

1984 WL 249793 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 17, 1984

***1 RE: Opinion Request No. 961**

Ms. Bonnie L. Carroll
Executive Director
State Board of Examiners for Nursing Home Administrators
Post Office Box 11477
Capitol Station
Columbia, South Carolina 29211

Dear Ms. Carroll:

You have asked whether a formal hearing is necessary for the issuance of a reprimand by the State Board of Examiners for Nursing Home Administrators where a particular nursing home administrator was alleged to have provided negligent care of patients and such allegations were substantiated by the Department of Health and Environmental Control. The answer to your question is found in [§ 40-35-130, CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), which states in pertinent part:

‘The license or registration of any person practicing or offering to practice nursing home administration or the license of a nursing home administrator holding a provisional license, may be revoked or suspended, or the licensee be disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases;’ (emphasis added)

It is clear under your enabling legislation and your [Regulations 93-240](#) and [93-250](#), that a formal hearing will be necessary before any discipline may be considered by the Board.¹ The findings of DHEC could, under certain conditions, be admissible as evidence in the hearing, but would not be determinative of the issue. I would be glad to consult with you on this in order that we might put the information from DHEC in the proper perspective. It would perhaps be necessary to call specific DHEC employees as witnesses at your hearing.

In any contested case such as this, it would be necessary to follow the Administrative Procedures Act very carefully in setting up and conducting your hearing. [§ 1-23-370, CODE](#). It is very important that you consult with me in setting up and conducting your hearing, because the Administrative Procedures Act makes very specific requirements as to notice and evidentiary matters.

I trust this has sufficiently answered your question. If not, please feel free to contact me at your convenience.

Sincerely,

Clifford O. Koon, Jr.
Assistant Attorney General

Footnotes

¹ This requirement is grounded in the concept of due process, further discussion of which is unnecessary for the purposes of this opinion.

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