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# The Care Giver

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The Texas Board of Nursing Facility Administrators

## EMERGENCY RULES IN EFFECT

Emergency rules took effect October 29, 1996, adding sections §241.19 and §241.20. Section §241.19 deals with Standards of Conduct and has 25 subsections. Section §241.20 deals with Administrative Penalties and has 8 subsections. The emergency rules are in effect for 180 days and is renewable once for no more than 60 additional days. These two sections are also being proposed for regular rule adoption. A public hearing on the proposed new rules was held on November 13, 1996; a total of 28 speakers addressed the board. Public comments were taken until December 2, 1996. The Board addressed the public comments during the December 30, 1996 board meeting and, with minor amendments, adopted the proposed rules (see the article on page 3).

### Meet the Board

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Note: The terms for Ms. Avery, Ms. Grey, and Ms. Killian expired 2-1-97. They will continue to serve until re-appointed or replaced by the Governor.

### CONTENTS

A Word From the Interim Executive Secretary	2
Executively Speaking...	2
Sid's Spot	2
Barbara's Q&A	2
Welcome New Staff Member!	2
Complaint Review Process	2
Complaint Hotline	3
New Rules	3
Continuing Education Reminders	5



## A Word From the Interim Executive Secretary

Hello! I'm Bobby Lane, Interim Executive Secretary for the Texas Board of Nursing Facility Administrators. I was assigned to this board on October 2, 1996 along with Sandy Guyn, Executive Assistant. Prior to this assignment I served as the Assistant Division Director for the Professional Licensing and Certification for 2 years. In that role, I am responsible for budgetary, human resources, network support, legislative bill tracking, and other operational issues. I also served 13 years in the Internal Audit Division for the Texas Department of Health. Before coming to TDH, I served over 9 years with the Texas Department of Public Safety in various roles.

I have enjoyed working with the TBNFA, and feel that we have made progress in adopting the Standards of Conduct and Administrative Penalties. We are working to improve the complaint management process and have added a new staff position for that purpose. As always, if there is anything we can do for you or information that you need, please give us a call. Sandy and I look forward to working with you during this interim period.

Bobby D. Lane  
Interim Executive Secretary  
Texas Board of Nursing Facility  
Administrators

## Executively Speaking...

Hello again! Well it seems as if I never really said goodbye! As always, working for the NFA board is, and has been special to me. Of course, this particular job has been made easier by having individuals such as Barbara De Lane and Sid Crumley to work with! I know that Bobby Lane, Interim Executive Secretary is committed to this program also and is working hard to familiarize himself with this program. It is my goal to maximize the services available to the public, administrators and applicants for licensure. This includes everything from answering and returning calls to issuing licenses and renewals in a timely fashion. I look forward to serving you, if I can ever be of assistance, please do not hesitate to call.

Sandra M. Guyn  
Executive Assistant

## Sid's Spot

Well it's been quite a year. I've had the opportunity to talk with many of you over the phone and to meet some of you in person. I really appreciate the patience all of you have shown with me while I've "gotten my feet on the ground". Having Sandy Guyn back to help us out during the current times has obviously been of tremendous help. I trust that now that the Standards of Conduct are now finalized that things will return to "norm".

Sid Crumley  
Administrative Assistant

## Barbara's Q&A

Q: When are the 40 hours of continuing education required?

A: All administrators who renew after December 1996 are required to have the 40 hours of continuing education every two years.

Q: How do we report these hours?

A: On a form provided with your renewal form. Please note: YOU are responsible for documenting your CE records.

Barbara DeLane  
Records Administrator

## Welcome New Staff Member!

Please help us welcome Ms. Aginah "Gina" Burgess, Administrative Technician I. She will be assisting us in the complaint tracking system and as back-up for incoming calls.

## Complaint Review Process

An increasing number of complaints are being received by the board. Here's how complaints are processed.

1. Once a complaint is received on a Licensed Nursing Facility Administrator (LNFA) it is assigned a complaint number using our fiscal year-NFA-numeric



sequence (Ex: 97-NFA-00001) and a file folder is made. 2. A letter of acknowledgment is sent to the complainant.

3. An initial notification letter is sent to the licensee.
4. The complaint is put on "hold" for 30 days awaiting the licensee's response.
5. Staff reviews the complaint and prepares a synopsis for the Complaints Committee.
6. The complaint is reviewed at the next available Complaints Committee meeting.
7. Possible actions from the Complaints Committee meeting are:
  - a. Closure
  - b. Tabling (for complaints which need further investigation).
  - c. Proposal of some type of disciplinary action.
8. Complaints tabled for further information will be forwarded to the investigators.
9. Once the investigation is completed, the complaint will be returned to the staff with an investigator's report.
10. The complaint is then added to the next available Complaints Committee for their review/action.
11. Once the Complaints Committee reviews a complaint, a letter either closing the complaint or proposing some action to be taken is sent to the licensee. Should there be a proposed action against the licensee, the licensee has 10 days from the receipt of the letter to request an administrative hearing. If no response is made within the 10 days from the receipt the proposed action automatically takes effect.
12. For complaints which are appealed, a copy of the complaint file is forwarded to the Texas Dept. Of Health, Office of General Counsel who will hold the administrative hearing.

13. Once the administrative hearing is completed the hearing examiner will forward a recommendation on the complaint to the Board.

14. The entire Board will review the hearing examiner's recommendation and decide upon final action on the complaint. Board members who were present at the Complaint Committee's meeting which proposed the action may not vote on this final review.

15. Letters are then sent to the licensee and the complainant stating what the final action was taken, if any from the complaint.

**PLEASE NOTE:** The Complaints Committee has added three advisory persons: Beth Ferris of the Texas Advocates for Nursing Home Residents (512) 719-4757, Marilyn Patillo of the University of Texas School of Nursing (512) 471-7311, and Robert Lampert of the Oblate School of Theology (210) 341-1366.

## Complaint Hotline

Complaints against a licensee may be filed in writing to: Texas Board of Nursing Facility Administrators, 1100 West 49th Street, Austin, Texas 78756-3183.

The complaint hotline is 1-800-942-5540. Copies of this sign; suitable for wall placement are available by contacting the board.

## New Rules

On December 30, 1996 new rules §241.19 and §241.20 were adopted by the Board. These new rules cover the Standards of Conduct and Administrative Penalties and

contain the following:  
§241.19. Standards of Conduct.

(a) A nursing facility administrator (licensee) who fails to comply with the provisions of the Texas Nursing Facility Administration Act (Act), Texas Civil Statutes, (TCS), Art. 4512q. §8 , or this chapter, may be disciplined by the board in accordance with §§20 or 22 of the Act or §241.11 of this title (relating to Adverse Licensure Actions) and §241.20 of this title relating to (Administrative Penalties).

(1) A licensee shall ensure that sufficient personnel are present in number and ability to assure the health and safety of a resident as determined by care outcomes.

(2) A licensee shall ensure that sufficient resources are present to assure nutrition, medications and treatments, including restraints, are in accordance with physician orders as determined by care outcomes.

(3) A licensee, either knowingly or through negligence, shall not personally commit or allow or direct actions by employees, contractors, or others which result or could result in failure to protect and promote the rights of each resident.

(4) A licensee, either knowingly or through negligence, shall not allow or direct actions which result or could result in failure to protect residents from harmful actions of the nursing facility employees, including but not limited to coercion, threat, intimidation, solicitation, harassment, theft of personal property, cruelty or indifference to the welfare and rights of the residents.

(5) A licensee, either knowingly or through negligence,



shall not personally commit or allow or direct actions by employees, contractors, or others which result or could result in inadequate care, harm, or injury to the resident.

(6) A licensee, either knowingly or through negligence, shall not allow or direct actions which result or could result in failure to follow a physician's order or the altering in any way of a physician's order for any resident's medical or therapeutic care.

(7) A licensee shall not commit or knowingly allow another to commit any act of abuse or neglect of a resident, as defined by 40 TAC §19.101.

(8) A licensee shall not fail to notify, allow or direct actions which result in failure to notify an appropriate governmental agency of any suspected case of abuse or neglect as defined by 40 TAC §19.101.

(9) A licensee shall not permit his or her license to be used by another person.

(10) A licensee shall not knowingly allow, aid, abet, sanction, or condone a violation of the Act or this chapter by another licensed nursing facility administrator and shall report such violations to the board.

(11) A licensee shall not advertise or knowingly participate in the advertisement of nursing home services in a manner which is fraudulent, false, deceptive, or misleading in form or content.

(12) A licensee shall not make, or allow employees, contractors, or volunteers to make misrepresentations or fraudulent statements about the operation of the nursing facility.

(13) A licensee shall not allow or direct actions which result in harassment or intimidation of

any person designed to cause that person to use the services or equipment of any particular health agency or facility.

(14) A licensee shall not bill or knowingly allow another person to bill for services other than those actually rendered.

(15) A licensee shall not make or file or allow employees, contractors or volunteers to make or file a report or record which the licensee knows to be false.

(16) A licensee shall not intentionally fail to file a report or record required by state or federal law; impede or obstruct such filings; or induce another person to impede or obstruct such filings.

(17) A licensee shall not fail to notify, allow, or direct actions which result in failure to notify an appropriate governmental agency of any suspected cases of criminal activity as defined by state and federal laws.

(18) A licensee shall not use or knowingly allow an employee or another person to use alcohol, narcotics or other drugs in a manner which interferes with the performance of the administrator or other person's duties.

(19) A licensee shall not knowingly or through negligence violate any confidentiality provisions as prescribed by state or federal law concerning a resident.

(20) A licensee shall post in the nursing facility where the administrator is employed as administrator of record in a conspicuous place and in clearly legible type the notice provided by the board giving the name, address, and telephone number of the board and stating that complaints about the administrator may be made to the board.

(21) A licensee shall not interfere with a board investigation by withholding or misrepresenting

facts to the board or its authorized representative, or by using threats or harassment against any person involved or participating in the investigation.

(22) A licensee shall not display a license issued by the board which has been reproduced, altered, expired, suspended, or revoked.

(23) A licensee shall not or knowingly or through negligence, allow other individuals to mismanage the personal funds of residents deposited with the facility.

(24) A licensee shall ensure that the nursing facility is physically maintained in a way that protects the health and safety of residents and the public.

(25) A licensee shall not bribe or attempt to bribe, harass or intimidate a governmental agency, its employees, or its agents in regard to the administration of the nursing facility.

(b) In determining disciplinary action the board may consider:

- (1) responsibility and response of the licensee prior to, during, and after the occurrence;
- (2) extenuating circumstances;
- (3) repeat complaints against a licensee; and
- (4) severity of harm to residents.

#### §241.20 Administrative Penalties.

The purpose of this section is to provide for monetary penalties for a nursing facility administrator who fails to comply with the standards of conduct as set out in §241.19, of this title (relating to Standards of Conduct.)

- (1) The assessment of an administrative penalty is governed



by the Texas Nursing Facility Administration Act (Act) Texas Civil Statutes, Article 4512q, §8 and §22 (Act). In compliance with the Act, new §241.19 establishes standards of conduct for nursing home administrators as a code of ethics; and new §241.20 provides the board with the administrative procedure and ability to sanction an administrator for improper conduct, i.e. administrative penalties for failure to comply with the standards of conduct.

(2) The board may impose an administrative penalty against a person licensed or regulated under the Act who violates the Act or this chapter or an order adopted by the board under the Act.

(3) The penalty for a violation may be in an amount not to exceed \$1,000. Each day a violation continues occurs is a separate violation for purposes of imposing a penalty.

(4) The executive secretary may issue a report that states the facts in which the determination is based and the executive secretary's recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty as required by the Act, §22(d) to the complaints committee of the board. The report shall not be considered to be issued under the Act, §22(e) until and unless the complaints committee decides to recommend the imposition of an administrative penalty based on the Act §22(c).

(5) The chairman of the board shall appoint a hearing examiner from the Texas Department of Health (TDH).

(6) A hearing to assess administrative penalties shall be governed by §241.17 of this title (relating to Formal Hearing

Procedures).

(7) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I - violations that have or have had an adverse impact on the health of safety of a resident to include serious harm, permanent injury or death to a resident;

(B) Level II - violations which have or have had a potential or adverse impact on the health and safety of a resident, but less than Level I; or

(C) Level III - violations that have no or minor health or safety significance.

(8) The ranges of administrative penalties by severity levels are as follows:

(A) Level I - \$500 - \$1,000;

(B) Level II - \$250 - \$500; and

(C) Level III - no more than \$250.

**Note:** The official adopted rules will be published in the Texas Register in late February. This copy is for informational purposes only and may have minor editorial differences from the final published version.

## Continuing Education Reminders

1. Everyone whose license renewal is after December 1996 must complete 40 total CE hours during each two year licensure period. Within this 40 total hours, at least 6 must be in Regulatory Changes, 6 in Management Theory, and 6 in Ethics, but at

least 24 hours in these three categories combined.

2. CE documentation shall be by a form supplied by the board. All licensees will be receiving a CE documentation form along with their normal renewal form when it's time to renew the license. You fill out this form with the name of the program, name of the provider, sponsor, date of program, category, and number of hours for each CE program you have attended during the last licensure period. Remember that a given program may have more than one category type. Also, be sure that you submit at least the total number of hours and required category hours listed above.

3. Send in verification of attendance of CE only if requested from the board as part of the random audit.

4. Licensees who live out of state are required to complete CE.

### WE VALUE YOUR INPUT!

Do you have a special article which you would like to see printed in The Care Giver? We encourage you to submit your ideas, suggestions, and comments. Please fill out and return the form provided below to the Editor, c/o TBNFA, 1100 West 49th Street, Austin, Texas 78756-3199.

#### SUGGESTIONS

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUGGESTION(S): \_\_\_\_\_

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## Approved Continuing Education Programs

DATE	SPONSOR	CREDIT	LOCATION	SEMINAR TITLE
<b>March</b>				
03/20/97	TAHSA	12/RC	Dallas	RAPs to Care Plans
03/22/97	GALVESTON	7/ETHICS	Galveston	Ethics in the Age of Managed Care
03/25/97	THCA/FUTURE	3/MT, 3/GENL	Lufkin	Management, Marketing & Motivation
03/27/97	THCA	6/MT	Dallas	How to Conduct an Investigation
<b>April</b>				
04/04/97	THCA	3/RC, 3/ETHICS	Waco	Nursing Facilities and Hospice: Partnerships
04/04/97	TAHSA	7/RC	Lubbock	MDS 2.0 Basic
04/09/97	CHA	8/RC	Tyler	Equal Opportunity: Making It Work
04/10/97	CHA	8/ETHICS	Tyler	Business Ethics in LTC Administration
04/11/97	CHA	8/MT	Tyler	Management: An Overview of Principles
04/13/97	CHA	8/RC	Lubbock	Improvement Regulations & JCAHO Standards
04/14/97	CHA	8/MT	Lubbock	Performance Improvement in Long Term Care Fac.
04/15/97	TAHSA	8/MT	Austin	Nursing Facility Nurses: Uncovering the Mysteries
04/24-25/97	TAHSA	12/RC	Houston	RAPs to Care Plans
04/26/97	GALVESTON	7/GENL	Galveston	Cultural Awareness in an Ethically & Sexually
<b>May</b>				
05/02/97	TAHSA	7/RC	San Antonio	MDS 2.0 Basic
05/03/97	ACHCA	21/VARIES	Minneapolis, MN	ACHCA's 31st Annual Convocation
05/06/97	TAHSA	12/RC	Lubbock	RAPs to Care Plans
05/08/97	TEXARKANA	7/GENL	Texarkana	Death and Dying
05/15-30/97	SWTSU	12/RC, 18/MT 3/ETHICS, 51/GENL	San Marcos	Assisted Living/Personal Care Program
05/18/97	TAHSA	6/MT	Austin	Annual Meeting Pre-Conference: Creative Interven.
05/19/97	TAHSA	11/VARIES	Austin	TAHSA Annual Meeting
05/21/97	CHA	8/RC	Dallas	Improvement Regulations & JCAHO Standards
05/22/97	CHA	8/MT	Dallas	Performance Improvement in LTC Facilities
05/23/97	CHA	8/ETHICS	Dallas	Business Ethics in LTC Administration

PLEASE NOTE: Continuing education seminars are updated continuously. Should you need further information, please contact the office for an updated list or you may contact the sponsoring agencies to see what programs they have planned.

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 THE CARE GIVER
 

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