

Case Notes

Finding of misconduct by nursing home administrator reversed; misconduct defined; all aspects of position behavior must be weighed in aggregate misconduct determination; "other reasons" standard for disciplinary action in regulation too vague and uncertain for enforcement. *State, Dept. of Health v. Tegnazian*, 205 N.J.Super. 160, 500 A.2d 398 (App.Div.1985).

8:34-8.2 Denial, license suspension, or license sanctions

(a) The Board may refuse to issue a license, recommend to the Commissioner the revocation or suspension of a license, or may reprimand or otherwise discipline an individual, in accordance with (d) below, upon receiving substantial evidence that said individual for license, or such nursing home administrator:

1. Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the rules of the Department pertaining thereto;

2. Has willfully or repeatedly violated any of the provisions of N.J.S.A. 26:2H-1 et seq. or the rules of any licensing or supervising authority or agency of the State or political subdivision thereof having jurisdiction over the operation and licensing of nursing homes;

3. Has been convicted of a crime involving moral turpitude or of violating the provisions of N.J.S.A. 30:11-11 or these rules by a court of competent jurisdiction or has admitted such guilt;

4. Has practiced fraud, deceit, or misrepresentation in securing or procuring a nursing home administrator license;

5. Is incompetent to engage in the practice of nursing home administration or to act as a nursing home administrator;

6. Has practiced fraud, deceit, or misrepresentation in his/her capacity as a nursing home administrator;

7. Has committed acts of misconduct in the operation of a nursing home under his/her jurisdiction;

8. Is addicted or dependent upon the use of any drug recognized as resulting in abnormal behavior;

9. Has practiced without a nursing home administrator license;

10. Has wrongfully transferred or surrendered possession either temporarily or permanently of his/her license to any person;

11. Has paid, given, caused to be paid or given or offered to pay or give to any person a commission or other valuable consideration for the solicitation or procurement either directly or indirectly of nursing home patronage;

12. Has been guilty of fraudulent, misleading, or deceptive advertising;

13. Has impersonated another licensee of a like or different name;

14. Has failed to act to promote the safety, health and life of a resident(s);

15. Has willfully permitted unauthorized disclosure of information relating to a resident or his or her records;

16. Has discriminated in respect to residents, employees or staff on account of race, religion, color, sex or national origin;

17. Has committed an act of professional negligence or omission of professional responsibility that is repeated, willful or knowingly committed, or has committed gross negligence, in the opinion of the Board; or

18. For such other reasons as the Board might deem reasonable and appropriate to protect the health, safety and welfare of the residents of any nursing home.

(b) Before the Board takes any of the following actions, the individual shall be afforded due notice and the opportunity to be heard, in accordance with N.J.S.A. 30:11-17:

1. Refuse to issue a license;

2. Recommend revocation or suspension of a license;

3. Recommend the issuance of a money civil penalty in excess of \$250.00;

4. Issue a written reprimand; or

5. Take other corrective or rehabilitative action against an individual.

(c) Pursuant to N.J.S.A. 30:11-21, the Board shall have the right of inquiry into the operations of a facility and review of statement of deficiencies and penalties issued by the Department in accordance with this chapter and pursuant to N.J.S.A. 30:11-21.

(d) Pursuant to N.J.S.A. 30:11-21(e) the Board shall have the power to:

1. Request an administrator, owner, employee or anyone having knowledge pertaining to a matter before the Board to provide information to the Board or to appear before the Board;

2. Place a letter of reprimand in the Department file of an administrator;

3. Place a letter of censure or warning in the Department file of an administrator;

4. Require an administrator to complete continuing education credits in specified areas in addition to the CEUs required for licensure renewal;

5. Require an administrator to obtain counseling and assistance;

6. Recommend the issuance of a civil money penalty; and/or

7. Recommend to the Commissioner, the denial, suspension or revocation of an administrator's license.

8:34-8.3 Hearings

(a) Any person, public officer, association, or the Department, may prefer charges against a licensee for due cause. Such charge shall be in writing and shall be submitted to the Board.

(b) The Board shall review the charges and retain the authority to dismiss said charges and take no action thereon, by formal hearing or otherwise, in which case the complaint and supporting documentation shall be filed with the Department.

(c) The Board may elect to issue a recommendation of revocation, suspension, or denial of a license, in which case the Board shall forward notice of its recommendation, together with a specification of charges, to the applicant or licensee by registered mail.

(d) Revocation, suspension, reprimand, or denial shall become effective 30 days after mailing of notice unless the applicant or licensee, within said 30 day period, shall give written notice to the Department of a desire for a hearing.

(e) If a hearing is requested by the applicant or licensee, the revocation, suspension, reprimand, or denial action shall be held in abeyance until final adjudication of the complaint.

(f) An order of suspension, denial, or revocation may contain such provisions regarding reinstatement of the license as the Board shall recommend. In the absence of any such provisions regarding reinstatement in an order or revocation, the revocation shall be deemed to be permanent.

8:34-8.4 Conduct of hearings

(a) The applicant or licensee shall be afforded an opportunity for a prompt and fair hearing before a final decision is made on the matter of revocation, suspension, written reprimand, denial of any license, or issuance of a civil money penalty in excess of \$250.00. The procedure governing such hearing shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) The Commissioner shall render a written decision stating conclusions and reasons therefor upon each matter heard, and shall be empowered to enter orders of revocation, suspension or denial consistent with the circumstances in each case.

Case Notes

Detailed findings of fact necessary for proper determination in proceeding to revoke license of nursing home administrator; remand for proper findings. State, Dept. of Health v. Tegnazian, 194 N.J.Super. 435, 477 A.2d 363 (App.Div.1984).

8:34-8.5 Restoration and reinstatement of licenses

(a) Upon written application for restoration of a license, the Board in its discretion may grant the applicant a hearing upon notice.

(b) If conviction of a crime which resulted in the revocation or suspension of a license is subsequently reversed on appeal and the accused acquitted or discharged, the license shall be restored, upon written request by the licensee to the Board.

SUBCHAPTER 9. FEES

8:34-9.1 Fees and charges

(a) The following fees shall be paid by the applicant:

- 1. Application fee\$100.00
- 2. Original license fee
 - i. During the first year of a biennial renewal period150.00
 - ii. During the second year of a biennial renewal period75.00
- 3. Biennial license renewal fee150.00
- 4. Late renewal fee in addition to renewal fee25.00
- 5. Duplicate license fee10.00
- 6. Duplicate certificate fee10.00
- 7. License restoration fee175.00
- 8. Annual fee for submission of a continuing education program application to be approved by the Board25.00
 - i. State agencies shall be exempt from the payment of this fee.

(b) Prior to taking the licensure examination, each applicant shall be required to submit an examination fee in the amount specified by the professional examination service utilized by the Department for the administration of the examination and approved by the Department and the Nursing Home Administrator's Board in accordance with N.J.S.A. 30:11-13. The Department shall provide timely notice of the examination fee in the Public Notices section of the New Jersey Register.

(c) All fees collected under the provisions of this subchapter are non-refundable.