

1200-08-06-.03 DISCIPLINARY PROCEDURES.

(1) The board may suspend or revoke a license for:

- (a) Violation of federal statutes or rules;
- (b) Violation of state statutes or the rules as set forth in this chapter;
- (c) Permitting, aiding or abetting the commission of any illegal act in the nursing home;
- (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the residents of the nursing home; and,
- (e) Failure to renew the license.

(2) The board may consider all factors which it deems relevant, including but not limited to the following, when determining sanctions:

- (a) The degree of sanctions necessary to ensure immediate and continued compliance;
- (b) The character and degree of impact of the violation on the health, safety and welfare of the residents in the facility;
- (c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and,
- (d) Any prior violations by the facility of statutes, rules or orders of the commissioner or the board.

(3) The Board shall have the authority to place a facility on probation. To be considered for probation, a facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys can have been initiated by an unusual event or incident self reported by the facility.

(a) If a facility meets the criteria for probation, the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating such a hearing, the board shall provide notice to the facility detailing what specific non-compliance the board had identified that the facility must respond to at the probation hearing.

(b) Prior to imposing probation, the board may consider and address in its findings all factors which it deems relevant, including, but not limited to, the following:

1. What degree of sanctions is necessary to ensure immediate and continued compliance; and
2. Whether the non-compliance was an unintentional error or omission, or was not fully within the control of the facility; and
3. Whether the nursing home recognized the non-compliance and took steps to correct the identified issues, including whether the facility notified the department of the non-compliance either voluntarily or as required by state law or regulations; and
4. The character and degree of impact of the non-compliance on the health, safety and welfare of the patient or patients in the facility; and
5. The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the non-compliance; and
6. The facility's prior history of compliance or non-compliance.

(4) If the Board places a facility on probation, the facility shall detail in a plan of correction those specific actions, which when followed, will correct the non-compliance identified by the board.

(5) During the period of probation, the facility must make reports on a schedule determined by the board. These reports must demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged and confidential under any state or federal law or regulation.

(6) The Board is authorized at any time during the probation to remove the probationary status of the facility's license, base upon information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.

(7) The Board must rescind the probational status of the facility if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional non-compliance that warrants an additional term of probation as defined in T.C.A. §68-11-207(e)(1).

(8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the

facility is not taking steps to correct non-compliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law.

(9) The hearing to place a facility on probation and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act.

(10) When a nursing home is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the statement of deficiencies, the facility must return a plan of correction indicating the following:

(a) How the deficiency will be corrected;

(b) The date upon which each deficiency will be corrected;

(c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and,

(d) How the corrective action will be monitored to ensure that the deficient practice does not recur.

(11) Either failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the nursing home's license to possible disciplinary action.

(12) Whenever the commissioner exercises the authority to suspend the admission of any new resident(s) to the nursing home because of detrimental conditions, as provided by T.C.A. § 68-11-207(b), the nursing home shall post a copy of the commissioner's order upon the public entrance doors of the facility and prominently display it there for so long as it remains effective. During the suspension of admissions, the nursing home shall inform any person who inquires about the admission of a new resident of the provisions of the order and make a copy of the order available.

(13) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this chapter, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq.

(14) Reconsideration and Stats. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209. Administrative History: Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Amendment filed March 13, 1986; effective April 12, 1986. Amendment filed December 30, 1986; effective February 13, 1987. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed May 24, 2004; August 7, 2004. Amendment filed March 1, 2007; effective May 15, 2007.