

**TITLE 40**      SOCIAL SERVICES AND ASSISTANCE  
**PART 1**        DEPARTMENT OF AGING AND DISABILITY SERVICES  
**CHAPTER 18**    NURSING FACILITY ADMINISTRATORS  
**SUBCHAPTER A** GENERAL INFORMATION

## Rules

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### **RULE §18.1      Purpose**

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This chapter implements the provisions of the Texas Health and Safety Code, Chapter 242, Subchapter I, Nursing Facility Administration, for the purpose of licensing nursing facility administrators in the state of Texas.

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**Source Note:** The provisions of this §18.1 adopted to be effective June 1, 2004, 29 TexReg 4233

### **RULE §18.2      Definitions**

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The words and terms in this chapter have the following meanings, unless the context clearly indicates otherwise:

- (1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action that causes or could cause mental or physical injury or harm or death to a nursing facility resident. Abuse includes verbal, sexual, mental, psychological, or physical abuse; corporal punishment; involuntary seclusion; or any other actions within this definition.
- (2) Administrative law judge (ALJ)--A State Office of Administrative Hearings (SOAH) attorney who conducts formal hearings for the Department of Aging and Disability Services.
- (3) Administrator--A licensed nursing facility administrator.
- (4) Administrator-in-training (AIT)--A person undergoing a minimum 1,000-hour internship under a DADS-approved certified preceptor.
- (5) Administrator of Record--The individual who is listed as the facility's licensed nursing facility administrator with the DADS' Licensing and Credentialing Section.
- (6) Applicant--A person applying for a Texas nursing facility administrator license.
- (7) Application--The notarized DADS application for licensure as a nursing facility administrator, as well as all required forms, fees, and supporting documentation.
- (8) Complaint--An allegation that a licensed nursing facility administrator violated one or more

of the licensure rules or statutory requirements.

(9) DADS--The Department of Aging and Disability Services.

(10) Deficiency--Violation of a federal participation requirement in a nursing facility.

(11) Domains of the NAB--The five categories for education and continuing education of the National Association of Long Term Care Administrator Boards, which are resident care and quality of life; human resources; finance; physical environment and atmosphere; and leadership and management.

(12) Equivalent--A level of achievement that is equal in amount and quality to completion of an educational or training program.

(13) Formal hearing--A hearing held by SOAH to adjudicate a sanction taken by DADS against a licensed nursing facility administrator.

(14) Good standing--The licensure status of a nursing facility administrator who is in compliance with the rules in this chapter and, if applicable, the terms of any sanction imposed by DADS.

(15) Informal review--The opportunity for a licensee to dispute the allegations made by DADS. The informal review includes the opportunity to show compliance.

(16) Internship--The 1,000-hour training period in a nursing facility for an AIT.

(17) License--A nursing facility administrator license or provisional license.

(18) Licensee--A person licensed by DADS as a nursing facility administrator.

(19) Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a nursing facility resident's belongings or money without the resident's consent.

(20) NAB--The National Association of Long Term Care Administrator Boards, which is composed of state boards or agencies responsible for the licensure of nursing facility administrators.

(21) NAB examination--The national examination developed by NAB that applicants must pass in combination with the state licensure examination to be issued a license to practice nursing facility administration in Texas.

(22) NCERS--The National Continuing Education Review Service, which is the part of NAB that approves and monitors continuing education activities for nursing facility administrators.

(23) Neglect--A deprivation of life's necessities of food, water, or shelter; or a failure of an individual to provide services, treatment, or care to a nursing facility resident that causes or could cause mental or physical injury, harm, or death to the nursing facility resident.

(24) Nursing facility--An institution or facility licensed by DADS as a nursing home, nursing facility, or skilled nursing facility.

(25) Nursing facility administrator--A person who is licensed to engage in the practice of nursing facility administration, regardless of whether the person has ownership interest in the facility.

(26) Nursing Facility Administrators Advisory Committee (NFAAC)--The nine-member governor-appointed advisory committee that makes recommendations to DADS about the practice and regulation of nursing facility administration.

(27) Opportunity to show compliance--An informal meeting between DADS and a licensee that allows the licensee an opportunity to show compliance with the requirements of law for the retention of the license. The opportunity to show compliance is part of an informal review.

(28) Preceptor--A licensed nursing facility administrator certified by DADS to provide supervision to an AIT.

(29) PES--Professional examination services. The testing agency that administers the NAB and state examinations to applicants seeking licensure as nursing facility administrators.

(30) Referral--A recommendation made by Regulatory Services Division staff to investigate an administrator's compliance with licensure requirements when deficiencies or substandard quality of care deficiencies are found in a nursing facility, as required by Title 42 Code of Federal Regulations.

(31) Regulatory Services Division--The division of DADS responsible for long term care regulation, including determining nursing facility compliance with licensure and certification requirements and licensing nursing facility administrators.

(32) Sanctions--Any adverse licensure actions DADS imposes against a licensee, including letter of reprimand, suspension, revocation, denial of license, and monetary penalties.

(33) Self-study course--A NAB-approved education course that an individual pursues independently to meet continuing education requirements for license renewal.

(34) State examination--The state licensure examination that applicants must pass, in combination with the NAB examination, to be issued a license to practice nursing facility administration in Texas. This examination covers the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification).

(35) State of Texas Administrator-In-Training Internship Manual--The DADS program guide used by an AIT and preceptor during the AIT's internship for nursing facility administrator licensure.

(36) Substandard quality of care--Any deficiency in Resident Behavior and Facility Practices, Quality of Life, or Quality of Care that is immediate jeopardy to nursing facility resident health or safety; or a pattern of widespread actual harm that is not immediate jeopardy; or a widespread potential for more than minimal harm that is not immediate jeopardy, with no actual harm.

(37) Survey--A resident-focused complaint/incident investigation or annual licensure or certification inspection of a nursing facility by DADS.

(38) Traditional business hours--Monday through Friday from 8:00 a.m. until 5:00 p.m.

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**Source Note:** The provisions of this §18.2 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

(a) The governor-appointed NFAAC advises DADS on:

- (1) the licensing process of nursing facility administrators;
- (2) minimum standards of conduct for the practice of nursing facility administration;
- (3) proposed rule changes;
- (4) complaints and referrals against administrators; and
- (5) sanctions for rule violations.

(b) NFAAC members serve staggered terms of six years.

(c) The nine-member advisory committee is made up of:

(1) three licensed nursing facility administrators, at least one of whom represents a not-for-profit nursing facility;

(2) three licensed healthcare professionals with geriatric experience and not employed by a nursing facility, consisting of:

- (A) a licensed physician;
- (B) a registered nurse; and
- (C) a licensed social worker; and
- (3) three public members who have working experience with the chronically ill and infirm.

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**Source Note:** The provisions of this §18.3 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.4      Schedule of Fees**

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DADS charges the following administrative and licensure fees:

- (1) application fee--\$100;
- (2) state examination fee--\$155;
- (3) state reexamination fee--\$155;
- (4) NAB examination fee--\$285;
- (5) NAB reexamination fee--\$285;
- (6) initial licensure fee--\$250;
- (7) renewal fee--\$250 every two years when the license is renewed on or before the date the license expires;
- (8) late renewal fees for license renewals made after the license expires:
  - (A) \$375 for an expired license renewed during the first 90 days after the license expires; and
  - (B) \$500 for an expired license renewed between 91 and 365 days after the license expires;
- (9) formal inactive status fee--\$250;
- (10) reinstatement of licensure fee--\$500; and
- (11) duplicate license fee--\$25.

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**Source Note:** The provisions of this §18.4 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

**SUBCHAPTER B**

**REQUIREMENTS FOR LICENSURE**

**RULE §18.11**

**Academic Requirements**

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- (a) Applicants seeking licensure must meet the following academic requirements:
  - (1) have a baccalaureate degree in any subject from a university or health science center accredited by an association recognized by the Texas Higher Education Coordinating Board; and
  - (2) complete a minimum of 15 semester credit hours in long term care administration, or its equivalent, that includes courses in the following domains of the NAB:
    - (A) resident care and quality of life;
    - (B) human resources;
    - (C) finance;
    - (D) physical environment and atmosphere; and

- (E) leadership and management.
  - (b) DADS accepts foreign university degrees and coursework that is counted as transfer credit by accredited universities recognized by the American Association of Collegiate Registrars and Admissions Officers.
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**Source Note:** The provisions of this §18.11 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.12      Internship Requirements**

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An AIT must meet the following requirements:

- (1) Before starting the internship, the AIT must provide DADS written notice of:
    - (A) the name and license number of the DADS-approved preceptor providing training; and
    - (B) the name and address of the nursing facility where the internship will be completed, and the administrator's name if the individual is not the preceptor of record.
  - (2) The internship must be in a nursing facility that has a minimum of 60 beds.
  - (3) The internship must be a minimum of 1,000 hours of training.
  - (4) A minimum of 500 of the 1,000 hours must be during traditional business hours.
  - (5) The AIT can train no more than 40 hours a week.
  - (6) Upon completing the internship, the AIT must submit to DADS:
    - (A) one of the following:
      - (i) a complete and notarized AIT Final Report and Preceptor Performance Report; or
      - (ii) official transcript from a university accredited by an association recognized by the Texas Higher Education Coordinating Board that reflects completion of the internship; and
    - (B) a signed statement from the administrator of record of the nursing facility in which the training occurred verifying the AIT trained at the nursing facility.
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**Source Note:** The provisions of this §18.12 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.13      Alternate Education, Training, and Experience**

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- (a) Applicants not meeting the academic or internship requirements for licensure in §18.11 of this subchapter (relating to Academic Requirements) and §18.12 of this subchapter (relating to Internship Requirements), are eligible for licensure if they present evidence satisfactory to DADS of the following alternate education and experience:
  - (1) a master's degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with one year of management experience and completion of a 500-hour internship; or
  - (2) a baccalaureate degree in health administration, health services administration, health care administration, or nursing, which includes coursework that encompasses the five domains of the NAB, with three years of management experience and completion of a 500-hour internship.
- (b) A minimum of 250 hours of the 500-hour internship referred to in subsection (a) of this

section must be done during traditional business hours.

(c) Management experience is defined as full-time employment as a department head or licensed professional supervising two or more employees in a nursing facility or skilled nursing hospital unit.

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**Source Note:** The provisions of this §18.13 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.14      Preceptor Requirements**

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(a) A licensee seeking to sponsor an AIT must:

(1) be licensed or registered as a nursing facility administrator for a minimum of five years, with the two most recent years in Texas;

(2) be in good standing;

(3) have paid a \$25 training fee and completed DADS preceptor training to become a certified preceptor; and

(4) meet the eligibility requirements in the State of Texas AIT Internship Manual.

(b) A preceptor must submit a complete and notarized AIT Performance Report to DADS at the end of the internship.

(c) A preceptor must obtain approval from DADS before sponsoring more than one AIT at the same time.

(d) DADS may consider any imposed sanction against a preceptor as grounds for refusing to allow the preceptor to sponsor an AIT.

(e) DADS may refuse to allow a preceptor to provide training to an AIT if the preceptor did not provide adequate training to previous AITs.

(f) DADS waives 20 of the 40 clock hours of continuing education required for license renewal for a preceptor who sponsors an AIT.

(g) A licensee is qualified to act as a preceptor for two years from the date the licensee completes DADS' preceptor training.

(h) A licensee must remain in good standing in order to act as a preceptor.

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**Source Note:** The provisions of this §18.14 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.15      Application Requirements**

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(a) Applicants seeking licensure must submit the following to DADS:

(1) a complete and notarized Nursing Facility Administrator's Application for Licensure Form;

(2) \$100 application fee;

(3) a Texas Department of Public Safety (DPS) Texas criminal conviction report and fingerprint card;

(4) an official transcript reflecting a baccalaureate degree from a university or health science center accredited by an association recognized by the Texas Higher Education Coordinating Board;

(5) if not a part of the transcript reflecting a baccalaureate degree, another transcript reflecting 15 semester credit hours in long term care administration or its equivalent that include the five domains of the NAB as listed in §18.11 of this subchapter (relating to Academic Requirements), or alternate education, training and experience listed in §18.13 of this subchapter (relating to Alternate Education, Training, and Experience); and

(6) proof of completing the minimum applicable internship that meets the internship requirements in §18.12 of this subchapter (relating to Internship Requirements).

(b) An application is valid for one year from the date the application fee is received.

(c) Applicants not meeting the requirements for licensure and examination within one year after DADS receives their application must resubmit the following to DADS:

(1) a notarized Nursing Facility Administrator's Application for Licensure form;

(2) \$100 application fee; and

(3) a DPS Texas criminal conviction report and fingerprint card.

(d) DADS is not responsible for applications, forms, notices, and correspondence unless they are received by DADS.

(e) DADS is not responsible for mail it sends to a licensee or applicant if the licensee's or applicant's current address was not reported in writing to DADS.

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**Source Note:** The provisions of this §18.15 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

## **RULE §18.16**

## **Examinations**

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(a) Applicants seeking licensure as nursing facility administrators from DADS must pass the following examinations:

(1) state examination on the nursing facility requirements found in Chapter 19 of this title (relating to Nursing Facility Requirements for Licensure and Medicaid Certification); and

(2) NAB examination.

(b) Applicants register for examination at a designated NAB website by:

(1) submitting an application for approval to test; and

(2) paying the \$155 state examination and \$285 NAB examination fees on-line.

(c) DADS sends e-mails notifying applicants of their eligibility to take the test.

(d) Applicants must not take any examination without DADS approval.

(e) Applicants complete the on-line state and NAB examinations at PES.

(f) DADS notifies applicants of test scores within two weeks after receiving examination results from the testing agency.

(g) An applicant who fails an examination and wants to retest must pay the appropriate state or NAB examination fee stated in subsection (b)(2) of this section.

(h) Applicants failing the state or NAB examination three consecutive times must complete another minimum 1,000-hour AIT internship before retesting.

(i) Applicants previously licensed as nursing facility administrators by passing the comprehensive examination and who have an expired license for 12 months or longer or voluntarily surrendered their license must pass the NAB and state examinations to obtain a new license.

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**Source Note:** The provisions of this §18.16 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

## SUBCHAPTER C

### LICENSES Initial License

#### RULE §18.31

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- (a) DADS issues a license certificate to applicants who:
- (1) receive passing scores on the state and NAB examinations;
  - (2) submit the \$250 initial license fee to DADS; and
  - (3) meet the requirements of §18.41 of this subchapter (relating to Licensure of Persons with Criminal Backgrounds).
- (b) DADS may determine that a criminal conviction or a sanction taken against an applicant in Texas or another state is a basis for pending or denying an initial license.
- (c) A license expires two years from the date issued.
- (d) Licensees must keep DADS informed of their current home address and employment address. If employed by a nursing facility, a licensee must submit a Data Change Request form to DADS within 30 days after a change of employment.
- (e) Licensees who do not notify DADS of a change in address or employment within the required 30 days may be subject to an administrative penalty as listed in §18.57 of this chapter (relating to Schedule of Sanctions).
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**Source Note:** The provisions of this §18.31 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

#### RULE §18.32      **Provisional License**

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- (a) DADS issues a provisional license to applicants currently licensed or registered as nursing facility administrators in another state who submit the following to DADS:
- (1) complete and notarized Provisional Licensure Questionnaire and Nursing Facility Administrator License Application forms;
  - (2) the \$100 application fee; and
  - (3) proof of the following:
    - (A) a license and good standing status in another state with licensing requirements substantially equivalent to the Texas licensure requirements;
    - (B) employment for at least two years as an administrator of record of a nursing facility;
    - (C) a passing score on the NAB examination; and
    - (D) sponsorship by an administrator licensed by DADS and who is in good standing, unless DADS waives sponsorship based on a demonstrated hardship.
- (b) A provisional license expires 180 days from the date of issue.
- (c) DADS issues a license certificate to a provisional license holder who:
- (1) passes the state examination;
  - (2) pays DADS the \$250 initial licensure fee; and
  - (3) has not had a license revoked in Texas or any other state.



(d) DADS may determine that a criminal conviction or sanction taken in another state is a basis for pending or denying a provisional license.

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**Source Note:** The provisions of this §18.32 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.33      Duplicate License**

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DADS replaces lost, damaged, or destroyed license certificates to licensees who submit a notarized Duplicate License Request form and \$25 duplicate license fee to DADS.

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**Source Note:** The provisions of this §18.33 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.34      License Renewal**

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- (a) DADS notifies licensees of their license expiration date and renewal requirements at least 31 days before the license expires.
  - (b) A licensee who does not receive a renewal notice must renew the license before the license expires.
  - (c) Licensees seeking renewal must submit the following to DADS on or before the date the license expires:
    - (1) a complete License Renewal form;
    - (2) the \$250 renewal fee;
    - (3) proof of completion of 40 clock hours of continuing education; and
    - (4) a DPS Texas criminal conviction report and fingerprint card.
  - (d) DADS uses the postmark date to determine if a renewal application is on time. If there is no postmark or the postmark is not legible, DADS uses the date that the Nursing Facility Administrator Licensing Program records the renewal application as received.
  - (e) DADS issues a two-year license renewal card to eligible licensees who meet the requirements in subsection (c) of this section.
  - (f) DADS may deny a license renewal according to §18.37 of this subchapter (relating to Denial of License Renewal).
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**Source Note:** The provisions of this §18.34 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.35      Continuing Education Requirements for License Renewal**

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- (a) The 40 clock hours of continuing education required for license renewal must:
  - (1) be completed during the previous two-year licensure period;
  - (2) include one or more of the five domains of the NAB listed in §18.11 of this chapter (relating

to Academic Requirements);

(3) include at least six clock hours in ethics; and

(4) be:

(A) approved by the National Continuing Education Review Service;

(B) a DADS-sponsored event; or

(C) an upper-division semester credit course taken or taught at a post-secondary institution of higher education accredited by an association recognized by the Texas Higher Education Coordinating Board.

(b) DADS accepts no more than 34 clock hours of NAB-approved self-study courses toward the required 40 clock hours of continuing education.

(c) DADS waives, at a maximum, 20 of the 40 clock hours of continuing education to a licensee who completes one three-semester hour upper-division course taken at a post-secondary institution of higher education.

(d) DADS approves continuing education hours once per licensure renewal period for the same course, seminar, workshop, or program.

(e) DADS waives 20 of the required 40 clock hours of continuing education for preceptors who sponsor an AIT.

(f) DADS may perform an audit of continuing education courses, seminars, or workshops that the licensee has reported by requesting certificates of attendance.

(g) If a licensee is on deployed military duty, the deadline to meet continuing education requirements is extended based on the actual duration of the deployment up to two years.

(1) A licensee must submit a copy of the military orders to DADS within 60 days of completion of deployed duty.

(2) If continuing education requirements for licensure renewal are not met by the extension deadline, the licensee must:

(A) meet the licensure application and examination requirements for an initial license as listed in §18.15 of this chapter (relating to Application Requirements), §18.16 of this chapter (relating to Examinations), and §18.31 of this subchapter (relating to Initial License); or

(B) prior to the extension deadline, place the license in a formal inactive status in accordance with §18.38 of this subchapter (relating to Inactive Status).

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**Source Note:** The provisions of this §18.35 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.36      Late Renewals**

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(a) A person has up to one year after the expiration date of a license to renew the license by:

(1) completing 40 clock hours of continuing education as listed in §18.35 of this subchapter (relating to Continuing Education Requirements for License Renewal); and

(2) submitting the following fee to DADS:

(A) a \$375 renewal fee for a license that has been expired for 90 days or less; or

(B) a \$500 renewal fee for a license that has been expired for 91 days to 365 days.

(b) A person whose license has been expired for more than 365 days must meet the licensure and examination requirements for an initial license.

(c) A person must retake the NAB exam if the person last took and passed the NAB exam more

than five years before the application date.

(d) A person who does not renew a license on or before the date the license expires must return the license to DADS.

(e) A person who fails to renew a license before the expiration date must not practice in the field of nursing facility administration until the license is renewed.

(f) DADS imposes one or more sanctions listed in §18.57 of this chapter (relating to Schedule of Sanctions) against a person who practices with an expired license.

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**Source Note:** The provisions of this §18.36 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.37      Denial of License Renewal**

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(a) DADS may deny an application for license renewal based on either of the following:

(1) a sanction taken against a licensee; or

(2) a conviction for a crime listed in §18.41 of this subchapter (relating to Licensure of Persons with Criminal Backgrounds).

(b) DADS does not renew a license if:

(1) a person's license was revoked in another jurisdiction;

(2) the licensee defaulted on a guaranteed student loan as addressed in the Education Code, §57.491; or

(3) the licensee did not comply with the terms of a sanction or settlement agreement with DADS.

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**Source Note:** The provisions of this §18.37 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.38      Inactive Status**

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(a) A licensee may place a license in a formal inactive status with DADS for up to two renewal periods.

(b) To place a license in a formal inactive status, the licensee submits the following to DADS on or before the date the license expires:

(1) a completed Inactive Status Application form; and

(2) the \$250 inactive status fee.

(c) Licensees must renew the inactive license on or before the date that the inactive status expires by submitting to DADS:

(1) the \$250 renewal fee; and

(2) proof of completing 40 clock hours of continuing education as listed in §18.35 of this chapter (relating to Continuing Education Requirements for License Renewal).

(d) If a licensee's inactive status has expired, the licensee must meet the licensure application and examination requirements as listed in §18.15 of this chapter (relating to Application Requirements) and §18.16 of this chapter (relating to Examinations).

(e) If it has been less than five years since the individual passed the NAB examination, the

individual is not required to take the NAB examination referenced in §18.16(a)(2) of this chapter, but must take the state exam.

(f) A person whose inactive status license has expired may not pay a late renewal fee.

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**Source Note:** The provisions of this §18.38 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.39      Voluntary Surrender of a License**

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(a) A licensee may voluntarily surrender a license by returning the license certificate to DADS.

(b) A licensee who voluntarily surrenders a license while under investigation for a violation of licensure requirements may still receive:

(1) a written reprimand; or

(2) an administrative penalty.

(c) A licensee who voluntarily surrenders a license in lieu of a proposed sanction, other than license revocation, may not reapply for licensure until two years after the surrender date.

(d) A licensee who voluntarily surrenders a license in lieu of a proposed license revocation is permanently disqualified from licensure in Texas.

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**Source Note:** The provisions of this §18.39 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.40      Reinstatement**

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Applicants who previously were licensed and in good standing in Texas may obtain a new license without reexamination if they:

(1) are licensed in good standing in another state;

(2) practiced in that state for at least the preceding two years before the date of their current licensure application; and

(3) pay DADS a \$500 reactivation fee.

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**Source Note:** The provisions of this §18.40 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.41      Licensure of Persons with Criminal Backgrounds**

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(a) DADS considers an applicant's or a licensee's conviction of a crime related to the duties, responsibilities and job performance of an administrator as a potential basis for:

(1) denying an initial or renewal application for licensure; and

(2) imposing a sanction listed in §18.57 of this chapter (relating to Schedule of Sanctions).

(b) DADS considers the following when determining if a criminal conviction directly relates to the duties and responsibilities of a nursing facility administrator:

- (1) the nature and seriousness of the crime;
  - (2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and
  - (3) the relationship of the crime to the ability or fitness required to perform the duties of nursing facility administrator.
- (c) DADS has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an administrator:
- (1) intentionally acting as a nursing facility administrator without a license;
  - (2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:
    - (A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;
    - (B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;
    - (C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or
    - (D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses; or
  - (3) committing an offense listed in Texas Health and Safety Code §250.006.
- (d) DADS may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.
- (e) Convictions under federal law or another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for DADS imposing sanctions.

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**Source Note:** The provisions of this §18.41 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

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## **RULE §18.51      Referral and Complaint Procedures**

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- (a) DADS' Professional Credentialing Enforcement Unit receives and investigates:
  - (1) referrals from Regulatory Services Division regional staff to determine an administrator's compliance with licensure requirements when survey findings cite deficiencies or substandard quality of care; and
  - (2) complaints alleging an administrator violated one or more of the licensure rules.
- (b) Persons wanting to file a complaint against a licensee may contact the Professional Credentialing Enforcement Unit:
  - (1) by calling (512) 438-5495; or
  - (2) by writing the Department of Aging and Disability Services, Professional Credentialing Enforcement Unit, Mail Code E-302, ATTN: NFA Complaint Investigations, P.O. Box 149030, Austin, TX 78714-9030.
- (c) DADS sends a Nursing Facility Administrator Complaint form to persons wanting to file a

complaint. The complainant must complete, sign, and return the form to DADS.

(d) If a referral or complaint is received, the Professional Credentialing Enforcement Unit notifies the licensee and, if applicable, the person filing the complaint of the:

- (1) alleged rule violation;
- (2) assigned case number; and
- (3) investigator contact information.

(e) DADS investigates referrals and complaints by first determining if a complaint is within Professional Credentialing Enforcement Unit authority to investigate, then by:

(1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;

(2) gathering additional evidence, including licensee and witness statements;

(3) determining licensee culpability for survey or investigative findings; and

(4) utilizing the services of a private investigator when special circumstances exist.

(f) DADS keeps records confidential in accordance with state and federal law.

(g) DADS prioritizes complaints as follows:

(1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.

(2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days of receipt.

(h) After the investigation is complete, a final report with supporting documentation is given to the NFAAC for review and recommendation consideration on the appropriate action.

(i) After evaluating the NFAAC's recommendation, DADS makes a decision to:

(1) impose a sanction;

(2) collect additional information; or

(3) dismiss the case.

(j) DADS notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.

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**Source Note:** The provisions of this §18.51 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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## **RULE §18.41      Licensure of Persons with Criminal Backgrounds**

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(a) DADS considers an applicant's or a licensee's conviction of a crime related to the duties, responsibilities and job performance of an administrator as a potential basis for:

(1) denying an initial or renewal application for licensure; and

(2) imposing a sanction listed in §18.57 of this chapter (relating to Schedule of Sanctions).

(b) DADS considers the following when determining if a criminal conviction directly relates to the duties and responsibilities of a nursing facility administrator:

(1) the nature and seriousness of the crime;

(2) the extent to which a license may offer an individual an opportunity to engage in the same type of criminal activity; and

(3) the relationship of the crime to the ability or fitness required to perform the duties of nursing facility administrator.

(c) DADS has determined that a conviction of the following crimes relates to nursing facility administration and reflects an inability to perform or tendency to inadequately perform as an administrator:

(1) intentionally acting as a nursing facility administrator without a license;

(2) attempting or conspiring to commit or committing any offense under the following chapters of the Texas Penal Code:

(A) Title 5 (offenses against persons), including homicide, kidnapping, unlawful restraint, and sexual and assault offenses;

(B) Title 7 (offenses against property), including arson, criminal mischief, robbery, burglary, criminal trespass, theft, fraud, computer crimes, telecommunications crimes, money laundering, and insurance fraud;

(C) Title 9 (offenses against public order and decency), including disorderly conduct and public indecency; or

(D) Title 10 (offenses against public health, safety, and morals), including weapons, gambling, conduct affecting public health, intoxication, and alcoholic beverage offenses; or

(3) committing an offense listed in Texas Health and Safety Code §250.006.

(d) DADS may consider other crimes and pertinent information as a potential basis for denying an initial or renewal application.

(e) Convictions under federal law or another state or nation for offenses containing elements similar to offenses listed in subsection (c) of this section may be a basis for DADS imposing sanctions.

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**Source Note:** The provisions of this §18.41 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

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## **RULE §18.51      Referral and Complaint Procedures**

---

(a) DADS' Professional Credentialing Enforcement Unit receives and investigates:

(1) referrals from Regulatory Services Division regional staff to determine an administrator's compliance with licensure requirements when survey findings cite deficiencies or substandard quality of care; and

(2) complaints alleging an administrator violated one or more of the licensure rules.

(b) Persons wanting to file a complaint against a licensee may contact the Professional Credentialing Enforcement Unit:

(1) by calling (512) 438-5495; or

(2) by writing the Department of Aging and Disability Services, Professional Credentialing Enforcement Unit, Mail Code E-302, ATTN: NFA Complaint Investigations, P.O. Box 149030, Austin, TX 78714-9030.

(c) DADS sends a Nursing Facility Administrator Complaint form to persons wanting to file a complaint. The complainant must complete, sign, and return the form to DADS.

(d) If a referral or complaint is received, the Professional Credentialing Enforcement Unit notifies the licensee and, if applicable, the person filing the complaint of the:

(1) alleged rule violation;

- (2) assigned case number; and
  - (3) investigator contact information.
  - (e) DADS investigates referrals and complaints by first determining if a complaint is within Professional Credentialing Enforcement Unit authority to investigate, then by:
    - (1) reviewing pertinent documentation maintained by the facility, including financial and resident medical records;
    - (2) gathering additional evidence, including licensee and witness statements;
    - (3) determining licensee culpability for survey or investigative findings; and
    - (4) utilizing the services of a private investigator when special circumstances exist.
  - (f) DADS keeps records confidential in accordance with state and federal law.
  - (g) DADS prioritizes complaints as follows:
    - (1) Priority one complaints allege physical abuse, sexual abuse, neglect, serious injury, death, or immediate jeopardy to resident health or safety. Investigations are initiated within 24 hours of receipt or by the next working day.
    - (2) Priority two complaints allege all other types of misconduct by the licensee. Investigations are initiated within 30 days of receipt.
  - (h) After the investigation is complete, a final report with supporting documentation is given to the NFAAC for review and recommendation consideration on the appropriate action.
  - (i) After evaluating the NFAAC's recommendation, DADS makes a decision to:
    - (1) impose a sanction;
    - (2) collect additional information; or
    - (3) dismiss the case.
  - (j) DADS notifies the licensee and, if applicable, the person filing a complaint of the status and final outcome of a complaint or referral.
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**Source Note:** The provisions of this §18.51 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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## **RULE §18.52      Informal Reviews**

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- (a) Before DADS initiates proceedings for a sanction, DADS gives a licensee:
    - (1) a description of the alleged rule violation(s) warranting the proposed sanction;
    - (2) an opportunity to demonstrate compliance with all requirements of the law for retention of the license; and
    - (3) the option to accept the sanction.
  - (b) A licensee's request for an informal review must:
    - (1) be received by DADS within 10 calendar days after the licensee receives DADS' notice letter; and
    - (2) contain documentation that refutes the allegations.
  - (c) DADS conducts the informal review:
    - (1) by telephone;
    - (2) in person; or
    - (3) by reviewing the licensee's written response and supporting evidence.
  - (d) DADS provides the licensee with official notice of the outcome of the informal review.
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**Source Note:** The provisions of this §18.52 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.53      Formal Hearings**

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- (a) DADS gives a licensee a formal hearing notice:
- (1) when DADS proposes a sanction; and
  - (2) when DADS upholds or modifies a proposed sanction after an informal review, in accordance with §18.52 of this chapter (relating to Informal Reviews).
- (b) The formal hearing notice to the licensee includes:
- (1) DADS' decision to continue with sanctions;
  - (2) the option for the licensee to accept the sanction as proposed; and
  - (3) the option to request a formal hearing no later than 15 days after receiving DADS' notice letter.
- (c) DADS imposes sanctions against a licensee when:
- (1) the licensee accepts DADS' decision to impose the sanction;
  - (2) the administrative law judge upholds DADS' proposed sanction after the formal hearing; or
  - (3) the licensee does not respond to DADS' formal hearing notice.
- (d) A hearing is governed by 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act).
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**Source Note:** The provisions of this §18.53 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795; amended to be effective September 1, 2010, 35 TexReg 6832

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**RULE §18.54      Rule or Statutory Violations**

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DADS may impose sanctions listed in §18.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for the following statutory violations:

- (1) the licensee willfully or repeatedly violated a provision of Texas Health and Safety Code, Chapter 242, or a rule in this chapter;
- (2) the licensee willfully or repeatedly acted in a manner inconsistent with the health and safety of the residents of a nursing facility of which the licensee is an administrator;
- (3) the licensee obtained or attempted to obtain a license through misrepresentation or deceit or by making a material misstatement of fact on a license application;
- (4) the licensee's use of alcohol or drugs creates a hazard to the residents of a facility;
- (5) a judgment of a court of competent jurisdiction finds that the licensee is mentally incapacitated;
- (6) the licensee has been convicted in a court of competent jurisdiction of a criminal offense listed in §18.41(c) of this chapter (relating to Licensure of Persons with Criminal Backgrounds);  
or
- (7) the licensee has been negligent or incompetent in the licensee's duties as a nursing facility administrator.

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**Source Note:** The provisions of this §18.54 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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**RULE §18.55      Violations of Standards of Conduct**

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(a) DADS may impose a sanction listed in §18.57 of this subchapter (relating to Schedule of Sanctions) against a licensee for violations of the following nursing facility administrator Standards of Conduct:

(1) A licensee must employ sufficient staff to adequately meet the needs of nursing facility residents as determined by care outcomes.

(2) A licensee must ensure that sufficient resources are present to provide adequate nutrition, medications, and treatments to nursing facility residents in accordance with physician orders as determined by care outcomes.

(3) A licensee must promote and protect the rights of nursing facility residents and ensure that employees, contractors, and others respect the rights of residents.

(4) A licensee must ensure that nursing facility residents remain free of chemical and physical restraints unless required by a physician's order to protect a nursing facility resident's health and safety.

(5) A licensee must report and direct nursing facility staff to report to the appropriate government agency any suspected case of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter (relating to Definitions).

(6) A licensee must ensure that the nursing facility is physically maintained in a manner that protects the health and safety of the residents and the public.

(7) A licensee must notify and direct employees to notify an appropriate government agency of any suspected cases of criminal activity as defined by state and federal laws.

(8) A licensee must post in the nursing facility where employed the notice provided by DADS that gives the address and telephone number for reporting complaints against an administrator. The notice must be posted in a conspicuous place and in clearly legible type.

(9) A licensee must not knowingly or through negligence commit, direct, or allow actions that result or could result in inadequate care, harm, or injury to a nursing facility resident.

(10) A licensee must not knowingly or through negligence allow nursing facility employees to harm nursing facility residents by coercion, threat, intimidation, solicitation, harassment, theft of personal property, or cruelty.

(11) A licensee must not knowingly or through negligence allow or direct employees to contradict or alter in any manner the orders of a physician regarding a nursing facility resident's medical or therapeutic care.

(12) A licensee must not knowingly commit or through negligence allow another individual to commit an act of abuse, neglect, or misappropriation of resident property as defined in §18.2 of this chapter.

(13) A licensee must not permit another individual to use his or her license or allow a nursing facility to falsely post his or her license.

(14) A licensee must not advertise or knowingly participate in the advertisement of nursing facility services in a manner that is fraudulent, false, deceptive, or misleading in form or content.

(15) A licensee must not knowingly allow, aid, or abet a violation by another licensed nursing

facility administrator of the Texas Health and Safety Code, Chapter 242, Subchapter I, or the agency's rules adopted under that subchapter and must report such violations to DADS.

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

(17) A licensee must not allow an employee's, a contractor's, or another person's action or inaction to result in harassment or intimidation of any person for purposes of coercing that person to use the services or equipment of a particular health agency or facility.

(18) A licensee must not falsely bill for goods or services or allow another person to bill for goods or services other than those that have actually been rendered.

(19) A licensee must not make or file false reports or allow an employee, contractor, or volunteer to make or file a report that the licensee knows to be false.

(20) A licensee must 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.

(21) A licensee must not use or knowingly allow employees or others to use alcohol, narcotics, or other drugs in a manner that interferes with the performance of the administrator's or other person's duties.

(22) A licensee must not knowingly or through negligence violate any confidentiality provisions as prescribed by state or federal law concerning a nursing facility resident.

(23) A licensee must not interfere or impede an investigation by withholding or misrepresenting fact to DADS representatives, or by using threats or harassment against any person involved or participating in the investigation.

(24) A licensee must not display a license issued by DADS that is reproduced, altered, expired, suspended, or revoked.

(25) A licensee must not, knowingly or through negligence, allow employees or other individuals to mismanage a resident's personal funds deposited with the nursing facility.

(26) A licensee must not harass or intimidate employees of DADS, other government agencies, or their representatives concerning the administration of the nursing facility.

(27) A licensee must not offer or give any gift, loan, or other benefit to a person working for DADS unless the benefit is offered or given on account of kinship or a personal relationship independent of the official status of the person working for DADS.

(b) Negligence, as referenced in the Standards of Conduct in subsection (a) of this section, means the failure of a licensee to use such care as a reasonably prudent and careful licensee would use in similar circumstances, or failure to act as a reasonably prudent licensee would in similar circumstances.

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**Source Note:** The provisions of this §18.55 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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## **RULE §18.56      Violations by Unlicensed Persons**

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- (a) Persons with an expired license must not engage in activities that require a license.
- (b) A person practicing as a licensed nursing facility administrator after license expiration:
- (1) commits an offense punishable as a Class B misdemeanor;
  - (2) is subject to local criminal prosecution; and
  - (3) may be referred to the Office of Attorney General for civil penalties not to exceed \$1,000

per violation per day for each day the violation continues.

(c) A licensee whose license expires before an investigation is complete, may still receive:

- (1) a written reprimand; or
- (2) an administrative penalty.

(d) A licensee allowing a license to expire instead of accepting a proposed license revocation is disqualified from licensure in Texas.

(e) A person with an expired license must return the license certificate to DADS.

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**Source Note:** The provisions of this §18.56 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795

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### **RULE §18.57      Schedule of Sanctions**

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(a) DADS may impose one or more of the following sanctions against a licensee for violations listed in §18.54 of this subchapter (relating to Rule or Statutory Violations) and §18.55 of this subchapter (relating to Violations of Standards of Conduct):

- (1) revocation of license;
- (2) license suspension;
- (3) denial of application for license renewal;
- (4) assessment of an administrative penalty;
- (5) written letter of reprimand;
- (6) requiring a licensee to participate in continuing education; or
- (7) probation.

(b) If a sanction is probated, DADS may require the licensee to:

- (1) report regularly to DADS on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by DADS;
- (3) practice under the direct supervision or guidance of a DADS-certified preceptor as specified in §18.14 of this chapter (relating to Preceptor Requirements); or
- (4) complete prescribed continuing education until the licensee attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(c) Civil penalties may result from a referral to the Office of Attorney General not to exceed \$1,000 per violation per day for each day the violation continues.

(d) Administrative penalties may not exceed \$1,000 per violation per day for each day the violation continues.

(e) The amount the administrative penalty is assessed is based on:

- (1) the seriousness of the violation, including:
  - (A) the nature, circumstances, extent, and gravity of prohibited acts; and
  - (B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) economic harm to property or environment;
- (3) history of previous violations;
- (4) amount necessary to deter future violations;
- (5) efforts to correct the violations;
- (6) the severity level of the violation:
  - (A) Level I--\$500 to \$1,000 for violations that have or had an adverse impact on nursing

facility resident health or safety that includes serious harm, permanent injury, or death to a nursing facility resident;

(B) Level II--\$250 to \$500 for violations that have or had a potential or adverse impact on the health or safety of a nursing facility resident, but less impact than Level I; or

(C) Level III--\$250 or less for violations having minimal or no significant impact on nursing facility resident health or safety; and

(7) any other matter that justice may require.

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**Source Note:** The provisions of this §18.57 adopted to be effective June 1, 2004, 29 TexReg 4233; amended to be effective June 1, 2009, 34 TexReg 2795