

1982 WL 189527 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 24, 1982

\*1 Mrs. Bonnie L. Carroll  
Administrative Assistant  
South Carolina State Board of Examiners for Nursing Home Administrators  
Post Office Box 11477  
Columbia, South Carolina 29211

Dear Mrs. Carroll:

You have asked whether the State Board of Examiners for Nursing Home Administrators may issue a nursing home administrator's license which is restricted to a facility serving only the mentally retarded. Encompassed in your inquiry is whether the Board may waive certain licensing requirements when issuing a restricted license. It is the opinion of this office that the Board is not authorized to issue a license restricted in that manner or waive licensing requirements.

This state's regulatory plan for the licensing of nursing home administrators is codified at §§ 40-35-10 et seq., Code of Laws for South Carolina, 1976, as amended. The statutes evince an intent to issue but two types of licenses: (1) a nursing home administrator's license, and (2) an emergency nursing home administrator's license. § 40-35-30. No other type of license is mentioned as being within the province of the Nursing Home Administrators Board. Section 40-35-30 requires that no license shall be issued unless the five requisites therein are met. There appears to be no flexibility in this mandate that all requirements within §40-35-30, including the successful completion of the examination, are to be met prior to the issuance of a nursing home administrators license. [The only exception being an emergency license restricted to bona fide emergencies and limited in duration.]

This conclusion is further supported by the rules and regulations promulgated by the Board. R93-12, Rules and Regulations of the State Board provides:

a. An applicant for a license as a Nursing Home Administrator who has successfully complied with the requirements of the licensing law and the standards provided for herein; passed the examination provided for herein; and where applicable complied with the requirements for nursing home administrator-in-training shall be issued a license on a form provided for that purpose by the Board, certifying that such applicant has met the requirements of law, rules and regulations entitling him to serve, act, practice, and otherwise hold himself out as a duly licensed Nursing Home Administrator.

The only other license recognized in the Board's rules and regulations is the provisional license which is synonymous with the emergency license discussed hereinabove.

The federal regulations pertaining to the state's program for licensing of nursing home administrators offer further support for this conclusion. 42 C.F.R. § 431.707 requires, inter alia, the state agency to impose and enforce standards that must be met by individuals in order to be licensed as a nursing home administrator. License is defined in 42 C.F.R. 431.701 as meaning 'certified by a State agency or Board as meeting all of the requirements for a licensed nursing home administrator specified in this subpart'. [Emphasis added]. The only exception to this requirement present in the federal regulations appears to be authorization for the State Board to issue provisional license in the event of the occurrence of an emergency and limited in its duration. 42 C.F.R. § 710.

\*2 Accordingly, you are advised that all persons licensed as Nursing Home Administrators in South Carolina must meet the requirements of § 40-35-30, [Code of Laws of South Carolina](#), 1976, as amended. You are further advised that there appears to be no provision authorizing a restricted or limited Nursing Home Administrators license other than that referred to as an emergency or provisional license.

Very truly yours,

Edwin E. Evans  
Senior Assistant Attorney General

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