

1979 WL 43564 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1979

**\*1 Re: Legislative Audit Council's Report on the Board of Examiners for Nursing Home Administrators**

Honorable Thomas E. Leath  
Director of Agency Evaluation  
State Reorganization Commission  
620 Bankers Trust Tower  
Columbia, South Carolina 29201

Dear Mr. Leath:

Thank you for providing this Office the opportunity to reply to the Legislative Audit Council's report (for the purpose of sunset review) on the Board of Examiners for Nursing Home Administrators. In the report the Council made several recommendations; these recommendations involve conclusions of law and our responses will attempt to discuss the legal aspects contained therein.

Council recommended the following:

1. THE BOARD SHOULD CLOSELY COORDINATE ITS ACTIVITY IN THE AREA OF COMPLAINTS AND INVESTIGATION WITH THAT OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (p. 24).

The utilization of the Department of Health and Environmental Control's investigative personnel appears to present no conflict with federal and state acts directing the Board to conduct investigations.

2. THE BOARD SHOULD CONSIDER THE COMPLAINTS, RECORD AND PROFESSIONAL EVALUATION OF EACH ADMINISTRATOR BEFORE RELICENSING (p. 24).

Pursuant to extant statutory law, the General Assembly has mandated that renewal of Nursing Home Administrator's licenses shall be accomplished upon payment of the appropriate fee. [Section 40-35-50, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Thus, relicensure could not be conditioned upon review and consideration of complaints or the professional record of the license holder. Action of the General Assembly in amending the present law would be necessary prior to this recommendation being implemented.

3. [SECTION 40-35-30 OF THE 1976 CODE OF LAWS SPECIFYING QUALIFICATIONS OF LICENSEES SHOULD BE AMENDED TO OMIT THE MINIMUM AGE REQUIREMENT FOR LICENSURE](#) (p. 24).

A minimum age requirement for a Nursing Home Administrator's license would be legally permissible if there exists some relationship between age and maturity and the functions of a Nursing Home Administrator. The legislature is presumed to have considered this prior to adoption of [§ 40-35-30](#). It is of further note that the Uniform Act for the licensing of Nursing Home Administrators suggests a minimum age requirement as a requisite to licensure. This is consistent with the requirement of adequate training and experience. Suggested State Legislation Vol. XXVIII at A-35 [et seq.](#) (1969).

4. [SECTION 40-35-30 OF THE 1976 SOUTH CAROLINA CODE OF LAWS SPECIFYING QUALIFICATIONS OF LICENSEES SHOULD BE AMENDED TO OMIT THE CITIZENSHIP REQUIREMENT FOR LICENSURE](#) (p. 24).

[Section 40-35-30](#) does not include a citizenship requirement for licensure, nor is it found elsewhere within the statutory law. However, R93-5, and R93-12, Rules and Regulations of the Board of Examiners for Nursing Home Administrators do require United States citizenship prior to licensure. This requirement is probably unconstitutional. These regulations should be repealed; such a procedure requires legislative approval. [Section 1-23-10 et seq., CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended.

**\*2 5. THE USE OF 'GOOD MORAL CHARACTER' REQUIREMENT FOR LICENSURE SHOULD BE ELIMINATED OR DEFINED** (p. 25).

The requirement of 'good character' for licensure is mandated by the Federal Medicaid Act and should not be deleted. [See](#), 43 U.S.C. § 1396g; 42 C.F.R. 432.707(b)(1). This phrase is commonly used in licensing requirements and has generally been upheld when confronted with allegations of vagueness. The phrase offers flexibility within traditional defined perimeters and should be retained. In addition, the enabling act and the implementing rules and regulations offer guidelines for its application. [See, inter alia, § 40-35-30 CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, 'reputable and responsible'; R93-6b(1) Rules and Regulations of the Board of Examiners for Nursing Home Administrators, 'conviction record'. A requirement of good moral character is suggested in the Uniform Act for licensing of Nursing Home Administrators. State legislation should conform to the requirement of the Federal Medicaid Act, which requires the applicant to be of 'good character'.

**6. THE BOARD SHOULD ESTABLISH AND MAINTAIN STANDARDS FOR A PROGRAM OF CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATORS. NON-COMPLETION OF ESTABLISHED MINIMUM REQUIREMENTS SHOULD SERVE AS THE BASIS FOR LICENSE REVOCATION OR SUSPENSION** (p. 25).

The Board under present statutory law lacks the authority to require continuing education as a requirement for relicensure or as a basis for revocation or suspension. [See](#), §§ [40-35-30](#) and [40-35-130, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. Thus, absent action by the General Assembly, the Board cannot implement this recommendation.

**7. THE SOUTH CAROLINA BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS SHOULD NOT BE TERMINATED. HOWEVER, THE BOARD SHOULD BE PLACED UNDER THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL. THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHOULD ASSUME THE ADMINISTRATIVE FUNCTIONS OF THE BOARD UTILIZING ITS EXISTING RESOURCES AND BOARD STAFF SHOULD BE ELIMINATED** (p. 4).

The present composition of the Board is mandated by 43 U.S.C. § 1396g and [42 C.F.R. 431.706](#). The Board could not exist in 'name only' or be subservient to another administrative agency not contemplated by the federal act. The issue of whether or not the State Board of Nursing Home Administrators can come within the ambit of the Department of Health and Environmental Control would have to ultimately be answered by the United States Department of Health, Education and Welfare, which has final administrative approval of the State Medicaid Plan. This critical consideration which would affect the entire Medicaid program in South Carolina should not be undertaken absent an opinion by the Department of Health, Education and Welfare that such a merger would be acceptable. The Council indicates by partial quote at page three that the Department of Health, Education and Welfare would approve this type plan; however, if approval exists, complete documentation of this should be made available to the Reorganization Commission.

**\*3** Again, thank you for the opportunity to reply. If this Office can be of further assistance, please feel free to call upon us.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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