

October 17, 2017

**Via U.S. Mail and E-Mail**

Nadine Pfeiffer  
Rulemaking Coordinator  
Division of Health Service Regulation  
2701 Mail Service Center  
Raleigh, NC 27699-2701  
[DHSR.RulesCoordinator@dhhs.nc.gov](mailto:DHSR.RulesCoordinator@dhhs.nc.gov)

**Re: North Carolina Board of Nursing Home Administrators; Written Comments,  
Proposed 10A NCAC 13D .2201**  
Our File: 4810.000005

Dear Ms. Pfeiffer:

I am the attorney for the North Carolina Board of Nursing Home Administrators and am providing comment as to the proposed amendments to 10A NCAC 13D .2201. As you are aware, the licensing of nursing home administrators is the sole purview of the Board pursuant to N.C. G.S. § 90-275.1, *et seq.* While the proposed amendments to .2201 are an improvement, a couple of these amendments are still inconsistent with the Board of Nursing Home Administrators' law and rules. In light of that, I would like to propose the following changes.

Regarding the changes to subsection (a), there is no need to make a distinction between a license and a temporary license; both are a license. Therefore, I suggest that this rule be worded such that either a period be placed after the word "Administrators", leaving the current proposed strikethroughs the same, or a citation to the Board's enabling statute (i.e. G.S. 90-275.1, *et seq.*) be inserted after "Administrators." Regarding subsection (b), this is not a requirement of the Board's law and rules, therefore if the Division desires to ensure that the administrator's duties are set forth in a written agreement, the Board has no jurisdiction so long as that written agreement does not conflict with the Board's law and rules.

Under subsection (c), this rule as currently written is not in direct accord with 21 NCAC 37B .0201. The Board's law and rules do not require the administrator to be responsible on a full time basis but merely be "physically present . . . for an amount of time sufficient to assure the facility's substantial compliance with applicable State and federal laws and rules." If the Division determines that to do so the administrator must be there "on a full-time basis" that may well be within the purview of the Division. However, I would expect questions from the Rules Review Commission as to the definition of "full-time," and as to whether this requirement contravenes the Board's rule.

Ms. Pfeiffer  
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In regards to subsection (d), the Board has no jurisdiction over what the Division may require of an administrator pursuant to the Division's law and rules, so long as the requirements do not conflict, and therefore has no objection to the rewrite of this section.

As to subsection (f), it is my suggestion that following the strikethrough of the word "temporary" that the word "physical" be added thereby modifying "absence." I am a bit concerned that somebody could interpret this to mean that the facility could do without an administrator by merely designating someone to be in charge of the operations during an interim period following the resignation or dismissal of an administrator, which of course is prohibited by the Board of Nursing Home Administrators' law and rules.

Thank you for allowing the Board the opportunity to comment on these proposed changes to this rule and we appreciate the fact that the Division includes direct references to the duties of the administrator in its rules. If I may assist in any other manner, please let me know.

Very truly yours,

BAILEY & DIXON, LLP

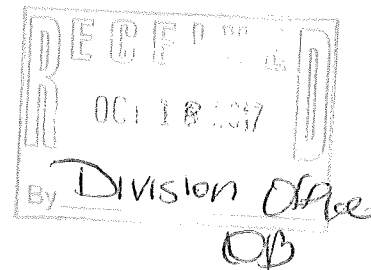
Jeffrey P. Gray  
Legal Counsel  
Board of Nursing Home Administrators

cc: Jane A. Baker, Executive Director  
Dawn Wilson, Chair

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