

By: Nelson

S.B. No. 806

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the imposition of a disciplinary action on a licensed  
3 nursing facility administrator; providing a penalty.

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

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

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

10 (5-a) "Executive commissioner" means the executive  
11 commissioner of the Health and Human Services Commission.

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

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

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

24 (2) the license holder has wilfully or repeatedly

1 acted in a manner inconsistent with the health and safety of the  
2 residents of a facility of which the license holder is an  
3 administrator;

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

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

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

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

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

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

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

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

26 (e) The executive commissioner ~~[department]~~ shall by rule  
27 establish criteria to determine whether deficiencies from a

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

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

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

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

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

25 (a) The board may revoke, suspend, or refuse to renew a  
26 nursing facility administrator's license, assess an administrative  
27 penalty, issue a written reprimand, require participation in

1 continuing education, or place an administrator on probation, after  
2 due notice and hearing, on proof of any of the following grounds:

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

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

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

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

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

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

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

22 (8) the license holder has been negligent or  
23 incompetent in the license holder's duties as a nursing facility  
24 administrator.

25 SECTION 5. Section 242.321(c), Health and Safety Code, as  
26 added by Section 2.01, Chapter 1280 (S.B. 84), Acts of the 75th  
27 Legislature, Regular Session, 1997, is amended to read as follows:

1           (c) If the person accepts the determination and the penalty  
2 recommended by the department, or if the person fails to timely  
3 respond to the notice, the department shall impose the recommended  
4 penalty.

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

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