (A.I.T.) program; option 5 requires administrative work experience but in no way mentions any type of training program. In and of itself, I think that is very misleading.

Secondly, this standard has historically not been consistently applied as the board openly acknowledged at the February 26th board meeting. Two of my coworkers, Jamie Guin and Mike Harbor were approved at the November 3, 2014 board meeting under this exact category based on their work experience and neither had an Administrator-In-Training program.

Although the law specifies the requirement for an administrator-in-training program, this has not been consistently applied and I feel that I am being held to a higher standard.