

**Minnesota Board of Examiners for Nursing Home Administrators  
Biennial Report  
July 1, 1998 to June 30, 2000**

**I. General Information**

**A. Board Mission and Major Functions**

**BENHA Mission**

The mission of the Board of Examiners for Nursing Home Administrators is to promote the public's interest in quality care and effective services for residents of nursing facilities by ensuring that licensed administrators are qualified to perform their administrative duties.

**BENHA functions**

**Setting and administering educational and examination standards for initial and continuing licensure**

- Reviewing administrator functions and required knowledges, skills and abilities to aid in determining what requirements to set for initial and continuing licensure
- Setting licensure requirements through the rules process
- Reviewing academic programs to determine if they meet requirements
- Reviewing individually completed academic courses or experiences to determine if they meet licensure requirements
- Developing and administering the state examination to determine candidate knowledge of Minnesota statutes and rules governing nursing facility operation
- Reviewing continuing education programs submitted by sponsors or individuals to determine if they meet requirements
- Reviewing individual applicant/licensee documentation of completion of requirements for initial and continuing licensure

**Responding to inquiries, complaints and reports from the public and other health care regulators regarding licensure and conduct of applicants, permit holders, licensees and unlicensed practitioners**

- Accepting complaints and reports from the public and health care providers and regulators
- Deciding whether a complaint or inquiry is jurisdictional and if so whether and what type of action to pursue to resolve the matter
- Referring inquiries and complaints to other investigative, regulatory or assisting agencies
- Responding to complainants and agency reports by informing the complainants/agencies of action taken to resolve their complaints while observing provisions of the data practices act regarding the legal status of data obtained during the course of an investigation and disciplinary proceeding

**Pursuing educational or disciplinary action with licensees as deemed necessary based upon results of investigations conducted in response to complaints/reports.**

- Setting standards of conduct and a basis for disciplinary action through the rules process
- Seeking information directly from the licensee and securing investigation and fact finding information from other agencies in response to complaints or inquiries
- Holding conferences with licensees to identify their role and responsibility in a matter under investigation
- Providing applicants and licensees education to improve practice and prevent recurrence of problems
- Obtaining voluntary agreement to disciplinary action or pursuing disciplinary action through a due process, contested case hearing and potential court action

**Providing information and education about licensure requirements and procedures and standards of practice to the public and other interested audiences.**

- Providing information to the long-term care community concerning requirements for administrator licensure and information about licensees available to fill vacancies in MN facilities
- Providing information about careers in nursing home administration and licensure requirements to prospective applicants for licensure
- Providing information to licensees to prevent inappropriate practice and to improve practice toward the end of better administered facilities and improved care for nursing home residents, e.g. direct educational mailings, providing educational/informational articles and appearances to organizations serving administrators in the long-term care community
- Providing the public information about where they can find answers to concerns related to care of residents in nursing homes including information about whether persons are licensed with the board and whether they have had disciplinary action taken against their licenses

**B. Major activities during the biennium**

The following major activities were accomplished by the board during the biennium:

- Revision of the board statute to delete obsolete provisions and clarify others
- Revision of board rules to delete obsolete provisions, clarify items that had proven difficult to administer, endorse positive changes in administrator licensing being made at the national level and make minor modifications to the fee structure to ensure that costs of board operations fall as closely as possible on those who receive the services.
- Development of new print media to inform various constituencies of board services including a brochure to explain licensure requirements and procedures, a handbook to explain to licensees their obligations and privileges as licensees of the board, a brochure to inform owners and managers of nursing homes of their responsibilities for staffing nursing homes with qualified administrators licensed or permitted by the board. (A brochure to inform the public of board functions and ways to pursue complaints about nursing home administrators or nursing homes was developed during the preceding biennium and updated during 1998-2000.)

- Development of a web site to provide information about the board and its various functions for access by the public, applicants for licensure and licensees of the board. The site provides links to other sites in state and federal government to help persons interested in finding appropriate nursing home or related elder care and to inform them of how to pursue complaints or concerns about care received in nursing homes.
- Extended discussion and decision-making to develop a mission statement for the board and to identify the important functions of the board. (See information under IA above.)
- Shift from manual to computer-based testing for the national examination for licensure, ensuring easier, faster access to exams for applicants and improving the security of the examination process.
- Implementation of a new national disciplinary data-base for all nursing home administrators through the National Association of Boards of Examiners for Long Term Care Administrators to be effectively coordinated with the federal Health Integrity Protection Data Bank.
- Conducted a five-year review of all academic programs previously approved by the board as offering courses to meet the board's requirements for licensure. Resulted in revisions to some course offerings to better insure that they provide board required topics and discontinuation of approval of one of eight schools previously approved.
- Encouraged increased attention to issues of cultural diversity within nursing home environments both in academic course requirements for licensure and in continuing education for license renewal.
- Conducted a search process to identify and appoint a new executive director to replace the previous individual who retired.

### **C. Emerging issues regarding regulation of nursing home administrators**

At the national level, state boards are reporting a slow down in applications for new licensees. Minnesota is reviewing application volume to determine whether a similar trend is occurring here and will be reviewing licensure requirements (revised in 1997) to determine whether any serve as impediments to otherwise qualified individuals who might otherwise enter the occupation.

Several other states have begun to license administrators of assisted living/residential care facilities through their nursing home administrator board (generally renamed to board of examiners for long term care administrators.) Nationally the association of boards of examiners for long term care administrators (the organization that has developed and administers the national examination for nursing home administrators required for Minnesota licensure) now also offers a national exam for administrators of assisted living facilities for states to use in licensing administrators of assisted living or related types of facilities. Barring a major national or state scandal reporting egregiously poor care in assisted living or related types of facilities, it appears unlikely that pressure will develop within Minnesota for licensure of assisted living administrators. Associations representing the long term care industry have taken an active role in opposition to increased regulation in this area.

Legislation was passed during the 2000 session permitting nursing facilities of less than 45 beds to have their director of nursing services also serve as the facility administrator without holding a license from the board as a nursing home administrator. The statute that this legislation amended originally permitted only facilities of under 25 beds to be so

administered. It was subsequently changed to permit facilities of less than 32 beds to be so administered, and now extended to facilities of fewer than 45 beds. Since federal regulations require the directors of nursing services in a nursing home to devote full-time to their nursing responsibilities, facilities availing themselves of this state provision could find themselves operating contrary to federal regulation. The board is concerned about this issue and also concerned about increasing numbers of requests to the Minnesota Department of Health to permit more and more facilities to share an administrator among two or even more facilities. At the same time, nursing homes are increasingly part of a complex of housing and related health care services offered to senior and no longer stand alone facilities. Their administrators are being expected to administer a full complex of services, putting administrator licensees at odds with the requirement of the Department of Health that they serve full-time (35 hours per week or more) as the nursing home administrator. The board will be working with the Department of Health to review these related issues with the hope of sponsoring legislation during the 2001 session to set some reasonable standards in statutes or rules that will provide clarity to practitioners and regulators while preserving standards and protections for nursing facility residents.

## II. Board's Members, Staff, and Budget

### A. Board composition

Statute requires the board to have 11 members. The names of persons holding the seats as of June 30, 2000 are as indicated below.

The following are appointed by the Governor for staggered four year terms:

2 members engaged in management, operation, or ownership of proprietary nursing homes—Scot Spates, Redwood Falls, Robert Letich, Plymouth

2 members engaged in management or operation of nonprofit nursing homes—Michael Gibson, Wadena, Thomas Goeritz, White Bear Lake

1 member engaged in the practice of medicine—Dr. Jane Pederson, Woodbury

1 member engaged in the practice of professional nursing—Catherine Lloyd, Plymouth

3 public members—Richard Sizer, St. James, Ann Tagtmeyer, Mendota Heights, Glen Woker, Roseville

The following are appointed by the commissioners of Health and of Human Services and serve as nonvoting designees of those commissioners—Linda Sutherland, Health, Robert Held, Human Services

### B. Employees

The board has two full-time equivalent positions. They are a full-time executive director, a half time office manager and a half time clerical assistant.

### C. Receipts and disbursements and major fees assessed by the board

Item	FY 1999	FY 2000
Receipts	\$216,601	\$212,975
Disbursements	\$165,151	\$175,337

Fee	Amount
Application	\$150
Original License	\$200
Annual Renewal	\$200
Acting Administrator Permit	\$250

### III. Licensing and Registration

**A. Persons licensed as of June 30, 2000**

910 persons licensed as nursing home administrators as of June 30, 2000.

**B. New licenses issued during biennium**

<b>FY</b>	<b>By Exam</b>	<b>By Reciprocity</b>
1999	58	(Exam Required)
2000	47	(Exam Required)

### IV. Complaints

**A. Complaints Received**

(Note: BENHA regulates only one occupation—Nursing Home Administrators. The following numbers all pertain to licensed nursing home administrators.)

<b>Item</b>	<b>FY 1999</b>	<b>FY 2000</b>
1. Complaints Received	127	135
2. Complaints Per 1,000 Regulated Persons	142	148
3. Complaints By Type of Complaint (See attached explanation.)	NA	
A.		
B.		
C.		
D.		125
E.		1
F.		
G.		
H.		1
I.		3
J.		2
K.		1
L.		
M.		1
N.		
O.		
P.		
Q.		
R.		
S.		
T.		
U.		
V.		
W.		
X.		1

**B. Open Complaints on June 30**

<b>Item</b>	<b>FY 1999</b>	<b>FY 2000</b>
1. Complaints Open	32	14
2. Open Less Than 3 Months	32	13
3. Open 3 to 6 Months	0	1
4. Open 6 to 12 Months	0	0
5. Open More Than 1 Year (explain)	0	0

**C. Closed Complaints on June 30**

<b>Item</b>	<b>FY 1999</b>	<b>FY 2000</b>
1. Number Closed	109	153
2. Disposition by Type		
A. Revocation		
B. Voluntary Surrender		
C. Suspension		
D. Restricted, Limited, Or Conditional License		
E. Civil Penalties		
F. Reprimand		
G. Agreement for Corrective Action	1	
H. Referral to HPSP		
I. Dismissal or closure	108	153
3. Cases Closed That Were Open For More Than One Year (explain)	1	0

Licensee appealed various actions prior to signing corrective action agreement.

**V. Trend Data as of June 30**

<b>Year</b>	<b>A. Persons Licensed</b>	<b>B. Complaints</b>	<b>C. Complaints Per 1,000 Licensees</b>	<b>D. Open Cases</b>
2000	910	135	148	14
1999	894	127	142	32
1998	935	40	43	NA
1997	904	34	38	NA
1996	838	150	178	NA
1995	NA	98	NA	NA
1994	NA	NA	NA	NA
1993	NA	NA	NA	NA
1992	NA	122	NA	NA
1991	NA	115	NA	NA

The significant decrease in complaints during 1998 and 1997 is accounted for by a revision in definitions and procedures for forwarding complaints from the Minnesota Department of Health. At the request of BENHA, the department returned to use of its previous standards for referring reports to BENHA in 1999.



## DISCIPLINE

### 6400.6900 DISCIPLINARY ACTION.

Subpart 1. **Criteria.** The board may impose disciplinary action as described in subpart 2 against an applicant, the holder of a permit to serve as an acting administrator, or a licensee, when the board determines, by a preponderance of the evidence and after due notice and an opportunity to be heard at a contested case hearing, that the applicant, permit holder, or licensee:

A. has been convicted of a felony or gross misdemeanor, including a finding or verdict of guilt, whether or not the adjudication of guilt has been withheld or not entered, an admission of guilt, or a no contest plea, when the felony or gross misdemeanor is reasonably related to the practice of nursing home administration, as evidenced by a certified copy of the conviction;

B. has been convicted of a crime against a minor, including a finding or verdict of guilt, whether or not adjudication of guilt has been withheld or not entered, an admission of guilt, or a no contest plea;

C. is not eligible to be employed as a nursing home administrator under Minnesota Statutes, section 144A.04, subdivision 6;

D. has failed to comply with Minnesota Statutes, section 626.557, the Vulnerable Adult Act;

E. has violated a statute, rule, or order that the board issued or is empowered to enforce or that pertains to administration of a nursing facility or to the responsibilities of a nursing home administrator;

F. has discriminated against any resident or employee, based on age, race, sex, religion, color, creed, national origin, marital status, status with regard to public assistance, sexual orientation, or disability;

G. has committed acts of misconduct substantially related to the qualifications, function, or duties of a nursing home administrator and evidenced unfitness to perform as a nursing home administrator in a manner consistent with protecting resident health, safety, and welfare;

H. has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of nursing home administration, that adversely affects the individual's ability or fitness to practice as a nursing home administrator;

I. has engaged in unprofessional conduct or any other conduct with potential for causing harm to the public or facility residents including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice, as specified in state and federal statutes and rules concerning administration of nursing home facilities, without actual injury having to be established;

J. has failed to exercise true regard for the safety, health, or life of a resident;

K. has willfully permitted the unauthorized or illegal disclosure of information relating to a resident;

L. has engaged in sexual harassment, made sexual advances toward, or engaged in sexual contact with any resident, student, or trainee under the licensee's supervision, or engaged in sexual harassment of an employee, consultant, or visitor to the facility in which the licensee practices;

M. has practiced fraud, deceit, cheating, or misrepresentation, or provided misleading omission or material misstatement of fact, in securing, procuring, renewing, or maintaining a nursing home administrator license;

N. has used the licensee's professional status, title, position, or relationship as a nursing home administrator or licensee to coerce, improperly influence, or obtain money, property, or services from a resident, resident's family member or visitor, employee, or any person served by or doing business with the nursing facility that the licensee administers or is employed by;

O. has paid, given, has caused to be paid or given, or offered to pay or give to any person, a commission or other consideration for solicitation or procurement either directly or indirectly for nursing home patronage. Nothing in this item shall be construed to limit or restrict commercial advertisement;

- P. has knowingly aided, advised, or allowed an unlicensed person to engage in the unlicensed practice of nursing home administration;
- Q. has practiced fraudulent, misleading, or deceptive advertising with respect to the facility of which the licensee is administrator;
- R. has wrongfully transmitted or surrendered possession of the licensee's license to any other person, either temporarily or permanently;
- S. has falsely impersonated another licensee;
- T. has practiced without current licensure;
- U. has made a false statement or knowingly provided false or misleading information to the board, failed to submit reports as required by the board, failed to cooperate with an investigation of the board, the office of the attorney general, or the Minnesota Department of Health, or violated an order of the board;
- V. has been the subject of a reprimand, restriction, limitation, condition, revocation, suspension, surrender, or other disciplinary action against the person's nursing home administrator license in another jurisdiction;
- W. has failed to report a reprimand, restriction, limitation, condition, revocation, suspension, surrender, or other disciplinary action against the person's license as a nursing home administrator in another jurisdiction or failed to report the existence of a complaint or other charges against the person's nursing home administrator license in this or another jurisdiction or has been refused a license as a nursing home administrator by any other jurisdiction for reasons not related strictly to a difference in academic or experience requirements among jurisdictions; or
- X. has abused or is dependent on alcohol, a legend drug as defined in Minnesota Statutes, chapter 151, a chemical as defined in Minnesota Statutes, chapter 151, or a controlled substance as defined in Minnesota Statutes, chapter 152, and this abuse or dependency has affected the performance of the licensee's duties.