

- UNDERSTANDING COMPLAINTS TO THE BOARD -
FOR
ADMINISTRATORS, PRECEPTORS AND AITS

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North Carolina Board of Examiners
for Nursing Home Administrators

POWERS AND DUTIES OF THE BOARD

§ 90-285. **Functions and duties of the Board.** The Board shall meet at least once annually in Raleigh or any other location designated by the chairman and shall have the following functions and duties:

- (1) Develop, impose and enforce rules and regulations setting out standards which must be met by individuals in order to receive and hold a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators shall be individuals who are of good character and who are otherwise suitable, by education, training and experience in the field of institutional administration, to serve as nursing home administrators.
- (2) Develop and apply appropriate methods and procedures, including examination and investigations, for determining whether individuals meet such standards, and administer an examination at least twice each year at such times and places as the Board shall designate.
- (3) Issue licenses to qualified individuals consistent with G.S. 90-278 and G.S. 90-287 and any rules adopted by the Board implementing those provisions.

POWERS AND DUTIES OF THE BOARD (CON'T'D)

(4) Establish and implement procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.

(5) Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards.

(6) Conduct a continuing study and investigation of nursing homes and nursing home administrators within the State in order to make improvements in the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of such standards, and to raise the quality of nursing home administration in such other ways as may be effective.

(7) Conduct, or cause to be conducted by contract or otherwise, one or more courses of instruction and training sufficient to meet the requirements of this Article, and make provisions for the conduct of such courses and their accessibility to residents of this State, unless it finds that there are sufficient courses conducted by others within this State. In lieu thereof the Board may approve courses conducted within and without this State as sufficient to meet the education and training requirements of this Article.

POWERS AND DUTIES OF THE BOARD (CON'T'D)

(8) Make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in section 1908 of the Social Security Act, the federal rules and regulations promulgated thereunder, and other pertinent federal authority.

(9) Receive and disburse any funds appropriated or given to the Board, including any federal funds, to carry out the purposes of this Article.

(10) Maintain a register of all applications for licensing and registration of nursing home administrators, which register shall show: the place or residence, name and age of each applicant; the name and address of employer or business connection of each applicant; the date of application; information of educational and experience qualifications; the action taken by the Board and the dates; the serial number of the license issued to the applicant; and such other pertinent information as may be deemed necessary. G.S. 90-285 Page 2

(11) Develop an administrator-in-training program to insure that nursing home administrators have adequate training and experience prior to licensure

THE BOARD'S STATUTORY GROUNDS FOR DISCIPLINE

§ 90-285.1. **Suspension, revocation or refusal to issue a license.** The Board may suspend, revoke, or refuse to issue a license or may reprimand or otherwise discipline a licensee after due notice and an opportunity to be heard at a formal hearing, upon substantial evidence that a licensee:

- (1) Has violated the provisions of this Article or the rules adopted by the Board;
- (2) Has violated the provisions of Part 2 of Article 6 of Chapter 131E of the General Statutes and rules promulgated thereunder;
- (3) Has been convicted of, or has tendered and has had accepted a plea of no contest to, a criminal offense showing professional unfitness;

THE BOARD'S STATUTORY GROUNDS FOR DISCIPLINE (CON'T'D)

- (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 or her capacity as a nursing home administrator;
- (7) Has committed acts of misconduct in the operation of a nursing home under his jurisdiction;
- (8) Repealed by Session Laws 2013-346, s. 5, effective July 23, 2013.
- (9) Is addicted or dependent upon the use of alcohol or any controlled substance, including morphine, opium, cocaine, or other drugs recognized as resulting in abnormal behavior;
- (10) Has practiced without being registered biennially;
- (11) Has transferred or surrendered possession of, either temporarily or permanently, his or her license or certificate to any other person;

THE BOARD'S STATUTORY GROUNDS FOR DISCIPLINE (CON'T'D)

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

(13) Has been guilty of fraudulent, misleading, or deceptive advertising;

(14) Has falsely impersonated another licensee;

(15) Has failed to exercise regard for the safety, health or life of the patient;

(16) Has permitted unauthorized disclosure of information relating to a patient or his or her records; or

(17) Has discriminated among patients, employees, or staff on account of race, gender, religion, color, national origin, mental or physical disability, or any other class protected by State or federal law.

The NC State Board for Nursing Home Administrator's 2022 Statistics

Surveys with Immediate Jeopardy: 74 (1 Letter of Warning; 2 Letters of Caution/Concern; remainder dismissed)

Surveys with Past Non-compliance: 23* (all dismissed)

Complaints against Administrators: 7 (2 Letters of Concern; 5 dismissed)

*10 of these are included in the 74 above because beginning in July 2022 the SOP Committee started to log these separately after deciding not to request a response since it is already past non-compliance; there were 13 after July 1st.

The administrator has always been the leader and the individual in charge, but F835* ties the Administrator by law to every single event and positive or negative outcome in the facility.

Or, said differently:

F835 embeds the Administrator in every law governing a nursing home.

*Note: This “F-tag” was previously F490.

DHSR's "Administrator Tags"

F835 states:

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being with each resident.

What the surveyor is looking for:

Procedures §483.75

If there is a deficiency in §483.13, Resident behavior and facility practices; §483.15, Quality of life; or §483.25, Quality of care, which has the scope and/or severity to be defined as substandard quality of care, fully review for compliance within all the tags within this section (§483.75).

DHSR's "Administrator Tags" (CON'T'D)

F835(b) states:

(b) Compliance with Federal, State, and local laws and professional standards. The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

What the surveyor is looking for:

Intent: §483.75(b)

The intent of this regulation is to ensure that a facility is in compliance with Federal, State, and local laws, regulations, and codes relating to health, safety, and sanitation.

Guidelines: §483.75(b)

The State is responsible for making decisions about whether there are violations of State laws and regulations. Licenses, permits and approvals of the facility must be available to you upon request. Current reports of inspections by State and/or local health authorities are on file, and notations are made of action taken by the facility to correct deficiencies.

DHSR's "Administrator Tags" (CON'T'D)

And F835(c) states:

In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of handicap (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

What the surveyor is looking for:

Procedures: §483.75(b)

If resident/family interviews reveal possible problems with admissions contracts, review these contracts for violations of requirements at §§4823.10 and 483.12. As appropriate, refer problems to an ombudsman or other agencies, e.g., Office for Civil Rights.

Some State or local laws are more stringent than the Federal requirement on the same issue. Failure of the facility to meet a Federal, State or local law may be cited at this tag only when the authority having jurisdiction has both made a determination of noncompliance and has taken a final adverse action as a result.

Accepted professional standards and principles include the various practice acts and scope of practice regulations in each State, and current, commonly accepted health standards established by national organizations, boards and councils.

If interviews with residents suggest that the facility may have required deposits from Medicare residents at admission, review the facility's admissions documents.

DHSR's Nursing Home Section Statistics

	FY18	FY19	FY20	FY21	FY22
Total Complaints	3065	3176	3249	3463	3484**
Complaints Substantiated	650	684	626*	875	627

*Keep in mind that during FY20 (the “pandemic year”) the Division was receiving complaints, but the investigation of complaints was on hold, except those rising to a certain level of severity.

**As of April 17, 2023 I was advised not all complaints have been investigated.

So, what type of complaint or F835 or 836 tag can result in discipline?

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

(14) Has falsely impersonated another licensee;

(15) Has failed to exercise regard for the safety, health or life of the patient;

(16) Has permitted unauthorized disclosure of information relating to a patient or his or her records; or

(17) Has discriminated among patients, employees, or staff on account of race, gender, religion, color, national origin, mental or physical disability, or any other class protected by State or federal law.