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Sequence Number: 07-21-10
Rule ID(s): 4793
File Date: 07/23/2010
Effective Date: 10/21/2010

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Board of Examiners for Nursing Home Administrators
Division:	
Contact Person:	Diona E. Layden, Assistant General Counsel
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Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1020-01	General Rules Governing Nursing Home Administrators
Rule Number	**Rule Title**
1020-01-.07	Qualifications for Licensure
1020-01-.10	Examinations
1020-01-.15	Licensure Discipline, Civil Penalties, Assessment of Costs, and Subpoenas
1020-01-.16	Scope of Practice

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://state.tn.us/sos/rules/1360/1360.htm)

Department of Health
Rulemaking Hearing Rules
Board of Examiners for Nursing Home Administrators
Division of Health Related Boards

Chapter 1020-01
General Rules Governing Nursing Home Administrators

Amendments

Rule 1020-01-.07 Qualifications for Licensure is amended by deleting paragraphs (3), (4) and (7) but not their subparagraphs and substituting instead the following language, so that as amended, the new paragraphs (3), (4) and (7) but not their subparagraphs shall read:

(3) Licensure by experience and education as a hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program – A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief executive officer of a licensed hospital is required. This individual is appointed by the governing authority and is responsible to it for the executive management of the organization according to the mission, goals and objectives that have been adopted.

(4) Licensure by experience and education as an assistant/associate hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program – A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief operating officer of a licensed hospital is required. This individual is appointed by the chief executive officer, usually with the concurrence of the governing authority.

(7) Licensure by experience combined with continuing education and an Administrator-In-Training (A.I.T.) program – Five (5) years of acceptable management experience and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with fifty (50) clock hours of Board approved continuing education in nursing home administration is required.

Authority: T.C.A. §§ 63-16-103, 63-16-104, and 63-16-106.

Rule 1020-01-.10 Examinations is amended by deleting paragraph (1) in its entirety and substituting instead the following language, and is further amended by deleting subparagraph (1) (a) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) but not its subparagraphs, and the new subparagraph (1) (a) shall read:

(1) NAB Examination. Except for individuals applying for licensure by reciprocity, all applicants must first receive Board approval to take the examination. Applicants must attempt to successfully complete the NAB examination within one (1) year from when Board approval to take the examination was granted. Successful completion of the examination is required before licensure is granted. The licensure examination process shall be governed by the following:

(a) Access to the Examination. To be admitted to the licensure examination an applicant must:

1. Fully comply with rules 1020-01-.07 and 1020-01-.08; and

2. Receive approval of the Board to take the examination.

Authority: T.C.A. §§ 63-16-103, 63-16-104, 63-16-105, and 63-16-106.

Rule 1020-01-.15 Licensure Discipline, Civil Penalties, Assessment of Costs, and Subpoenas is amended by deleting subparagraph (2) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (f) shall read:

(f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:

1. During any period of probation, suspension; or

2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or

3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or

4. As a stand-alone requirement(s) in any disciplinary order.

Authority: T.C.A. §§ 63-16-103 and 63-16-108.

Rule 1020-01-.16 Scope of Practice is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

(3) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Nursing Home Administrator" and/or the acronym "N.H.A.," and to practice as a nursing home administrator as defined in T.C.A. § 63-16-101. Violation of this rule regarding use of titles shall subject the licensee to disciplinary action. Any person licensed by the Board must use the title and/or the acronym authorized by this rule in every advertisement he or she publishes. The failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the nursing home administrator to disciplinary action pursuant to T.C.A. § 63-16-108 (1), (2), and (3).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-16-101, 63-16-103, 63-16-108 and 63-16-111.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Harold Walker	X				
Kathryn Wilhoit	X				
Craig Laman	X				
Mark Davis				X	
Norma Lester, RN				X	
Jennifer Johnson, MD	X				
Vickie W. Harris	X				
Susan Carson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Examiners for Nursing Home Administrators on November 5, 2007, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/15/07

Rulemaking Hearing(s) Conducted on: (add more dates). 8/20/07

Date: July 13, 2010

Signature: DEL

Name of Officer: Diona E. Layden

Title of Officer: Assistant General Counsel
Tennessee Department of Health

Subscribed and sworn to before me on: 7/13/10

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/7/2011

THEODORA P. WILKINS NOTARY PUBLIC LARGE DAVIDSON COUNTY, TENN.

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

7-20-10
Date

Department of State Use Only

Filed with the Department of State on: 7/23/10

Effective on: 10/21/10

Tre Hargett
Secretary of State

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2010 JUL 23 PM 3:38
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PUBLICATIONS

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC HEARING COMMENTS

RULEMAKING HEARING

TENNESSEE BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

AUGUST 20, 2007

The rulemaking hearing for the Tennessee Board of Examiners for Nursing Home Administrators was called to order on at 2:30 p.m., CDT, on August 20, 2007 in the Department of Health Conference Center's Mockingbird Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Jerry Kosten was the presiding officer

Prior to the rulemaking hearing, a written comment was received from the Tennessee Health Care Association expressing the Association's thanks to the Board for incorporating their suggested changes concerning continuing education hours and titles into the proposed rules. The Board made the suggested changes to the permanent rules.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

The rulemaking hearing concluded at 2:50 p.m., CDT.

Regulatory Flexibility Addendum
Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A.
§ 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

(1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The proposed rules are not written with special consideration for the flexible compliance and/or REPORTING requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

(4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission in licensing nursing home administrators. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow services and providers to come into compliance with the proposed rules.

(5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.

(7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation. The decreased cost for record keeping for hospitals are minimal, but electronic record keeping will be sufficient to protect the health, safety and welfare of Tennesseans.

Economic Impact Statement

The proposed amendment to Rule 1020-01-.15 has no economic impact to small businesses.

(1) Type or types of small business subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Amendment to 1020-01-.07 Qualifications for Licensure

Nursing homes which are owned by nursing home administrators and nursing homes which seek to hire nursing home administrators

Amendment to 1020-01-.10 Examinations

Nursing homes which are owned by nursing home administrators and nursing homes which seek to hire nursing home administrators

Amendment to 1020-01-.16 Scope of Practice

Nursing homes which advertise

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

As of December 31, 2006, Tennessee had seven hundred and seventy (770) licensed nursing home administrators who were eligible for licensure renewal.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed amendments which have economic impact on small businesses will have some minimally increased or new reporting, recordkeeping and other administrative costs that are required for compliance. The professional skills necessary for preparation of such reports and records are not believed to exceed or be in addition to the professional skills presently needed to obtain and maintain licensure.

(4) Statement of the probable effect on impacted small businesses and consumers:

Amendment to 1020-01-.07 Qualifications for Licensure

Nursing homes which are owned by nursing home administrators and nursing homes which seek to hire nursing home administrators may experience difficulties in filling positions, but not to the extent that the Board would consider its obligation to protect the public as being secondary.

Amendment to 1020-01-.10 Examinations

Nursing homes which are owned by nursing home administrators and nursing homes which seek to hire nursing home administrators may experience difficulties in filling positions, but not to the extent that the Board would consider its obligation to protect the public as being secondary.

Amendment to 1020-01-.16 Scope of Practice

Nursing homes which advertise may have to revise advertisements which have been previously developed and/or currently running.

(5) Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

Amendment to 1020-01-.07 Qualifications for Licensure

It would be less burdensome to not promulgate this amendment at all, but that would be contrary to the Board's mission of protecting the public's health, safety, and welfare. Ensuring the competency of applicants for licensure so that all who practice are qualified is how the Board achieves its mission.

Amendment to 1020-01-.10 Examinations

It would be less burdensome to not promulgate this amendment at all, but that would be contrary to the Board's mission of protecting the public's health, safety, and welfare. Ensuring the competency of applicants for licensure so that all who practice are qualified is how the Board achieves its mission.

Amendment to 1020-01-.16 Scope of Practice

The Board does not believe there are less burdensome alternatives because: a) the intent of T.C.A. § 63-1-145 [Public Chapter 467 of the Public Acts of 2005] requires the promulgation of this rule; and b) the Boards wants no misinterpretation of its licensee's advertisements with regard to professional credentials.

(6) Comparison of the proposed rule with any federal or state counterparts:

Federal The Board is not aware of any federal counterparts. Nursing home administrators are not licensed by the federal government.

State The proposed rule amendments regarding qualifications for licensure and examinations are similar to requirements at other health-related professions, although the Board provides more pathways to licensure than any other health-related licensing board. The proposed rule amendment regarding use of titles will be promulgated at all of the health related licensing boards.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

It is not possible to exempt the impacted small businesses from all or any part of the requirements contained in the proposed rule because the impacted small businesses are the Board's licensees. If there were to be an exemption, the proposed rule amendments would have no actual effect. T.C.A. § 63-16-103 states the Board has a duty to "develop, impose and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards are designed 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."

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (http://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

1020-01-.07 Qualification for Licensure – The present rule's seven (7) pathways to licensure include two (2) pathways that provide for licensure by experience only. The new rule: a) adds to these two (2) pathways: an education requirement of at least a baccalaureate degree and completion of a three (3) month Administrator-In-Training (A.I.T.) program; and b) revises the A.I.T. program length of another pathway which requires experience to be consistent.

1020-01-.10 Examinations – The present rule contains a deadline to successfully complete the required exam but does not contemplate a deadline to attempt to successfully complete. The new rule requires an applicant to attempt successful completion of the required exam within one (1) year from when the Board granted approval.

1020-01-.05 Licensure Discipline, Civil Penalties, Assessment of Costs, and Subpoenas – The present rule contains language regarding conditions imposed upon disciplinary licensees which does not provide for such conditions to be imposed during any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license, and does not provide for such conditions to be imposed as a standalone requirement in any disciplinary order. The new rule adds these provisions.

1020-01-.16 Scope of Practice – The current rule does not address the use of professional titles by licensed Nursing Home Administrators as it pertains to advertising. The new rule sets forth permissible titles and requires one (1) of these titles to be used in all advertisements.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Authority for these amendments comes from state statutes regarding nursing home administrators, T.C.A. §§ 63-16-101, *et seq.*

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals most directly affected by these rules are all future applicants for licensure by experience, and licensees who advertise.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

No opinions of the attorney general or judicial ruling have been identified that affect this aspect of the amended rules.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

There is estimated to be no increase or decrease in revenues or expenditures because of these rule amendments.

(F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Diona E. Layden, Assistant General Counsel, Tennessee Department of Health.

(G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Diona E. Layden, Assistant General Counsel, Tennessee Department of Health.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611, Diona.Layden@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

No additional information has been requested at this time.

(Rule 1020-1-.06, continued)

(i) If the approved preceptor is unable, for any reason, to fulfill the approved program of an A.I.T., a new preceptor shall be obtained as soon as possible, but no more than sixty (60) days from the date the A.I.T. first obtained knowledge that the training under the previous preceptor would be discontinued. In special circumstances the Board, upon application, may authorize additional time in which a new preceptor may be secured.

(ii) In the event an A.I.T. desires to secure a preceptor different from the one approved by the Board, the new preceptor and the A.I.T. shall notify the Board stating the reasons. New agreement forms shall be completed, signed by the new preceptor and the A.I.T., and be submitted to the Board Administrative Office for approval prior to continuing training.

2. It shall be the duty of both the preceptor and the A.I.T. to notify the Board if the A.I.T. drops out of the program.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-106 and 63-16-109.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed November 12, 1982; effective December 13, 1982. Amendment filed February 3, 1983; effective March 7, 1983. Amendment filed April 19, 1984; effective May 19, 1984. Amendment filed February 23, 1987; effective April 9, 1987. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 4, 1989; effective February 18, 1989. Amendment filed August 14, 1989; effective September 28, 1989. Amendment filed September 8, 1989; effective October 23, 1989. Amendment filed February 21, 1991; effective April 7, 1991. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed January 19, 2001; effective April 5, 2001. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed December 9, 2005; effective February 22, 2006. Amendment filed July 27, 2006; effective October10, 2006.*

1020-1-.07 QUALIFICATIONS FOR LICENSURE. To practice as a nursing home administrator in Tennessee, a person must possess a lawfully issued license from the Board. Paragraphs (2) through (8) of this rule describe the seven (7) ways/categories to obtain licensure as a nursing home administrator. Combining requirements from different categories is not permitted, and will not constitute completion of licensure requirements. In addition to the requirements of this rule all applicants, regardless of which category is used, must successfully complete the examinations required in rule 1020-1-.10 Examinations.

(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, that this term is not to be construed to require that the applicant have spent the entire number of years of "acceptable management experience" referred to in paragraphs (6) and (7) of this rule in the capacity of an assistant administrator. Responsible supervisory experience in various departments within the facility may be applied to meet the requirements of paragraphs (6) and (7) 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.

(2) Licensure by examination - A baccalaureate, masters, or doctorate degree in the area of Health Care Administration from an accredited college or university is required. The curriculum shall include a four hundred (400) hour internship taken for credit and served in a licensed long term care nursing facility.

~~(3) Licensure by experience as a hospital administrator - A minimum of five (5) of the last seven (7) years as the chief executive officer of a licensed hospital is required. This individual is appointed by the governing authority and is responsible to it for the executive management of the organization according to the mission, goals and objectives that have been adopted.~~

(Rule 1020-1-.07, continued)

(3) Licensure by experience and education as a hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program – A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief executive officer of a licensed hospital is required. This individual is appointed by the governing authority and is responsible to it for the executive management of the organization according to the mission, goals and objectives that have been adopted.

(a) The administrator must develop an organizational structure to provide the patient care services that are offered by the facility which is consistent with the mission and meets all applicable legal, licensure and accreditation requirements; assure that appropriate mechanisms are in place for an organized medical staff and (if applicable) a volunteer organization; also oversee long range planning and possibly even joint ventures. The individual must work with community, county and state governmental agencies on a wide variety of topics.

(b) In a multi-hospital organization, the chief executive officer may be directly responsible to a corporate official and may have a local advisory board or other consultative group.

~~(4) Licensure by experience as an assistant/associate hospital administrator - A minimum of five (5) of the last seven (7) years as the chief operating officer of a licensed hospital is required. This individual is appointed by the chief executive officer, usually with the concurrence of the governing authority.~~

(4) Licensure by experience and education as an assistant/associate hospital administrator combined with a Limited Administrator-in-Training (A.I.T.) program – A baccalaureate, masters or doctorate degree from an accredited college and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than three (3) months and no more than six (6) months combined with a minimum of five (5) of the last seven (7) years as the chief operating officer of a licensed hospital is required. This individual is appointed by the chief executive officer, usually with the concurrence of the governing authority.

(a) The assistant/associate administrator is directly responsible for the operation of several hospital departments and assists the administrator, as assigned, in other executive management functions. The individual must work with community, county and state governments on a wide variety of topics.

(b) The assistant/associate administrator is "in charge" of the facility during the absence of the administrator and must follow its mission, goals and objectives that have been adopted.

(5) Licensure by education combined with an Administrator-In-Training (A.I.T.) program - A baccalaureate, masters or doctorate degree from an accredited college combined with a Board approved A.I.T. program of at least six (6) months is required.

(6) Licensure by education and experience combined with an Administrator-In-Training (A.I.T.) program - An associate degree and three (3) years of acceptable management experience in a licensed long term care facility combined with a Board approved A.I.T. program of at least six (6) months is required.

~~(7) Licensure by experience combined with continuing education and an Administrator-In-Training (A.I.T.) program - Five (5) years of acceptable management experience combined with a Board approved A.I.T. program of at least six (6) months and fifty (50) clock hours of Board approved continuing education in nursing home administration is required.~~

(7) Licensure by experience combined with continuing education and an Administrator-In-Training (A.I.T.) program – Five (5) years of acceptable management experience and a four hundred (400) hour Board-approved A.I.T. program to be completed in no less than

(Rule 1020-1-.07, continued)

three (3) months and no more than six (6) months combined with fifty (50) clock hours of Board approved continuing education in nursing home administration is required.

(a) The fifty (50) clock hours of continuing education shall be a prerequisite to the A.I.T. program.

(b) The fifty (50) clock hours of continuing education must have been presented in the traditional "lecture / classroom" format. Courses that use any of the presentation methods in part (3) (c) 1. of Rule 1020-1-.12 shall not be allowed.

(c) The fifty (50) clock hours of continuing education must have begun within twenty-four (24) months immediately prior to approval of the A.I.T. Program.

(8) Licensure by reciprocity - An active license as a nursing home administrator in another state is required.

(a) This individual must demonstrate to the Board's satisfaction that he/she has successfully completed requirements which are substantially equivalent to or exceed the requirements of paragraphs (2), (3), (4), (5), (6), or (7) of this rule; or

(b) This individual must demonstrate to the Board's satisfaction that he/she has successfully completed requirements which are substantially equivalent to or exceed the requirements for certification by the American College for Health Care Administrators.

(9) An applicant who chooses to qualify for licensure by meeting the requirements of paragraphs (5), (6), or (7) of this rule must obtain Board approval to begin the A.I.T. program.

(a) Successful completion of the A.I.T. program as governed by rule 1020-1-.06 is a prerequisite to approval to take the licensure examination.

(b) The time an applicant spends in the A.I.T. program may be credited toward the last six (6) months needed to meet the "acceptable management experience" requirement for admission to the examination.

(c) The Board shall concurrently determine eligibility for both admission to the examination and commencement of the A.I.T. program upon review of both applications.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-105, 63-16-106, and 63-16-109.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Amendment filed November 12, 1982; effective December 13, 1982. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed August 14, 1989; effective September 28, 1989. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Repeal and new rule filed September 4, 2003; effective November 18, 2003.*

1020-1-.08 PROCEDURES FOR LICENSURE.

(1) An applicant shall obtain an examination or an A.I.T. program application from the Board Administrative Office or from the Board's Internet website (tennessee.gov), and respond truthfully and completely to every question. The applicant is responsible for obtaining and submitting the required documentation, or causing it to be submitted, to the Board Administrative Office.

(2) An applicant must submit the application along with the non-refundable application, jurisprudence examination and state regulatory fees as provided in rule 1020-1-.02.

(3) Unless the applicant is applying for licensure as provided in paragraphs (2), (5) or (6) of Rule 1020-1-.07, an applicant must submit proof of graduation from high school or its equivalent.

(Rule 1020-1-.09, continued)

file shall be closed and the applicant notified that the Board will not take further action regarding the application. In order to resume the application process, a new application must be received, including another payment of all fees.

(2) Completed applications received in the Board Administrative Office may be submitted to a Board member or a Board designee for review. An initial determination to allow practice to commence may be made prior to the next Board meeting after the application is received. Each member of the Board and the Board's designee is vested with the authority to make these initial determinations.

(3) If the full Board denies licensure, the action shall become final and the following shall occur:

(a) Notification of the denial shall be sent by the Board Administrative Office by certified mail, return receipt requested, containing all the specific statutory or rule authorities for the denial.

(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act, T.C.A. § 4-5-301, et seq.

1. An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.

2. An applicant may be granted a contested case hearing if licensure denial is based on objective, clearly defined criteria and denial is based on a genuine issue of fact and/or law.

(4) Applicants may be required to present themselves to the Board for oral examination.

(5) Approval of an application may be withheld or restricted for violation of the provisions of T.C.A. § 63-16-108 and any rules promulgated pursuant thereto or failure to fully comply with all application requirements.

Authority: *T.C.A. §§4-5-102(3), 4-5-202, 4-5-204, 63-1-142, 63-16-103, 63-16-103(l) through 63-16-103(8), 63-16-104, 63-16-105, 63-16-106(a), 63-16-107(c), 63-16-107(d), 63-16-108, and 63-16-109.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed April 28, 1983; effective May 31, 1983. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed May 9, 1991; effective June 22, 1991. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed September 4, 2003; effective November 18, 2003.*

1020-1-.10 EXAMINATIONS.

~~(1) NAB Examination. Except for individuals applying for licensure by reciprocity, all applicants must first receive Board approval to take the examination. Successful completion of the examination is required before licensure is granted. The licensure examination process shall be governed by the following:~~

~~(a) Access to the Examination. To be admitted to the licensure examination an applicant must:~~

~~1. Fully comply with rules 1020-1-.07 and 1020-1-.08;~~

~~2. Receive approval of the Board to take the examination; and~~

~~3. Failure to comply with rules 1020-1-.07 and 1020-1-.08 within one (1) calendar year of the date on which the application is received by the Board Administrator shall cause the application to be closed as incomplete unless prior written authorization for an extended period has been issued by the Board.~~

(Rule 1020-1-.11, continued)

(1) NAB Examination. Except for individuals applying for licensure by reciprocity, all applicants must first receive Board approval to take the examination. Applicants must attempt to successfully complete the NAB examination within one (1) year from when Board approval to take the examination was granted. Successful completion of the examination is required before licensure is granted. The licensure examination process shall be governed by the following:

(a) Access to the Examination. To be admitted to the licensure examination an applicant must:

1. Fully comply with rules 1020-01-.07 and 1020-01-.08; and

2. Receive approval of the Board to take the examination.

(b) The Examination.

1. The Board approves the subjects, scope, content and format of the NAB examination and adopts the examination as the licensure examination for Tennessee applicants.

2. Passing scores and grading processes are determined by NAB. Such passing scores as certified to the Board are adopted by the Board as constituting successful completion of the licensure examination.

3. Applicants who fail to successfully complete the examination on the initial attempt may apply to retake it by complying with the requirements stated in subparagraph (1) (a) of this rule.

4. Applicants who fail twice to successfully complete the examination shall do the following before each subsequent retaking:

(i) Complete an additional A.I.T. program which emphasizes training in the deficient areas and is at least three (3) months in length; or

(ii) Submit to the Board for approval an education and training program as an alternative to the additional A.I.T. program. Any alternative education and training program must be approved by the Board prior to the applicant beginning such program, and must be successfully completed before retaking the examination.

5. Applicants who fail twice to successfully complete the examination may, in the Board's discretion, be required to furnish a written opinion of his/her reasons for the failure or may be required to appear before the Board to deliver an oral opinion. Failure of an applicant to provide the written or oral opinion shall cause the licensure application to be closed.

(2) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.

(a) When an applicant has become eligible for licensure and has submitted the Jurisprudence Examination Fee as provided in rule 1020-1-.02 (1) (g), the Board shall send notification of such eligibility and the jurisprudence examination to the applicant.

(b) The examination must be completed and returned to the Board Administrative Office before the expiration of ninety (90) days from the date of notification of eligibility, or the applicant shall forfeit such eligibility and must begin the licensure process over.

(c) The scope, format, and content of the examination shall be determined by the Board but limited to statutes and rules governing practices and facilities.

(Rule 1020-1-.11, continued)

(d) Correctly answering ninety percent (90%) of the examination questions shall constitute a passing score and successful completion of the jurisprudence exam. Applicants who fail to achieve a passing score on the examination may apply to retake it by written request to the Board Administrative Office and payment of the Jurisprudence Examination Fee as provided in rule 1020-1-.02 (1) (g).

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, 63-16-104, 63-16-105, and 63-16-106.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. New rule filed December 30, 1983; effective January 29, 1984. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 4, 1989; effective February 18, 1989. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed February 20, 2002; effective May 6, 2002. Amendment filed September 4, 2003; effective November 18, 2003. Amendment filed March 22, 2007; effective June 6, 2007.*

1020-1-.11 LICENSURE RENEWAL. All persons licensed by the Board must renew their licenses to be allowed to lawfully continue in practice. The due date for renewal is the last day of the month in which a licensee's birthdate falls, pursuant to the Division's biennial birthdate renewal system, shown as the expiration date on renewal certificates.

(1) Methods of Renewal

(a) Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

(b) Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.

(2) To be eligible for licensure renewal, a licensee must submit to the Board Administrative Office on or before the due date for renewal all the following:

(a) A completed Board licensure renewal form.

(b) The Renewal Fee as provided in rule 1020-1-.02(1)(b).

(c) The State Regulatory Fee as provided in rule 1020-1-.02(1)(c).

(3) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.

(4) Reinstatement of an Expired License. Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:

(a) At the discretion of the Board, either appear before it or submit a notarized statement setting forth the cause for failure to renew; and

(b) Payment of all past due Renewal Fees and State Regulatory Fees; and

(c) Payment of the Late Renewal Fee provided in rule 1020-1-.02 (1) (d); and

(d) Compliance with the continuing education requirements of rule 1020-1-.12; and

(6) Upon all legal requirements and obligations being met and a recommendation from the Board Consultant that an "affirmative finding" cannot be made, a notice of that recommendation shall be sent to the administrator involved. He shall also be notified of any and all rights available to him for review of that recommendation before the Board.

(a) If the administrator does not pursue his review rights within thirty (30) days of receipt of notice thereof the matter will be referred to the board for approval of the recommendation at which time it shall become a final action of the board.

(b) If an administrator requests a hearing pursuant to subparagraph (6)(a) a Notice of Hearing shall be issued alleging the facts and violations of the Nursing Home Administrator's Practice Act and the fact that disciplinary actions may be taken when the matter is addressed as a contested case hearing.

(7) Administrators subject to review shall not be allowed to renew their licenses until one of the following has occurred:

(a) An "affirmative finding" letter has been authorized by the Board; or

(b) Any requested contested case hearing is concluded subject to the provisions of T.C.A. § 4-5-320.

(8) Any administrator who by final action of the Board has not been allowed to renew licensure pursuant to this rule may not engage in the practice of nursing home administration at any time until complying with all statutes and rules governing initial licensure. The Board may consider the action taken under this rule in determining whether the person is qualified for licensure.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, 63-16-103(4), 63-16-103(5), 63-16-103(8), 63-16-107, and 63-16-107(e).* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 4, 1989; effective February 18, 1989. Amendment filed July 19, 1990; effective September 2, 1990. Amendment filed February 21, 1991; effective April 7, 1991. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000.*

1020-1-.15 LICENSURE DISCIPLINE, CIVIL PENALTIES, ASSESSMENT OF COSTS, AND SUBPOENAS

(1) Acts or omissions of or by an applicant or licensee which may, within the context of the policy statement of rule 1020-1-.16, constitute "unfitness" or "incompetence" in the practice of nursing home administration, as those terms are used in T.C.A. § 63-16-108(a)(1) for which disciplinary action and licensure or licensure renewal denial are authorized, include but are not limited to the following:

(a) Failure to comply with all continuing education requirements of rule 1020-1-.12.

(b) Intentionally or negligently allowing abuse or neglect of a resident or placing a resident in a situation where abuse or neglect, as those terms are defined in T.C.A. § 71-6-102(1), is occurring or is likely to occur.

(c) Habitual intoxication or personal misuse of any drugs or the use of intoxicating liquors, narcotics, controlled substances, or other drugs or stimulants in such manner as to adversely affect the person's ability to practice nursing home administration.

(d) Unauthorized use or unauthorized removal of narcotics, drugs, supplies or equipment from any health care facility or other work place location.

(Rule 1020-1-.15, continued)

(e) Impersonating another licensed nursing home administrator.

(f) Permitting or allowing another person to use the licensee's license for the purpose of nursing home administration.

(g) Revocation or suspension or other disciplinary action taken with respect to a license to practice nursing home administration by another state or territory of the United States or any act or omission which would constitute grounds for the revocation, suspension or other disciplinary action with respect to a license in this state.

(h) Practicing nursing home administration in this state on a lapsed state license or beyond the period of a valid temporary license.

(i) Failure to notify the appropriate licensure board of the unethical or illegal practice of any health care professional or provider of which the administrator has direct knowledge or responsibility.

(j) Violation of any lawful order of the Board.

(k) Making false statements or representations in obtaining a license to practice nursing home administration.

(l) Willfully or repeatedly violating any of the provisions of the laws of the State of Tennessee governing licensure of nursing homes or any of the rules promulgated pursuant thereto.

(2) Upon a finding by the Board that a licensee has violated any provision of the Tennessee Nursing Home Administrator Practice Act (T.C.A. §§ 63-16-101, et seq.) or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:

(a) Private Censure. A written action issued to the licensee for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.

(b) Public Censure or Reprimand. A written action issued to a licensee for a single episode or less severe violations. It is a formal disciplinary action.

(c) Probation. A formal disciplinary action which places a licensee on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the licensee's activities during the probationary period.

(d) Licensure Suspension. A formal disciplinary action which suspends a licensee's right to practice for a fixed period of time. It contemplates the reentry of the licensee into practice under the license previously issued.

(e) Licensure Revocation. The most severe form of disciplinary action which removes a licensee from practice and terminates the license previously issued. It relegates the violator to the status possessed prior to application for licensure. However, the Board may allow the reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license has been revoked shall be considered prior to the expiration of at least one (1) year.

~~(f) Conditions. Any action deemed appropriate by the Board to be required of a disciplined licensee during any period of probation or suspension or as a prerequisite to the lifting of probation or suspension or the reinstatement of a revoked license.~~

(Rule 1020-1-.15, continued)

(f) Conditions - Any action deemed appropriate by the Board to be required of a disciplined licensee in any of the following circumstances:

1. During any period of probation, suspension; or

2. During any period of revocation after which the licensee may petition for an order of compliance to reinstate the revoked license; or

3. As a prerequisite to the lifting of probation or suspension or as a prerequisite to the reinstatement of a revoked license; or

(g) Civil penalty -- A monetary disciplinary action assessed by the Board pursuant to paragraph (5) of this rule.

(h) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (3) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.

(3) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.

(a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or

2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or

3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order; and

(ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and

(iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed state-

(Rule 1020-1-.15, continued)

ments from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or

   (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.

5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance
Board of Examiners for Nursing Home Administrators

Petitioner's Name:
Petitioner's Mailing Address:

Petitioner's E-Mail Address:

Telephone Number:

Attorney for Petitioner:
Attorney's Mailing Address:

Attorney's E-Mail Address:
Telephone Number:

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1.

(Rule 1020-1-.15, continued)

2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or

3. An order issued reflecting that compliance and reinstating a license previously revoked.

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ___ day of _____, 20____.

_____
Petitioner's Signature

(4) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:

(i) A copy of the previously issued order; and

(ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and

(iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than

(Rule 1020-1-.15, continued)

that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

   (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or

   (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.

3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.

4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.

5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification
Board of Examiners for Nursing Home Administrators

Petitioner's Name: _____
Petitioner's Mailing Address: _____
_____
_____

Petitioner's E-Mail Address: _____
Telephone Number: _____

Attorney for Petitioner: _____
Attorney's Mailing Address: _____
_____
_____

Attorney's E-Mail Address: _____
Telephone Number: _____

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

_____
_____
_____
_____
_____
_____
_____

(Rule 1020-1-.15, continued)

Note – You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the ____ day of _____, 20____.

_____
Petitioner's Signature

(5) Civil Penalties.

(a) The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(b) Schedule of Civil Penalties.

1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed or certified by the Board guilty of a willful and knowing violation of the Practice Act, or regulations promulgated pursuant thereto, to such an extent that there is or is likely to be an imminent, substantial threat to the public. For purposes of this section willfully and knowingly practicing as a nursing home administrator without a license from the Board is one of the violations of the Nursing Home Administrators Practice Act for which a Type A Civil Penalty is assessable.

2. A Type B Civil Penalty may be imposed whenever the Board finds a person required to be licensed by the Board is guilty of a violation of the Nursing Home Administrators Practice Act or regulations promulgated pursuant thereto in such manner as to impact directly on the care of patients or the public.

3. A Type C Civil Penalty may be imposed whenever the Board finds a person required to be licensed by the Board is guilty of a violation of the Nursing Home Administrators Practice Act or regulations promulgated pursuant thereto, which is neither directly detrimental to the patients or public, nor directly impacts their care, but has only an indirect relationship to patient care or the public.

4. Each day a violation continues to occur shall constitute a separate violation.

(c) Amount of Civil Penalties.

1. Type A Civil Penalties may be assessed in the amount of not less than $500 nor more than $1,000.

2. Type B Civil Penalties may be assessed in the amount of not less than $100 nor more than $500.

3. Type C Civil Penalties may be assessed in the amount of not less than $50 nor more than $100.

(d) Procedure for Assessing Civil Penalties.

(Rule 1020-1-.15, continued)

1. The Division may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges.

2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.

3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:

   (i) Whether the amount imposed will be a substantial economic deterrent to the violator;

   (ii) The circumstances leading to the violation;

   (iii) The severity of the violation and the risk of harm to the public;

   (iv) The economic benefits gained by the violator as a result of non-compliance; and,

   (v) The interest of the public.

(6) All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of the Administrative Procedures Act, T.C.A. §§ 4-5-301, et seq.

(7) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

(8) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-16-115.

(9) Subpoenas

(a) Purpose - Although this rule applies to persons and entities other than nursing home administrators, it is the Board's intent as to nursing home administrators that they be free to comprehensively treat and document treatment of their residents without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or board investigators to seek other incriminating evidence against nursing home administrators when the division or board does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.

(b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

1. Probable Cause

(Rule 1020-1-.15, continued)

(i). For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of nursing home administrator statutes or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.

(ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the board, or any duly appointed or elected chairperson of any panel of the board.

(c) Procedures

1. Investigative Subpoenas

(i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.

(ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:

(I) The time frame in which issuance is required so the matter can be timely scheduled; and

(II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the division or board.

In no event shall such subpoena be broadly drafted to provide investigative access to medical records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or board consideration of a nursing home administrators conduct, act, or omission.

(III) Whether the proceedings for the issuance is to be conducted by physical appearance or electronic means; and

(IV) The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed.

(iii) The Board's Unit Director shall cause to have the following done:

(I) In as timely a manner as possible arrange for either an elected officer of the board, or any duly appointed or elected chairperson of the board, to preside and determine if issuing the subpoena should be recommended to the full Board; and

(Rule 1020-1-.15, continued)

(II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and

(III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:

I. Preserve a verbatim record of the proceeding; and

II. Prevent the person presiding over the proceedings and/or signing the subpoena from being allowed to participate in any manner in any disciplinary action of any kind formal or informal which may result which involves either the person or the documents or records for which the subpoena was issued.

(iv) The Proceedings

(I) The applicant shall do the following:

I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and

II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and

III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:

A. The name and address of the person for whom the subpoena is being sought or who has possession of the, items being subpoenaed; and

B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and

C. A brief, particular description of any materials, documents or items to be produced pursuant to the subpoena; and

D. The date, time and place for compliance with the subpoena.

IV. Provide the presiding officer testimony and/or documentary evidence which in good faith the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.

(II) The Presiding Officer shall do the following:

I. Have been selected only after assuring the Boards' Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and

II. Commence the proceedings and swear all necessary witnesses; and

(Rule 1020-1-.15, continued)

III. Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full board only that evidence necessary for an informed decision; and

IV. Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and

V. Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full board; and

VI. Sign the subpoena as ordered to be issued; and

VII. Not participate in any way in any other proceeding whether formal or informal which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.

(III) The Board shall do the following:

I. By a vote of two thirds (2/3) of the members to which the board is entitled, issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and

II. Sign the subpoena as ordered to be issued, quashed or modified.

2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.

(d) Subpoena Forms

1. All subpoena shall be issued on forms approved by the Board.

2. The subpoena forms may be obtained by contacting the Board's Administrative Office.

(e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-16-103, and 63-16-108.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed December 17, 1982; effective January 17, 1983. Amendments by Public Chapter 969; effective July 1, 1984. Amendment filed June 30, 1987; effective August 14, 1987. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 5, 1990; effective February 19, 1990. Amendment filed March 16, 1990; effective April 30, 1990. Amendment filed July 19, 1990; effective September 2, 1990. Amendment filed September 24, 1990; effective November 8, 1990. Amendment filed February 21, 1991; effective April 7, 1991. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000. Amendment filed April 10, 2000; effective July 1, 2000. Amendment filed February 20, 2002; effective May 6, 2002. Amendments filed December 28, 2004; effective March 13, 2005. Amendment filed March 22, 2007; effective June 5, 2007.*

1020-1-.16 SCOPE OF PRACTICE.

(1) Policy Statement. The health, safety and welfare of nursing home residents in Tennessee depends upon the efficiency, fitness, competence and integrity of the administrators of those nursing homes. Licensure to practice nursing home administration confers upon each licensee the ultimate responsibility for the overall operation of any nursing home in which the licensee has assumed duties as an administrator. That responsibility, for purposes of nursing home administration licensure, is independent of any responsibility for facility licensure placed upon any governing body of a facility or any corporation, association or other entity or person which may own the facility.

(a) A licensee's responsibility extends to the acquisition of the authority necessary to assure that all equipment, supplies, personnel, structures and finances are available at all times and in such measures as to bring the facility into compliance with statutes and rules governing nursing home administrators, nursing home licensure and federal certification if participating in the Medicare or Medicaid programs.

(b) It is only after exhaustion of all avenues available to an administrator to secure those items necessary for the prevention or correction of facility survey deficiencies that the administrator will be deemed to have met his licensure responsibilities.

(2) Surveys, Complaint Investigations, and Inspections. All matters concerning governmental surveys, complaint investigations and inspections of any kind are the direct responsibility of the administrator employed at the facility. The responsibility for addressing those actions cannot be assumed by any unlicensed personnel or licensees who are not expressly employed as the administrator of the facility.

(a) When an authorized signature is required on any federal, state or local governmental survey, investigation or inspection of any kind, those documents must be reviewed and signed by the administrator employed at the facility regardless of corporate or other ownership procedures or policies.

(b) In the absence of a facility administrator's signature, the signature of any person authorized by the owner of the facility does not absolve the administrator from responsibility for the condition in the facility which gave rise to the governmental action. Such signatures merely signify that the contents of the documents are true and any remedial action incorporated is authorized for timely implementation.

(c) The failure of any facility administrator to sign governmental documents requiring authorized signatures when within reasonable capabilities of the administrator to do so may constitute grounds for discipline pursuant to T.C.A. § 63-16-108. Any unlicensed personnel who sign such documents not containing the facility administrator's signature may be considered as practicing nursing home administration without a license and consequently subject to Board jurisdiction pursuant to T.C.A. § 63-1-134 and rule 1020-1-.15(3).

~~(3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Nursing Home Administrator" and to practice as a nursing home administrator as defined in T.C.A. §§ 63-16-101. Violation of this rule regarding use of titles shall subject the licensee to disciplinary action.~~

(3) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Nursing Home Administrator" and/or the acronym "N.H.A.," and to practice as a nursing home administrator as defined in T.C.A. § 63-16-101. Violation of this rule regarding use of titles shall subject the licensee to disciplinary action. Any person licensed by the Board must use the title and/or the acronym authorized by this rule in every advertisement he or she publishes. The failure to do so will constitute an omission of a material fact which

(Rule 1020-1-.16, continued)

makes the advertisement misleading and deceptive and subjects the nursing home administrator to disciplinary action pursuant to T.C.A. § 63-16-108 (1), (2), and (3).

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-102, 63-1-145, 63-1-146, 63-16-101, 63-16-103 ~~and~~ 63-16-108; and 63-16-111.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Amendment by Public Chapter 969; effective July 1, 1984. Amendment filed September 11, 1984; effective October 11, 1984. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed May 6, 1988; effective June 20, 1988. Amendment filed January 4, 1990; effective February 18, 1990. Repeal and new rule filed December 17, 1991; effective January 31, 1992. Repeal and new rule filed December 14, 1999; effective February 27, 2000.*
Amendment filed July 27, 2006; effective October10, 2006.

1020-1-.17 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.

(1) Malpractice reporting requirements. The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars ($10,000).

(2) Criminal conviction reporting requirements. For purposes of the "Health Care Consumer Right-To-Know Act of 1998", the following criminal convictions must be reported:

(a) Conviction of any felony.

(b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:

1. Sex.

2. Alcohol or drugs.

3. Physical injury or threat of injury to any person.

4. Abuse or neglect of any minor, spouse or the elderly.

5. Fraud or theft.

(c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the department before the conviction will be expunged from any profile.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-16-103, and 63-51-101, et seq.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed September 24, 1987; effective December 29, 1987. Repeal filed December 17, 1991; effective January 31, 1992. New rule filed April 10, 2000; effective July 1, 2000.*

1020-1-.18 ADVERTISING. The following acts or omissions in the context of advertisements by any licensee shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-16-108.

(1) Claims that convey the message that one licensee is better than another when superiority cannot be substantiated.

(2) Misleading use of an unearned or non-health degree.

(3) Misrepresentation of a licensee's credentials, training, experience, or ability.

(Rule 1020-1-.18, continued)

(4) Promotion of professional services which the licensee knows or should know are beyond the licensee's ability to perform.

(5) Use of any personal testimonial attesting to a quality of competency that is not reasonably verifiable.

(6) Utilization of any statistical data or other information based on past performances for prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.

(7) Communication of personal identifiable facts, data, or information about a nursing home resident without first obtaining the resident's consent, unless otherwise permitted or required by state or federal law or regulation.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-16-103, and 63-16-108.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed by Public Chapter 969; effective July 1, 1984. New rule filed July 27, 2006; effective October10, 2006.*

1020-1-.19 REPEALED.

Authority: *T.C.A. §63-16-103.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Repealed by Public Chapter 969; effective July 1, 1984.*

1020-1-.20 REPEALED.

Authority: *T.C.A. §63-16-103.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed by Public Chapter 969; effective July 1, 1984.*

1020-1-.21 REPEALED.

Authority: *T.C.A. §63-16-103.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed May 22, 1979; effective July 6, 1979. Repealed by Public Chapter 969; effective July 1, 1984.*

1020-1-.22 REPEALED.

Authority: *T.C.A. §63-16-103.* ***Administrative History:*** *Original rule certified June 7, 1974. Repealed by Public Chapter 969; effective July 1, 1984.*

1020-1-.23 REPEALED.

Authority: *T.C.A. §§63-16-103(8) and 4-5-202.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal filed December 17, 1991; effective January 31, 1992.*