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Subtitle 33 BOARD OF LONG-TERM CARE ADMINISTRATORS

10.33.01 General Regulations

Authority: Health-General Article, §2-104; Health Occupations Article, §§9-101—9-501; Annotated Code of Maryland

.01 Scope.

This subtitle governs the licensure, practice, and discipline of nursing home administrators and assisted living managers in the State.

.02 Definitions.

A. In this subtitle, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Administrator-in-training (AIT)” means an applicant approved by the Board to train to practice as a nursing home administrator in a nursing home under the supervision of a preceptor pursuant to this subtitle.

(2) “Administrator-in-training (AIT) contract” means a document signed by an AIT and a preceptor which includes requirements of the AIT program.

(3) “Administrator-in-training (AIT) program” means a Board-approved program which consists of practical training and experience in nursing home administration.

(4) “Alternate assisted living manager” means an individual who is available to assume the duties of the licensed assisted living manager for a licensed assisted living program when the licensed assisted living manager is temporarily unavailable to perform the duties of an assisted living manager.

(5) “Assisted living manager” means an individual who is:

(a) Designated by an assisted living program to oversee the overall day-to-day operations of an assisted living program;
and

(b) Responsible for the duties set forth under COMAR 10.07.14.15.

(6) Assisted Living Program.

(a) “Assisted living program” means a residential or facility-based program for two or more residents that provides long-term housing and supportive services, supervision, personalized assistance, health-related services, or a combination of those that meets the needs of the individuals who are unable to perform or who need assistance in performing the activities of daily living or instrumental activities of daily living in a way that promotes optimum dignity and independence for the individuals.

(b) “Assisted living program” does not include:

(i) A nursing home as defined by Health-General Article, §19-1401, Annotated Code of Maryland;

(ii) A nursing facility as defined by Health-General Article, §19-301, Annotated Code of Maryland;

(iii) A State facility, as defined under Health-General Article, §10-101, Annotated Code of Maryland;

(iv) A program licensed or approved by the Department under Health-General Article, Title 7 or Title 10, Annotated Code of Maryland;

(v) A hospice care program licensed by the Department under Health-General Article, Title 19, Annotated Code of Maryland;

(vi) Services provided by family members;

(vii) Services provided by a licensed residential service agency or licensed home health agency in an individual’s own home; or

(viii) A Certified Adult Residential Environment Program that is certified by the Department of Human Services under Human Services Article, §§6-508—6-513, Annotated Code of Maryland.

(7) “Board” means the State Board of Long-Term Care Administrators.

(8) “Central Repository” means the Criminal Justice Information System Central Repository of the Maryland Department of Public Safety and Correctional Services.

(9) “Department” means the Maryland Department of Health.

(10) “Endorsement applicant” means an individual applying for a license to practice nursing home administration in the State who is licensed in another state to practice nursing home administration.

(11) “Family” means:

- (a) A spouse;
 - (b) A child;
 - (c) A sibling;
 - (d) A parent;
 - (e) A grandparent;
 - (f) A niece or nephew; or
 - (g) An uncle or aunt.
- (12) "Family-owned or family-operated nursing facility" means a nursing home owned or operated by any one or more of the following relatives of the AIT:
- (a) A spouse;
 - (b) A parent;
 - (c) A child;
 - (d) A sibling;
 - (e) A grandparent;
 - (f) A grandchild;
 - (g) A stepparent;
 - (h) A stepchild;
 - (i) An uncle or aunt;
 - (j) A first cousin;
 - (k) A nephew or niece;
 - (l) A father-in-law or mother-in law;
 - (m) A son-in-law or daughter-in-law; or
 - (n) A brother-in-law or sister-in-law.
- (13) "License" means, unless the context requires otherwise, official authorization issued by the Board to practice as:
- (a) A nursing home administrator under Health Occupations Article, Title 9, Subtitle 3, Annotated Code of Maryland; or
 - (b) An assisted living manager under Health Occupations Article, Title 9, Subtitle 3A, Annotated Code of Maryland.
- (14) "Licensee" means, unless the context requires otherwise, an individual licensed by the Board to practice as:
- (a) A nursing home administrator; or
 - (b) An assisted living manager.
- (15) "National Association of Long Term Care Administrator Boards (NAB)" means the organization that commissions the services of a third-party administrator of the State and national examinations for long term care administrators.
- (16) "Nursing home" means a facility or institution as defined in Health Occupations Article, §9-101(i), Annotated Code of Maryland, and includes:
- (a) A comprehensive care facility or extended care facility which offers non-acute inpatient care to residents who:
 - (i) Have a disease, chronic illness, condition, disability of advanced age, or terminal disease requiring maximal nursing care without continuous hospital services; and
 - (ii) Require medical services and nursing services rendered by or under the supervision of a licensed nurse together with convalescent, restorative, or rehabilitative services; and
 - (b) A nursing facility as defined under federal or State law.
- (17) "Nursing home administrator" means an individual licensed by the Board, who:
- (a) Administers, directs, manages, supervises, or is in general administrative charge of a nursing home, whether or not the individual has an ownership interest in the facility, and whether or not the individual's functions and duties are shared with one or more individuals; or
 - (b) Is in supervisory control over one or more nursing home administrators of one or more nursing homes and has authority to substitute the supervisor's judgment for that of the administrator of record in the day-to-day operation of the facility.
- (18) "Person" means any individual, guardian, personal representative, company, corporation, partnership, limited liability company, association, representative of any kind, or non-governmental entity.
- (19) "Practice of assisted living management" means the exercise of final authority of any act or the making of any decision involved in the planning, organizing, directing, or controlling of the day-to-day operation of an assisted living program.
- (20) "Practice of nursing home administration" means the exercise of final authority of any act or the making of any decision involved in the planning, organizing, directing, or controlling of the day-to-day operation of a nursing home.
- (21) "Preceptor" means an individual certified to serve as an instructor in an AIT program to be a nursing home administrator, pursuant to this subtitle.
- (22) "State standards exam" means an examination developed by the Board based on the following chapters:
- (a) COMAR 10.07.02;
 - (b) COMAR 10.07.09;
 - (c) COMAR 10.09.10;
 - (d) COMAR 10.09.24; and
 - (e) COMAR 10.15.03.

.03 General Powers of the Board.

A. The Board shall exercise the powers provided by the laws of this State pertaining to the licensure, practice, and discipline of nursing home administrators and assisted living managers.

B. Board staff and designees of the Board:

- (1) May enter any nursing home and assisted living program in the State in order to carry out its functions; and

(2) Shall have access to the records related to licensure of any nursing home and assisted living program in the State in order to carry out its functions.

C. The Office of Health Care Quality may assist the Board in carrying out its functions.

D. The Board has the authority to utilize consultant experts, as needed, in areas of its concern.

E. From time to time, the Board shall make and publish regulations for the execution and enforcement of the laws related to the licensure, license renewal, and discipline of nursing home administrators and assisted living managers.

.04 Severability.

If any provision of the regulations in this subtitle is declared unconstitutional or invalid, or the application of these regulations to any person or circumstances is held invalid, the applicability of the provision to other persons and circumstances and the constitutionality or validity of every other provision of these regulations is not to be affected.

10.33.02 Licensing of Nursing Home Administrators

Authority: Health Occupations Article, §§9-205, 9-301—9-316.1, and 9-401—9-501, Annotated Code of Maryland

.01 Scope.

This chapter governs nursing home administrator applicants and licensees in the State pursuant to Health Occupations Article, Title 9, Annotated Code of Maryland.

.02 Licensure Qualifications, Applications, and Requirements.

A. Except as otherwise provided by law, to qualify for an initial license to practice nursing home administration in the State, the applicant shall:

(1) Be at least 21 years old;

(2) Be of good moral character;

(3) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland;

(4) Obtain a passing score on the State standards exam;

(5) Obtain a passing score on the national licensure exams provided by NAB; and

(6) Except for an endorsement applicant, successfully complete the AIT program as set forth in Regulation .04 of this chapter.

B. The Board's receipt of the State and national criminal history records check from the Central Repository, as provided in Health Occupations Article, §9-302.1(c), Annotated Code of Maryland, satisfies Health Occupations Article, §9-303(3), Annotated Code of Maryland.

C. The applicant shall submit to the Board:

(1) The completed Board online application;

(2) The application fee as set forth under COMAR 10.33.05.02D;

(3) Satisfactory evidence that the applicant has a bachelor's or master's degree in:

(a) Healthcare, health administration, or healthcare management, or the equivalent, with a concentration in healthcare administration or health administration or a master's degree in business with a concentration in healthcare administration or health administration from an accredited college or university; or

(b) A field other than as described in §C(3)(a) of this regulation and has completed within the last 5 years a minimum 100-hour course approved by the Board in healthcare administration or health administration;

(4) Two letters of character reference, which are signed and dated within 3 months prior to the date of application, from individuals engaged in either business or professional work on company or business letterhead:

(a) Who shall attest to the good moral character of the applicant; and

(b) Which may not be those from current employers or members of the applicant's family; and

(5) A passport type and size photograph of the applicant, which shall have been taken within 3 months prior to the date of application.

D. Except for an endorsement applicant, an applicant may take the State standards exam and NAB exams when the applicant has completed:

(1) A minimum of 8 months of the full-time 12-month AIT program or its equivalent or 12 months of the 18-month part-time AIT program or its equivalent; and

(2) The other requirements for licensure as specified in this regulation.

E. The 100-hour course for applicants with a bachelor's or master's degree in a field other than those described in §C(3)(a) of this regulation shall:

(1) Contain the subject matter relating to healthcare or health administration set forth under Regulation .03A of this chapter; and

(2) Be taken for credit for the purpose of initial licensure and be a course that has been approved by the Board.

F. An applicant who provides satisfactory evidence to the Board that the applicant is a registered nurse and who meets the requirements of Health Occupations Article, §9-302(f)(1), Annotated Code of Maryland, is not required to have a bachelor's or master's degree.

G. An application shall be void if an applicant fails to meet all the requirements for licensure within 2 years of receipt of the application by the Board. To pursue licensure after that time, the applicant shall:

(1) Submit a new application; and

(2) Meet the requirements for licensure that are in effect at the time of reapplication.

.03 Examinations for Nursing Home Administrators.

- A. *Subjects for Examination.* The State standards exam and the NAB exams shall include, at a minimum, the following subjects:
- (1) *Applicable standards of environmental health and safety;*
 - (2) *Local health and safety regulations;*
 - (3) *General administration;*
 - (4) *Psychology of patient care;*
 - (5) *Principles of medical care;*
 - (6) *Personal and social care;*
 - (7) *Therapeutic and supportive care and services in long-term care;*
 - (8) *Departmental organization and management; and*
 - (9) *Community interrelationships.*
- B. *Scoring Examinations.*
- (1) *The passing score for licensure examinations for a license shall be determined by the Board.*
 - (2) *The Board shall determine a method of scoring each part of the exams separately and shall apply that method uniformly to all applicants taking the exams.*
 - (3) *Minimum Passing Scores.* The following apply.
 - (a) *The NAB national exams—scale score of 113 on the:*
 - (i) *NAB CORE exam; and*
 - (ii) *NAB NHA exam; and*
 - (b) *The State standards exam—75 percent correct answers.*

.04 Administrator-in-Training Program—Requirements for AIT Participation.

- A. *General Provisions.*
- (1) *An AIT program is a supervised 12-month full-time, or 18-month part-time, internship during which the AIT works under the guidance and supervision of a preceptor who is a licensed administrator that meets the qualifications set forth in Regulations .05 and .06 of this chapter.*
 - (2) *The AIT program is a required phase of education consisting of both the supervised practice of nursing home administration in the environment of the nursing home, performing and participating in the day-to-day duties of each position, when legally permissible, in each of the following service areas:*
 - (a) *Administration;*
 - (b) *Business office;*
 - (c) *Nursing;*
 - (d) *Resident activities;*
 - (e) *Social services;*
 - (f) *Medical records;*
 - (g) *Dietary services;*
 - (h) *Maintenance;*
 - (i) *Environmental services, including housekeeping and laundry;*
 - (j) *Rehabilitation services; and*
 - (k) *Quality assurance.*
 - (3) *Prior to Board approval of the AIT program, the AIT applicant and preceptor shall develop an outline for the written course of instruction and dates of rotation schedule for the provision of practical training, experience, and learning situations that includes:*
 - (a) *The 11 basic service areas set forth in §A(2) of this regulation;*
 - (b) *The AIT's past experience and allocation of clinical experiences in the nursing home; and*
 - (c) *Approval by the Board.*
 - (4) *An AIT may not, during the normal working hours of the program, fill a specific, specialized position in the nursing home.*
 - (5) *The AIT shall be exposed to all shifts during the AIT program.*
 - (6) *If the AIT is a department head, notice shall be conspicuously posted in the nursing home stating who the acting department head will be while the AIT is performing training duties.*
 - (7) *If an applicant does not meet all of the requirements for licensure after having completed 12 months in the full-time or 18 months in the part-time AIT program, the preceptor and applicant have the option to work out a plan satisfactory to the Board to continue studying in the AIT program beyond the 12 or 18 months until all the requirements are met.*
 - (8) *The Board or Board committee shall interview each applicant and proposed preceptor, or preceptors, before the approval of an AIT program.*
 - (9) *After the interview, the AIT and preceptor shall sign an AIT contract and submit it to the Board for consideration of approval.*
 - (10) *The Board may approve the AIT program if it is satisfied that the background and circumstances of the applicant and preceptor, or preceptors, qualify them for the AIT program.*
 - (11) *A change of preceptor may be authorized by the Board upon submission of:*
 - (a) *Application by the proposed new preceptor;*
 - (b) *Evidence satisfactory to the Board that the proposed preceptor is certified by the Board; and*
 - (c) *A new signed AIT contract by the AIT and preceptor.*
 - (12) *If a preceptor is found by the Board to have failed to provide adequate training, the Board may cancel the preceptor's authorization to serve as a preceptor for a period of time prescribed by the Board.*

(13) The AIT and preceptor shall comply with the AIT contract.

(14) An individual duly registered as an AIT whose internship is interrupted by service in the armed forces of the United States shall be permitted to resume the internship without loss of credit at any time within 1 year after the date of the AIT's separation from active service.

B. Application Requirements.

(1) The Board may approve an application for a nursing home AIT program only if it determines that the application contains satisfactory evidence that:

- (a) The applicant is at least 21 years old;
- (b) The applicant is of good moral character;
- (c) The applicant's training will be supervised by a Board-certified preceptor; and
- (d) The AIT program meets the other requirements set forth in this regulation.

(2) The training proposed to be provided to the applicant shall be satisfactory to the Board.

(3) The applicant shall participate in training provided in:

- (a) A nursing home licensed in the State, as defined in COMAR 10.33.01.02B; and
- (b) Not more than two licensed nursing homes in the State approved by the Board for training. If two nursing homes are utilized for training, one shall have at least 60 beds.

(4) If there are subject areas as specified in the list of subjects provided in §A(2) of this regulation that are not available in the nursing home approved by the Board for training, the Board may require training in other facilities.

C. Credit for Prior Experience.

(1) The AIT program is a minimum of 12 months for full-time programs or 18 months for part-time programs unless, upon request from the applicant to review prior work experience, the Board awards credit for prior experience within the last 5 years. The amount of credit awarded is at the discretion of the Board, based on an applicant's work experience demonstrating exposure to the core of knowledge set forth in Regulation .04A(2) of this chapter, but may not exceed:

- (a) Six months for a hospital assistant administrator;
- (b) Eight months for a hospital administrator;
- (c) Six months for a nursing home assistant administrator;
- (d) Six months for a department head;
- (e) Three months for an Executive Director of a continuing care retirement community;
- (f) Three months for an assisted living manager;
- (g) Three months for a healthcare-related senior management official; or
- (h) Three months for a non-healthcare-related senior management official.

(2) Qualifying Experience for Healthcare Related Professions in §C(1)(a)—(f) of this regulation. The minimum experience required for receiving credit towards the AIT program includes:

(a) A minimum of 18 months as a full-time employee, with line responsibility for hiring, firing, budget, and supervision of at least one department comprised of ten or more employees; and

(b) Reporting directly to the nursing home administrator or chief executive officer.

(3) Qualifying Experience for Healthcare Related or Non-Healthcare Related Senior Management Official in §C(1)(g) and (h) of this regulation. The following requirements set the minimum experience required for receiving credit:

- (a) Minimum of 18 months as a full-time senior management official of a single nursing home or entity; and
- (b) Administrative responsibility for the total operation of the nursing home or entity and its multiple departments, as applicable.

(4) Experience credit can be awarded on a month-to-month basis totaling 12 months for:

- (a) An individual who has worked as a licensed nursing home administrator in another state;
- (b) A resident or intern in a program offered by an accredited college or university for the purpose of satisfying the requirements for a baccalaureate or master's degree in healthcare administration; or
- (c) An individual who has successfully completed an AIT program in another state, if the program is substantially comparable to the AIT program in the State, as determined by the Board.

.05 Requirements for AIT Program.

A. The preceptor for an AIT shall be currently certified by the Board under Regulation .06 of this chapter.

B. The preceptor may not be responsible for more than two AITs at any one time. The preceptor shall devote a minimum of 16 hours per week of direct, on-site supervision for each AIT, which may be on an individual or combined basis in the case of two AITs.

C. The preceptor may be the administrator of record of the facility in which the training is to take place, provided that the preceptor has had a minimum of 30 days of oversight in the facility where the training is to take place immediately prior to beginning the AIT program.

D. The preceptor may not be the administrator of record for a facility other than the facility designated for training.

E. A minimum of 80 percent of the training shall occur during 8 consecutive hours for full-time programs or 6 consecutive hours for part-time programs each day (except for regular days off) between the hours of 7 a.m. and 7 p.m.

F. A minimum of 40 hours per week for full-time or 30 hours per week for part-time shall be devoted to continuous, bona fide training activities which include observing and performing the day-to-day duties of each position, when legally permissible, in the service areas referred to in Regulation .04A(2) of this chapter.

G. The applicant may spend a maximum of 50 percent of the training in a family-owned or family-operated nursing home, and the remainder of the time shall be spent in another Board-approved facility.

H. An employee may not be a preceptor for their employer.

I. Required AIT Reports.

(1) The AIT and preceptor shall maintain a progress report for the training program on the forms provided by the Board for every 3 months of the training program.

(2) The report shall:

(a) Be submitted by the AIT and the preceptor to the Board's office on the dates specified by the Board; and

(b) Include the following:

(i) A detailed description of activity or area covered, or both, and dates of rotation, and, if applicable, an explanation for any changes to the Board-approved rotation schedule;

(ii) A detailed analysis of any problems observed, new experiences, insights gained, and the AIT's role in problem solutions; and

(iii) The course of instruction outline including signatures from the preceptor, AIT, and department managers to verify that the AIT trained in those departments.

(3) If the reports are not submitted to the Board's office by the date specified by the Board, the AIT shall be considered to have violated the terms of the AIT contract.

J. Discontinuance of AIT Status in a Nursing Home.

(1) The AIT and the preceptor shall report discontinuance within 10 days to the Board.

(2) Within 10 days of the date of discontinuance, the preceptor shall file a report to the Board detailing the AIT's experience and abilities.

(3) The AIT may fulfill the training requirement in no more than two licensed nursing facilities, with a lapse of no more than 90 days between the two periods of training.

.06 Certification of Preceptors.

A. The Board shall issue a certificate of qualification to be a preceptor in the AIT program if the following conditions are met:

(1) The preceptor holds and has held a license from the Board for 1 year or longer;

(2) The proposed preceptor has been satisfactorily employed in nursing home administration for a minimum of 3 years as the nursing home administrator of record;

(3) The proposed preceptor has no disciplinary action pending nor is currently under investigation by the Board;

(4) Individuals seeking certification as preceptors in the AIT program shall submit evidence of the successful completion of the preceptor training course offered by NAB; and

(5) The proposed preceptor has either been employed full time as a nursing home administrator of record for a minimum of 2 of the past 3 years immediately before application to precept or meets the following qualifications:

(a) Works on the same property as the nursing home where the AIT program will be conducted;

(b) Is able to demonstrate to the Board the proposed preceptor's active, direct, and material management and daily operations of the nursing home; and

(c) Has been actively licensed as a nursing home administrator for a minimum of 5 years immediately before application to precept.

B. If the proposed preceptor has not precepted an AIT program within the past 5 years, the proposed preceptor shall recertify as a preceptor by completing the preceptor training course offered by NAB.

C. The Board may disapprove a preceptor for a training program:

(1) If the preceptor has failed to remain in compliance with this chapter; or

(2) At any time for good cause.

.07 License by Endorsement.

A. The Board, in its discretion, may grant a license by endorsement to practice nursing home administration in the State, upon satisfactory evidence that the endorsement applicant, in addition to the requirements of this section, meets all the qualifications and requirements for a nursing home administrator license set forth in Regulation .02 of this chapter, except that the endorsement applicant is not required to:

(1) Take the NAB exams set forth under Regulation .03 of this chapter; or

(2) Participate in the AIT program that is set forth under Regulation .04 of this chapter.

B. The endorsement applicant shall:

(1) Possess a valid license as a nursing home administrator, which has not been revoked or suspended in each state from which the applicant has ever received a nursing home administrator license or reciprocal endorsement;

(2) Provide satisfactory evidence of having completed one year as the full-time nursing home administrator of record in a nursing home within the last 5 years; and

(3) Be familiar with State and local health and safety regulations related to nursing homes by evidence of a passing score on the State standards exam.

C. To be granted a State nursing home administrator license, the endorsement applicant shall possess a nursing home administrator license in other states that shall:

(1) Maintain a system and standard of qualification and examination for a license, which are substantially equivalent to those required by this State; and

(2) Give similar recognition and endorsement to nursing home administrator licenses of this State.

D. The Board may waive:

(1) The education requirements of COMAR 10.33.02.02B(3), if the endorsement applicant provides satisfactory evidence to the Board that the endorsement applicant is licensed and has practiced as a nursing home administrator for at least 3 years in another state; and

(2) The State standards examination, if the endorsement applicant provides satisfactory evidence to the Board that the endorsement applicant met the requirements of Health Occupations Article, §9-306(b), Annotated Code of Maryland.

.08 Provisional License.

A. As an exception to the licensure requirements in this chapter, a nursing home shall immediately appoint an individual not licensed to practice as a nursing home administrator to act as the interim nursing home administrator if:

(1) A licensed nursing home administrator in the State leaves or is removed from the position as a nursing home administrator by death or other unexpected cause; and

(2) A licensed nursing home administrator in the State is unavailable to fill the position.

B. The departure of the licensed nursing home administrator specified under §A of this regulation is by unexpected cause if:

(1) The departure occurred suddenly;

(2) The departure was unforeseen; and

(3) There was insufficient time for the nursing home to obtain the services of a nursing home administrator licensed in the State.

C. The appointed non-licensed individual may begin acting as the interim nursing home administrator upon appointment by the nursing home.

D. No later than 24 hours after the appointment of the non-licensed individual as interim nursing home administrator, under §A of this regulation, the nursing home shall:

(1) File an application with the Board requesting a provisional license for the non-licensed individual;

(2) Notify the Board of the circumstances involved in the departure of the licensed nursing home administrator;

(3) Notify the Board of the credentials of the non-licensed individual; and

(4) If requested, provide the Board with the acts the nursing home took, or is taking, to hire a nursing home administrator who is licensed in the State.

E. State and National Criminal History Records Check.

(1) The appointed non-licensed individual shall immediately submit to a criminal history records check, in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland.

(2) A criminal history records check is not required if the appointed non-licensed individual is actively licensed by a health occupations board in the State who previously has completed a criminal history records check required for licensure, certification, or registration.

(3) The Board may deny approval of an appointment based on the results of a criminal history records check after consideration of the factors listed in Health Occupations Article, §9-308(b)(1), Annotated Code of Maryland.

F. Provisional License. The Board may issue a provisional license to the applicant if the Board determines that:

(1) The applicant is of good moral character;

(2) The departure of the licensed nursing home administrator was by unexpected cause; and

(3) The applicant is capable of adequately administering the nursing home for the provisional period.

G. If the Board grants the application for the provisional nursing home administrator license, the provisional license is in effect for 90 days from the date of the departure of the licensed nursing home administrator. For good cause shown, the Board may extend the provisional license period by 30 days.

H. Denial of Provisional License.

(1) If the application for a provisional license is denied by the Board, the nursing home may request a meeting with the Board to contest the denial.

(2) The nursing home shall provide the request for a meeting to the Board within 5 business days of the denial.

(3) If the nursing home requests a meeting, the appointed non-licensed individual may remain acting as the interim nursing home administrator until the Board issues a decision.

(4) If the Board denies the application for a provisional license after a meeting contesting the initial denial, the non-licensed individual shall immediately cease acting as the interim nursing home administrator upon receipt of the decision.

(5) If the nursing home does not file a timely request for a meeting with the Board, the non-licensed individual shall cease acting as the interim nursing home administrator within 5 business days of the denial.

I. If the non-licensed individual is required to cease acting as the interim nursing home administrator under §H of this regulation, and a nursing home administrator licensed in the State remains unavailable to fill the nursing home administrator position, the nursing home may appoint another non-licensed individual as set forth in this regulation.

J. As a result of §I of this regulation, if the nursing home appoints another non-licensed individual, and a provisional license is granted, the provisional license is in effect for 90 days from the date of the departure of the nursing home administrator licensed in the State, unless the Board extends the provisional license, for good cause shown, for an additional 30 days.

K. Upon request by the nursing home, for reasonable cause, the Board may extend the 24-hour time period for meeting the requirements of §D of this regulation.

.09 Renewals.

A. The Board shall send each licensee a renewal notice that states the:

(1) Date on which the current license or current registration expires;

(2) Latest date by which the renewal application and documentation can be received by the Board in order for the renewal license to be issued before the current license expires; and

(3) Amount of the renewal fee as specified in COMAR 10.33.05.02D.

B. At least 30 days before the current license expires, the Board shall send the renewal notice by electronic means to the last known electronic mail address or first-class mail to the physical address of the licensee.

C. Licensees shall satisfactorily complete the minimum continuing education requirements set forth under COMAR 10.33.04.

D. Licensees shall complete an implicit bias and structural racism training program approved by the Cultural and Linguistic Health Care Professional Competency Program in accordance with Health-General Article, §20-1306, Annotated Code of Maryland, for an applicant's first renewal after April 1, 2026.

.10 Reinstatement After License Expiration.

A. The Board shall reinstate an individual whose license has expired if the individual:

- (1) Meets the renewal requirements of this chapter and Health Occupations Article, §9-312, Annotated Code of Maryland;
- (2) Pays the reinstatement fee as specified under COMAR 10.33.05.02D; and
- (3) Satisfactorily completes the minimum continuing education requirements set forth under COMAR 10.33.04.01.

B. A previously licensed nursing home administrator who fails to apply for licensure reinstatement within 5 years after the expiration date of the license shall meet the requirements for a new license in effect at the time of the request in order to be licensed to practice as a nursing home administrator in the State.

.11 Inactive Status and Reactivation.

A. In accordance with Health Occupations Article, §9-312.1, Annotated Code of Maryland, a request by an active licensee to transfer a license to inactive status shall be granted upon receipt of the:

- (1) Completed Board-approved inactive status application; and
- (2) Payment of the required, non-refundable, biennial inactive status fee set forth in COMAR 10.33.05.02D.

B. An individual:

(1) May apply for inactive status only if the individual's license is still active at the time the inactive status application request is made;

- (2) Shall renew and pay the biennial inactive status fee during each renewal period; and
- (3) Is not authorized to and may not practice as a nursing home administrator in the State while on inactive status.

C. Reactivation.

(1) The Board shall reactivate the license of a licensee who is on inactive status if the licensee:

(a) Completes an application form for reactivation of the license before expiration of the 2-year term of inactive status on the form required by the Board;

(b) Complies with the renewal requirements in effect at the time the licensee seeks to reactivate the license;

(c) Meets the continuing education requirements set by the Board;

(d) Has not practiced as a nursing home administrator in the State while on inactive status;

(e) Pays all appropriate fees set by the Board under COMAR 10.33.05.02D;

(f) Has been on inactive status for less than 5 years; and

(g) Is otherwise entitled to be licensed.

(2) Before the Board may reactivate the license of an individual who has been on inactive status for 5 years or more, the individual shall:

(a) Submit a new online application;

(b) Pay all appropriate fees set by the Board under COMAR 10.33.05.02D;

(c) Complete a 100-hour Board-approved course in healthcare administration or health administration;

(d) Pass the State standards exam for nursing home administrators; and

(e) Submit satisfactory evidence of having completed a State and national criminal history records check in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland.

(3) A nursing home administrator whose inactive status expires before the license is reactivated shall meet the reinstatement requirements set forth in Health Occupations Article, §9-312, Annotated Code of Maryland.

.12 Incomplete Applications.

A. The Board is not required to consider an application that is incomplete.

B. The applicant shall submit to the Board any additional relevant documentation requested by the Board if the Board determines the application documentation received is incomplete or insufficient.

C. The Board may hold an incomplete application for a license for up to 1 year from the date of receipt.

D. After 1 year from the date of receipt, the Board shall close a pending application that is incomplete.

E. If an application has been closed under §D of this regulation, to obtain a license the applicant shall submit a new application fee and otherwise comply with all applicable license requirements.

.13 Display of License.

Each individual licensed as a nursing home administrator in the State shall display printed verification of licensure in a conspicuous place in the office or place of business or employment of the licensee.

.14 Change of Mailing Address, Legal Name, or Email Address.

A. A licensed nursing home administrator shall give the Board written or electronic notice within 30 days of a change of:

- (1) Mailing address;
- (2) Legal name; or
- (3) Email address.

B. Failure to notify the Board of any change of mailing address, legal name, or email address within 30 days of the change may result in a fine as set forth under COMAR 10.33.05.02D.

10.33.03 Licensing of Assisted Living Managers

.01 Effective Date and Scope.

A. Except as otherwise provided in this chapter, effective July 1, 2026, an individual shall be licensed by the Board before the individual may practice as an assisted living manager in the State.

B. This chapter governs assisted living managers in the State pursuant to Health Occupations Article, Title 9, Annotated Code of Maryland.

.02 Licensure Qualifications, Applications, and Requirements—Applicant I.

A. This regulation applies to applicants who have practiced as an assisted living manager in a licensed assisted living program in the State prior to July 1, 2026.

B. Except as otherwise provided by law, to qualify for an initial license to practice assisted living management in Maryland, an applicant shall:

- (1) Be at least 21 years old;
- (2) Be of good moral character;
- (3) Submit the following to the Board:
 - (a) The completed Board online application;
 - (b) The application fee as set forth in COMAR 10.33.05.02D; and
 - (c) A passport type and size photograph of self, which shall have been taken within 3 months prior to the date of application;
- (4) Meet, and attest on the application to meeting, the following requirements:
 - (a) Has obtained a high school diploma, a high school equivalency diploma, or other appropriate education as specified under COMAR 10.07.14.15; or
 - (b) For level 3 licensed programs, set forth under COMAR 10.07.14.05, has completed at least one of the following:
 - (i) A 4-year, college-level degree;
 - (ii) 2 years of experience in a healthcare related field and 1 year of experience as an assisted living program manager or alternate assisted living manager; or
 - (iii) 2 years of experience in a healthcare related field and successful completion of an 80-hour assisted living manager training course approved by the Department;
 - (c) Completed an 80-hour assisted living manager training course and passed the course examination as required under Health-General Article, §19-1807(a), Annotated Code of Maryland, and Health Occupations Article, §9-3A-02(a)(5)(i), Annotated Code of Maryland.
 - (d) Submitted to a State and national criminal history records check in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland. The Board's receipt of the State and national criminal history records check from the Central Repository, as provided in Health Occupations Article, §9-302.1(c), Annotated Code of Maryland, satisfies Health Occupations Article, §9-3A-03(3), Annotated Code of Maryland;
 - (e) Is certified in:
 - (i) Basic first aid taught by a first aid instructor certified by a national organization, except licensed practical nurses and registered nurses licensed in this State who are not required to attest to being certified in basic first aid; and
 - (ii) Basic cardiopulmonary resuscitation (CPR), including a hands-on component, taught by a CPR instructor certified by a nationally recognized organization;
 - (f) Completed training in:
 - (i) Fire and life safety;
 - (ii) Infection control, including standard precautions;
 - (iii) Emergency disaster plans; and
 - (iv) Basic food safety.

C. Exemptions for the 80-Hour Training Course. Except as otherwise provided by law, an applicant is exempt from the 80-hour training course, pursuant to Health-General Article, §19-1807(d)(1), Annotated Code of Maryland, if the applicant meets, and attests to meeting, at least one of the following:

- (1) Is employed by an assisted living program, has enrolled in the 80-hour training course, and expects to complete the course within 6 months;
- (2) Has been employed as an assisted living manager in the State for 1 year prior to January 1, 2006; or
- (3) Is licensed as a nursing home administrator in the State.

D. If an individual is licensed through the exemption in §C(1) of this regulation, the licensee shall:

- (1) Complete the 80-hour course, which includes passing the course examination, within 6 months of enrollment in the course, in accordance with COMAR 10.07.14.16E(1); and
- (2) Submit to the Board satisfactory evidence that the licensee has completed the course, within 15 days from the date the licensee was notified of their successful completion of the course.

.03 Licensure Qualifications, Applications, and Requirements—Applicant II.

A. This regulation applies to applicants who have not practiced as an assisted living manager in a licensed assisted living program in the State prior to July 1, 2026.

B. Except as otherwise provided by law, to qualify for an initial license to practice assisted living management in the State, an applicant shall:

- (1) Be at least 21 years old;

- (2) *Be of good moral character;*
- (3) *Provide satisfactory evidence to the Board that the applicant:*
 - (a) *Has obtained a high school diploma, a high school equivalency diploma, or other appropriate education as specified under COMAR 10.07.14.15; or*
 - (b) *For level 3 licensed programs, set forth under COMAR 10.07.14.05, has completed at least one of the following:*
 - (i) *A 4-year, college-level degree;*
 - (ii) *Two years of experience in a healthcare related field and 1 year of experience as an assisted living program manager or alternate assisted living manager; or*
 - (iii) *Two years of experience in a healthcare related field and successful completion of an 80-hour assisted living manager training course approved by the Department;*
 - (c) *Completed an 80-hour assisted living manager training course and passed the course examination as required under Health-General Article, §19-1807(a), Annotated Code of Maryland, and Health Occupations Article, §9-3A-02(a)(5)(i), Annotated Code of Maryland;*
- (4) *Submit the following to the Board:*
 - (a) *The completed Board online application;*
 - (b) *The application fee as set forth in COMAR 10.33.05.02D; and*
 - (c) *A passport type and size photograph of self, which shall have been taken within 3 months prior to the date of application;*
- (5) *Meet, and attest on the application to meeting, the following requirements:*
 - (a) *Submitted to a State and national criminal history records check in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland; and*
 - (b) *Is certified in:*
 - (i) *Basic first aid taught by a first aid instructor certified by a national organization, except licensed practical nurses and registered nurses licensed in this State who are not required to attest to being certified in basic first aid; and*
 - (ii) *Basic cardiopulmonary resuscitation (CPR), including a hands-on component, taught by a CPR instructor certified by a nationally recognized organization; and*
 - (c) *Completed training in:*
 - (i) *Fire and life safety;*
 - (ii) *Infection control, including standard precautions;*
 - (iii) *Emergency disaster plans; and*
 - (iv) *Basic food safety.*

C. The Board's receipt of the State and national criminal history records check from the Central Repository, as provided in Health Occupations Article, §9-302.1(c), Annotated Code of Maryland, satisfies Health Occupations Article, §9-3A-03(3), Annotated Code of Maryland.

D. The Board may require official transcripts of the educational requirements set forth in §B(3) of this regulation.

E. Exemptions for the 80-Hour Training Course. Except as otherwise provided by law, an applicant is exempt from the 80-hour training course, pursuant to Health-General Article, §19-1807(d)(1), Annotated Code of Maryland, if the applicant meets, and attests to meeting, at least one of the following:

- (1) *Is employed by an assisted living program and has enrolled in the 80-hour training course and expects to complete the course within 6 months; or*
- (2) *Is licensed as a nursing home administrator in the State.*

F. If an individual is licensed through the exemption in §E(1) of this regulation, the licensee shall:

- (1) *Complete the 80-hour course, which includes passing the course examination, within 6 months of enrollment in the course, in accordance with COMAR 10.07.14.16E(1); and*
- (2) *Submit to the Board satisfactory evidence that the licensee has completed the course, within 15 days from the date the licensee was notified of their successful completion of the course.*

.04 Provisional License.

A. As an exception to the licensure requirements in this chapter, an assisted living program shall immediately appoint an individual not licensed to practice as an assisted living manager to act as the interim assisted living manager if:

- (1) *An assisted living manager licensed in the State leaves or is removed from the position as an assisted living manager by death or other unexpected cause; and*
- (2) *A licensed assisted living manager in the State is unavailable to fill the position.*

B. The alternate assisted living manager is a non-licensed individual in this regulation and may be appointed as the interim assisted living manager under §A of this regulation, but another non-licensed individual may also be appointed.

C. The departure of the assisted living manager as specified in §A of this regulation, is by unexpected cause if:

- (1) *The departure occurred suddenly;*
- (2) *The departure was unforeseen; and*
- (3) *There was insufficient time for the assisted living program to obtain the services of an assisted living manager licensed in the State.*

D. The appointed non-licensed individual may begin acting as the interim assisted living manager upon appointment.

E. No later than 24 hours after the appointment of the non-licensed individual as interim assisted living manager, under §A of this regulation, the assisted living program shall:

- (1) *File an application with the Board requesting a provisional license for the non-licensed individual;*
- (2) *Notify the Board of the circumstances involved in the departure of the licensed assisted living manager;*

- (3) Notify the Board of the credentials of the non-licensed individual; and
- (4) If requested, provide the Board with the actions the assisted living program took, or is taking, to hire an assisted living manager licensed in the State.

F. *State and National Criminal History Records Check.* The appointed non-licensed individual shall immediately submit to a criminal history records check, in accordance with Health Occupations Article, §9-302.1, Annotated Code of Maryland.

(1) A criminal history records check is not required if the appointed non-licensed individual is actively licensed by a health occupations board in the State who previously has completed a criminal history records check required for licensure, certification, or registration.

(2) The Board may deny approval of an appointment based on the results of a criminal history records check after consideration of the factors listed in Health Occupations Article, §9-3A-05(b)(1), Annotated Code of Maryland.

G. *Provisional License.* The Board may issue a provisional license to the applicant if the Board determines that:

- (1) The applicant is of good moral character;
- (2) The departure of the licensed assisted living manager was by unexpected cause; and
- (3) The applicant is capable of adequately administering the assisted living program for the provisional period.

H. If the Board grants the application for the provisional assisted living manager license, the provisional license is in effect for 90 days from the date of the departure of the licensed assisted living manager. For good cause shown, the Board may extend the provisional license period by 30 days.

I. *Denial of Provisional License.*

(1) If the application for a provisional license is denied by the Board, the assisted living program may request a meeting with the Board to contest the denial.

(2) The assisted living program shall provide the request for a meeting to the Board within 5 business days of the denial.

(3) If the assisted living program requests a meeting, the appointed non-licensed individual may remain acting as the interim assisted living manager until the Board issues a decision.

(4) If the assisted living program does not file a timely request for a meeting with the Board, the non-licensed individual shall cease acting as the interim assisted living manager after 5 days from the denial.

(5) If the Board denies the application for a provisional license after a meeting contesting the initial denial, the non-licensed individual shall cease acting as the interim assisted living manager upon receipt of the decision.

J. If the non-licensed individual is required to cease acting as the interim assisted living manager under §I(4) and (5) of this regulation, and an assisted living manager licensed in the State remains unavailable to fill the assisted living manager position, the assisted living program may appoint another non-licensed individual set forth in this regulation.

K. As a result of §J of this regulation, if the assisted living program appoints another non-licensed individual, and a provisional license is granted, the provisional license is in effect for 90 days from the date of the departure of the assisted living manager licensed in the State, unless the Board extends the provisional license, for good cause, for an additional 30 days.

L. Upon request by the assisted living program, for reasonable cause, the Board may extend the 24-hour time period for meeting the requirements of §E of this regulation.

.05 Renewals.

A. A license expires on the second anniversary of its effective date, unless the license is renewed for a 2-year term as provided in this regulation.

B. The Board shall send each licensee a renewal notice that states the:

- (1) Date on which the current license expires;
- (2) Latest date by which the renewal application and documentation can be received by the Board in order for the renewal license to be issued before the current license expires; and
- (3) Amount of the renewal fee as specified in COMAR 10.33.05.02D.

C. At least 30 days before the current license expires, the Board shall send the renewal notice by:

- (1) Electronic means to the last known electronic mail address; or
- (2) First-class mail to the physical address of the licensee.

D. Licensees shall satisfactorily complete the minimum continuing education requirements set forth under COMAR 10.07.14.16C.

E. A licensee shall complete an implicit bias and structural racism training program approved by the Cultural and Linguistic Health Care Professional Competency Program in accordance with Health-General Article, §20-1306, Annotated Code of Maryland, for an applicant's first renewal after April 1, 2026.

.06 Reinstatement After License Expiration.

A. The Board shall reinstate an individual whose license has expired if the individual:

- (1) Meets the renewal requirements of this chapter and Health Occupations Article, §9-3A-09, Annotated Code of Maryland;
- (2) Pays the reinstatement fee as specified under COMAR 10.33.05.02D; and
- (3) Satisfactorily completes the minimum continuing education requirements set forth under COMAR 10.07.14.16C.

B. An assisted living manager who fails to apply for licensure reinstatement within 5 years after the expiration date of the license shall meet the requirements for a new license in effect at the time of the request in order to be licensed to practice as an assisted living manager in the State.

.07 Inactive Status and Reactivation.

A. In accordance with Health Occupations Article, §9-3A-10, Annotated Code of Maryland, a request by an active licensee to transfer a license to inactive status shall be granted upon receipt of the:

- (1) Completed Board-approved inactive status application; and

(2) Payment of the required, non-refundable, biennial inactive status fee set forth in COMAR 10.33.05.02D.

B. An individual:

(1) May apply for inactive status only if the individual's license is still active at the time the inactive status application request is made;

(2) Shall renew and pay the biennial inactive status fee during each renewal period; and

(3) Is not authorized to and may not practice as an assisted living manager in the State while on inactive status.

C. Reactivation.

(1) The Board shall reactivate the license of a licensee who is on inactive status for less than 5 years if the licensee:

(a) Completes an application form for reactivation of the license before expiration of the 2-year term of inactive status on the form required by the Board;

(b) Complies with the renewal requirements in effect at the time the licensee seeks to reactivate the license;

(c) Meets the continuing education requirements set by the Board under COMAR 10.33.04.02;

(d) Has not practiced as an assisted living manager in the State while on inactive status;

(e) Pays all appropriate fees set by the Board under COMAR 10.33.05.02D; and

(f) Is otherwise entitled to be licensed.

(2) Before the Board may reactivate the license of an individual who has been on inactive status for 5 years or more, the individual shall:

(a) Submit a new online application;

(b) Pay all appropriate fees set by the Board;

(c) Complete a Board-approved assisted living manager training course; and

(d) Submit to a State and national criminal history records check in accordance with Health Occupations Article, §9-3A-05, Annotated Code of Maryland.

(3) An assisted living manager whose inactive status expires before the license is reactivated shall meet the reinstatement requirements of Health Occupations Article, §9-3A-09, Annotated Code of Maryland.

.08 Incomplete Applications.

A. The Board is not required to consider an application that is incomplete.

B. The applicant shall submit to the Board any additional relevant documentation requested by the Board if the Board determines the application documentation received is incomplete or insufficient.

C. The Board may hold an incomplete application for a license for up to 1 year from the date of receipt.

D. After 1 year from the date of receipt, the Board shall close a pending application that is incomplete.

E. If an application has been closed under §D of this regulation, to obtain a license the applicant shall submit a new application fee and otherwise comply with all applicable license requirements.

.09 Display of License.

Each individual licensed as an assisted living manager in the State shall display printed verification of licensure in a conspicuous place in the office or place of business or employment of the licensee.

.10 Change of Mailing Address, Legal Name, or Email Address.

A. A licensed assisted living manager shall give the Board written or electronic notice within 30 days of a change of:

(1) Mailing address;

(2) Legal name; or

(3) Email address.

B. Failure to notify the Board of any change of mailing address, legal name, or email address within 30 days of the change may result in a fine as set forth under COMAR 10.33.05.02D.

10.33.04 Continuing Education Requirements

Authority: Health-General Article, §19-1807; Health Occupations Article, §§9-205 and 9-311; Annotated Code of Maryland

.01 Continuing Education Requirements for Nursing Home Administrators.

A. The approval of continuing education hours shall be at the discretion of the Board.

B. Before renewal, a nursing home administrator shall submit satisfactory evidence of having completed a minimum of 40 hours of Board approved continuing education, unless otherwise specified by State or federal law, within the 2-year period before the renewal date.

C. The Board shall audit a percentage of nursing home administrators, to be determined by the Board, for each reporting period.

D. On request by the Board, a nursing home administrator shall provide full documentation of the credit hours completed in accordance with the requirements of this regulation.

E. All continuing education shall be completed in courses approved by NAB, except as provided in §§F and G of this regulation.

F. The Board shall award 10 hours of continuing education for each completed college credit from an accredited institution that falls within the subjects outlined in COMAR 10.33.02.03A.

G. The Board shall award 1 hour of continuing education for each month a preceptor serves as an instructor in an AIT program, up to a maximum of 12 credit hours per renewal cycle.

H. A licensee suspended for disciplinary reasons is not exempt from the continuing education requirement in this regulation.

.02 Continuing Education Requirements for Assisted Living Managers.

- A. The approval of continuing education hours shall be at the discretion of the Board.
- B. Before renewal, an assisted living manager shall submit satisfactory evidence of having completed a minimum of 20 hours of Department approved continuing education, unless otherwise specified by State or federal law, within the 2-year period before the renewal date.
- C. The Board shall audit a percentage of assisted living managers, to be determined by the Board, for each reporting period.
- D. On request by the Board, an assisted living manager shall provide full documentation of the credit hours completed in accordance with the requirements of this regulation.
- E. A licensee suspended for disciplinary reasons is not exempt from the continuing education requirement in this regulation.

10.33.05 Fees

Authority: Health Occupations Article, §§9-205, 9-206, 9-311—9-312.1, 9-3A-03, and 9-3A-08—9-3A-10, Annotated Code of Maryland

.01 Scope.

This chapter governs all individuals licensed or applying for licensure by the Board under this subtitle.

.02 Fees.

- A. The fee for a license shall be established by the Board under this subtitle.
- B. The fee shall be payable on notification by the Board that the applicant has successfully completed the requirements for licensure or renewal.
- C. The license fee or license renewal fee does not include costs for participating in educational courses or for the examination.
- D. Fee Schedule.
 - (1) Initial application — \$100.
 - (2) License fee — \$200.
 - (3) Biennial license renewal — \$200.
 - (4) Reinstatement fee — \$300.
 - (5) Inactive status fee — \$100.
 - (6) Biennial inactive renewal — \$100.
 - (7) Reactivation fee — \$200.
 - (8) Fine for failure to notify Board of change in either name, home address of the licensee, or email address, or change in name or address of the employer or business connection of the licensee within 30 days of the change — \$100.
 - (9) NAB Examinations. The National Association of Long-Term Care Administrators Boards, Inc. determines the fees for the National Licensure Examination for nursing home administrators. A fee is charged each time an applicant takes an exam.
 - (10) State Standards Examination. The examination service determines the fee for the State standards exam. A fee is charged each time an applicant takes the exam.
- E. All fees are non-refundable.

10.33.06 Code of Ethics

Authority: Health Occupations Article, §§9-205, 9-314, and 9-3A-12, Annotated Code of Maryland

.01 Scope.

This chapter applies to all licensees of the Board.

.02 Ethical Principles.

- A. A licensee shall:
 - (1) In all professional relationships, be honest and practice with compassion and respect for the dignity and rights of the individual, with commitment to the care, safety, and well-being of the residents being paramount;
 - (2) Practice in a manner consistent with the laws and standards of practice pertaining to the nursing home or assisted living program the licensee administers or manages;
 - (3) Provide a safe and healthy environment which shall protect the rights of the residents;
 - (4) Promote and enhance their profession and its standards by increasing awareness and understanding of healthcare and their profession;
 - (5) Be responsible for maintaining their professional competence and to continue professional development and growth through continuing education; and
 - (6) Safeguard the confidentiality and privacy of information regarding residents consistent with existing law and professional standards.
- B. A licensee may not discriminate on the basis of race, color, sex, religion, age, national origin, disability, or other basis prohibited by State or federal law or regulation.

10.33.07 Sanctions and Disciplinary Proceedings

Authority: Health-General Article, §§2-104 and 19-1809; Health Occupations Article, §§1-602—1-609, 9-205, 9-313—9-316.1, 9-3A-11—9-3A-17, and 9-401—9-407; State Government Article, §§10-201—10-226; Annotated Code of Maryland

.01 Scope.

These regulations govern procedures for disciplinary and licensing proceedings before the Board.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Administrative prosecutor" means the attorney assigned from the Office of the Attorney General to prosecute the Board's administrative charges on behalf of the State.

(2) "Charges" means the accusations or grounds for action that the Board alleges a respondent committed which concerns:

(a) A disciplinary action against a licensee that may result in sanctions against a licensee;

(b) Intent to deny an initial application for licensure;

(c) An action against an individual practicing nursing home administration or assisted living management without a license; or

(d) Other action authorized by law or regulation against an individual, licensee, or applicant that entitles the respondent to a contested case hearing.

(3) "Charging document" means the document that includes the charges that initiates a Board action against a respondent and gives formal notice to the respondent of an action by the Board.

(4) Complaint.

(a) "Complaint" means an allegation or report received by the Board that indicates:

(i) A Board licensee may have committed an act or omission for which the licensee may be disciplined or sanctioned;

(ii) An applicant may have committed an act or omission that could result in the denial of the applicant's application for a license; or

(iii) An individual may be practicing either nursing home administration or assisted living management without a license.

(b) "Complaint" includes, but is not limited to, the following:

(i) Consumer complaints and complaints from the public;

(ii) Reports or allegations from a government entity concerning a nursing home or assisted living program at which the licensee is or was employed;

(iii) Media reports;

(iv) Statements on Board applications for licensure;

(v) Reports from anonymous sources; or

(vi) Information from any source that warrants an investigation.

(5) "Preliminary investigation" means a review of the allegations in a complaint by the Board and the response from a respondent, if provided, that determines whether there is a sufficient basis for a formal Board investigation.

(6) "Respondent" means a licensee, applicant, or individual who:

(a) Is under investigation by the Board; or

(b) Has been charged by the Board.

.03 Complaints, Investigations, and Disposition of Complaint.

A. Complaint.

(1) Any person, government entity, public officer, association, or the Board may submit to the Board a complaint against any licensee, applicant, or individual for due cause.

(2) The Board shall investigate and take appropriate action as to any complaint filed with the Board that alleges or indicates that:

(a) A licensee has failed to meet any standard governing the practice of the licensee's profession;

(b) A licensee has violated disciplinary grounds of the Board; or

(c) An unlicensed individual:

(i) Is practicing nursing home administration or assisted living management in this State without a license or proper authorization; or

(ii) Has represented to the public that the individual is authorized to practice nursing home administration or assisted living management in this State without a license or proper authorization from the Board.

(3) The Board may investigate responses in a Board licensure application that may warrant denial of the application.

B. Representation by Counsel.

(1) A respondent may be represented by counsel in any matter before the Board and at any stage of the proceedings.

(2) If the matter goes to a hearing, a respondent may be represented by:

(a) The respondent; or

(b) An attorney who is:

(i) Admitted to the Maryland Bar; or

(ii) Specially admitted to practice law pursuant to Maryland Rule 19-217.

(3) An administrative prosecutor assigned to the Board by the Office of the Attorney General shall prosecute disciplinary matters in Board proceedings.

(4) The Board may be represented by and obtain the advice of counsel assigned to it by the Office of the Attorney General in all proceedings.

C. Confidentiality of Proceedings.

(1) Except as otherwise provided by law, the proceedings of the Board are confidential. The parties may not waive the confidentiality provided by this regulation.

(2) The Office of Administrative Hearings' proceedings involving the adjudication of a Board-contested case and the administrative law judge's proposed decision are confidential. The parties may not waive the confidentiality of the proceedings or of the residents whose medical records or care are reflected in the record of the proceedings.

(3) Except as otherwise provided by law, even after a final decision is issued by the Board, the parties may not reveal the identity of any residents or patients referenced in the Board proceeding.

D. Investigation of Complaint.

(1) After receipt of a complaint, the Board staff:

- (a) Shall send an acknowledgement to the complainant;
- (b) Shall present the complaint to the disciplinary committee of the Board; and
- (c) May forward the complaint to another regulatory agency that has jurisdiction over the matter.

(2) The Board's disciplinary committee shall:

- (a) Review a complaint over which the Board has jurisdiction; and
- (b) Make a recommendation to the Board on whether to open a formal investigation of a complaint. The disciplinary committee may recommend to the Board closure of the case based on a preliminary investigation of the complaint.

(3) Prior to or after a decision on whether to open a formal investigation of a complaint, the Board may send a copy of the complaint, either in its entirety or redacted, to the licensee who is the subject of the complaint to obtain a response to the allegations made in the complaint.

(4) Participation in review of complaints made to the Board is not a basis for recusal of a Board member, Board counsel, or the administrative prosecutor from further proceedings in the case.

(5) If the Board votes for a formal investigation, an investigator shall be assigned to the investigation.

(6) As part of its investigation, the Board may issue investigative subpoenas requiring the attendance and testimony of witnesses, who may have information about the complaint, the production of records, or other tangible objects. The subpoena shall be:

(a) Signed by:

- (i) The Board's Executive Director; or
- (ii) A Board officer;

(b) Served by:

- (i) U.S. first-class mail;
- (ii) Certified mail to the address the respondent is required to maintain with the Board;
- (iii) Hand delivery in-person or by courier;
- (iv) Delivery service for which a signature is required;
- (v) Electronic means; or
- (vi) A method otherwise agreed to by the person or government entity to whom the subpoena is directed or the person's

counsel.

E. Subpoenas. If service of the subpoena is provided by electronic means, under §D(6)(b)(v) of this regulation, and no response or delivery receipt is obtained from the e-mail address to which service of the subpoena was provided, the Board shall serve the subpoena through other means under §D(6)(b) of this regulation.

F. Except as otherwise provided by law, Board investigations are confidential.

G. For each complaint, after a review of the complaint, pertinent investigative material, and the disciplinary committee's recommendation, the Board shall:

(1) Close the case;

(2) Close the case with a nonpublic informal advisory letter to the licensee; or

(3) Vote to take any of the following actions:

(a) Charge the licensee with a violation or violations of Health Occupations Article, §§9-314 or 9-3A-12, Annotated Code of Maryland, or a violation or violations of Regulation .06 of this chapter;

(b) Summarily suspend a license or issue a Notice of Intent to Summarily Suspend;

(c) Issue an intent to deny an application for licensure;

(d) Issue a cease and desist order; or

(e) Take any action against a respondent authorized by the subtitle or law that entitles the respondent to a contested case hearing.

H. Referral to Prosecutor.

(1) After a vote for disciplinary action or actions, the matter shall be referred to an administrative prosecutor for prosecutorial action.

(2) After the administrative prosecutor has drafted the charging document, notice, or order of the disciplinary action or actions, if acceptable, a Board officer or the Board Executive Director shall sign the charging document, notice, or order of the disciplinary action or actions and the licensee, applicant, or individual shall be served.

.04 Pre-Hearing Procedures.

A. The charging document shall:

(1) Give reasonable notice of the Board's action;

(2) Comply with State Government Article, §10-207, Annotated Code of Maryland;

(3) Notify the respondent of, if applicable:

(a) Any proceedings scheduled before the Board and the consequences of failing to appear for those proceedings; and

(b) An opportunity to request a hearing within a certain period of time and the consequences of failing to request a hearing; and

(4) Be accompanied by a letter of procedure notifying the respondent of the applicability of the Administrative Procedure Act to the Board's proceedings.

B. If the respondent does not participate in the Board proceeding without a valid reason, the Board may nevertheless proceed in adjudicating the case or issue a default order.

C. If the Board initiates an investigation or if the Board issues a notice of initial denial to an applicant for a license, the applicant may not withdraw the application without approval of the Board.

D. A notice of denial of a provisional license does not entitle the applicant, nursing home, or assisted living program to a hearing under this chapter.

E. After the administrative prosecutor has drafted the charging document, if acceptable, a Board officer or the Board Executive Director shall sign the charging document.

F. An investigation and prosecution of charges may proceed if a respondent's license expires after a Board investigation has been initiated or charges have been issued.

G. Service of the Charging Document. If the Board issues a charging document, the charging document shall be served upon the respondent at the address the respondent maintains for purposes of licensure or the respondent's last known address by:

- (1) U.S. first-class mail;
- (2) Certified mail;
- (3) Hand delivery in person or by courier;
- (4) Delivery service for which a signature is required;
- (5) Electronic means; or
- (6) A method otherwise agreed to by the respondent or respondent's counsel.

H. If service of the charging document is provided by electronic means, under §G(5) of this regulation, and no response or delivery receipt is obtained from the e-mail address to which service of the charging document was provided, the Board shall serve the charging document through other means under §G of this regulation.

I. Case Resolution Conference.

(1) After service of the charging document or notice of initial denial, the Board shall offer a respondent the opportunity for a case resolution conference.

(2) Matters admitted, revealed, negotiated, or otherwise discussed at a case resolution conference are confidential and without prejudice and may not be used by the respondent, administrative prosecutor, or Board in any subsequent proceedings, unless the information is otherwise discovered or available by other appropriate means.

(3) Recommendations of the case resolution conference committee are not binding on the Board, which may:

- (a) Accept the proposed resolution; or
- (b) Modify a proposed settlement.

(4) If the respondent and the administrative prosecutor are unable to reach an agreement for settlement that is proposed by the case resolution conference committee, or the Board, the matter shall proceed to a hearing on the charges.

(5) Participation in a case resolution conference is not a basis for recusal of a Board member, Board counsel, or Board prosecutor from further proceedings in a case.

J. Discovery.

(1) Discovery on Request. By written request served on the other party and filed with the Board or the Office of Administrative Hearings, as appropriate, a party may require another party to produce copies of documents that the opposing party intends to be produced at the hearing within 30 days of service of the request.

(2) Mandatory Discovery.

(a) At least 15 days before the prehearing conference, if scheduled, or 45 days before the scheduled hearing date, whichever is earlier, each party shall provide to the other party:

(i) The name and curriculum vitae of any expert witness who will testify at the hearing; and

(ii) A detailed written report summarizing the expert testimony, which includes the opinion offered and the factual basis and reasons underlying the opinion.

(b) Upon motion, if the Board Chair or the Board Chair's designee, who shall be a Board member, or the Office of Administrative Hearings, as appropriate, finds that the expert report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, or the proposed expert is unqualified, the testimony of the expert and any report of the expert shall be excluded from the hearing.

(c) If an expert adopts a sufficiently specific charging document as the expert report, that adoption shall satisfy the requirements set forth in this section.

K. Motions and Orders for a Hearing Before the Board.

(1) Motions shall:

- (a) Be in writing and filed with the Board and shall include the pertinent facts and legal authorities relied upon;
- (b) Be decided by the Chair of the Board or the Chair's designee, who shall be a Board member;
- (c) Be served upon the opposing party's legal counsel, if the opposing party is represented, and upon the opposing party, if not represented by legal counsel; and
- (d) Contain a certificate of service.

(2) Unless shortened or extended by the presiding officer, the opposing party has 15 days from service of the motion to respond to the motion.

(3) Except as otherwise provided by this regulation, the Chair of the Board or the Chair's designee, who shall be a Board member, may decide any issues needed to facilitate Board proceedings after the charging document is issued.

(4) Parties may be notified of decisions and orders from this chapter by the Board's Executive Director, who may also sign decisions and orders on behalf of the Board or the Board decision maker.

L. Pre-Hearing Conference for Hearings Before the Board.

- (1) The Board may hold a pre-hearing conference.*
- (2) If the Board holds a pre-hearing conference, at minimum:*
 - (a) A Board member shall attend; and*
 - (b) Both parties shall disclose any:*
 - (i) Anticipated witnesses; and*
 - (ii) Documents anticipated to be offered into evidence.*
- (3) Both parties have a continuing duty to supplement their disclosures of witnesses and documents.*
- (4) The parties shall comply with the pre-hearing conference instructions and orders.*
- (5) In the case of unforeseen circumstances which would otherwise impose an extraordinary hardship on a party:*
 - (a) If a prehearing conference is scheduled, witnesses or documents may not be added to the list after the prehearing conference; or*
 - (b) If no prehearing conference is scheduled, witnesses or documents may not be added to the list later than 15 days before the hearing.*
- (6) The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.*
- (7) Failure to comply with discovery, pre-hearing conference instructions, or orders may result in the exclusion of witnesses from testifying or documents from being admitted or default.*

.05 Hearings and Final Decisions.

A. Hearings shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

- (1) The Board may delegate the Board's authority to hear contested cases to the Office of Administrative Hearings on a case-by-case basis.*
- (2) Proceedings are not open to the public.*
- (3) Hearings may be held by electronic means.*
- B. Burden of Proof. A party asserting the affirmative of an issue bears the burden of proof regarding the issue.*
- C. Order of Procedure. The party with the burden of proof shall present their case first.*
- D. Hearings Conducted Before the Board.*
 - (1) The Board shall notify the parties of the date, time, and place of the hearing.*
 - (2) Each hearing shall be held before a majority of the Board.*
 - (3) The delegation for an evidentiary hearing to an administrative law judge shall be by the Board at its discretion.*
 - (4) Presiding Officer. For hearings before the Board, the Board Chair, or, in the Chair's absence, a member designated by the Chair shall be the presiding officer of the hearing. The presiding officer shall:*
 - (a) Have complete charge of the hearing proceedings;*
 - (b) Rule on any matter to facilitate the hearing;*
 - (c) Permit the examination of witnesses;*
 - (d) Rule on the admissibility of evidence;*
 - (e) Admit evidence; and*
 - (f) Adjourn or recess the hearing from time to time.*
 - (5) The presiding officer, at the presiding officer's discretion, may set reasonable time limits on arguments and presentation of evidence.*
 - (6) The presiding officer shall be responsible for decorum in a hearing and can suspend the proceedings as necessary to maintain decorum.*
 - (7) Legal Advisor and Counsel for the Board. A representative of the Office of the Attorney General shall act as legal advisor and counsel to the Board.*
 - (8) Administrative Prosecutor.*
 - (a) The Board may request the Office of the Attorney General, Health Occupations and Prosecution Unit to participate as the administrative prosecutor in any hearing to present the case on behalf of the State.*
 - (b) The administrative prosecutor that presents the case on behalf of the State shall have the same rights with regard to the submission of evidence, examination, cross-examination of witnesses, presentation of summation and argument, and filing of objections, exceptions, and motions as does the respondent and respondent's counsel for any party.*
 - (9) Examination of Witnesses and Introduction of Evidence.*
 - (a) The rules of evidence in all hearings under these regulations shall be as set forth in State Government Article, §10-213, Annotated Code of Maryland.*
 - (b) Every party has the right to call witnesses and present evidence, cross-examine every witness called on behalf of the Board or other party, and present summation and argument and file objections, exceptions, and motions.*
 - (c) When a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions, and motions shall be done and presented solely by counsel.*
 - (d) The presiding officer, or any person designated by the presiding officer for that purpose, may examine any witness called to testify. Any member of the Board may examine any witness called to testify.*
- E. Evidentiary Hearings Conducted at the Office of Administrative Hearings.*
 - (1) Unless specified otherwise in this chapter, hearings delegated to the Office of Administrative Hearings are governed by the Office of Administrative Hearings Rules of Procedure, pursuant to COMAR 28.02.01.*
 - (2) Proceedings are not open to the public.*

(3) The Board action concerning charges against a nursing home administrator or an assisted living manager may be consolidated for the evidentiary hearing at the Office of Administrative Hearings, with a disciplinary action against a nursing home or assisted living program, brought by the Department if:

(a) The licensed nursing home administrator or licensed assisted living manager of the Board action administered or managed the facility that is the subject of the Department's action; and

(b) The issues and facts in the cases are sufficiently similar.

(4) If a matter has been delegated to the Office of Administrative Hearings, unless otherwise specified by the Board, the administrative law judge presiding over the proceedings shall issue to the Board a proposed decision which shall include:

(a) Proposed findings of fact;

(b) Proposed conclusions of law; and

(c) A proposed sanction.

F. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings or to an individual member of the Board, a party may file exceptions to the proposed decision before the Board makes a final decision.

(2) Unless otherwise permitted by the Board, within 21 days after the issuance of the proposed decision, either party may file written exceptions with the Board.

(3) Unless otherwise permitted by the Board, a party's written exceptions may not be longer than 25 double-spaced pages and shall state with particularity the:

(a) Finding of fact;

(b) Conclusion of law or other matter excepted to; and

(c) Relevant portions of the record supporting the party's exception.

(4) Unless otherwise permitted by the Board, within 15 business days after a party's exceptions are filed with the Board, the opposing party may file an answer to exceptions.

(5) Unless otherwise permitted by the Board, a party's answer to exceptions may not be longer than 25 double-spaced pages and shall state with particularity:

(a) A response to an exception; and

(b) The relevant portions of the record supporting that response.

(6) Unless otherwise agreed to by the parties and permitted by the Board, an exceptions hearing shall be scheduled for the next meeting of the Board after receipt of the parties' exceptions and any answer to exceptions.

(7) Exceptions Hearing.

(a) An exceptions hearing shall be held before the Board.

(b) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the exceptions and answers to exceptions.

(c) The Board member presiding at the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(d) The presiding Board member shall make rulings reasonably necessary to facilitate the exceptions hearing.

(e) The respondent and the administrative prosecutor may not exceed 30 minutes to present oral argument per side, unless approved by the presiding officer.

(f) The party who filed the exceptions shall proceed first and may reserve part of the allotted time for rebuttal.

(8) Unless otherwise agreed to by the parties and permitted by the Board, in an answer to exceptions or in the hearing on exceptions, the parties may not reference any document or other evidence or offer an exhibit that is outside the record of the evidentiary hearing before the administrative law judge.

(9) If neither party files exceptions within the time specified in §C(2) of this regulation, in making the Board's final decision, the Board shall consider only the:

(a) Proposed decision of the administrative law judge; and

(b) Record of the evidentiary hearing.

G. Final Decision. After a formal hearing is conducted, the Board shall issue a written final decision to be sent to the parties upon issuance which shall include:

(1) Findings of fact;

(2) Conclusions of law;

(3) An order; and

(4) Appeal rights, if applicable.

.06 Grounds for Sanctioning and Sanctions.

A. Pursuant to Health Occupations Article, §§9-314(b)(3) or 9-3A-12(b)(3), Annotated Code of Maryland, the Board may deny a license to any applicant, suspend or revoke the license of a licensee, place on probation, reprimand, or fine a licensee after proper notice and a hearing, if the applicant or licensee:

(1) Violated any of the provisions of law or regulations pertaining to the licensing or practice of nursing home administration or assisted living management;

(2) Violated any of the provisions of the law or regulations of the:

(a) Licensing or oversight authority or agency of the State for nursing homes or assisted living programs; or

(b) Federal entity having jurisdiction over the operation of nursing homes;

(3) Is incompetent to engage in the practice of nursing home administration or assisted living management or to act as a nursing home administrator or assisted living manager;

(4) Engaged in fraud, deceit, or misrepresentation in the licensee's or applicant's capacity as a nursing home administrator or assisted living manager;

(5) Wrongfully transferred or surrendered possession of, either temporarily or permanently, an individual's license;

(6) Paid, gave, caused to be paid or given, or offered to pay or be given to any person a commission or other valuable consideration for the solicitation or procurement, either directly or indirectly, of nursing home or assisted living program patronage;

(7) Used fraudulent, misleading, or deceptive advertising;

(8) Falsely impersonated another licensee;

(9) Endangered or sanctioned the endangerment of the safety, health, or life of any resident of a nursing home or assisted living program;

(10) Violated a resident's rights or allowed a resident's rights to be violated;

(11) Failed to oversee and facilitate the nursing home's or assisted living program's quality improvement processes to the extent that the safety, health, or life of any resident has been endangered;

(12) Willfully permitted the unauthorized disclosure of information relating to a resident or the resident's records;

(13) Discriminated against residents, employees, or staff on account of race, religion, national origin, sexual orientation, or disability;

(14) Violated the Code of Ethics set forth under COMAR 10.33.06;

(15) Engaged in sexual behavior that would be considered unethical or unprofessional according to professional standards of conduct, including, but not limited to:

(a) Sexual behavior with a resident or patient in the context of a professional evaluation, treatment, procedure, or service to the resident or patient, regardless of the setting in which the professional service is rendered;

(b) Sexual behavior with a resident or patient under the pretext of diagnostic or therapeutic intent or benefit;

(c) Solicitation of a sexual relationship, whether consensual or nonconsensual, with a resident or patient;

(d) Sexual advances requesting sexual favors;

(e) Therapeutically inappropriate or intentional touching of a sexual nature;

(f) A verbal comment of a sexual nature;

(g) Physical contact of a sexual nature with a resident or patient;

(h) Discussion of unnecessary sexual matters with a resident or patient;

(i) Direct or indirect observation of a resident or patient while the resident or patient is undressing or dressing;

(j) Taking photographs or video of a resident or patient for a sexual purpose;

(k) Sexual harassment of staff, students, or volunteers;

(l) An unnecessary sensual act or comment;

(m) Sexual contact with an incompetent or unconscious client, patient, or resident; or

(n) Offering to provide services or material in exchange for sexual favors;

(16) Practiced as a nursing home administrator or assistant living manager in the State without a license from the Board or without proper authorization to practice as a nursing home administrator or assistant living manager;

(17) Falsified continuing education records; or

(18) Failed to cooperate with an investigation, proceedings, or other requirements of the Board.

B. The Board may, after due notice and an opportunity to be heard, suspend or revoke an AIT's participation in a Board-approved AIT program, upon substantial evidence that the AIT has committed any of the actions listed in §A of this regulation.

C. A licensee shall notify the Board in writing within 30 days if the licensee has been sanctioned by a licensing authority of another state for the practice as a nursing home administrator or assistant living manager.

D. On finding that there has been a violation of Health Occupations Article, Title 9, Annotated Code of Maryland, or this subtitle, and in accordance with the applicable notice and due process procedures, the Board may order that the:

(1) Licensee be fined;

(2) Licensee be reprimanded;

(3) Licensee be placed on probation with appropriate terms and conditions;

(4) Licensee's license be suspended, with or without terms and conditions; or

(5) Licensee's license be revoked.

E. The Board may order any of the sanctions listed in §A of this regulation in combination or individually as appropriate for the violations committed by the licensee.

.07 Sanctioning Guidelines.

A. If the Board concludes that a licensee has violated a ground for discipline under Health Occupations Article, §§9-314(b) or 9-3A-12(b), Annotated Code of Maryland, or under this chapter, the Board shall:

(1) Determine the applicable sanction range according to the guidelines set forth in Regulation .08 of this chapter;

(2) Consider the applicable aggravating and mitigating factors set forth in §J of this regulation to determine whether the sanction should fall outside the indicated range of sanctions; and

(3) After considering any applicable aggravating and mitigating factors, impose the appropriate sanction.

B. The Board is not required to make findings of fact with respect to any of the factors for determining the sanction indicated by the sanctioning guidelines.

C. In the event that a licensee's violation of the Board's statutes or regulation does not fall within a sanction range, the Board shall so indicate and use its best judgment to determine the appropriate sanction and consider, to the extent possible, the factors in the sanctioning guidelines.

D. If the Board deviates from the sanctioning guidelines, the Board shall state its reasons for the deviation.

- E. A departure from the sanctioning guidelines is not an independent ground for an appeal or challenge of a Board action.
- F. Notwithstanding this regulation, in order to resolve a disciplinary proceeding, the Board and the licensee may agree to a surrender of license or a Consent Order with terms and sanction agreed to by the Board and the licensee.
- G. In a case where there are multiple and distinct violations, the Board may impose a sanction greater than the maximum indicated by the sanctioning guidelines for each individual violation.
- H. If probation or suspension is imposed, the Board may impose appropriate terms and conditions for the probation or suspension. If a licensee violates the terms or conditions of the probation or suspension, the Board may take further disciplinary action against the licensee, as provided in the Board order.
- I. Pursuant to Health Occupations Article, §§9-314.1 and 9-3A-13, Annotated Code of Maryland, if a civil fine is imposed, the fine may not exceed \$1,000 for a first violation or \$5,000 for any subsequent violation of the same provision.
- J. Aggravating and Mitigating Factors.

(1) Mitigating Factors. In determining whether the sanction falls outside the indicated range of sanctions guidelines listed in Regulation .08 of this chapter, the Board may consider the following mitigating factors:

- (a) Absence of a prior disciplinary record;
- (b) That the licensee reported the violation to the Board;
- (c) That the licensee:
 - (i) Voluntarily admitted violation;
 - (ii) Provided full disclosure to the Board; and
 - (iii) Cooperated during Board proceedings;
- (d) That the licensee implemented remedial measures to correct or mitigate harm arising from the violation;
- (e) That the licensee made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;
- (f) Evidence of the licensee's rehabilitation or potential for rehabilitation;
- (g) Absence of premeditation to commit the violation;
- (h) Absence of potential harm to or adverse impact on the public;
- (i) That the incident was isolated and is not likely to recur; or
- (j) If the licensee has worked at the nursing home or assisted living program for a limited period, and the violation was present before beginning work at the facility or program.

(2) Aggravating Factors. In determining whether the sanction of the licensee falls outside the indicated range of sanctions guidelines listed in Regulation .08 of this chapter, the Board may consider the following aggravating factors:

- (a) The licensee's previous criminal or administrative disciplinary history;
- (b) If the violation was committed deliberately or with gross negligence or recklessness;
- (c) If the violation had the potential for, or caused, serious resident harm;
- (d) If the violation was part of a pattern of detrimental conduct;
- (e) If the licensee pursued the licensee's financial gain over a resident's welfare;
- (f) That the resident was especially vulnerable;
- (g) That the licensee attempted to:
 - (i) Conceal the violation;
 - (ii) Falsify or destroy evidence; or
 - (iii) Present false testimony or evidence;
- (h) That the licensee failed to cooperate with the Board's investigation; or
- (i) That the licensee's previous attempts at rehabilitation were unsuccessful.

.08 Guidelines for Disciplinary Sanctions.

A. Patient Safety.

Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to Greatest	1	(a) Committed a violation which resulted in no or little potential harm to a resident; or (b) Made an immediate and significant effort to remedy the violation.	Reprimand	Probation for 2 years
	2	(a) Committed a violation which resulted in moderate potential for resident harm; (b) Had been given prior warning of facility errors; (c) Made no significant or immediate attempt to remedy the facility errors; or (d) Failed to oversee a quality improvement process.	\$500 fine and probation for 1 year	Maximum fine allowable under Regulation .07I of this chapter, suspension for 2 years, and probation for 3 years

	3	<p>(a) Committed a violation resulting in actual or potentially serious harm to a resident;</p> <p>(b) Had been given repeated warnings of facility errors;</p> <p>(c) Committed a violation affecting two or more residents; or</p> <p>(d) Was under the influence of alcohol or drugs at the time the licensee committed the violation</p>	Suspension for 1 year	Revocation
	4	A licensee is not competent to practice as a nursing home administrator or assisted living manager.	Suspension until the Board determines the licensee is competent	Revocation

B. Fraud, Deceit, or Misrepresentation.

Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to Greatest	1	<p>(a) Committed a singular fraudulent or deceptive act, limited in nature; or</p> <p>(b) Neither achieved nor attempted to achieve personal financial or material gain from the violation.</p>	Reprimand	Maximum fine allowable under Regulation .071 of this chapter and probation for 3 years
	2	<p>(a) Achieved or attempted to achieve a material or financial gain as a result of the fraud, deceit, or misrepresentation;</p> <p>(b) Targeted or harmed residents of the facility administered by the licensee;</p> <p>(c) Committed multiple acts of fraud or deceit or perpetrated an elaborate scheme; involving fraud, deceit, or misrepresentation</p> <p>(d) Used false impersonation or identification in furtherance of the violation; or</p> <p>(e) Committed a violation in order to obtain a license for the licensee or another.</p>	\$500 fine, suspension for 2 years, and probation for 3 years	Revocation

C. General Misconduct.

Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to Greatest	1	<p>(a) Made a singular inappropriate sexual comment during the licensee's practice as a nursing home administrator or assisted living manager; or</p> <p>(b) Committed a violation resulting in no harm or having potentially minimal harm.</p>	Reprimand	Maximum fine allowable under Regulation .071 of this chapter and probation for 2 years
	2	<p>(a) Has made multiple inappropriate sexual comments not rising to the level of harassment;</p> <p>(b) Was under the influence of alcohol or drugs at the time the licensee committed the violation; or</p> <p>(c) Committed a violation which resulted in a moderate potential for harm.</p>	\$500 fine, and probation for 1 year	Maximum fine allowable under Regulation .071 of this chapter, suspension for 2 years, and probation for 3 years
	3	<p>(a) Diverted or stole drugs from a facility or a resident;</p> <p>(b) Committed an act of sexual misconduct involving touching, inappropriate contact, observation, recording, or harassment;</p>	\$500 fine, suspension for 1 year, and probation for 3 years	Revocation

		<p>(c) Committed or threatened to commit an act of violence;</p> <p>(d) Committed an act resulting in actual harm or the serious potential for harm;</p> <p>(e) Discriminated against a person; or</p> <p>(f) Recorded a resident or residents, without authorization from the resident or residents, using, but not limited to, a camera, phone, or video recorder.</p>	
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D. Records Violation Without Fraudulent or Deceitful Intent.

Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to Greatest	1	Licensee made limited errors in completing or maintaining a resident's or the facility's record, resulting in no harm to a resident.	Reprimand	Reprimand
	2	<p>(a) Produced a significant pattern of inaccurate records;</p> <p>(b) Improperly disclosed or authorized the disclosure of confidential medical records without intent to violate the governing confidentiality laws or regulations; or</p> <p>(c) Committed an act of false advertising.</p>	\$500 fine, and probation for 1 year	Maximum fine allowable under Regulation .071 of this chapter, suspension for 1 year, and probation for 3 years
	3	Willfully releasing or willfully authorizing the release of confidential medical records to unauthorized recipients.	\$500 fine, suspension for 1 year, and probation for 3 years	Revocation

E. Administrator-In-Training Violations by Nursing Home Administrator.

Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to Greatest	1	Licensee failed to fulfill requirements related to the supervising of an administrator-in-training but was in general compliance.	Reprimand	Maximum fine allowable under Regulation .071 of this chapter and probation for 3 years
	2	<p>(a) Committed an act involving deliberate falsification or deceit; or</p> <p>(b) Failed to achieve significant compliance with regulatory requirements of the administrator-in-training program.</p>	\$500 fine, suspension for 1 year, and probation for 3 years	Revocation

.09 Surrender of License.

A. This regulation pertains to the surrender of a license when:

- (1) A licensee is under investigation by the Board; or
- (2) Charges have been issued by the Board against a licensee.

B. The surrender of a licensee's license may be rejected by the Board.

C. Letter of Surrender.

(1) The language of the Letter of Surrender is subject to the approval of the Board.

(2) If the Letter of Surrender is approved by the Board, it shall be signed by the respondent and the Board's Executive Director.

(3) The Letter of Surrender may include, but is not limited to:

- (a) The circumstances that resulted in the surrender;
- (b) The time period before the respondent may apply for reinstatement if the surrender is not permanent; and
- (c) Conditions before the respondent may apply for reinstatement.

(4) The Letter of Surrender is a final order that is the result of formal discipline, and a public document, under:

- (a) General Provisions Article, §4-333, Annotated Code of Maryland; and
- (b) Health Occupations Article, §1-607, Annotated Code of Maryland.

.10 Summary Suspensions.

A. Pursuant to its authority under State Government Article, §10-226(c), Annotated Code of Maryland, the Board shall order the summary suspension of a license if the Board determines that the public health, safety, or welfare imperatively requires emergency action against the licensee.

B. Notice of Intent to Summarily Suspend.

(1) Based on information gathered in an investigation or otherwise provided to the Board, the Board may vote to issue a notice of intent to summarily suspend a license.

(2) If the Board votes to issue a notice of intent to summarily suspend a license or an order of summary suspension, the Board shall refer the matter to an administrative prosecutor for prosecution.

(3) A notice of intent to summarily suspend a license shall include:

(a) A proposed order of summary suspension which is unexecuted by the Board and includes:

(i) The statutory authority on which the action has been taken;

(ii) Allegations of fact that the Board believes demonstrate that the public health, safety, or welfare imperatively requires emergency action against the licensee; and

(iii) Notice to the respondent of the right to request a full hearing on the merits of the summary suspension if the Board executes the proposed order of summary suspension; and

(b) An order or summons to appear before the Board to show cause as to why the Board should not execute the order of summary suspension, which notifies the respondent of the consequences of failing to appear.

(4) Service.

(a) The Board shall serve a respondent with a notice of intent to summarily suspend a license no later than 5 days before a pre-deprivation show cause hearing is scheduled before the Board.

(b) Service of the notice of intent to summarily suspend shall be made as provided under COMAR 10.33.07.04G and H that includes proof of delivery.

(c) If the Board is unable to serve the notice of intent to summarily suspend a license upon the respondent as described in §B(4)(a) and (b) of this regulation, the Board may nevertheless proceed to prosecute the case.

C. Pre-Deprivation Opportunity to Be Heard.

(1) If the Board issues a notice of intent to summarily suspend a license, the Board shall offer the respondent the opportunity to appear before the Board to show cause as to why the respondent's license should not be suspended before the Board executes the order of summary suspension.

(2) Pre-Deprivation Show Cause Hearing Before the Board.

(a) The hearing shall be a non-evidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension.

(b) The Board member presiding at the hearing shall determine all procedural issues and may impose reasonable time limits on each party's oral argument.

(c) The presiding Board member shall make rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(d) The respondent and the administrative prosecutor may not exceed 30 minutes each to present oral argument.

(e) The respondent shall proceed first and may reserve part of the allotted time for rebuttal.

(f) The presiding officer:

(i) May allow either the respondent or the administrative prosecutor to present documents or exhibits which are relevant and material to the proceedings and which are not unduly repetitious, if the presiding Board member believes that the documents or exhibits are necessary for a fair hearing; and

(ii) May not allow testimony by any witness unless agreed to by the parties and approved by the presiding Board member in advance of the hearing.

(g) A Board member may be recognized by the presiding member to ask questions of either party appearing before the Board.

D. Post-Deprivation Opportunity to be Heard.

(1) Extraordinary Circumstances. The Board may, after consultation with Board counsel, order the summary suspension of a license without first issuing a notice of intent to summarily suspend a license or providing a respondent with an opportunity for a pre-deprivation hearing if the Board determines that:

(a) The public health, safety, or welfare imperatively requires the immediate suspension of the license; and

(b) Prior notice and an opportunity to be heard are not feasible.

(2) Time — Service and Hearing.

(a) An order of summary suspension under §D(1) of this regulation shall be served on the respondent promptly after its execution as provided by COMAR 10.33.07.04G and H that includes proof of delivery.

(b) The respondent shall be provided an opportunity for a post-deprivation hearing before the Board within 15 days after the effective date of the summary suspension, which shall provide the respondent with an opportunity to show cause as to why the Board should lift the summary suspension and reinstate the license.

(3) If the respondent requests a hearing under §B(3)(a)(iii) of this regulation, that hearing shall:

(a) Be conducted before the Board; and

(b) Provide the respondent with an opportunity to show cause as to why the Board should lift the summary suspension and reinstate the license.

E. Burdens of Production and Persuasion.

(1) In a show cause proceeding under §C of this regulation, the respondent may present argument in opposition to the allegations presented in the order for summary suspension or which otherwise demonstrate that the public health, safety, or welfare does not imperatively require the immediate suspension of a license.

(2) The administrative prosecutor bears the burden of demonstrating by a preponderance of the evidence that the health, safety, or welfare of the public imperatively requires the Board to summarily suspend the respondent's license.

F. Disposition.

(1) If the Board issues a notice of intent to summarily suspend a license before summarily suspending a license, the Board may, after the show cause hearing, vote to:

- (a) Order a summary suspension;
- (b) Deny the summary suspension; or
- (c) Issue an order agreed to by the parties.

(2) If the Board orders a summary suspension before a show cause hearing, the Board may, at the conclusion of the hearing, vote to:

- (a) Affirm its order of summary suspension;
- (b) Terminate or rescind the order for summary suspension; or
- (c) Issue an order agreed to by the parties.

(3) An order for summary suspension or other order issued by the Board after the initiation of summary suspension proceedings are final orders of the Board and public records under General Provisions Article, §4-333, Annotated Code of Maryland.

G. Post-Deprivation Opportunity for an Evidentiary Hearing.

(1) If the Board orders the summary suspension of a license under §§C or D of this regulation, the respondent shall have an opportunity for an evidentiary hearing before the Board, or, if the Board delegates the matter to the Office of Administrative Hearings, before an administrative law judge.

(2) The respondent may request an evidentiary hearing within 10 days after the Board issues the order of summary suspension.

(3) An evidentiary hearing may be consolidated with a hearing on charges issued by the Board that include the facts which form the basis for the summary suspension.

(4) An evidentiary hearing shall be conducted under the contested case provisions of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

(5) If the Board delegates the matter to the Office of Administrative Hearings, unless otherwise specified by the Board, the administrative law judge shall issue a proposed decision to the Board with:

- (a) Proposed findings of fact;
- (b) Proposed conclusions of law; and
- (c) A proposed disposition.

(6) If the hearing is one combined with charges, and the Board delegates the matter to the Office of Administrative Hearings, the administrative law judge's determination of the merits of the summary suspension shall be based only on the parts of the record available to the Board when the Board voted for summary suspension.

(7) The parties may file exceptions to the proposed decision, as provided in State Government Article, §10-216, Annotated Code of Maryland.

(8) An order issued by the Board after a pre-deprivation or post-deprivation hearing is a public record under:

- (a) Health Occupations Article, §1-607, Annotated Code of Maryland; and
- (b) General Provisions Article, §4-333, Annotated Code of Maryland.

.11 Cease and Desist Orders.

A. The Board may issue a cease and desist order to an unlicensed individual practicing nursing home administration or assisted living management without a license or authorization from the Board.

B. The cease and desist order shall be served upon the respondent as provided by COMAR 10.33.07.04G and H that includes proof of delivery.

C. The respondent is entitled to a prompt opportunity to be heard by the Board to contest the cease and desist order. This opportunity to be heard shall be conducted by argument and record evidence, without witness testimony.

D. If the Board upholds the cease and desist order under §C of this regulation, if requested, the respondent shall be entitled to an evidentiary hearing pursuant to the procedures under Regulation .05 of this chapter.

.12 Show Cause Hearings.

A. The Board may conduct a show cause hearing to determine whether a respondent violated an order of the Board.

B. An order of the Board includes, but is not limited to:

- (1) Final decisions and orders;
- (2) Consent orders; or
- (3) Any order imposing probation, suspension, or another term or condition that the respondent is required to comply with.

C. Failure to comply with any term or condition of an order of the Board is a violation of the order of the Board.

D. Service of the show cause order shall be as provided by COMAR 10.33.07.04G and H.

E. If the Board determines there is no genuine dispute of material facts that cannot be resolved at the show cause hearing, the show cause hearing may be conducted by argument by the parties and records offered for consideration by the Board.

F. The Board, in its discretion, may allow for an evidentiary hearing if it determines there is a genuine dispute of material fact that cannot be resolved at the show cause hearing.

.13 Petitions for Reinstatement Following License Revocation or Surrender.

A. In order for a revoked or surrendered license to be reinstated, the individual whose license was revoked or surrendered shall petition the Board for reinstatement.

B. A surrendered license in this regulation means a surrender, approved by the Board, while the individual was licensed and under investigation or charges had been issued by the Board.

C. An individual who petitions the Board for reinstatement following the revocation or surrender of the individual's license may petition for reinstatement only pursuant to the terms of the Board's order revoking the license or the Letter of Surrender. The Board may set conditions precedent and a time period for petitioning for reinstatement or may permanently revoke or require permanent surrender.

D. If the Board's order revoking the license or the Letter of Surrender does not contain a time period for petitioning for reinstatement, the individual may petition for reinstatement after 3 years from revocation.

E. A petitioner for reinstatement shall comply with all reasonable requests for information by the Board.

F. The decision of the Board on whether to grant or deny the petition for reinstatement is a discretionary decision by the Board.

G. If the Board denies a petition for reinstatement, the Board may set conditions precedent and a time period for further petitions for reinstatement.

H. If the Board grants reinstatement, the Board may impose probationary conditions and restrictions along with the reinstatement.

10.33.08 Compelling Purpose Disclosure

Authority: General Provisions Article, §4-333; Health Occupations Article, §9-205; Annotated Code of Maryland

.01 Disclosure for Compelling Public Purpose.

The Board's Executive Director may find that a compelling public purpose warrants disclosure of information in a certification, licensing, or investigative file, whether or not there has been a request for the information and may disclose the information under the following circumstances:

A. The information concerns possible criminal activity and is disclosed to a federal, state, or local law enforcement or prosecutorial official or authority;

B. The information concerns a possible violation of law and is disclosed to a federal, state, or local authority that has jurisdiction over the person or government entity whose conduct may be a violation, and the information disclosed is limited to information relevant to the possible violation by that individual; or

C. The information concerns conduct by a person or government entity which the Board's Executive Director reasonably believes may pose a risk to the public health, safety, or welfare and is disclosed to a law enforcement authority, administrative official, or agency that regulates the individual, or to a hospital or other healthcare facility where the individual has privileges.

.02 Other Disclosures.

This chapter does not prevent or limit the ability of the Board to disclose general licensing information as provided in General Provisions Article, §4-333, Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

MEENA SESHAMANI, MD, PhD
Secretary of Health