

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 33 BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

Chapter 01 Nursing Home Administrators

Authority: Health Occupations Article, §§1-212, 1-606, and 9-101—9-502; State Government Article, §§10-226 and 10-617(h)(3); Annotated Code of Maryland

.01 Source of Authority.

These regulations constitute and shall be known as the regulations of the Board of Examiners of Nursing Home Administrators, and are promulgated pursuant to the authority granted to, and imposed upon, the Board under the provisions of Health Occupations Article, §§9-101—9-502, Annotated Code of Maryland.

.02 Definitions.

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

B. Terms Defined.

(1) "Administrator-in-training (AIT)" means an individual approved by the Board pursuant to law and these regulations.

(2) "Administrator-in-training (AIT) program" means the Board-approved program of a minimum of 1 year full-time or 18 months part-time of practical training and experience in nursing home administration.

(3) "Board" means the Board of Examiners of Nursing Home Administrators of Maryland created by Health Occupations Article, §9-201, Annotated Code of Maryland.

(4) "Examination" means the tests consisting of:

(a) Written questions on general nursing facility administration compiled by the National Association of Long Term Care Administrator Boards (NAB examination); and

(b) Written questions on nursing facility licensure State standards of the Office of Health Care Quality (State Standards examination).

(5) "Family-owned or family-operated nursing facility" means a nursing facility owned or operated by any one or more of the following relatives of the trainee:

(a) Spouse;

- (b) Father;
- (c) Mother;
- (d) Son;
- (e) Daughter;
- (f) Sister;
- (g) Brother;
- (h) Grandfather;
- (i) Grandmother;
- (j) Grandchild;
- (k) Stepfather;
- (l) Stepmother;
- (m) Stepchild;
- (n) Uncle;
- (o) Aunt;
- (p) Cousin;
- (q) Nephew;
- (r) Niece;
- (s) Father-in-law;
- (t) Mother-in-law;
- (u) Brother-in-law;
- (v) Sister-in-law;
- (w) Son-in-law; or
- (x) Daughter-in-law.

(6) "Nursing facility" means a facility, other than a facility offering domiciliary care, as defined in Health Occupations Article, §9-101(e), Annotated Code of Maryland, which offers nonacute inpatient care to patients:

(a) Suffering from a disease, condition, disability, or advanced age, or terminal disease requiring maximal nursing care without continuous hospital services; and

(b) Who require medical services and nursing services rendered by or under the supervision of a licensed nurse together with convalescent services, restorative services, or rehabilitative services.

(7) "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 facility, 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 facilities 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.

(8) "Person" means any individual, company, corporation, or association.

(9) "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 facility.

(10) "Preceptor" means an individual certified to serve as an instructor in an AIT program, pursuant to the law and these regulations.

.03 Board of Examiners; Meetings.

A. The Board shall hold at least two regular meetings each year.

B. The Chairman, or other presiding officer of the Board, may call special meetings of the Board, when, in the Chairman's judgment, circumstances or functioning of the Board require it. Special meetings shall be called upon written request of three or more members of the Board.

C. At any meeting a majority of the full authorized membership of the Board shall constitute a quorum.

.04 Board of Examiners; General Powers.

A. The Board shall exercise the powers provided by the laws of this State pertaining to the licensing and license renewal of nursing home administrators.

B. Board members or designees may enter any nursing facility in the State in order to carry out its functions under Health Occupations Article, §9-205, Annotated Code of Maryland.

C. The Board shall have access to the licensing file of any nursing facility in order to carry out its functions under Health Occupations Article, §9-205, Annotated Code of Maryland.

D. The State agency responsible for licensing nursing facilities may be requested by the Board to assist in carrying out Health Occupations Article, §9-205, Annotated Code of Maryland.

E. The Board shall have the authority to utilize consultant experts, as needed, in areas of its concern.

F. From time to time, the Board shall make and publish regulations for the execution and enforcement of the laws governing the licensing and license renewal of nursing home administrators.

.05 Board of Examiners; Officers and Duties.

A. The Chairman shall preside at all meetings of the Board, and shall sign or designate who shall sign all official documents of the Board. In the absence of the Chairman, the Vice-Chairman shall preside at meetings, and perform all duties usually performed by the Chairman.

B. In addition to the duties imposed by law, the executive director shall:

- (1) Attend all meetings of the Board;
- (2) Keep a full and complete record of the minutes of the meetings;
- (3) Notify the members of the Board of the time and place fixed for meetings of the Board;
- (4) Maintain all records pertinent to the operation of the Board;
- (5) Countersign all licenses and renewal cards;
- (6) Conduct all routine correspondence for the Board;
- (7) Issue all notices of meetings and hearings;
- (8) Have custody of all books, records, and property of the Board; and
- (9) Perform all duties pertaining to the office of executive director.

C. The executive director of the Board shall receive all monies payable to the Board and shall pay the same to general funds of the State.

D. The Board shall provide all nursing facilities with a current list of Board members and its appointed representatives and consultants.

E. The Board may provide consultation to administrators upon request through the executive director.

F. Board members may not make public statements or visitations to nursing facilities as official representatives of the Board unless authorized by the Board.

.06 Minimum Requirements for Licensure of Nursing Home Administrators.

The applicant shall:

A. Be at least 21 years old.

B. At the time of submitting the application, have successfully completed a baccalaureate degree. Applicants from out-of-State will be processed for licensure in accordance with Health Occupations Article, §9-302, Annotated Code of Maryland.

C. In the absence of a baccalaureate or master's degree in health care administration from an accredited college or university, present evidence of satisfactory completion within the last 5 years of a minimum of 100 hours in a course of study in health care administration approved by the Board. This is the course of study referred to in Regulation .11A of this chapter.

D. Obtain a passing grade on the examination administered by the Board, or meet the criteria outlined in Regulation .18 of this chapter for waiver of examination.

E. Successfully complete:

(1) The AIT program, or its equivalent, as outlined in Regulation .13 of this chapter; or

(2) 1 year as the full-time nursing home administrator of record in a nursing facility within the last 5 years.

F. Be of good moral character.

G. Not have committed any act that would constitute grounds for licensure denial, reprimand, suspension, or revocation, as specified in Health Occupations Article, §9-314(b), Annotated Code of Maryland, or in Regulation .15 of this chapter, unless the Board is satisfied that the applicant has subsequently removed the disability that would be grounds for license denial, reprimand, suspension, or revocation.

.07 Application for License.

A. An applicant for a license as a nursing home administrator shall make application, in writing, on forms provided by the Board, and shall furnish evidence satisfactory to the Board that the applicant has met the requirements as provided for in the Maryland Nursing Home Administrators Licensing Act and Regulations .06 and .13 of this chapter.

B. An applicant for license shall submit with the application two letters from individuals engaged in either business or professional work, who shall attest to the good moral character of the applicant. These character references may not be those from current employers or members of the applicant's family.

C. An applicant who has been convicted of, or pleads guilty or nolo contendere to, a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside, shall submit with the application evidence satisfactory to the Board that the applicant has complied with all of the terms of the applicant's sentence imposed by the court and, if applicable, probation authority.

D. An applicant shall submit with the application on the form supplied by the Board, a certificate of health, signed by a licensed physician, describing the current health status of the individual, and reflecting the date of the examination.

D-1. An applicant shall submit with the application a finished, unmounted, photograph of himself or herself, which shall have been taken within 3 months prior to the date of application.

E. After an applicant has completed a minimum of 8 months of the full-time administrator-in-training program or its equivalent, or 12 months of the part-time administrator-in-training program or its equivalent, and has completed the other requirements for licensure as specified in Regulation .06 of this chapter, the applicant may sit for the written portions of the examination.

F. 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 submit a new application, and shall meet the requirements for licensure that are in force at the time of reapplication.

.08 Fees.

A. The fee for a license shall be established by the Board.

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) Original license ... \$200.
- (3) Biennial license renewal ... \$200.
- (4) Reinstatement fee ... \$200.
- (5) Duplicate of original license or license renewal ... \$50.
- (6) Inactive fee ... \$100.
- (7) Biennial inactive renewal ... \$100.
- (8) Reactivation application fee ... \$100.
- (9) Reactivation fee ... \$100.
- (10) Repealed.
- (11) Repealed.

(12) Fine for failure to notify Board of change in either name or home address of the licensee, or change in name or address of the employer or business connection of the licensee within 30 days of the change ... \$100.

(13) NAB Examination. The National Association of Long Term Care Administrator Boards, Inc. determines the fees for the National Licensure Examination for nursing home administrators. A fee is charged each time a candidate takes the examination.

(14) State's Standards Examination. The Professional Examination Service determines the fee for the Maryland State's Standards Examination. A fee is charged each time a candidate takes the examination.

E. All fees are nonrefundable.

.09 Subjects for Examination.

The examination may include, but is not limited to, the following subjects:

A. Applicable standards of environmental health and safety;

B. Local health and safety regulations: Guidelines vary according to local provisions and may be obtained from local health subdivisions;

C. General administration;

- D. Psychology of patient care;
- E. Principles of medical care;
- F. Personal and social care;
- G. Therapeutic and supportive care and services in long-term care;
- H. Departmental organization and management; or
- I. Community interrelationships.

.10 Grading Examinations.

A. The passing grade for the examination for the license shall be determined by the Board.

B. The Board shall determine a method of grading each part of the examination separately, and shall apply that method uniformly to all candidates taking the examination.

C. Minimum Passing Grades. The following apply:

(1) Written questions on general nursing facility administration (NAB examination)—scale score of 113;

(2) Written questions on nursing facility licensure (State's Standards examination)—75 percent correct answers.

.11 Approval of Institutions and Courses of Study.

A. Courses taken for credit for the purpose of original licensure shall first be approved by the Board. This is the course of study referred to in Regulation .06C of this chapter.

B. The courses shall contain the subject matter listed in Regulation .09 of this chapter.

.12 Continuing Education.

A. Before relicensure, an individual shall submit satisfactory evidence of having completed a minimum of 40 hours, unless otherwise specified by State or federal law, of continuing education, approved by the Board, within the 2-year period before the relicensure date. The approval of the continuing education shall be at the discretion of the Board.

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

C. 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.

D. All continuing education shall be completed in courses approved by the National Association of Long Term Care Administrator Boards (NAB), except as provided in §§E, F and G of this regulation.

E. The Board shall award 10 clock hours of continuing education for each completed accredited college credit that falls within the core of knowledge outlined in Regulation .09 of this chapter.

F. 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.

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

.13 Administrator-in-Training.

A. An Administrator-in-training (AIT) 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, a licensed administrator meeting the qualifications set forth in Regulation .14 of this chapter. 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 facility, performing and participating in the day-to-day duties of each position, when legally permissible, in each of the following service areas:

- (1) Administration;
- (2) Business office;
- (3) Nursing;
- (4) Resident activities;
- (5) Social services;
- (6) Medical records;
- (7) Dietary;
- (8) Maintenance;
- (9) Environmental, including housekeeping and laundry;
- (10) Rehabilitation services; and
- (11) Quality assurance.

B. An AIT may not, during the normal working hours of the program, fill a specific, specialized position in the nursing facility.

C. If the AIT is a department head, notice shall be conspicuously posted in the nursing facility stating who the acting department head will be while the AIT is performing training duties.

D. If a candidate 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, preceptor and candidate 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.

E. The Board shall interview each applicant and proposed preceptor, or preceptors, before the approval of an AIT program. The Board shall satisfy itself that the background and circumstances of the applicant and preceptor, or preceptors, qualify them for the AIT program.

F. Application Requirements.

(1) The Board may approve an application for a nursing facility 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 preceptor approved by the Board; and
- (d) The AIT program meets the other requirements of this section.

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

(3) The applicant shall participate in training provided in a nursing facility licensed in Maryland, as defined in Regulation .02B of this chapter, with at least 60 beds.

(4) If there are subject areas as specified in the list of subjects provided in Regulation .09 of this chapter that are not available in the nursing facility approved by the Board for training, the Board may require training in other facilities.

(5) The applicant shall participate in training provided in not more than two duly Maryland licensed nursing facilities approved by the Board for training. One of the licensed nursing facilities shall have at least 60 beds.

(6) The preceptor is currently certified by the Board.

(7) 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 trainees.

(8) The preceptor may or may not be the administrator of record of the facility in which the training is to take place, but the preceptor may not be the administrator of record of a facility other than the one designated for training.

(9) 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. 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 §A of this regulation. The trainee shall be exposed to all shifts during the AIT program.

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

(11) An employee may not be a preceptor for his employer.

G. Required AIT Reports.

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

(2) The report shall:

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

(b) Include the following:

(i) A brief description of activity or area covered, or both, and
dates of rotation;

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

(iii) A checklist including signatures from preceptor, AIT, and
department managers to verify that the AIT trained in those departments.

(3) At the conclusion of the training program, the AIT shall complete a brief
survey and return it to the Board's office providing feedback with suggestions for continuing
improvements.

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

H. 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 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 exposure to the
core of knowledge set forth in Regulation .09 of this chapter, but may not exceed;

(a) 6 months for a hospital assistant administrator;
(b) 8 months for a hospital administrator;
(c) 6 months for a nursing facility assistant administrator;
(d) 6 months for a department head;
(e) 3 months for an executive director of a continuing care retirement
community;

- (f) 3 months for an assisted living manager;
- (g) 3 months for a health-care-related senior management official;
- (h) 3 months for a non-health-care-related senior management official.

(2) Qualifying Experience for Healthcare Related Professions in §H(1)(a)—(f) of this regulation. The following requirements set the minimum experience required for receiving credit:

(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;

(b) Reporting directly to the facility administrator or chief executive officer;

(3) Qualifying Experience for Healthcare Related or Non-Healthcare Related Senior Management Official in §H(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 facility or entity; and

(b) Administrative responsibility for the total operation of the facility 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 health care 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 Maryland, as determined by the Board.

I. Discontinuance of AIT Status in a Nursing Facility in Which the Trainee is Registered.

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

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

(3) The trainee may fulfill the training requirement in not more than two licensed nursing facilities, with not more than 90 days lapse between the two periods of training.

J. A change of preceptor may be authorized by the Board upon submission of:

- (1) Application by the proposed new preceptor;
- (2) A report by the Credentials Committee resulting from a personal interview with the trainee and proposed preceptor;
- (3) Evidence satisfactory to the Board that the proposed preceptor is certified by the Board; and
- (4) A new signed contract by the trainee, preceptor, and the Board.

K. 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. If an AIT fails to live up to the terms of the contract, the Board may cancel the contract.

L. A person 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.

.14 Certification of Preceptor.

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 State Board of Examiners of Nursing Home Administrators;
- (4) Persons seeking certification as preceptors in the AIT program shall submit evidence of the successful completion of a Board-approved training program for preceptors; and
- (5) The proposed preceptor has been employed full time as a nursing home administrator for a minimum of 2 of the past 3 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 a Board-approved training program.

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.

.15 Suspension and Revocation of Licenses.

A. Pursuant to Health Occupations Article, §9-314(b)(3), Annotated Code of Maryland, the Board may deny a license or limited license to any applicant, suspend or revoke a license of a nursing home administrator, or reprimand or otherwise discipline an applicant or a licensee after due notice and an opportunity to be heard at a formal hearing, upon evidence that the applicant or licensee:

(1) Has violated any of the provisions of the law pertaining to the licensing of nursing home administrators or the regulations of the Board pertaining to it;

(2) Has violated any of the provisions of the law or regulations of the licensing or supervising authority or agency of the State or political subdivision of it having jurisdiction of the operation and licensing of nursing facilities;

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

(4) Has practiced fraud, deceit, or misrepresentation in the licensee's capacity as a nursing home administrator;

(5) Has wrongfully transferred or surrendered possession, either temporarily or permanently, his license certificate, license card, or license renewal card to any other person;

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

(7) Has used fraudulent, misleading, or deceptive advertising;

(8) Has falsely impersonated another licensee;

(9) Has endangered or sanctioned the endangerment of the safety, health, and life of any patient;

(10) Has failed to oversee and facilitate the nursing facility's quality improvement processes to the extent that the safety, health, or life of any patient has been endangered;

(11) Has willfully permitted unauthorized disclosure of information relating to a patient or patient's records;

(12) Has discriminated in respect to patients, employees, or staff on account of race, religion, color, national origin, sexual orientation, or disability;

(13) Has violated the terms of the AIT contract;

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

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

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

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

(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 client, patient, or resident,

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

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

(j) The taking of photographs of a client, patient, or resident 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;

(n) Offering to provide services, such as drugs, in exchange for sexual favors;

(15) Has practiced as a nursing home administrator without holding a license to practice nursing home administration in the State;

(16) Has falsified continuing education records; or

(17) Has failed to cooperate with investigations, proceedings, and other requirements of the Board.

B. Pursuant to Health Occupations Article §§9-302(d) and 9-205, Annotated Code of Maryland, the Board may, after due notice and an opportunity to be heard, reprimand, suspend, or revoke an AIT's participation in a Board approved 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 any license, certificate, permit, or registration granted by another state for the practice of a nursing home administrator has been limited, restricted, suspended, revoked, or subjected to other disciplinary action by the licensing or certifying authority.

.16 Complaints and Hearing Procedures.

A. Filing of Complaints. Any person, public officer, or association or the Board may submit a complaint against any licensee or AIT for due cause.

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 shall be represented by:

(a) The respondent; or

(b) By an attorney who is:

(i) Admitted to the Maryland Bar; or

(ii) Specially admitted to practice law pursuant to Maryland Rule

14.

(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 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 recommended decision are confidential. The respondent 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) To the extent possible, even after a final order is issued by the Board, the parties may not reveal the identity of any residents referred to in the Board's order.

D. Investigation of Complaints.

(1) On receipt of a complaint, the administrative personnel shall:

- (a) Send an acknowledgement letter to the complainant; and
- (b) Present the complaint to the disciplinary subcommittee of the Board.

(2) The Board's disciplinary subcommittee shall:

- (a) Review a complaint over which the Board has jurisdiction; and
- (b) Make a recommendation to the Board as to the disposition of the

complaint.

(3) 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) The Board may issue subpoenas over the signature of:

- (a) The Board's executive director; or
- (b) A Board member.

E. Prosecution of Complaint.

(1) For each complaint, after reviewing the complaint and any investigative material, the Board, through its disciplinary subcommittee, shall:

- (a) Close the case;
- (b) Close the case with a nonpublic informal advisory letter to the

licensee; or

(c) Vote to take the following disciplinary action or actions:

(i) Charge the licensee with a violation or violations of Health Occupations Article, §9-314, Annotated Code of Maryland, or a violation or violations of COMAR 10.33.01.15;

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

(iii) Deny an application for licensure; or

(iv) Issue a cease and desist order.

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

(3) After the administrative prosecutor has drafted the notice or order of the disciplinary action or actions, if acceptable, a Board officer or the Board executive director shall sign the notice or order of the disciplinary action or actions and the licensee, applicant, or individual shall be served.

.17 Procedure of Board Hearings.

A. Scope. These regulations apply to all formal hearings before the Board of Examiners of Nursing Home Administrators. They do not apply to conferences or other informal investigations or proceedings when no formal ruling or decision is made.

B. Charges and Notice of Initial Denial.

(1) If the Board issues charges or a notice of initial denial, the document shall be served upon the respondent.

(2) Service is completed when the document is:

(a) Sent by first-class regular mail;

(b) Sent by certified mail to the address the respondent is required to maintain with the Board; or

(c) Hand delivered in person.

(3) Charges or a notice of initial denial shall:

(a) Inform the respondent of the statutory basis for the charges or denial of licensure;

(b) Allege sufficient facts which the Board believes constitute a basis for:

(i) Violation of the Maryland Nursing Home Administrators Act or COMAR 10.33.01.15; or

(ii) Denial of licensure;

(c) Notify the respondent of any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time and the consequences of failing to appear for those proceedings or to request a hearing; and

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

(4) If the respondent has not acknowledged receipt of the charges or notice of initial denial, the Board may nevertheless proceed in prosecuting the case if it has complied with §B(2) of this regulation.

(5) 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.

C. Representation of Parties. All parties appearing at formal hearings shall have the right to appear in person, with counsel, or to be represented by counsel.

D. Case Resolution Conference.

(1) After service of charges 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 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 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 recommended by the case resolution conference committee, the matter shall proceed to a hearing on the charges or notice of initial denial.

(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.

E. Conduct of the Hearing.

(1) Board Majority. Each hearing shall be held before a majority of the Board, which majority of the Board shall include not less than three nursing home administrators, unless the hearing authority is delegated pursuant to State Government Article, §10-205, Annotated Code of Maryland. Board action shall be by majority vote of those Board members present at the hearing, unless the hearing authority has been delegated, in which case the provisions of State Government Article, §10-205, Annotated Code of Maryland, apply to any decision.

(2) Duties of Presiding Officer.

(a) The chairman, or in the chairman's absence, a member designated by the chairman shall be the presiding officer or if in a delegated hearing, a hearing examiner shall be the presiding officer. The presiding officer shall:

(i) Have complete charge of the hearing;

(ii) Permit the examination of witnesses;

(iii) Admit evidence;

(iv) Rule on the admissibility of evidence;

(v) Adjourn or recess the hearing from time to time.

(b) The presiding officer, at the presiding officer's discretion, may set reasonable time limits on arguments and presentation of evidence.

(c) The presiding officer shall be responsible for decorum in a hearing and can suspend the proceedings as necessary to maintain decorum.

(3) Legal Advisor and Counsel for the Board.

(a) The Board may request the Office of the Attorney General to participate in any hearing to present the case on behalf of the Board.

(b) Counsel presenting the case on behalf of the Board 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 counsel for any party.

(c) The Board may also request a representative of the Office of the Attorney General to act as legal advisor to the Board as to questions of evidence and law.

(4) Order of Procedure. The case on behalf of the Board shall be presented first. The respondent shall then present the respondent's case. After that, rebuttal shall be permitted.

(5) 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:

(i) Call witnesses and present evidence;

(ii) Cross-examine every witness called on behalf of the Board or other party;

(iii) 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) Witnesses.

(i) The presiding officer, or any person designated by the presiding officer for that purpose, may examine any witness called to testify.

(ii) The presiding officer may call as a witness any person in attendance at the hearing.

(iii) Any member of the Board may examine any witness called to testify.

F. Records and Transcript.

(1) The Board or its designee shall prepare an official record which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceeding.

(2) A stenographic record of the proceedings shall be made at the expense of the Board. This record need not be transcribed, however, unless requested by a party or by the Board. The cost of any typewritten transcripts of any proceedings, or part of them, shall be paid by the party requesting the transcript.

G. Decision and Order. Each decision and order rendered by the Board shall be in writing and shall be accompanied by findings of fact and conclusions of law. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record.

H. Rehearings.

(1) Any party aggrieved by the decision and order may apply for rehearing within 10 days after service of the decision and order. Action on an application shall lie in the discretion of the Board.

(2) Unless otherwise ordered, neither the rehearing nor the application for it shall stay the enforcement of the order, or excuse the persons affected by it for failure to comply with its terms.

(3) On rehearing, the Board shall only consider facts not presented in the original hearing, including facts arising after the date of the original hearing, and may by new order abrogate, change, or modify its original order.

I. 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 intended to be produced at the hearing within 30 days of service.

J. Mandatory Discovery.

(1) 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:

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

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

(2) If the Board or the Office of Administrative Hearings, as appropriate, finds that the report is not sufficiently specific, or otherwise fails to comply with the requirements of this section, the testimony of the expert and any report of the expert shall be excluded from the hearing.

(3) The Board or the Office of Administrative Hearings, as appropriate, shall consider and decide arguments regarding the sufficiency of the report:

(a) At the prehearing conference, if scheduled; or

(b) Immediately before the scheduled hearing.

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

(5) Parties are not entitled to discovery of items other than as listed in §J(1) of this regulation.

(6) Both parties have a continuing duty to supplement their disclosures of witnesses and documents.

(7) Absent 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.

(8) The prohibition against adding witnesses does not apply to witnesses or documents to be used for impeachment or rebuttal purposes.

(9) Construction.

(a) In hearings conducted by an administrative law judge of the Office of Administrative Hearings, this section shall, whenever possible, be construed as supplementing and being in harmony with COMAR 28.02.01.

(b) In the event of a conflict between this section and COMAR 28.02.01, this section applies.

.18 Disclosure for Compelling Public Purpose.

A. The Board 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:

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

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

(3) The information concerns conduct by an individual which the Board 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 health care facility where the individual has privileges.

B. Other Disclosures. This regulation does not prevent or limit the ability of the Board to disclose general licensing information as provided in State Government Article, §10-617(h), Annotated Code of Maryland, or any information which the Board may otherwise disclose by law.

.19 Sanctions, Hearings, and Final Order.

A. Surrender of License.

(1) The Board may require conditions for surrender of a license, including:

(a) An admission of a violation of the Maryland Nursing Home Administrators Act;

(b) An admission of facts;

(c) A statement of the circumstances under which the surrender was offered or accepted;

(d) Restrictions on future licensure;

(e) Conditions for reinstatement of the license; or

(f) An agreement that the respondent may not apply for reinstatement of the license.

(2) Unless the Board determines that disclosure of the surrender is not in the public interest, a letter of surrender is a:

(a) Final order of the Board; and

(b) Public record under State Government Article, §10-611, Annotated Code of Maryland.

B. Hearings on Charges or Notice of Initial Denial.

(1) Hearings shall be conducted under State Government Article, Title 10, Annotated Code of Maryland.

(2) The Board may delegate the Board's authority to hear contested cases to the Office of Administrative Hearings on a case-by-case basis.

(3) Proceedings may not be open to the public.

(4) All records, including the recommended decision, shall be confidential and sealed.

(5) If a matter has been delegated to the Office of Administrative Hearings, the administrative law judge presiding over the proceedings shall issue to the Board a recommended decision containing:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) A proposed sanction; or

(d) Pursuant to the Board's delegation, any combination of §B(5)(a)—(c) of this regulation.

C. Burden of Proof.

(1) An applicant or licensee issued a notice of initial denial by the Board has the burden to demonstrate by a preponderance of the evidence that the applicant or licensee is entitled to licensure or other benefit the Board has initially denied.

(2) The administrative prosecutor has the burden to demonstrate by a preponderance of the evidence that the licensee has committed a violation or violations of the Maryland Nursing Home Administrators Act.

D. Exceptions and Exceptions Hearing.

(1) If a matter has been delegated by the Board to the Office of Administrative Hearings, a party may file exceptions to the administrative law judge's proposed findings of fact, proposed conclusions of law, and proposed sanction, as set out in the recommended decision, before the Board makes a final decision.

(2) Unless otherwise permitted by the Board, within 15 days after the issuance of the recommended decision, or as otherwise specified by the administrative law judge in the recommended 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 10 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 permitted, the Board may not consider a party's response to an answer to exceptions.

(7) 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.

(8) Exceptions Hearing.

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

(b) The hearing shall be a nonevidentiary 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 effective and efficient progress of the hearing.

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

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

(9) 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.

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

- (a) Recommended decision of the administrative law judge; and
- (b) Record of the evidentiary hearing.

E. Board Final Decision and Order.

(1) After review of the record and deliberation, the Board shall issue a final order consisting of:

- (a) Findings of fact;
- (b) Conclusions of law; and
- (c) The sanction or disposition to be imposed.

(2) On finding that there has been a violation of the Maryland Nursing Home Administrators Act, the Board may order that the:

- (a) Licensee be:
 - (i) Fined;
 - (ii) Reprimanded;
 - (iii) Placed on probation; or
 - (iv) Subjected to any combination of §E(2)(a)(i)—(iii) of this

regulation; or

- (b) The licensee's license be:
 - (i) Suspended; or
 - (ii) Revoked.

.20 Summary Suspension of a License.

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 there is a substantial likelihood that a licensee poses a risk of harm to the public health, safety, or welfare.

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) A notice of intent to summarily suspend a license; or

(b) An order of summary suspension.

(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 a substantial likelihood that the licensee poses a risk of harm to the public health, safety, or welfare; 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 why the Board should not execute the order of summary suspension and 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 not later than 5 days before a predeprivation show cause hearing is scheduled before the Board.

(b) Service of the notice of intent to summarily suspend shall be made:

(i) Personally upon the respondent;

(ii) By certified mail to the address the respondent is required to maintain with the Board; or

(iii) By other reasonable means to effect service.

(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. Predeprivation 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 why

the respondent's license should not be suspended before the Board executes the order of summary suspension.

(2) A Predeprivation Show Cause Hearing Before the Board.

(a) The hearing shall be a nonevidentiary 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.

(3) The Board member who presides at the hearing:

(a) 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

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

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

D. Summary Suspension Without Prior Notice or an 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 predeprivation hearing if the Board determines that:

(a) The public health, safety, or welfare 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.

(b) The respondent shall be provided an opportunity for a hearing before the Board within 15 days after the effective date of the summary suspension.

(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 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 is not at risk.

(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) 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 State Government Article, §10-611, Annotated Code of Maryland.

G. Postdeprivation 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) Unless otherwise agreed to by the parties, a hearing shall be provided within 60 days after the respondent's request.

(4) 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.

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

(6) If the Board delegates the matter to the Office of Administrative Hearings, the administrative law judge shall issue a recommended decision to the Board with:

(a) Proposed or final findings of fact;

(b) Proposed or final conclusions of law;

(c) A proposed disposition; or

(d) Any combination of §G(6)(a)—(c) of this regulation, pursuant to the Board's delegation of the matter to the Office of Administrative Hearings.

(7) If the hearing is one combined with charges, 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.

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

(9) An order issued by the Board after a postdeprivation evidentiary hearing is a final order of the Board and is a public record under State Government Article, §10-611, Annotated Code of Maryland.

.21 Probation and Violation of Probation Proceedings.

A. If the Board imposes a period of probation as a sanction, the Board may impose conditions of probation which the Board considers appropriate, including but not limited to:

(1) Re-education or completion of approved courses;

(2) Payment of a fine;

(3) Practicing under supervision;

(4) Monitoring by the Board or by an individual or entity approved by the Board, with periodic reporting to the Board;

(5) An examination by a physician or other appropriate health care provider;

(6) Limitation of the licensee's practice;

(7) Obtaining a passing score on an appropriate examination; or

(8) Any other condition the Board considers appropriate for the rehabilitation or retraining of a licensee.

B. A term of probation may be defined by a specific period of time or the successful completion of certain conditions or acts by the licensee.

C. A licensee seeking termination of probation shall do so only by petitioning the Board to lift the probation when:

(1) The specific period of time has passed; and

(2) The licensee has successfully completed the conditions or acts required for termination.

D. If the Board determines that the licensee is not in compliance with the conditions of probation, the Board shall:

(1) Charge the licensee with a violation of probation;

(2) Take any action the final order or consent order provides for a violation of probation, including suspension of the license;

(3) Summarily suspend the license; or

(4) Take any other action the Board considers appropriate and may take by law.

E. Charges for Violation of Probation.

(1) If the Board issues charges for a violation of probation, the service shall be as provided for in Regulation .17B(2) of this chapter.

(2) The charging document for a violation of probation shall:

(a) Inform the respondent of the statutory provision, condition of probation, or provision of the Board's order which the Board believes has been violated;

(b) Allege facts that constitute a basis for a violation of probation; and

(c) Notify the respondent of:

(i) Any proceedings scheduled before the Board or of an opportunity to request a hearing within a certain period of time; and

(ii) The consequences of failing to appear for those proceedings or to request a hearing.

(3) If the respondent requests a hearing on the charge of a violation of probation, the Board shall, before the hearing, provide the respondent with a case resolution conference as provided in Regulation .17D of this chapter, to discuss settlement of the matter.

F. Violation of Probation Hearing. A hearing for a violation of probation shall be held as set out in Regulation .17E of this chapter.

G. If the Board determines that a respondent has violated probation, the Board shall:

(1) Take any action the consent order or final order provides for a violation of probation;

(2) Impose additional conditions of probation; or

(3) Impose a sanction or take any other action the Board considers appropriate and may take by law.

.22 Sanctioning Guidelines.

A. General Application of Sanctioning Guidelines.

(1) After concluding that a licensee has violated a ground for discipline under Health Occupations Article, §9-314(b), Annotated Code of Maryland, or under COMAR 10.33.01.15A, the Board shall determine the applicable sanction range according to the range of sanctions set forth in §B of this regulation. The Board shall then consider the applicable aggravating and mitigating factors, set forth in §C of this regulation, to determine whether the sanction should fall outside the indicated range of sanctions. After considering the applicable aggravating and mitigating factors, the Board shall impose the appropriate sanction.

(2) 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.

(3) 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.

(4) The Board shall state its reasons if it deviates from the sanctioning guidelines.

(5) A departure from the sanctioning guidelines alone is not a ground for any hearing or appeal of a Board action.

(6) 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.

(7) 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.

(8) If probation is imposed, the Board may impose appropriate terms and conditions of probation. If a licensee violates the terms or conditions of probation, the Board may take further disciplinary action against the licensee.

(9) Pursuant to Health Occupations Article, §9-314.1, 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.

B. Range of Sanctions.

(1) 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 §A (9) of this regulation, suspension for 2 years, and probation for 3 years
	3	(a) Committed a violation resulting in actual or potentially serious harm to a resident; (b) Had been given repeated warnings of facility errors; (c) Committed a violation affecting two or more residents; or (d) Was under the influence of alcohol or drugs at the time the licensee committed the violation.	Suspension for 1 year	Revocation
	4	A licensee is not competent to practice as a nursing home administrator.	Suspension until Board determines competent	Revocation

(2) Fraud, Deceit, or Misrepresentation.				
Severity	Tier	Conduct	Sanction Range	
			Minimum	Maximum
Least to	1	(a) Committed a singular fraudulent or deceptive act, limited in nature; and (b) Neither achieved nor attempted to achieve personal financial or material gain from the violation.	Reprimand	Maximum fine allowable under §A(9) of his regulation and probation for 3 years
	2	(a) Achieved or attempted to achieve a material or financial gain as a result of the fraud, deceit, or	\$500 fine, suspension for 2 years, and probation for 3 years	Revocation

Greatest		<p>misrepresentation.</p> <p>(b) Targeted or harmed residents of the facility administered;</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>		
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(3) 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</p> <p>(b) Committed a violation resulting in no harm or having potentially minimal harm.</p>	Reprimand	Maximum fine allowable under §A(9) of this regulation 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 act resulting in a moderate potential for harm.</p>	\$500 fine, and probation for 1 year	Maximum fine allowable under §A(9) of this regulation, 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> <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>	\$500 fine, suspension for 1 year, and probation for 3 years	Revocation

(4) 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 §A(9) of this regulation, suspension for 1 year, and probation for 3 years
	3	Willfully releasing or willfully authorizing the release of	\$500 fine, suspension for 1 year,	Revocation

		confidential medical records to unauthorized recipients.	and probation for 3 years	
(5) 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 §A(9) of this regulation and probation for 3 years
	2	(a) Committed an act involving deliberate falsification or deceit; (b) Failed to achieve significant compliance with regulatory requirements of the administrator-in-training program.	\$500 fine, suspension for 1 year, and probation for 3 years	Revocation

C. Aggravating and Mitigating Factors.

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

- (a) Absence of a prior disciplinary record;
- (b) The licensee reported the violation to the Board;
- (c) The licensee:
 - (i) Voluntarily admitted violation;
 - (ii) Provided full disclosure to the Board; and
 - (iii) Cooperated during Board proceedings;
- (d) The licensee implemented remedial measures to correct or mitigate harm arising from the violation;
- (e) The licensee made a timely good-faith effort to make restitution or otherwise rectify the consequences of the violation;
- (f) Evidence of 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 or adverse impact on the public;
- (i) Isolated incident and not likely to recur; or
- (j) If the licensee had worked at the nursing facility for a limited period and violation was present before beginning work at the facility.

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

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

.23 Petitions for Reinstatement of License Following Revocation.

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

B. An individual who petitions the Board for reinstatement following the revocation of his or her license may petition for reinstatement only pursuant to the terms of the Board's order revoking the license. The Board may set conditions precedent and a time period for petitioning for reinstatement or may permanently revoke.

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

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

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

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

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

.24 Fines.

A. This chapter establishes the standards by which the Board may impose a fine not exceeding:

- (1) \$1,000 for a first offense; or
- (2) \$5,000 for any subsequent violation of the same provision.

B. After a hearing under Health Occupations Article, §9-314, Annotated Code of Maryland, and COMAR 10.33.01.15, the Board may impose a fine, in addition to, or instead of:

- (1) Reprimanding a licensee;
- (2) Placing a licensee on probation; or
- (3) Suspending or revoking a license.

C. In determining whether to impose a fine and the amount of the fine, the Board shall consider the following factors:

- (1) The cost of investigating and prosecuting the case against the individual;
- (2) The extent of actual or potential public harm caused by the violation;
- (3) The extent to which the individual derived a financial benefit from the violation;
- (4) The history of a previous violation or violations;
- (5) The willfulness of the improper conduct; and
- (6) Mitigating factors as presented by the licensee.

D. An individual shall pay the fine to the Board under the terms of the Board's order.

E. The Board shall pay all money collected under this chapter to the General Fund of the State.

F. Unless the Board's order provides otherwise, if an individual fails to pay in whole or in part a fine imposed by the Board, the Board may not restore, reinstate, or renew the license of the individual until the individual pays the fine in full.

G. The Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings and ensure prompt payment.

.25 Reciprocity.

The Board in its discretion, and otherwise subject to the laws pertaining to the licensing of nursing home administrators prescribing the qualification for a nursing home administrator license, may endorse, without retaking the national examination, a nursing home administrator license issued by the proper authorities of any other state, upon payment of the fee and upon submission of evidence satisfactory to the Board that the:

A. Other state maintains a system and standard of qualification and examination for a nursing home administrator license, which are substantially equivalent to those required by this State;

B. Other state gives similar recognition and endorsement to nursing home administrator licenses of this State;

C. Applicant for endorsement is familiar with State and local health and safety regulations related to nursing facilities, and has received a passing grade on the State's standards examination; and

D. Applicant for endorsement holds 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.

.26 Restoration and Reinstatement of Licenses.

A. A license may be restored after a period of 2 years after revocation by the Board, in its discretion, upon submission of evidence satisfactory to the Board that the applicant for the restoration of the license has removed the disability causing the revocation.

B. Upon application for restoration of a license, the Board, in its discretion, may grant the applicant a formal hearing after notice.

.27 Display of Licenses and Renewal Certificates.

Each person licensed as a nursing home administrator shall display a license certificate and license card, or license renewal card in a conspicuous place in the office or place of business or employment of the licensee.

.28 Duplicate Licenses.

Upon receipt of satisfactory evidence that the license certificate, license card, or license renewal card has been lost, mutilated, or destroyed, the Board may issue a duplicate license certificate,

license card, or license renewal card upon any conditions as the Board may prescribe, and upon payment of an appropriate fee established by the Board in Regulation .08 of this chapter.

.29 Applicability, Legal Effect, Severability.

A. Every regulation, order, and directive adopted by the Board shall state the date upon which the Board proposes that it take effect, and a copy signed by the Chairman and the Executive Director of the Board shall be filed as a public record in the Board office and as required by the Administrative Procedure Act.

B. If any provision of these regulations is declared unconstitutional or invalid, or the application of these regulations to any person or circumstance 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.

C. These regulations do not affect pending actions or proceedings, civil or criminal.

D. Amendments to these regulations of the Board may be made only at a regularly called Board meeting by a majority vote of all members. An amendment may not be acted upon unless the amendment was presented at a prior meeting and unless notice has been given to the members of the Board that the amendment is to be acted upon at a specific meeting of the Board.

E. The most recent edition of "Robert's Rules of Order, Newly Revised" shall govern all meetings of the Board.

Administrative History **Effective date: July 15, 1971**

Regulations .01, .02, .06, .08, .10A, .13, .14, .15, .16, and .24 amended effective January 22, 1975 (2:2 Md. R. 86)
Regulations .01—.24 repealed effective December 15, 1986 (13:25 Md. R. 2260)

Annotation: COMAR 10.33.01.07 cited in Attorney General Opinion No. 85-030 (December 13, 1985)

Regulations .01—.22 adopted effective December 15, 1986 (13:25 Md. R. 2660)

Regulation .02 amended effective April 1, 2002 (29:6 Md. R. 567)

Regulation .02B amended effective January 25, 2010 (37:2 Md. R. 68); March 21, 2011 (38:6 Md. R. 395)

Regulation .02D amended effective May 23, 1994 (21:10 Md. R. 844)

Regulation .03A and C amended effective April 27, 1992 (19:8 Md. R. 804)

Regulation .04 amended effective January 25, 2010 (37:2 Md. R. 68)

Regulation .05B amended effective May 23, 1994 (21:10 Md. R. 844); September 23, 1996 (23:19 Md. R. 1376)

Regulation .05C, E amended effective May 23, 1994 (21:10 Md. R. 844)

Regulation .05D, F amended effective January 25, 2010 (37:2 Md. R. 68)

Regulation .06 amended effective April 27, 1992 (19:8 Md. R. 804); January 25, 2010 (37:2 Md. R. 68)

Regulation .06C amended effective May 23, 1994 (21:10 Md. R. 844); September 23, 1996 (23:19 Md. R. 1376)

Regulation .06E amended effective September 23, 1996 (23:19 Md. R. 1376)

Regulation .07 amended effective May 23, 1994 (21:10 Md. R. 844); April 1, 2002 (29:6 Md. R. 567)

Regulation .07D amended effective January 25, 2010 (37:2 Md. R. 68)

Regulation .07D-1 adopted effective January 25, 2010 (37:2 Md. R. 68)

Regulation .07E amended effective March 21, 2011 (38:6 Md. R. 395)

Regulation .07F, G amended effective April 27, 1992 (19:8 Md. R. 804)

Regulation .08 amended effective April 1, 2002 (29:6 Md. R. 567)

Regulation .08D amended as an emergency provision effective November 3, 2005 (32:25 Md. R. 1938); amended permanently effective February 27, 2006 (33:4 Md. R. 352)

Regulation .08D amended effective January 25, 2010 (37:2 Md. R. 68)

Regulation .08E amended effective April 27, 1992 (19:8 Md. R. 804); May 23, 1994 (21:10 Md. R. 844); September 23, 1996 (23:19 Md. R. 1376)

Regulation .08E amended as an emergency provision effective November 17, 1999 (26:25 Md. R. 1896); amended permanently effective March 20, 2000 (27:5 Md. R. 584)

Regulation .09 amended effective January 25, 2010 (37:2 Md. R. 68)

Regulation .10C amended effective April 27, 1992 (19:8 Md. R. 804); May 23, 1994 (21:10 Md. R. 844); September 23, 1996 (23:19 Md. R. 1376); January 25, 2010 (37:2 Md. R. 68)
Regulation .11A amended effective April 27, 1992 (19:8 Md. R. 804)
Regulation .12 amended effective May 23, 1994 (21:10 Md. R. 844); April 1, 2002 (29:6 Md. R. 567); January 25, 2010 (37:2 Md. R. 68)
Regulation .12A—C amended effective April 27, 1992 (19:8 Md. R. 804)
Regulation .12B, C amended effective March 21, 2011 (38:6 Md. R. 395)
Regulation .13 amended effective April 27, 1992 (19:8 Md. R. 804); April 1, 2002 (29:6 Md. R. 567); January 25, 2010 (37:2 Md. R. 68); March 21, 2011 (38:6 Md. R. 395)
Regulation .13D amended as an emergency provision effective February 22, 1996 (23:6 Md. R. 472); amended permanently effective June 17, 1996 (23:12 Md. R. 871)
Regulation .13F amended effective May 23, 1994 (21:10 Md. R. 844); September 23, 1996 (23:19 Md. R. 1376); June 28, 1999 (26:13 Md. R. 1019)
Regulation .14 amended effective May 23, 1994 (21:10 Md. R. 844); January 25, 2010 (37:2 Md. R. 68)
Regulation .14B amended effective April 27, 1992 (19:8 Md. R. 804); March 20, 2000 (27:5 Md. R. 584); March 21, 2011 (38:6 Md. R. 395)
Regulation .14C amended effective April 27, 1992 (19:8 Md. R. 804)
Regulation .15A amended effective October 4, 1999 (26:20 Md. R. 1546); January 25, 2010 (37:2 Md. R. 68)
Regulation .17D amended effective December 13, 1999 (26:25 Md. R. 1898)
Regulation .17E amended effective April 27, 1992 (19:8 Md. R. 804); April 1, 2002 (29:6 Md. R. 567); January 25, 2010 (37:2 Md. R. 68)
Regulation .17F amended effective April 27, 1992 (19:8 Md. R. 804)
Regulation .17-1 adopted effective April 1, 2002 (29:6 Md. R. 567)
Regulation .18C amended effective January 25, 2010 (37:2 Md. R. 68)

Chapter revised effective March 19, 2012 (39:5 Md. R. 383)
Regulation .03A amended effective April 15, 2013 (40:7 Md. R. 611)
Regulation .08D amended effective April 15, 2013 (40:7 Md. R. 611)
Regulation .13A amended effective April 15, 2013 (40:7 Md. R. 611)