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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 2.35. Nursing Home Administrator Program [1416 - 1416.86] (*Chapter 2.35 added by Stats. 2001, Ch. 687, Sec. 5.*)

ARTICLE 5. Enforcement [1416.60 - 1416.86] (*Article 5 added by Stats. 2001, Ch. 687, Sec. 5.*)

1416.60. Each licensee shall, within 30 days, after each appointment as the designated administrator of a nursing home and after any termination of that appointment, notify the program. Each notification shall include the name of the administrator, the nursing home administrator number assigned, the name and address of the facility or facilities involved, and the date of the appointment or termination. All information provided pursuant to this section shall be public information.

(*Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.*)

1416.62. The program shall maintain a current list of nursing home administrators who have been placed on probation or had their licenses suspended or revoked within the last three years. The program shall provide the current list of these administrators to licensed nursing homes and the department district offices every six months. The current list shall also be available to the general public upon request.

(*Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.*)

1416.64. (a) The program shall maintain a record of enforcement actions reported to the program, pursuant to Section 1416.12. The program shall routinely review the citation logs and files of nursing home administrators whose facilities have received citations from the department to determine if remedial or disciplinary action against the administrator is warranted based on the administrator's involvement or culpability in the citations. Regardless of the facility's performance record, the program may initiate disciplinary action against an administrator who violates any statute or regulation governing licensed nursing home administrators.

(b) Following receipt of reports on temporary suspension orders, service of an accusation for facility license revocations, or final decertification of a facility from participation in the Medi-Cal or Medicare programs, due to failure to meet certification standards, the program shall make a determination as to whether the evidence available warrants remedial or disciplinary action against the administrator or constitutes grounds for denial, suspension, or revocation pursuant to Section 1416.76.

(c) If the program determines that action against the administrator is not warranted, the program shall document in the file the reasons and specific circumstances for not taking remedial or disciplinary action against the administrator's license.

(d) The program shall consider all of the following prior to making a determination to initiate disciplinary action:

- (1) Any information provided to the program by the administrator pursuant to this section.
- (2) Whether the administrator was in fact the designated administrator of the facility when the violation occurred, or the designated administrator of the facility during the period of time the citation covered.
- (3) Whether the administrator should have or could have prevented the violation or violations that occurred.

(e) Prior to making a final determination to initiate action against an administrator, the program shall notify the administrator that the program is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action should not be initiated.

(f) If the program determines that grounds for remedial or disciplinary action exist, the program may initiate either or both of the following actions, as warranted:

- (1) Remedial action, including, but not limited to, a conference with the administrator, a letter of warning, or both.

(2) Disciplinary action, including, but not limited to, citations, fines, formal letters of reprimand, probation, denial, suspension, revocation of the administrator's license, or any combination of these actions.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.66. (a) The program shall develop and make available a form that may be utilized at the nursing home administrator's option to provide the program with relevant information, documentation, and background on any actions reported to the program pursuant Section 1416.12.

(b) Any reports received pursuant to Section 1416.12 shall remain in the administrator's file for five years, unless the program is notified that the action has been modified or overturned. Any modification of an action shall be noted and documented in the administrator's file.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.68. (a) It is the responsibility of the nursing home administrator as the managing officer of the facility to plan, organize, direct, and control the day-to-day functions of a facility and to maintain the facility's compliance with applicable laws, rules, and regulations.

(b) The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(c) No licensee shall be cited for any violation caused by any person licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) if the person is independent of, and not connected with, the facility and the licensee shows that he or she has exercised reasonable care and diligence in notifying these persons of their duties to the patients in the nursing facility.

(d) The delegation of any authority by a licensee shall not diminish the responsibilities of that licensee.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.69. (a) Within 24 hours after the nursing home administrator acquires actual knowledge or credible information that any of the events specified in subdivision (b) has occurred, the nursing home administrator shall notify the department's district office for licensing and certification of that knowledge or information. This notification may be in written form if it is provided by telephone facsimile or overnight mail, or by telephone with a written confirmation within five calendar days. The information provided pursuant to this subdivision may not be released to the public by the department unless its release is needed to justify an action taken by the department or it otherwise becomes a matter of public record. A violation of this section may result in a citation.

(b) All of the following occurrences shall require notification pursuant to this section as long as the administrator has actual knowledge of the occurrence:

(1) The licensee of a facility receives notice that a judgment lien has been levied against the facility or any of the assets of the facility or the licensee.

(2) A financial institution refuses to honor a check or other instrument issued by the licensee to its employees for a regular payroll.

(3) The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified by any applicable statute or regulation.

(4) The financial resources of the licensee fall below the amount needed to operate the facility for a period of at least 45 days based on the current occupancy of the facility.

(5) The licensee fails to make timely payment of any premiums required to maintain required insurance policies or bonds in effect, or any tax lien levied by any government agency.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.70. (a) The program shall establish a system for the issuance of citations to licensees, examinees, or participants of any program activity offered or approved by the program. The citations may contain an order of abatement, an order to pay an administrative fine assessed by the program chief, or both, where the licensee, examinee, or participant is in violation of any state or federal statute or regulation governing licensed nursing home administrators.

(b) The system shall contain all of the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing reasonable time for abatement of the violation.

(3) (A) Administrative fines assessed by the program shall be separate from and shall not preclude the levying of any other fines or any civil or criminal penalty.

(B) In no event shall the administrative fine assessed by the program be less than fifty dollars (\$50) or exceed two thousand five hundred dollars (\$2,500) for each violation. The total assessment shall not exceed ten thousand dollars (\$10,000) for each investigation or for counts involving fraudulent billings submitted to insurance companies, Medi-Cal, or Medicare programs.

(4) In assessing a fine, the program shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith effort of the licensee, examinee, or participant, the unprofessional conduct, including, but not limited to, incompetence and negligence in the performance of the duties and responsibilities of an administrator, the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation, whether the violation was related to patient care, the history of any previous violations, and other matters as may be appropriate.

(5) A citation or fine assessment issued pursuant to a citation shall inform the licensee, examinee, or participant that if he or she desires a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the program within 30 days after the date of issuance of the citation or assessment. A licensee may, in lieu of contesting a citation pursuant to this section, transmit to the state department 75 percent of the amount specified in the citation for each violation within 15 business days after the issuance of the citation.

(6) Failure of a licensee, examinee, or participant to pay a fine within 30 days of the date of the assessment, unless the citation is being appealed, may result in further disciplinary action being taken by the program. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine, along with any accrued penalty interest, shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee, fine, and accrued interest penalty. A citation may be issued without the assessment of an administrative fine.

(c) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act. Notwithstanding any other provisions of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosures. Administrative fines collected pursuant to this section shall be deposited in the State Department of Public Health Licensing and Certification Program Fund established by Section 1266.9.

(Amended by Stats. 2012, Ch. 672, Sec. 5. (AB 1710) Effective January 1, 2013.)

1416.72. (a) The program may issue a citation to any person who holds a license from the program and who violates any statute or regulation governing licensed nursing home administrators.

(b) Any licensee served with a citation may contest the citation by appeal to the program within 30 days of service of the citation. Appeals shall be conducted pursuant to Section 100171.

(c) In addition to requesting a hearing before an administrative law judge, the licensee may, within 10 days after service of the citation, notify the department in writing of his or her request for an informal conference with the department regarding the violations cited in the citation. At the time of requesting an informal conference, the licensee shall inform the department whether he or she shall be represented at the informal conference by legal counsel. Failure to notify the department of legal representation shall not result in forfeiture of the right to have legal counsel present. Unless the request for an informal hearing is made within the 10-day period, the licensee's right to an informal hearing is deemed waived.

(d) The department shall hold an informal conference with the licensee and, if applicable, his or her legal counsel or authorized representatives. At the conclusion of the informal conference the department may affirm, modify, or dismiss the citation, including any administrative fine levied, or order of abatement issued.

(e) The licensee does not waive his or her request for a hearing to contest a citation by requesting an informal conference. If the citation is dismissed after the informal conference, the request for a hearing on the matter of the citation shall be deemed to be withdrawn. If the citation, including any administrative fine levied or order of abatement, is modified or affirmed, the citation shall be upheld and the licensee shall, within 15 working days from the date the citation review conference decision was rendered, notify the director or the director's designee that he or she wishes to appeal the decision through the procedures set forth in Section 100171.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.74. (a) The time allowed for abatement of violation shall begin the first day after the order of abatement has been served or received. If a licensee who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the licensee may request from

the program an extension of time in which to complete the correction. The request shall be in writing and made within the time set for abatement.

(b) An order of abatement shall either be personally served upon the licensee or mailed by certified mail, return receipt requested.

(c) When an order of abatement is not contested, or if the order is appealed and the licensee does not prevail, failure to abate the violation cited within the time specified in the citation shall constitute a violation and failure to comply with the order of abatement. Where a licensee has failed to correct a violation within the time specified in the citation the department shall assess the licensee a civil penalty in the amount of fifty dollars (\$50) for each day that the violation continues beyond the date specified in the citation. If the licensee disputes a determination by the department regarding alleged failure to correct a violation or regarding the reasonableness of the proposed deadline for correction, the licensee may request an informal conference to contest the determination.

(d) Any unpaid administrative fine shall begin accruing a 7-percent interest penalty on the unpaid balance due. This interest shall continue to accrue until the administrative fine and interest are paid in full.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.75. The program may deny, or may suspend or revoke, a license upon any of the following grounds:

(a) Gross negligence.

(b) Incompetence.

(c) The conviction of any crime involving dishonesty or which is substantially related to the qualifications, functions, or duties of a nursing home administrator. A conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this section.

(d) Using fraud or deception in applying for a license or in taking the examination provided for in this chapter.

(e) Treating or attempting to treat any physical or mental condition without being currently licensed to do so.

(f) Violating Section 650 of the Business and Professions Code, any provision of this chapter, or any rule or regulation of the program adopted pursuant to this chapter.

(g) Lack of any qualification requirement for the license.

(h) Failure to report under Section 1416.60 to the program, without just cause.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.76. (a) The program may deny a nursing home administrator applicant or licensee, a license, based on one of the following grounds:

(1) Conviction of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. The program may take action following the establishment of a conviction after the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(2) Commits any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) Commits any act which, if done by a licensee, would be grounds for suspension or revocation of license. The program may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of a nursing home administrator.

(b) Notwithstanding any other provision of this chapter, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Section 4852.01 of the Penal Code, or that he or she has been convicted of a misdemeanor and has met all applicable requirements of the criteria of rehabilitation developed by the program pursuant to subdivision (f).

(c) The program may deny a nursing home administrator license on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

(d) The program may suspend or revoke a license on the ground that the applicant or licensee has been convicted of a crime, as defined in paragraph (1) of subdivision (a), if the crime is substantially related to the qualifications, functions, or duties of a nursing home administrator.

(e) The program shall develop criteria to use to determine whether a crime or act is substantially related to the qualifications, functions, or duties of a nursing home administrator, and shall use the criteria when considering the denial, suspension, or

revocation of a license.

(f) The program shall develop criteria to be used by the program to evaluate the rehabilitation of a person when considering the denial, suspension, or revocation of a license under this section.

(g) The program shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee pursuant to the evaluation process set forth in subdivision (f).

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.77. The program may deny, or may suspend or revoke, a nursing home administrator license or participation in specific training program areas under this chapter upon any of the following grounds:

- (a) Misappropriation of funds or property of the facility, the patients, or of others.
- (b) Using fraud, deception, or misrepresentation in applying for the AIT Program, the examination for licensure, or any other program functions provided for in this chapter.
- (c) Procuring a nursing home license by fraud, deception, or misrepresentation.
- (d) Impersonating any applicant or acting as a proxy for an applicant in an examination.
- (e) Impersonating any licensed nursing home administrator.
- (f) Treating or attempting to treat any physical or mental condition without having a valid license to do so.
- (g) Violating Section 650 of the Business and Professions Code, any provisions of this chapter, or any rule or regulation of the program adopted pursuant to this chapter.
- (h) Lack of any qualification requirement for a license, participation in the AIT Program or preceptor program.
- (i) A pattern of failure to report changes under Section 1416.60 to the program without just cause.
- (j) Failure to comply with this chapter or the laws, rules, and regulations relating to health facilities.
- (k) The commission of any dishonest, corrupt, or fraudulent act or any act of physical or mental, including sexual, abuse of any person in connection with the administration of, or any patient in, a nursing home.
- (l) Violation by the licensee of any of the provisions of this chapter or of the rules and regulations promulgated under this chapter.
- (m) Aiding, abetting, or conspiring with another person to violate provisions of this chapter or of the rules and regulations promulgated under this chapter.
- (n) Violation of the examination security agreement.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.78. (a) The program may place a nursing home administrator license on probation in lieu of formal action to suspend or revoke the license if the department determines that probation is the appropriate action. Upon successful completion of the probation period, the license shall be restored to regular status.

(b) The probationary license shall be based upon an agreement entered into between the licensee and the program that specifies terms and conditions of licensure during the probationary period. The terms and conditions shall be related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs.

(c) The term of the probationary license shall not exceed two years. If the licensee successfully completes the term of probation, as determined by the department, no further action shall be taken upon the allegations that were the basis for the probationary license. If the licensee fails to comply with the terms and conditions of the probationary license agreement, the department may proceed with a formal action to suspend or revoke the license.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.80. Upon the determination to deny application for licensure for grounds specified in Section 1416.77, the program shall immediately notify the applicant in writing by certified mail. A petition for an administrative hearing must be received by the program within 20 business days of receipt of notification. Upon receipt, the department shall set the matter for administrative hearing, pursuant to procedures specified in Section 100171.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.82. (a) Proceedings to suspend or revoke licensure for grounds specified in Section 1416.77 shall be conducted in accordance with Section 100171. In the event of conflict between this chapter and Section 100171, Section 100171 shall prevail.

(b) (1) The program may temporarily suspend any license prior to any hearing if the action is necessary to protect the public welfare. The program shall notify the licensee of the temporary suspension and the effective date. Upon receipt of a notice of

defense by the licensee, the department shall set the matter within 15 days. The administrative hearing conducted in accordance with Section 100171 shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the department fails to make a final determination on the merits of the action within 60 days after the original hearing has been completed. If the provisions of this chapter or the rules or regulations promulgated by the director are violated by a licensee, the director may suspend the license for the violation.

(2) If the program determines that the temporary suspension shall become an actual suspension, the department shall specify the period of the suspension, not to exceed two years. The program may determine that the suspension shall be stayed, and place the licensee on probation for a period that shall not exceed two years.

(c) The program may suspend or revoke a license prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Proceedings for immediate revocation shall be conducted in accordance with Section 100171. The department shall set the matter for hearing within 15 days and hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the licenseholder within 30 calendar days of the hearing.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.84. Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this chapter, the superior court in and for the county in which those acts or practices take place, or are about to take place, may issue an injunction or other appropriate order, restraining the conduct, on application of the program, to the Attorney General, or the district attorney.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)

1416.86. If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

(Added by Stats. 2001, Ch. 687, Sec. 5. Effective January 1, 2002.)