

AN ACT

To repeal sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, and 344.105, RSMo, and to enact in lieu thereof eleven new sections relating to nursing home administrators, with penalty provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 344.020, 344.030, 344.040, 344.050, 344.060, 344.070, 344.080, and 344.105, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 344.020, 344.030, 344.040, 344.050, 344.055, 344.056, 344.060, 344.070, 344.080, 344.105, and 344.108, to read as follows:

344.020. No person shall act or serve in the capacity of a nursing home administrator without first procuring a license from the Missouri board of nursing home administrators as provided in sections 344.010 to ~~[344.100]~~ 344.108. The board may issue a separate license to administrators of residential care facilities II, as defined in section 198.006, RSMo. Any individual who receives a license to operate a residential care facility II is not thereby authorized to operate any intermediate care facility or skilled nursing facility as those terms are defined in section 198.006, RSMo.

344.030. 1. An applicant for an initial license shall file a completed application with the board on a form provided by the

board, accompanied by an application fee of one hundred dollars payable to the [director of revenue] department of health and senior services. Information provided in the application shall be given under oath subject to the penalties for making a false affidavit.

2. No initial license shall be issued to a person as a nursing home administrator unless:

(1) The applicant provides the board satisfactory proof that the applicant is twenty-one years of age or over, of good moral character and a high school graduate or equivalent;

(2) The applicant provides the board satisfactory proof that the applicant has had a minimum of three years' experience in health care administration or two years of postsecondary education in health care administration or has satisfactorily completed a course of instruction and training prescribed by the board, which includes instruction in the needs properly to be served by nursing homes, the protection of the interests of residents therein, and the elements of good nursing home administration, or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise and manage a nursing home; and

(3) The applicant passes the [written examination] examinations administered by the board. If an applicant fails to

make a passing grade on [the examination] either of the examinations such applicant may make application for reexamination on a form furnished by the board and may be retested [at the next regularly scheduled examination]. If an applicant fails [the examination] either of the examinations a third time, the applicant shall be required to complete a course of instruction prescribed and approved by the board [before the applicant may reapply for examination]. After completion of the board-prescribed course of instruction, the applicant may reapply for board-administered examination. No applicant shall be licensed by the board after the applicant's third licensure examination failure unless the applicant successfully completes the board-prescribed course of instruction and passes board-administered examinations. With regard to any nationally certified examination required for licensure, no examination scores from other states shall be recognized by the board after the applicant has failed his or her third attempt at examination. There shall be a separate, nonrefundable fee for each examination. The board shall set the amount of the fee for examination by rules and regulations promulgated pursuant to section 536.021, RSMo. The fee shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering the examination.

3. The board may issue a license through reciprocity to any

person who is regularly licensed as a nursing home administrator in any other state, territory, or the District of Columbia, if the regulations for securing such license are equivalent to those required in the state of Missouri. However, no license by reciprocity shall be issued until the applicant passes a special examination approved by the board, which will examine the applicant's knowledge of specific provisions of Missouri statutes and regulations pertaining to nursing homes. The applicant shall furnish satisfactory evidence that such applicant is of good moral character and has acted in the capacity of a nursing home administrator in such state, territory, or the District of Columbia, at least one year after the securing of the license. The board, in its discretion, may enter into written reciprocal agreements pursuant to this section with other states which have equivalent laws and regulations.

4. Nothing in sections 344.010 to ~~[344.100]~~ 344.108, or the rules or regulations thereunder shall be construed to require an applicant for a license as a nursing home administrator, who is employed by an institution listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., to administer institutions certified by such commission for the care and treatment of the sick in accordance with the creed or tenets of a recognized church or religious denomination, to demonstrate proficiency in

any techniques or to meet any educational qualifications or standards not in accord with the remedial care and treatment provided in such institutions. The applicant's license shall be endorsed to confine the applicant's practice to such institutions.

5. The board may issue a temporary emergency license for a period not to exceed ninety days to a person twenty-one years of age or over, of good moral character and a high school graduate or equivalent to serve as an acting nursing home administrator, provided such person is replacing a licensed nursing home administrator who has died, has been removed or has vacated the nursing home administrator's position. No temporary emergency license may be issued to a person who has had a nursing home administrator's license denied, suspended or revoked. A temporary emergency license may be renewed for one additional ninety-day period upon a showing that the person seeking the renewal of a temporary emergency license meets the qualifications for licensure and has filed an application for a regular license, accompanied by the application fee, and the examination [has not yet been given] results have not be received by the board. No temporary emergency license may be renewed more than one time.

344.040. 1. Every license issued under this chapter shall expire on June thirtieth of the year of issuance and each year thereafter. Licensees seeking renewal shall, during the month of

May of each year, file an application for renewal on forms furnished by the board, which shall include evidence satisfactory to the board of completion of the approved continuing education hours required by the board, and shall be accompanied by a renewal fee of fifty dollars payable to the [director of revenue] department of health and senior services.

2. Upon receipt of an incomplete application for renewal, the board shall grant the applicant a temporary permit which shall be in effect for thirty days. The applicant is required to submit the required documentation or fee within the thirty-day period, or the board may refuse to renew his application. The thirty-day period can be extended for good cause shown for an additional thirty days. Upon receipt of the approved continuing education credits or other required documentation or fee within the appropriate time period, the board shall issue an annual license.

3. The board shall renew the license of an applicant who has met all of the requirements for renewal.

4. As a requirement for renewal of license, the board may require not more than forty-eight clock hours of continuing education a year. The continuing education provided for under this section shall be approved by the board. There shall be a separate, nonrefundable fee for each single offering provider. The board shall set the amount of fee for any single offering

provided by rules and regulations promulgated pursuant to section 536.021, RSMo. The fee shall be set at a level to produce revenue which shall not substantially exceed the cost and expense in administering and reviewing any single offering.

5. By April first of each year, the board shall mail an application for renewal of license to every person for whom a license was issued or renewed during the current year. The applicant must submit such information as will enable the board to determine if the applicant's license should be renewed. Information provided in the application shall be given under oath.

6. Any licensee who fails to apply to renew his license by June thirtieth may be relicensed by the board if he meets the requirements set forth by the board pursuant to sections 344.010 to [344.100] 344.108 and pays the fifty-dollar renewal fee, plus a penalty of twenty-five dollars. No action shall be taken by the board in addition to a penalty of twenty-five dollars imposed by this section against any such licensee whose license has not expired for a period of more than two months, and who has had no action in the preceding five years taken against them by the board, and who has met all other licensure requirements by June thirtieth; provided, however, that nothing in this section shall prevent the board from taking any other disciplinary action against a licensee if there shall exist a cause for discipline

pursuant to section 344.050. A person whose license has expired for a period of more than twelve months must meet the requirements set out in section 344.030 for initial licensure.

344.050. 1. The board may refuse to issue or renew any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of [his] the applicant's right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo. As an alternative to refusal to issue or renew any certificate, registration or authority, permit or license, the board may, at its discretion, issue a license which is subject to probation for any one or any combination of causes stated in subsection 2 of this section. The board's order of probation shall contain a statement of the discipline imposed, the basis therefore, the date such action shall become effective, and a statement that the applicant has thirty days to request in writing a hearing before the administrative hearing commission. If the board issues a probationary license to an applicant for licensure, the applicant may file a written petition with the administrative hearing commission within thirty days of the effective date of the probationary license seeking review of whether cause exists to discipline the license pursuant to

subsection 2 of this section. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, pursuant to criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Violation of, or assisting or enabling any person to violate, any provision of chapter 198, RSMo, or any lawful rule or regulation promulgated thereunder;

(8) Impersonation of any person holding a certificate of registration or authority, permit or license, or allowing any person to use [his] such person's certificate of registration or authority, permit, license or diploma from any school;

[(8)] (9) Disciplinary action against the holder of a license or other right to practice any profession regulated by

this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

[(9)] (10) A person is finally adjudged incapacitated or disabled by a court of competent jurisdiction;

[(10)] (11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice [under] pursuant to this chapter;

[(11)] (12) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

[(12)] (13) Violation of the drug laws or rules and regulations of this state, any other state or the federal government;

[(13)] (14) Knowingly failing to report abuse or neglect of a resident in a long-term care facility, as required by section 198.070, RSMo, of which he or she has actual knowledge that it is abuse or neglect;

(15) Violation of any professional trust or confidence;

(16) Having served as the administrator, operator, or any principal involved in the operation of a facility licensed under chapter 198, RSMo, and during such time the facility has had its license revoked under section 198.036, RSMo, has entered into a

consent agreement to obtain a probationary license under subsection 5 of section 198.026, RSMo, has had a license denied under subsection 2 of section 198.022, RSMo, or has surrendered its license while under investigation.

3. The administrative hearing commission shall have no authority to require issuance of a license, pending a final determination by the commission, in any case in which an applicant is seeking initial licensure.

4. No license may be suspended or revoked and no application for renewal of a license may be denied under this section until the licensee has been afforded an opportunity for hearing after due notice as provided in sections 621.015 to 621.205, RSMo.

5. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, [place upon probation,] censure or place the person named in the complaint on probation on such terms as the board deems appropriate, or may suspend or revoke [a] the certificate [of registration or authority], permit or license. The board may exclude any application for up to five years for any person who has had his or her license revoked by the board or has surrendered his or her license to the board.

344.055. 1. The board of nursing home administrators may

hold a disciplinary hearing to singly or in combination censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate, or may suspend or revoke a certificate of registration or authority, permit, or license issued under sections 344.010 to 344.108 following a review of the record of the proceedings by the board and upon a formal motion of the board:

(1) When the final trial proceedings are concluded where a person has been adjudicated and found guilty, or has entered a plea of guilty or nolo contendere regardless of imposition of sentence in a felony criminal prosecution under the laws of this state, the laws of any other state, territory, or district of the United States, or the United States:

(a) For any felony offense reasonably related to the qualifications, functions, or duties of the person licensed under sections 344.010 to 344.108; or

(b) For any felony offense for which an essential element is fraud, dishonesty, or an act of violence; or

(c) For any felony offense involving moral turpitude;

(2) Upon the final and unconditional revocation or surrender of the person's license to practice the same profession in another state, territory, or district of the United States upon grounds for which revocation is authorized in this state.

2. The certificate, permit, or license of such person shall be automatically reinstated if the conviction, judgment, or revocation is set aside upon final appeal in any court of

competent jurisdiction.

3. Any person who has had revoked or been denied a certificate, permit, license, or other authority to practice a profession in another state, if such profession in this state is regulated under sections 344.010 to 344.108, may automatically be denied a certificate, permit, or license to practice such a profession in this state.

344.056. 1. Notwithstanding any other provisions of law to the contrary and to encourage settlement of disputes between the board of nursing home administrators and its licensees, the board shall:

(1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated together with copies of any documents that are the basis for which discipline is sought or file a contested case against the licensee as provided in sections 621.015 to 621.205, RSMo, prior to offering the licensee a settlement proposal and provide the licensee with an opportunity to respond to the allegations;

(2) If no contested case has been filed against the licensee, allow the licensee at least sixty days from the date of mailing during which to consider the board's initial settlement offer and discuss the terms of such settlement offer with the board;

(3) If no contested case has been filed against the licensee, advise the licensee that the licensee may, either at

the time the settlement agreement is signed by all parties or within fifteen days thereafter, submit the agreement to the administrative hearing commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee; and

(4) In any contract pursuant to this section by the board or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.

2. If the licensee desires review by the administrative hearing commission under subdivision (3) of subsection 1 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee.

344.060. 1. The director of the department of health and senior services shall appoint ten suitable persons who together

with the director of the division of aging of the department of health and senior services shall constitute the "Missouri Board of Nursing Home Administrators" which is hereby created within the department of health and senior services and which shall have the functions, powers and duties prescribed by sections 344.010 to ~~[344.100]~~ 344.108.

2. In addition to the director of the ~~[division of aging]~~ department of health and senior services or ~~[his]~~ the director's designee the membership of the board shall consist of one licensed physician, two licensed health professionals, one person from the field of health care education, four persons who have been in general administrative charge of a licensed nursing home for a period of at least five years immediately preceding their appointment, and two public members. In addition to these qualifications, the physician, the two licensed health care professionals, and the health care educator shall be citizens of the United States and tax-paying residents of the state of Missouri for one year preceding their appointments. The four appointees who have been in general administrative charge of a licensed nursing home shall be citizens of the United States and either residents of the state of Missouri for one year preceding their appointments or persons who have been licensed by the board and whose five years of employment in a licensed nursing home immediately preceding their appointment have occurred in the state of Missouri. The public members shall be citizens of the

United States, residents of the state of Missouri for one year preceding their appointment, and registered voters. The public members shall be persons who are not, or never were, licensed nursing home administrators or the spouse of such persons, or persons who do not have or never have had a material, financial interest in either the providing of licensed nursing home services or in an activity or organization directly related to licensed nursing home administration. Neither the one licensed physician, the two licensed health professionals, nor the person from the health care education field shall have any financial interest in a licensed nursing home.

3. The members of the board shall be appointed for three-year terms or until their successors are appointed and qualified provided that no more than four members' terms shall expire in the same year. All members appointed prior to September 28, 1979, shall serve the term for which they were appointed. The governor shall fill any vacancies on the board as necessary. Appointment to fill an unexpired term shall not be considered an appointment for a full term. Board membership, continued until successors are appointed and qualified, shall not constitute an extension of the three-year term and the successors shall serve only the remainder of the term.

4. Every member shall receive a certificate of appointment; and every appointee, before entering upon his or her duties,

shall take the oath of office required by article VII, section 11, of the Constitution of Missouri.

5. Any member of the board may be removed by the director of the department of health and senior services for misconduct, incompetency or neglect to duty after first being given an opportunity to be heard in his or her own behalf.

344.070. 1. The board shall annually elect one of its members as president, another as vice president, and another as secretary. It shall adopt an official seal. It shall file and preserve all written applications, petitions, complaints, charges or requests made or presented to it. It shall cause to be kept accurate records and minutes of its proceedings, and shall maintain a register of the names and addresses of all persons holding licenses as nursing home administrators. A copy of any entry in the register, or of any records or minutes of the board, certified by the president or secretary of the board under its seal, shall be received in evidence, to all intents and purposes as the original. The board may employ such part- or full-time clerical assistance, purchase such equipment and supplies, employ legal counsel, employ a part- or full-time investigator, and incur travel and other expense, within the limits of its appropriations.

2. The board shall adopt, amend and repeal rules and regulations necessary to carry out the provisions of sections

344.030 to [344.100] 344.108. Any rule or regulation under the authority of sections 344.030 to [344.100] 344.108 shall be promulgated in accordance with chapter 536, RSMo. The committee on administrative rules may file a complaint in accordance with the provisions of chapter 536, RSMo, before the commission contesting the validity of any rule purportedly promulgated under the authority of sections 344.030 to [344.100] 344.108. On filing any complaint in accordance with this section, the administrative hearing commission shall immediately suspend that portion of the rule which is challenged until the commission has determined the matter. The commission shall hold a hearing within ten days of the filing to determine the matter. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

3. The board shall examine, license, and renew the license of duly qualified applicants, and shall conduct hearings affording due process of law, upon charges calling for discipline of a licensee. The board shall refer to the appropriate prosecuting attorney information regarding any persons violating the provisions of sections 344.010 to [344.100] 344.108 and may incur necessary expenses therefor.

344.080. The members of the board, other than the director of the [division of aging] department of health and senior

services or his designee, shall receive as compensation for their services fifty dollars for each day devoted to the affairs of the board, and shall be entitled to reimbursement for their expenses necessarily incurred in the discharge of their official duties.

344.105. 1. Any nursing home administrator possessing a current license to practice as a nursing home administrator in this state who has maintained an active license for at least ten years may retire his or her license by filing an affidavit with the board which states the date on which the licensee retired from such practice and such other facts as tend to verify the retirement as the board may deem necessary. The affidavit shall be accompanied by a fee of twenty-five dollars made payable to the [division of aging] department of health and senior services. Such request for retired status may also be accomplished by signing the request for retired status that appears on the nursing home administrator's application for license renewal and returning such application to the board prior to June thirtieth of the year of renewal of the administrator's active license, accompanied by a fee of twenty-five dollars made payable to the [division of aging] department of health and senior services. Information provided in the request for retired status shall be given under oath subject to the penalties for the making of a false affidavit.

2. An individual who requests retired license status shall

return his or her original wall license and all other indicia of licensure to the board. Once the board has received the original wall license from the licensee and the other requirements for requesting retired status have been met, the board shall issue a new license to the licensee indicating that the licensee is retired.

3. A retired license may be reactivated within five years of the granting of the retired license by filing with the board evidence satisfactory to the board of the completion of twenty clock hours of continuing education for each calendar year the license was retired. All clock hours of continuing education shall be completed prior to the filing of the affidavit or renewal form requesting reactivation of the retired license. If more than five years have passed since the issuance of a retired license to a licensee, the licensee shall follow the procedures for initial licensure stated in section 344.030.

4. No person shall practice as a nursing home administrator in this state or hold himself or herself out as a nursing home administrator if his or her license is retired.

5. Retired licensees shall remain subject to disciplinary action for violations of this chapter and the rules promulgated thereunder.

344.108. 1. Any nursing home administrator possessing a current license to practice as a nursing home administrator in

this state may place such license on inactive status by filing a written signed request for inactive status with the board, accompanied by evidence satisfactory to the board of completion of five clock hours of continuing education in the area of patient care and a fee of fifty dollars made payable to the department of health and senior services. This request may also be accomplished by signing the request for inactive status that appears on the nursing home administrator's application for license renewal and returning such application to the board prior to June thirtieth of the year of renewal of the administrator's active license, accompanied by evidence satisfactory to the board of the completion of five clock hours of continuing education in the area of patient care and a fee of fifty dollars made payable to the department of health and senior services. Information provided in the request for inactive status shall be given under oath subject to the penalties of making a false affidavit.

2. An individual who requests that his or her license be placed on inactive status shall return all indicia of licensure to the board.

3. An inactive license shall expire on June thirtieth of the year of issuance and each year thereafter. Licensees seeking to renew shall, during the month of May each year, file an application for renewal on forms furnished by the board that include evidence satisfactory to the board of completion of five clock hours of continuing education in the area of patient care and shall be accompanied by a renewal fee of twenty-five dollars

payable to the department of health and senior services.

4. A license may be carried in inactive status for up to five years from the date of issuance. If the licensee does not reactivate the license during the five-year period, the license shall expire on the last day of the five-year period.

5. A holder of an inactive license may reactivate the license by submitting a written request to the board, accompanied by evidence satisfactory to the board of the completion of twenty clock hours of continuing education and a fee of fifty dollars made payable to the department of health and senior services. The twenty clock hours of continuing education shall be earned no earlier than six months prior to the request for reactivation and no later than six months after the inactive license has been reactivated. If the holder of an inactive license requests reactivation prior to completing the twenty clock hours of continuing education, the board shall issue a six-month interim license to the licensee. The interim license shall expire six months from the date of issuance or at such earlier time as the licensee earns the twenty clock hours of continuing education and submits evidence satisfactory to the board of completion of the required hours. If a holder of an inactive license requests reactivation after January first of the current renewal cycle, the twenty clock hours of continuing education required for license renewal may be prorated by the board.

6. A request for reactivation of an inactive license shall show, under oath or affirmation of the nursing home

administrator, a statement that the nursing home administrator has not practiced during the inactive period and is not presently practicing in this state.

7. No person shall practice as a nursing home administrator or hold himself or herself out as a nursing home administrator in this state while his or her license is inactive.

8. Inactive licensees shall remain subject to discipline for violations of this chapter and the rules promulgated thereunder.