

3. Persons who are certified as homemaker-home health aides by the New Jersey Board of Nursing, in accordance with N.J.A.C. 13:37-14, and who successfully complete the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department; and

4. Persons who successfully complete the Core Curriculum for Unlicensed Assistive Personnel approved by the Department and the New Jersey Board of Nursing, and the Long-Term Care Module of the Core Curriculum for Unlicensed Assistive Personnel approved by the Department.

#### 8:39-43.4 Certificates

(a) A nurse aide in long-term care facilities certificate shall be valid for a period of two years from the date of issue.

(b) A nurse aide certificate shall not be retained by an employer for any reason.

(c) A nurse aide certificate is not transferable by sale, gift, duplication, or other means and shall not be forged or altered.

#### 8:39-43.5 Revocation and suspension of certificates

(a) A certificate issued to a nurse aide in accordance with this subchapter shall be revoked in the following cases:

1. Finding of abuse, neglect or misappropriation of property of a resident of a long-term care facility or assisted living residence, or of a patient, resident, or client of any other facility or agency licensed by the Department;

2. Conviction or guilty plea as specified at N.J.A.C. 8:39-9.3(b) or other crime or offense as specified at N.J.A.C. 8:43I-2.1(b); or

3. Sale, purchase, or alteration of a certificate; use of fraudulent means to secure the certificate, including filing false information on the application; or forgery, imposture, dishonesty, or cheating on an examination.

(b) The Commissioner or his or her designee may summarily suspend the certificate of a nurse aide when the continued certification of an individual poses an immediate threat to the health, safety or welfare of the public, including residents and patients of long-term care facilities, assisted living facilities and other licensed health care facilities or agencies. An individual whose certificate is summarily suspended shall have the right to appeal to the Commissioner for an expedited hearing at the Office of Administrative Law, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. If the summary suspension is upheld at the Office of Administrative Law, the individual whose certificate has been summarily suspended shall have the right to apply for injunctive relief in the Superior Court of New Jersey. Nothing in this subsection shall be construed to prevent the Commissioner

from thereafter revoking the license in accordance with (a) above.

#### Case Notes

Nurse aide's certification was revoked for one year and an entry on the Nurse Aide Registry was ordered for a period of one year, where the aide was properly charged with neglect because she failed to use a Hoyer lift rather than a one-man lift to lift a resident, who had suffered a stroke that left her with limited mobility. The aide was further properly charged with neglect because once the resident fell, the aide failed to provide her charge nurse with the information as to what had occurred so that the resident could be properly treated. N.J. Dep't of Health & Senior Services v. Cator, OAL Dkt. No. HLT 8230-07, 2008 N.J. AGEN LEXIS 179, Initial Decision (March 8, 2008).

Nurse aide's name was to be listed on the Nurse Aid Registry and her certificate revoked, where evidence showed that (1) while being showered, a resident asked repeatedly to use the bathroom, but the aide refused to allow her to do so despite being in immediate proximity to a facility and instead, the aide required the resident to void into a plastic garbage bag, causing the resident to experience embarrassment and mental distress; (2) the aide jammed the shower wand between the resident's legs and moved it back and forth, causing injury to the resident's labia in the form of abrasions resulting in harm, pain, and mental anguish; and (3) the aide left the resident in her room covered only by a sheet and when the sheet fell off, the resident was exposed to the view of workmen and others in the hall, causing the resident to be denied privacy and to experience embarrassment and mental anguish. N.J. Dep't of Health & Senior Services v. Badio, OAL Dkt. No. HLT 9591-06, 2007 N.J. AGEN LEXIS 41, Initial Decision (January 22, 2007).

Ordering revocation of a nurse aide's certification and permanent placement of her name on the Nurse Aide Registry, where credible evidence supported the finding that the aide struck the resident with a shoe after the resident kicked the aide in the stomach when the resident did not want to get out of bed, and the aide's action caused swelling and a large bruise. N.J. Dep't of Health & Senior Services v. Lacrete, OAL Dkt. No. HLT 7560-04, 2006 N.J. AGEN LEXIS 818, Initial Decision (September 26, 2006).

Adopting Initial Decision (2005 N.J. AGEN LEXIS 568) and ordering that a finding of misappropriation of a resident's property be placed next to a nursing aide's name on the Nurse Aide Registry and her certificate revoked, where evidence showed that the aide took the checkbook of a former resident of a specialty care center to the aide's home, and failed to report the taking to the resident, to the center, or to the police. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8937-04, 2005 N.J. AGEN LEXIS 1315, Final Decision (November 1, 2005).

#### 8:39-43.6 Recertification

(a) The Department shall require the renewal and updating of a nurse aide listing on the registry at least once every two years on a schedule established by the Department.

(b) In order to be recertified, an individual shall have a currently valid nurse aide in long-term care facilities certificate and shall have been employed performing nursing or nursing-related services for at least seven hours for pay, in a licensed health care facility or for an agency licensed by the Department, within the past 24 months from the date of expiration as specified on the nurse aide certificate, and shall not have had his or her certificate revoked in accordance with N.J.A.C. 8:39-43.5(a), and shall not have his or her certificate suspended in accordance with N.J.A.C. 8:39-43.5(b).

(c) The designated facility representative shall verify such employment by signing the individual's recertification data mailer upon request of the individual.

(d) Any individual who does not meet the recertification requirement listed in (b) above and who wishes to be recertified, shall repeat the requirements for certification at N.J.A.C. 8:39-43.2, unless the original date of issue of the certificate is within the five years prior to the expiration date listed on the certificate and the nurse aide successfully completes the skills evaluation and written/oral examination.

1. Any individual who has allowed his or her certificate to expire must undergo a criminal background investigation as required by N.J.A.C. 8:43I, regardless of whether the person must complete a training program.

### 8:39-43.7 Nurse aide registries

(a) The Department shall establish and maintain a nurse aide registry in accordance with 42 CFR 483.156, as supplemented and amended.

(b) The Department shall establish and maintain a nurse aide abuse registry in accordance with 42 CFR 483.156, as supplemented and amended.

1. The nurse aide abuse registry shall include the names of individuals who are found to have abused, neglected or misappropriated the property of any resident while working in a long-term care facility as an uncertified nurse aide.

#### Case Notes

Adopting Initial Decision (2007 N.J. AGEN LEXIS 813) and ordering that a finding of neglect be entered on the Nurse Aide Registry, where although the certified nurse aide's testimony claiming her innocence of the charge appeared to be credible based upon her demeanor, the testimony of other witnesses and the objective physical evidence preponderated in favor of a finding of guilt. It was indisputable that the aide was responsible for the care of an elderly, incontinent resident, that the resident got out of her bed and her doing so was not detected because the tabs monitor was not attached as required by the Kardex care plan, that the resident's diaper and clothing were soaked with urine and soiled with feces, that the resident suffered a serious injury to her left hip and leg, and that the aide admitted to the risk manager at the care center and to the director of nursing that she had not examined or checked the resident from approximately 1:30 a.m. until she was found at approximately 5:30 a.m. in contravention of the aide's responsibility to toilet the resident every two hours. N.J. Dep't of Health & Senior Services v. Pawlowska, OAL Dkt. No. HLT 6659-07, 2008 N.J. AGEN LEXIS 146, Final Decision (January 18, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 787) adopted, which concluded that the evidence was insufficient to warrant placing a certified nurse aide on the Nurse Aide Registry for allegedly having verbally abused a resident under her care. N.J. Dep't of Health & Senior Services v. Lewis, OAL Dkt. No. HLT 7747-07, 2008 N.J. AGEN LEXIS 147, Final Decision (January 18, 2008).

Certified nurse aide committed an act of abuse when a resident was splashed with hot tea; despite the aide's claim that warm tea was accidentally spilled, witnesses who were actually present in the room when the incident occurred agreed that the resident was becoming agitated and further agreed that the aide did have a cup of hot tea in her hand and did throw the hot tea at the resident in response to the resident's agitation,

and an examination of the resident shortly after the incident showed that the resident's chest was red from the tea (adopting in part and modifying in part 2007 N.J. AGEN LEXIS 788). N.J. Dep't of Health & Senior Services v. Snowden, OAL Dkt. No. HLT 7842-07, 2008 N.J. AGEN LEXIS 148, Final Decision (January 18, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 487) adopted, which concluded that a certified nurse aide neglected and abused a resident in a long-term care facility where the resident, an alert and oriented woman, testified that the aide had hit her face on the left side rail of the bed as she was helping the resident during the night; the resident further testified that when the resident told the aide what she, the aide, had done, the aide responded "good" and advised her to shut up, the resident was not changed until 2:00 a.m. that morning, and that was all the assistance and care that she had received for that night shift. N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929, Final Decision (August 20, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 487) adopted, which concluded that a certified nurse aide neglected a resident in a long-term care facility where the resident, who could not toilet herself at the time in question, testified that she could not move fast enough when she was turning over on her left side during the night and the aide was rough in turning her, that she thereafter tried to help herself and called for help, that she could not remember how long she waited for help before she took her diaper off and threw it on the floor, and that the aide had told her she would be back to change her in a short time but the aide never returned to change her. N.J. Dep't of Health & Senior Services v. Adams, OAL Dkt. No. HLT 3783-07, 2007 N.J. AGEN LEXIS 929, Final Decision (August 20, 2007).

Adopting Initial Decision (2007 N.J. AGEN LEXIS 453) and ordering that a finding of verbal abuse be entered on the Nurse Aide Registry, where credible evidence established that a patient approached the aide and several other aides and interrupted their conversation, that as a result of this interruption, the aide told the patient that no one was talking to her and that, because of similar prior conduct of the patient, "That's why my mother is alive and . . . your mother is dead," and the aide's remark upset the resident to an extent not seen previously. N.J. Dep't of Health & Senior Services v. Jenkins, OAL Dkt. No. HLT 4964-06, 2007 N.J. AGEN LEXIS 930, Final Decision (August 9, 2007).

Adopting Initial Decision (2007 N.J. AGEN LEXIS 418) and ordering that a finding of misappropriation of a resident's property be placed on the Nurse Aide Registry, where it appeared that a certified nurse aide used the telephone of a long-term care facility resident on several occasions. Although the aide raised her absence of understanding, and therefore requisite intent, it was not believable to argue in her defense that a long-experienced certified nursing aide, over the course of three separate days, could have made calls in all innocence from a phone she knew to have been paid for by a resident, and in reliance on the ostensible permission allowed by the same resident, who was suffering from partial dementia. N.J. Dep't of Health & Senior Services v. Robert, OAL Dkt. No. HLT 803-07, 2007 N.J. AGEN LEXIS 931, Final Decision (July 18, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 185) adopted, which concluded that a finding that a certified nurse aide verbally abused a resident had been substantiated and should be entered on the Nurse Aide Registry where it appeared that the aide did threaten and curse at the resident, pointing a can of deodorant in his face; in addition, the aide engaged the resident in verbal disputes, and allowed the matter to escalate instead of diffusing the situation. N.J. Dep't of Health & Senior Services v. Thompson, OAL Dkt. No. HLT 249-07, 2007 N.J. AGEN LEXIS 542, Final Decision (May 17, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 154) adopted, which concluded that a certified nurse aide neglected a resident in a long-term care facility where the aide, faced with a situation of a resident who was incontinent, upset, and in need of a clothing change and careful attention, simply left the resident alone in his room, slumped over in his chair, seated in feces, vulnerable to the anxiety-inducing turmoil she created, and then left the facility without completing her shift, although she had been promised that another aide would be available to help

within only a few minutes of her request for aid. N.J. Dep't of Health & Senior Services v. Martinez, OAL Dkt. No. HLT 320-07, 2007 N.J. AGEN LEXIS 526, Final Decision (May 14, 2007).

Adopting Initial Decision's conclusion that neither a finding of neglect nor a finding of abuse should be placed next to the nurse aide's name on the Nurse Aide Registry for alleged abuse and neglect of an elderly resident suffering from Alzheimer's Disease; the ALJ found that the testimony of the resident's roommate was unreliable and not credible, and the director of social services at the facility and a certified nurse's aide both disbelieved the roommate's statements on the matter. N.J. Dep't of Health & Senior Services v. Yates, OAL Dkt. No. HLT 8438-06, 2007 N.J. AGEN LEXIS 326, Final Decision (March 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 29) accepted, which concluded that a certified nurse aide did not neglect or verbally or mentally abuse two residents of an assisted living and convalescent home by statements that the two residents did not like black people; while an incident occurred involving the two residents and the aide in the dining room that, at the minimum, had the aide speaking in a loud and/or gruff manner as concerns the topic of who would be caring for the residents while their white aide was on vacation, the aide in no way intended for her statement to be intimidating or otherwise to cause pain or mental anguish, humiliation, or harassment. N.J. Dep't of Health & Senior Services v. McIntosh, OAL Dkt. No. HLT 212-07, 2007 N.J. AGEN LEXIS 324, Final Decision (March 8, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 19) adopted, which concluded that DHSS carried its burden of persuasion of proof by a preponderance of the competent and credible evidence that two nurse aides abused a resident and that their names should be placed in the Nurse Aide Registry; the aides' explanations about the clearly abusive comments and restriction of the resident to her room lacked credibility, and neither could offer an explanation regarding their instances of swearing as to why they believed the resident should learn to be a better cursor. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8404-04 and HLT 8842-04, 2007 N.J. AGEN LEXIS 325, Final Decision (February 22, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 724) adopted, which concluded that DHSS had failed to prove by a preponderance of the credible evidence that two certified nurse aides abused or were negligent in their handling of their patient, an older woman, who was demented, easily confused, and at risk of falling and who had fallen from a chair and fractured her hip; no injury report was submitted, no one saw the patient fall, no one clearly stated that there was no safety belt, no physician's orders were introduced, and no management safety plan for the patient was introduced. N.J. Dep't of Health & Senior Services v. Yu, OAL Dkt. No. HLT 429-06; HLT 2392-06, 2006 N.J. AGEN LEXIS 873, Final Decision (September 27, 2006).

Name of a certified nurse aide would not be placed on the Nurse Aide Registry on grounds that the aide struck and/or taunted a resident, where the resident clearly had no recollection of what had occurred, her testimony was rambling, incoherent, and not believable, her statements taken after the incident were inconsistent, including the failure to tell a nurse that the aide had struck her, and there was the absence of any red marks or bruises; on the other hand, the aide appeared very soft spoken and was consistent in her testimony. N.J. Dep't of Health & Senior Services v. Toussaint, OAL Dkt. No. HLT 755-06, 2006 N.J. AGEN LEXIS 453, Initial Decision (July 19, 2006).

Initial Decision (2006 N.J. AGEN LEXIS 336) adopted, which concluded that neglect of a resident by a certified nurse aide had not been substantiated; although it was undisputed that the physician had ordered the use of a Gerrichair with a lap tray to keep resident, a fall risk, in a seated position and that the resident had been placed in a Gerrichair with no tray and with no tab alarm to sound if the resident attempted to rise, the aide's testimony about the lack of notice and knowledge as to the resident's care plan was entirely credible based on the observations of the aide and her demeanor during her testimony as well as the fact that even the nursing staff and the direct care staff on an earlier shift were unaware of the safety precautions applicable to the resident. N.J. Dep't

of Health & Senior Services v. Quirindongo, OAL Dkt. No. HLT 754-06, 2006 N.J. AGEN LEXIS 584, Final Decision (June 16, 2006).

Adopting Initial Decision (2005 N.J. AGEN LEXIS 568) and ordering that a finding of misappropriation of a resident's property be placed next to a nurse aide's name on the Nurse Aide Registry and the aide's certificate revoked, where evidence showed that the aide took the checkbook of a former resident of a specialty care center to the aide's home, and failed to report the taking to the resident, to the center, or to the police. N.J. Dep't of Health & Senior Services v. Williams, OAL Dkt. No. HLT 8937-04, 2005 N.J. AGEN LEXIS 1315, Final Decision (November 1, 2005).

Adopting Initial Decision (2005 N.J. AGEN LEXIS 358) and ordering that a finding of abuse be entered on the Nurse Aide Registry where the evidence showed that a certified nurse aide abused a quadriplegic resident in her early 60's, suffering from MS and with very slight use of her hands, by comments that subjected the resident to mental anguish, disparaging and derogatory terms within the resident's hearing, and threats of deprivation and involuntary seclusion. In particular, the aide, in the presence and hearing of the resident, stated to two students training to become certified nurse aides that the resident was "too heavy" and "dead weight," the aide told the resident to "lay off the call light" because she was not going to return to get her up again, and when informed by the resident that she had the flu, the aide harshly retorted that the flu had nothing to do with her "acting up" and again told her not to use the call light. N.J. Dep't of Health & Senior Services v. Michael-George, OAL Dkt. No. HLT 6685-04, 2005 N.J. AGEN LEXIS 1472, Final Decision (September 16, 2005).

### **8:39-43.8 Hearings for resident abuse, resident neglect, or misappropriation of resident property**

(a) Prior to entering a finding on the nurse aide abuse registry, the Department shall provide an opportunity of at least 30 days notice to the certified nurse aide or uncertified nurse aide, identifying the intended action, the factual basis and source of the finding, and the individual's right to a hearing.

(b) If a hearing is requested, it shall be conducted by the Office of Administrative Law or by a hearing officer of the Department in accordance with hearing procedures established by the Administrative Procedure Act., N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) No further right to an administrative hearing shall be offered to a certified nurse aide or uncertified nurse aide who has been afforded a hearing before a State or local administrative agency or other neutral party, or in a court of law, at which time the nurse aide received adequate notice and an opportunity to testify and to confront witnesses, and where there was an impartial hearing officer who issued a written decision verifying the findings of abuse, neglect, or misappropriation of property of a resident. The individual shall have a right to enter a statement to be included in the registry contesting such findings.

### **8:39-43.9 Equivalency for nurse aides registered in other states**

(a) A nurse aide certificate received in another state or territory of the United States may be entered on the registry, provided that the following conditions are satisfied:

1. The Department receives documentation from the state's or U.S. territory's registry that such nurse aide has completed a training and competency evaluation program at least equal to that required in New Jersey;

2. The nurse aide has not been convicted of any crimes and has no documented findings of abuse, neglect, or misappropriation of resident property on the registry; and

3. The nurse aide complies with the requirements for a criminal background investigation as required by N.J.A.C. 8:43I.

**8:39-43.10 Approval of a nurse aide in long-term care facilities training program**

(a) Written approval of the Department is required prior to enrollment of students and the commencement of a training program in an educational institution, a facility, or a proprietary program. Training program approval, when granted, shall be granted for a 24-month period.

(b) An approved training program for nurse aides shall consist of 90 hours of training. This shall include 50 hours of classroom instruction and 40 hours of clinical experience in a New Jersey licensed long-term care facility. All training programs shall use the curriculum approved by the Department, in accordance with (c) below.

(c) The New Jersey Curriculum for Nurse Aide Personnel in Long-Term Care Facilities ("the curriculum"), which has been approved by the Department, shall be the approved curriculum for a 90 hour training program. The entire content of the curriculum shall be taught. A copy of the curriculum and the form needed to apply for approval of a training course may be obtained by contacting the following office:

Certification Program  
New Jersey Department of Health and Senior  
Services  
PO Box 367  
Trenton, NJ 08625-0367

(d) The New Jersey competency evaluation shall consist of both a skills examination and a written/oral examination.

(e) A facility-based approved training program and the New Jersey competency evaluation shall be scheduled so as to be completed within 120 days of the starting date of employment for a nurse aide.

(f) A training program offered in an educational institution to train and test certified nurse aides shall be approved by the Department.

(g) No resident care unit shall serve as the site of clinical instruction for more than one training program at a time.

(h) The training program for nurse aides shall not be used as a substitute for staff orientation or staff education programs.

(i) Classroom and clinical instruction for particular tasks or procedures shall be scheduled concurrently to the extent practicable.

(j) The Department may request submission of additional information or require the redesign and/or revision of the program materials. Redesign or revision of the program application does not ensure that approval will be granted.

(k) Any changes in a training program, such as changes in location, dates, times or instructors, shall be reported in writing, to the Certification Program at least 30 working days prior to the planned change. No change shall be implemented without the written approval of the Certification Program.

(l) The facility or educational institution conducting a training program shall maintain on file a copy of the lesson plans for the course. Each lesson plan shall state, at a minimum, the following:

1. The objective(s) of the lesson;
2. The content of the lesson;
3. A description of clinical activities for each lesson, consistent with the objectives in the curriculum;