

By: Nelson

S.B. No. 806

A BILL TO BE ENTITLED

AN ACT

relating to the imposition of a disciplinary action on a licensed nursing facility administrator; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 242.002, Health and Safety Code, is amended by amending Subdivision (4) and adding Subdivision (5-a) to read as follows:

(4) "Department" means the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services.

(5-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION 2. Subsections (a), (c), (d), and (e), Section 242.313, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this subchapter;

1 (2) the license holder has wilfully or repeatedly
2 acted in a manner inconsistent with the health and safety of the
3 residents of a facility of which the license holder is an
4 administrator;

5 (3) the license holder obtained or attempted to obtain
6 a license through misrepresentation or deceit or by making a
7 material misstatement of fact on a license application;

8 (4) the license holder's use of alcohol or drugs
9 creates a hazard to the residents of a facility;

10 (5) a judgment of a court of competent jurisdiction
11 finds that the license holder is mentally incapacitated;

12 (6) the license holder has been convicted in a court of
13 competent jurisdiction of a misdemeanor or felony involving moral
14 turpitude; ~~[or]~~

15 (7) the license holder has been convicted in a court of
16 competent jurisdiction of an offense listed in Section 250.006; or

17 (8) the license holder has been negligent or
18 incompetent in the license holder's duties as a nursing facility
19 administrator.

20 (c) A license holder is entitled to a hearing in accordance
21 with rules adopted ~~[promulgated]~~ by the executive commissioner
22 ~~[board]~~ before a sanction is imposed under this section.

23 (d) The executive commissioner ~~[board]~~ by rule shall adopt a
24 broad schedule of sanctions for violations under this subchapter.
25 The department shall use the schedule for any sanction imposed ~~[as~~
26 ~~the result of a hearing conducted]~~ in accordance with the rules.

27 (e) The executive commissioner ~~[department]~~ shall by rule

1 establish criteria to determine whether deficiencies from a
2 facility's survey warrant action against an administrator. The
3 criteria shall include a determination of whether the survey
4 indicates substandard quality of care related to an act or failure
5 to act by the administrator, and whether a deficiency is related to
6 an act or failure to act by the administrator. If a deficiency on
7 which a disciplinary action against an administrator is initiated
8 or completed is not substantiated, the disciplinary action shall be
9 reversed.

10 SECTION 3. Subsections (c) and (d), Section 242.316, Health
11 and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84),
12 Acts of the 75th Legislature, Regular Session, 1997, are amended to
13 read as follows:

14 (c) If the person accepts the determination and the penalty
15 recommended by the department, or if the person fails to timely
16 respond to the notice, the department shall impose the recommended
17 penalty.

18 (d) If the person requests a hearing [~~or fails to respond~~
19 ~~timely to the notice~~], the department shall set a hearing and give
20 notice of the hearing to the person. The hearing shall be held in
21 accordance with the [~~department's~~] rules on contested case hearings
22 adopted by the executive commissioner.

23 SECTION 4. Subsections (a) and (d), Section 242.318, Health
24 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),
25 Acts of the 75th Legislature, Regular Session, 1997, are amended to
26 read as follows:

27 (a) The board may revoke, suspend, or refuse to renew a

1 nursing facility administrator's license, assess an administrative
2 penalty, issue a written reprimand, require participation in
3 continuing education, or place an administrator on probation, after
4 due notice and the opportunity for a hearing, on proof of any of the
5 following grounds:

6 (1) the license holder has wilfully or repeatedly
7 violated a provision of this subchapter or a rule adopted under this
8 subchapter;

9 (2) the license holder has wilfully or repeatedly
10 acted in a manner inconsistent with the health and safety of the
11 residents of a facility of which the license holder is an
12 administrator;

13 (3) the license holder obtained or attempted to obtain
14 a license through misrepresentation or deceit or by making a
15 material misstatement of fact on a license application;

16 (4) the license holder's use of alcohol or drugs
17 creates a hazard to the residents of a facility;

18 (5) a judgment of a court of competent jurisdiction
19 finds that the license holder is mentally incapacitated;

20 (6) the license holder has been convicted in a court of
21 competent jurisdiction of a misdemeanor or felony involving moral
22 turpitude; [~~or~~]

23 (7) the license holder has been convicted in a court of
24 competent jurisdiction of an offense listed in Section 250.006; or

25 (8) the license holder has been negligent or
26 incompetent in the license holder's duties as a nursing facility
27 administrator.

1 (d) The board by rule shall adopt a broad schedule of
2 sanctions for violations under this subchapter. The board shall
3 use the schedule for any sanction imposed [~~as the result of a~~
4 ~~hearing conducted~~] in accordance with the rules.

5 SECTION 5. Subsections (c) and (d), Section 242.321, Health
6 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),
7 Acts of the 75th Legislature, Regular Session, 1997, are amended to
8 read as follows:

9 (c) If the person accepts the determination and the penalty
10 recommended by the department, or if the person fails to timely
11 respond to the notice, the department shall impose the recommended
12 penalty.

13 (d) If the person requests a hearing [~~or fails to respond~~
14 ~~timely to the notice~~], the department shall set a hearing and give
15 notice of the hearing to the person. The hearing shall be held in
16 accordance with the [~~department's~~] rules on contested case hearings
17 adopted by the executive commissioner.

18 SECTION 6. The change in law made by this Act applies only
19 to a disciplinary action imposed on or after the effective date of
20 this Act. A disciplinary action imposed before that date is
21 governed by the law in effect at the time the action was initiated,
22 and the former law is continued in effect for that purpose.

23 SECTION 7. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2009.