

ARTICLE 39 265
Nursing Home Administrators

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1 **12-265-101. [Formerly 12-39-101] Legislative declaration.** The general assembly
2 declares that the intent of this article **265** is to provide a measure of protection to the
3 residents of nursing homes in this state who are aged or who have disabilities by establishing
4 a means to regulate nursing home administrators to ensure quality administration and sound
5 management of nursing homes. It is also the intent of the general assembly that the board of
6 examiners of nursing home administrators be adequately funded to carry out the duties and
7 functions specified by this article **265** as well as the legislative intent expressed in this
8 section.

1 **12-265-102. Applicability of common provisions.** ARTICLES 1, 20, AND 30 OF THIS
2 TITLE 12 APPLY, ACCORDING TO THEIR TERMS, TO THIS ARTICLE 265.
3

4 **12-265-103. [Formerly 12-39-102] Definitions.** As used in this article 265, unless
5 the context otherwise requires:

6 (1) "Board" means the board of examiners of nursing home administrators CREATED
7 IN SECTION 12-265-106.

8 (2) "Nursing home administrator" means any individual licensed and responsible for
9 planning, organizing, directing, and controlling the operation of a nursing home or who in
10 fact performs ~~such~~ THESE functions, whether or not ~~such~~ THESE functions are shared by one
11 or more other persons.

12 (3) "Nursing home administrator-in-training" means an individual registered with the
13 board pursuant to the provisions of this article 265.

14 (4) "Nursing home facility" shall have the same meaning as that set forth in section
15 25-1-1002, ~~C.R.S.~~, and shall include nursing care facilities, whether proprietary or nonprofit,
16 ~~which~~ THAT are licensed under section 25-1.5-103 (1)(a)(I), ~~C.R.S.~~, or pursuant to the rules
17 for nursing homes promulgated by the department of public health and environment. The
18 term "nursing home" includes but is not limited to nursing homes owned or administered by
19 the state government or any agency or political subdivision thereof.

20 (5) "Practice of nursing home administration" means the planning, organizing,
21 directing, and control of the operation of a nursing home.

22 (6) "Reasonable grounds" means facts and circumstances sufficiently strong to
23 warrant a prudent person to believe that the facts and circumstances are true.
24

25 **12-265-104. [Formerly 12-39-103] Administrator license required.** No person shall
26 practice or offer to practice nursing home administration in this state or use any title, sign,
27 card, or device to indicate that ~~such~~ THE person is a nursing home administrator, unless ~~such~~
28 THE person has been duly licensed as a nursing home administrator as required by this article
29 265.
30

31 **12-265-105. [Formerly 12-39-103.5] State training school.** The nursing home
32 administrator in each of the three state home and training schools at Grand Junction, Pueblo,
33 and Wheat Ridge is not required to be the superintendent of ~~such~~ THE facility.
34

35 **12-265-106. [Formerly 12-39-104] Board of examiners of nursing home
36 administrators - creation - subject to termination.** (1) (a) The board of examiners of
37 nursing home administrators is hereby created in the division. ~~of professions and occupations~~
38 ~~in the department of regulatory agencies.~~ The board is composed of the following members
39 appointed by the governor:

40 (I) Three members who are practicing nursing home administrators duly licensed
41 under this article 265, at least one of whom shall be from nonprofit facility administration;
42 AND

1 ~~(H) Repealed.~~

2 ~~(HH) (II) Three members shall be representative of the public at large; except that~~
3 ~~upon the expiration of the term of office of the one member of the board representing the~~
4 ~~public whose term expires on July 1, 2011, the board shall consist of~~ Two members
5 representative of the public at large. <{Does the repealed language have any continuing

6 effect?}>
7 (b) No more than three of the members of the board shall be officials or full-time
8 employees of state government or local governments. The term of office for each member
9 of the board shall be four years. No member of the board shall serve more than two
10 consecutive terms. All the members of the board shall be residents of this state.

11 (2) (a) The governor shall make appointments to the board. In making an appointment
12 to fill a vacancy on the board in the position of, or to fill the remainder of an unexpired term
13 for, a nursing home administrator who is from nonprofit facility administration, as required
14 by subparagraph (I) of paragraph (a) of subsection (1) SUBSECTION (1)(a)(I) of this section,
15 if the governor, after a good-faith attempt, is unable to find a nursing home administrator
16 candidate who comes from nonprofit facility administration to fill the vacancy or complete
17 the unexpired term, the governor may appoint any qualified nursing home administrator to
18 complete the unexpired term or fill the vacancy in that board position. If the appointment is
19 to fill a vacancy, the board member may serve the full term and is eligible for appointment
20 for a second term.

21 (b) The governor may remove any board member for negligence, incompetency,
22 unprofessional conduct, or willful misconduct. Actions constituting neglect of duty include
23 but are not limited to three unexcused absences from scheduled meetings in any one calendar
24 year. The governor shall fill a vacancy in the membership of the board for the remainder of
25 the unexpired term. A member who is a practicing nursing home administrator or long-term
26 care professional shall serve for a full term only if, during ~~such~~ THE term, ~~such~~ THE member
27 is actively employed as a practicing member of his or her profession without a lapse of
28 employment greater than one hundred twenty days.

29 (3) The board shall elect annually from its membership a chair and vice-chair. The
30 board shall hold two or more meetings each year. At any meeting a majority shall constitute
31 a quorum.

32 (4) The board shall exercise its powers and perform its duties and functions specified
33 by this article 265 under the department of regulatory agencies and the executive director
34 thereof and the division of professions and occupations as if the same were transferred to the
35 department by a type 1 transfer ENTITY as such transfer is defined in the "Administrative
36 Organization Act of 1968", article 1 of title 24, C.R.S. SECTION 24-1-105. <{Suggest updates

37 based on the Statutory Revision Committee's proposed bill.}>
38 (5) The director of the division of professions and occupations in the department of
39 regulatory agencies may appoint, subject to section 13 of article XII of the state constitution,
40 a program director to FOR the board. <{Based on the following sentence, does substituting

41 "for" for "to" make sense?}> The program director shall not be a member of the board, but
42 shall have ~~such~~ THE powers and shall perform ~~such~~ THE duties as are prescribed by law and

1 the rules of the board. Additional staff may be appointed by the director of the division of
2 professions and occupations to adequately assist the board and the program director in
3 keeping records and in the performance of their duties. These employees, if any, shall be
4 appointed and serve in accordance with section 13 of article XII of the state constitution.

5 ~~(6) The provisions of section 24-34-104, C.R.S., concerning the termination schedule~~
6 ~~for regulatory bodies of the state unless extended as provided in that section, are applicable~~
7 ~~to the board of examiners of nursing home administrators created by this section.~~
8 <{***Redundant with the sunset section, 12-265-124; recommend repeal.***}>

9 ~~(7) Repealed.~~

10
11 **12-265-107. [Formerly 12-39-104.5] Qualifications of board members.** (1) A
12 nursing home administrator is qualified to be appointed to the board if the person:

13 (a) Is a legal resident of Colorado;

14 (b) Is currently licensed as a nursing home administrator; and

15 (c) Has been actively engaged as a licensed nursing home administrator for at least
16 three years.

17 (2) Notwithstanding subsection (1) of this section, a person convicted of a felony in
18 Colorado or any other state or of violating this article **265** or any law governing the practice
19 of nursing home administrators shall not be appointed to or serve on the board. <{***Should***
20 ***this section be consolidated with 12-265-106?***}>

21
22 **12-265-108. Powers and duties of the board - rules.** (1) [Formerly 12-39-105
23 (1)] ~~(a)~~ The board has the following powers and duties:

24 ~~(A)~~ (a) (I) To adopt rules defining standards of nursing home administration,
25 including the responsibilities and duties of nursing home administrators, consistent with this
26 article **265**. The standards established in the rules shall be met by individuals in order to
27 receive and retain a license and shall be designed to ensure that nursing home administrators
28 are qualified by education and training in the appropriate field to serve as nursing home
29 administrators.

30 ~~(B)~~ (II) To develop and apply appropriate techniques, including examinations and
31 investigations, for determining whether an individual meets ~~such~~ THE standards;

32 ~~(H)~~ (b) To issue licenses to individuals determined, after application of ~~such~~ THE
33 techniques, to meet ~~such~~ THE standards specified in ~~subparagraph (I) of this paragraph (a)~~
34 SUBSECTION (1)(a) OF THIS SECTION;

35 ~~(HH)~~ (c) To revoke, suspend, withhold, or refuse to renew any license previously
36 issued by the board, to place a licensee or temporary license holder on probation, or to issue
37 a letter of admonition to a licensee in accordance with section ~~12-39-111(3)~~ **12-20-404 (4)**
38 in any case where the individual holding any such license is determined to have failed to
39 conform to the standards developed pursuant to ~~subparagraph (I) of this paragraph (a)~~
40 SUBSECTION (1)(a) OF THIS SECTION or to have committed an act that constitutes grounds for
41 discipline as set forth in section ~~12-39-111~~ **12-265-114**;

42 ~~(IV)~~ (d) To establish and carry out procedures designed to ensure that individuals

1 licensed as nursing home administrators will, during any period that they serve as such,
2 comply with the requirements of such THE standards specified in subparagraph (f) of this
3 paragraph (a) SUBSECTION (1)(a) OF THIS SECTION.

4 ~~(v) (e) (I) To conduct investigations, hold hearings, and take evidence in all matters
5 relating to the exercise and performance of the powers and duties vested in the board and,
6 in connection with any investigation following the filing of a signed complaint, an
7 investigation initiated by the board, or any hearing, to administer oaths and issue subpoenas
8 compelling the attendance and testimony of witnesses and the production of books, papers,
9 or records relevant to an investigation or hearing ACCORDANCE WITH SECTION 12-20-403;
10 <{**Redundant with the common provision, 12-20-403; recommend amending.**}>~~

11 ~~(VI) (Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1023, § 6, effective
12 May 4, 2009.)~~

13 ~~(b) The board or an administrative law judge shall have the power to administer
14 oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of
15 witnesses and the production of all relevant papers, books, records, documentary evidence,
16 and materials in any hearing, investigation, accusation, or other matter coming before the
17 board. The board may appoint an administrative law judge pursuant to part 10 of article 30
18 of title 24, C.R.S., to take evidence and to make findings and report them to the board.~~

19 ~~(II) The A person providing documents SUBPOENAED PURSUANT TO SECTION
20 12-20-403 (2) shall prepare them from the original record and shall delete from the copy
21 provided pursuant to the subpoena the name of the resident, but shall identify the resident by
22 a numbered code, to be retained by the custodian of the records from which the copies were
23 made. Upon certification of the custodian that the copies are true and complete except for the
24 resident's name, they shall be deemed authentic, subject to the right to inspect the originals
25 for the limited purpose of ascertaining the accuracy of the copies. No privilege of
26 confidentiality shall exist with respect to the copies, and no liability shall lie against the
27 board, the custodian, or the custodian's authorized employee for furnishing or using the
28 copies in accordance with this subsection (1). <{**Partially redundant with disciplinary
29 procedures common provision, 12-20-403. Recommend amending as indicated.**}>~~

30 ~~(c) Upon failure of any witness to comply with such subpoena or process, the district
31 court of the county in which the subpoenaed person or licensee resides or conducts business,
32 upon application by the board or director with notice to the subpoenaed person or licensee,
33 may issue to the person or licensee an order requiring that person or licensee to appear before
34 the board or director; to produce the relevant papers, books, records, documentary evidence,
35 or materials if so ordered; or to give evidence touching the matter under investigation or in
36 question. Failure to obey the order of the court may be punished by the court as a contempt
37 of court. <{**Redundant with the disciplinary procedures/subpoena powers common
38 provision, 12-20-403 (2); recommend repeal.**}>~~

39 (2) [Formerly 12-39-105 (3)] (a) The board shall develop rules, with input from
40 long-term care facility provider associations, the department of public health and
41 environment, the office of the state attorney general, and consumer representatives,
42 concerning factors to be considered in determining performance that fails to meet generally

1 accepted standards for nursing home administrators and whether or not remedial or
2 disciplinary actions are warranted. The board may create an advisory committee to assist the
3 board in developing standards that describe the responsibilities and duties of nursing home
4 administrators.

5 (b) If after an investigation the board determines that there are reasonable grounds
6 to believe that the performance of a licensed administrator is inconsistent with the health or
7 safety of residents in the care of the facility in which the administrator works and is contrary
8 to standards adopted by the board, the board may initiate disciplinary action as may be
9 warranted.

10 (3) [Formerly 12-39-105 (4)] The board shall have the authority to make rules
11 consistent with law as may be necessary for the proper performance of its duties PURSUANT
12 TO SECTION 12-20-204 and to take such other actions as may be necessary to enable the state
13 to meet the requirements set forth in section 1908 of the federal "Social Security Act", the
14 federal rules REGULATIONS promulgated thereunder, and other pertinent federal requirements.
15 <{*Recommend adding a cross reference to the rule-making common provision,*
16 *12-20-204.*}>

17 (4) [Formerly 12-39-107.5] The board shall promulgate rules defining the criteria for
18 the education and experience necessary for admittance to the administrator-in-training
19 program. The board shall furnish copies of the appropriate rules to members of the public
20 upon request. ~~Such~~ THE criteria for the education and experience necessary for admittance
21 to the administrator-in-training program shall not exceed successful completion of two years
22 of college level study in an accredited institution of higher education in areas relating to
23 health care or two years of board approved experience in nursing home administration or
24 comparable health management experience for each year of required education.

25
26 **12-265-109. [Formerly 12-39-106] Qualifications for admission to examination.**

27 (1) The board shall admit to examination for licensure as a nursing home administrator any
28 applicant who pays a fee as determined by the board, ~~who~~ submits evidence of suitability
29 prescribed by the board, ~~who~~ is twenty-one years of age or older, and ~~who~~ provides written
30 documentation that the applicant meets one of the following requirements:

31 (a) The applicant has successfully completed the administrator-in-training program
32 pursuant to section ~~12-39-107~~ **12-265-110**; or

33 (b) The applicant has successfully completed a bachelor's degree or higher degree in
34 public health administration or health administration, a master's degree in management or
35 business administration, or any degree or degrees deemed appropriate by the board; or

36 (c) (I) The applicant has successfully completed an associate's degree or higher
37 degree in a health care-related field or a bachelor's degree in business or public
38 administration and has a minimum of one year of experience in administration in a nursing
39 home or hospital. For the purposes of this section, a registered nurse who is a graduate of a
40 three-year diploma program meets the associate degree requirement.

41 (II) For purposes of the experience required by this ~~paragraph (c)~~ SUBSECTION (1)(c),
42 an applicant must have day-to-day, on-site responsibility for supervising, directing,

1 managing, monitoring, or exercising reasonable control over subordinates for one year.

2 (2) If the applicant fails to provide evidence satisfactory to the board that the
3 applicant meets the requirements of subsection (1) of this section, the applicant shall not be
4 admitted to take the licensing examination, and the applicant shall not be entitled to or be
5 granted a license as a nursing home administrator.

6 (3) ~~(Deleted by amendment, L. 99, p. 361, § 4, effective July 1, 1999.)~~

7
8 **12-265-110. [Formerly 12-39-107] Administrator-in-training - rules.** (1) The
9 board may grant admission into the nursing home administrator-in-training program to an
10 applicant for a nursing home administrator's license who meets the board's criteria for
11 education and experience, pursuant to section ~~12-39-107.5~~ **12-265-108 (4)**. Upon successful
12 completion of the one-thousand-hour training period, the applicant is eligible to take the
13 examination.

14 (2) ~~(Deleted by amendment, L. 2009, (SB 09-169), ch. 225, p. 1024, § 8, effective~~
15 ~~May 4, 2009.)~~

16 (3) (2) Every nursing home administrator-in-training shall register the fact of such
17 THE training with the board in accordance with the rules and on forms provided by the board.

18 (4) (3) The board shall, by rule, establish a monitoring mechanism that will provide
19 oversight of the administrator-in-training program, including a requirement that an
20 administrator-in-training submit periodic progress reports to the board.

21 (5) ~~(Deleted by amendment, L. 99, p. 362, § 5, effective July 1, 1999.)~~

22 (6) (4) The board may waive any portion required by subsection (1) of this section
23 if it finds that the applicant has prior experience or training sufficient to satisfy requirements
24 established by rule of the board.

25
26 ~~**12-39-107.5. Board to promulgate rules.** The board shall promulgate rules defining~~
27 ~~the criteria for the education and experience necessary for admittance to the~~
28 ~~administrator-in-training program. The board shall furnish copies of the appropriate rules to~~
29 ~~members of the public upon request. Such The criteria for the education and experience~~
30 ~~necessary for admittance to the administrator-in-training program shall not exceed successful~~
31 ~~completion of two years of college level study in an accredited institution of higher education~~
32 ~~in areas relating to health care or two years of board approved experience in nursing home~~
33 ~~administration or comparable health management experience for each year of required~~
34 ~~education. <{*Moved to 12-265-108 (4).*}>~~

35
36 **12-265-111. [Formerly 12-39-108] Licenses - temporary licenses - renewal - fees**
37 **- rules.** (1) Any license issued by the board shall be valid for a period determined pursuant
38 to a schedule established by the director of the division of professions and occupations within
39 the department of regulatory agencies and shall be renewed or reinstated pursuant to section
40 24-34-102 (8), C.R.S. The director of the division of professions and occupations within the
41 department of regulatory agencies may establish renewal fees and delinquency fees for
42 reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her

license pursuant to the schedule established by the director of the division of professions and occupations, such license shall expire PURSUANT TO THIS ARTICLE 265 IS SUBJECT TO THE RENEWAL, EXPIRATION, REINSTATEMENT, AND DELINQUENCY FEE PROVISIONS SPECIFIED IN SECTION 12-20-202 (1) AND (2). Any person whose license has expired shall be subject to the penalties provided in this article 265 or section 24-34-102 (8), C.R.S. 12-20-202 (1). <{***Redundant with renewal/reinstatement common provision, 12-20-202. Recommend amending as indicated.***}>

(2) Repealed.

(3) (2) Only an individual who has qualified as a licensed nursing home administrator under the provisions of this article 265 and who holds a valid current license pursuant to the provisions of this section has the privilege of using the title "nursing home administrator" and the right and the privilege of using the abbreviation "N.H.A." after such THE person's name.

(4) (3) The board shall maintain a list of all licensed nursing home administrators, which list shall show: the place of residence, the name and age of each licensee, any action taken by the board, the number of the license issued to the licensee, and such other pertinent information as the board may deem necessary. The department shall keep a list of applicants who are denied.

(5) (4) The board may issue a temporary license to an applicant for a period not to exceed six months. The board shall promulgate rules and regulations for the issuance of such a temporary license.

(6) (5) A temporary license shall be granted to an applicant who is employed as a hospital administrator by a general hospital licensed or certified by the department of public health and environment. Such THE temporary permit <{***Is "permit" the right word, given the previous references to a license?***}> shall be granted for a period not to exceed twelve months and shall be void at such time the license holder is no longer employed by the general hospital.

(7) (6) The board shall establish, pursuant to section 24-34-105, C.R.S. 12-20-105, and publish annually a schedule of fees for the licensing of nursing home administrators.

(8) All moneys collected or received by the board shall be transmitted to the state treasurer who shall credit the same as provided in section 24-34-105, C.R.S., and the general assembly shall make annual appropriations pursuant to said section for the expenditures of the board incurred in the performance of its duties under this article, which expenditures shall be made from such appropriations upon vouchers and warrants drawn pursuant to law. <{***Redundant with fees common provision, 12-20-105. Recommend repeal.***}>

(9) No nursing home administrator who has had a license revoked may apply for licensure before a one-year waiting period following the date of such revocation and must comply with all requirements established by rules and regulations of the board. <{***Redundant with waiting period common provision, 12-20-404 (3)(a)(III)(A); recommend repeal.***}>

(10) (7) Each licensee shall, within thirty days, notify the board of any conviction of a felony or the acceptance of a guilty plea or a plea of nolo contendere to a felony.

12-265-112. [Formerly 12-39-109] Examinations. (1) The board shall determine the

1 subjects of the state examination for all applicants for licensure as nursing home
2 administrators.

3 (2) Examinations shall be held at least semiannually at such times and places as the
4 board shall designate. Any examination shall be prepared or approved by the board.

5 (3) The board shall have the authority to select and administer a national examination.
6

7 **12-265-113. [Formerly 12-39-110] Endorsement - definitions.** (1) (a) The board
8 shall issue a license to any person duly licensed to practice nursing home administration in
9 another state or territory of the United States who:

10 (I) Provides written documentation verifying that the applicant has passed a national
11 examination administered by a nationally recognized testing entity for nursing home
12 administrators and has passed an examination in another state; and

13 (II) Successfully completes the Colorado state examination provided in section
14 ~~12-39-109~~ **12-265-112**.

15 (b) For purposes of this section, "state or territory" includes the District of Columbia
16 and the commonwealth of Puerto Rico.

17 (2) An applicant for licensure under this section shall submit to the board, in a manner
18 prescribed by the board, all of the following:

19 (a) Evidence that the applicant holds a current, active license to practice nursing home
20 administration issued by a state or territory of the United States other than Colorado. ~~Such~~
21 THE evidence shall include a license history from the state or territory that issued the license,
22 indicating whether any disciplinary or other adverse actions are currently pending or have
23 ever been taken in connection with that license and the final disposition of ~~such~~ THESE
24 actions, if any. If an applicant is or has been licensed in more than one state or territory other
25 than Colorado, the applicant shall submit a license history or similar record as described in
26 this ~~paragraph~~ (a) SUBSECTION (2)(a) from each such state or territory.

27 (b) A license history or similar record, as described in ~~paragraph (a) of this subsection~~
28 (2) SUBSECTION (2)(a) OF THIS SECTION, relating to any license or registration ~~which~~ THAT
29 the applicant holds or has held in any other health care occupation in any state or territory
30 other than Colorado. For purposes of this section, "health care occupation" includes without
31 limitation the practices of medicine, dentistry, psychiatry, psychology, nursing, physical
32 therapy, gerontology, chiropractic, podiatry, midwifery, optometry, pharmacy, and any other
33 practice in which individuals are treated for medical or psychological problems or conditions,
34 as well as the rendition of any service supportive to or ancillary to those practices.

35 (c) (I) Verification that the applicant has been engaged in the practice of nursing
36 home administration, has taught in a health care administration program, or has served as a
37 member of a nursing home survey or accreditation team for one year immediately preceding
38 the date of the receipt of the application, or has been engaged in one of the services described
39 in this ~~subparagraph~~ (I) SUBSECTION (2)(c)(I) for three of the five years immediately
40 preceding the date of the receipt of the application; or

41 (II) Evidence that the applicant has demonstrated competency as a nursing home
42 administrator as determined by the board.

1 **12-265-114. [Formerly 12-39-111] Grounds for discipline.** (1) The board has the
 2 power to revoke, suspend, withhold, or refuse to renew any license, to place on probation a
 3 licensee or temporary license holder, or to issue a letter of admonition to a licensee in
 4 accordance with the procedures set forth in subsection (3) of this section, TAKE DISCIPLINARY
 5 OR OTHER ACTION AS SPECIFIED IN SECTION 12-20-404, upon proof that the person:
 6 <{*Redundant with disciplinary action common provision, 12-20-404. Recommend*
 7 *amending as indicated.*}>

8 (a) Has procured or attempted to procure a license by fraud, deceit, misrepresentation,
 9 misleading omission, or material misstatement of fact;

10 (b) Has been convicted of a felony or pled guilty or nolo contendere to a felony. A
 11 certified copy of the judgment of conviction by a court of competent jurisdiction shall be
 12 prima facie evidence of ~~such~~ THE conviction. In considering a possible revocation,
 13 suspension, or nonrenewal of a license or temporary license, the board shall be governed by
 14 the provisions of section SECTIONS 24-5-101, ~~C.R.S.~~ AND 12-20-202 (5). <{*Recommend*
 15 *adding a cross reference to the consideration of convictions common provision, 12-20-202*
 16 *(5).*}>

17 (c) Has had a license to practice nursing home administration or any other health care
 18 occupation suspended or revoked in any jurisdiction. A certified copy of the order of
 19 suspension or revocation shall be prima facie evidence of ~~such~~ THE suspension or revocation.

20 (d) Has violated or aided or abetted a violation of any provision of this article **265**,
 21 any rule or regulation adopted under this article **265**, or any lawful order of the board;

22 (e) Has committed or engaged in any act or omission ~~which~~ THAT fails to meet
 23 generally accepted standards for ~~such~~ nursing home administration practice or licensure;

24 (f) Has falsified or made incorrect entries or failed to make essential entries on
 25 resident records;

26 (g) Has an alcohol use disorder, as defined in section 27-81-102, or a substance use
 27 disorder, as defined in section 27-82-102, abuses or engages in the habitual or excessive use
 28 of any such habit-forming drug or any controlled substance as defined in section 18-18-102
 29 (5), or participates in the unlawful use of controlled substances as specified in section
 30 18-18-404; except that the board has the discretion not to discipline the licensee if ~~such~~ THE
 31 person is participating, in good faith, in a substance use disorder treatment program approved
 32 by the board;

33 (h) Has a physical disability or an intellectual and developmental disability that
 34 renders the licensee unable to practice nursing home administration with reasonable skill and
 35 safety to the residents and that may endanger the health or safety of persons under the
 36 licensee's care;

37 (i) Has violated the confidentiality of information or knowledge as prescribed by law
 38 concerning any resident;

39 (j) Has violated section 18-13-119 ~~C.R.S.~~, concerning the abuse of health insurance;

40 (k) Has failed to post in the nursing home facility in a conspicuous place and in
 41 clearly legible type a notice giving the address and telephone number of the board and stating
 42 that complaints may be made to the board;

1 (l) Has practiced as a nursing home administrator without a license;

2 (m) Has used in connection with the person's name any designations tending to imply
3 that the person is a licensed nursing home administrator, unless the person in fact holds a
4 valid license;

5 (n) Has practiced as a nursing home administrator during a period when the person's
6 license has been suspended or revoked; or

7 (o) Has sold, fraudulently obtained, or furnished a license to practice as a nursing
8 home administrator, or has aided or abetted therein.

9 (2) The board need not find that the actions ~~which~~ THAT are grounds for discipline
10 were willful or negligent, but it may consider the same in determining the nature of
11 disciplinary sanctions to be imposed.

12 (3) (a) ~~When a complaint or investigation discloses an instance of misconduct that,~~
13 ~~in the opinion of the board, does not warrant formal action by the board but that should not~~
14 ~~be dismissed as being without merit, THE BOARD MAY SEND a letter of admonition may be~~
15 ~~issued and sent, by certified mail, to the A licensee PURSUANT TO SECTION 12-40-404 (5).~~

16 (b) ~~When a letter of admonition is sent by the board, by certified mail, to a licensee,~~
17 ~~such licensee shall be advised that he or she has the right to request in writing, within twenty~~
18 ~~days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate~~
19 ~~the propriety of the conduct upon which the letter of admonition is based.~~

20 (c) ~~If the request for adjudication is timely made, the letter of admonition shall be~~
21 ~~deemed vacated and the matter shall be processed by means of formal disciplinary~~
22 ~~proceedings. <{Redundant with letters of admonition common provision, 12-20-404 (4).~~
23 ~~Recommend amending as indicated.}>~~

24 (4) If the board finds the charges proven and orders that discipline be imposed, it may
25 also require the licensee to participate in a treatment program or course of training or
26 education as a requirement for reinstatement as may be needed to correct any deficiency
27 found in the hearing.

28 (5) ~~When a complaint or an investigation discloses an instance of misconduct that,~~
29 ~~in the opinion of the board, warrants formal action, the complaint shall not be resolved by~~
30 ~~a deferred settlement, action, judgment, or prosecution. <{Redundant with no deferment~~
31 ~~common provision, 12-20-404 (2). Recommend repealing.}>~~

32
33 **12-265-115. [Formerly 12-39-112] Withholding or denial of license - hearing.** The
34 board has the authority, pursuant to article 4 of title 24, ~~C.R.S.~~, to determine whether an
35 applicant for a license or a temporary license to practice as a nursing home administrator
36 possesses the qualifications required by this article **265**, or whether there are reasonable
37 grounds to believe that ~~such~~ THE applicant has done any of the acts set forth in section
38 ~~12-39-111~~ **12-265-114** as grounds for discipline. As used in this section, "applicant" does not
39 include a person seeking the renewal of a license.

40
41 **12-265-116. [Formerly 12-39-113] Mental and physical examination of licensees.**
42 (1) (a) **IN ACCORDANCE WITH SECTION 12-30-108**, if the board has reasonable grounds to

1 believe that a licensee or temporary license holder is unable to practice with reasonable skill
2 and safety to residents because of a condition described in section ~~12-39-111 (1)(g) or (1)(h)~~
3 **12-265-114 (1)(g) OR (1)(h)**, it may require the person to submit to a mental or physical
4 examination by a physician or other licensed health care professional it designates. **Upon the**
5 **failure of the person to submit to the mental or physical examination, unless due to**
6 **circumstances beyond the person's control, the board may suspend the person's license until**
7 **the person submits to the required examinations.**

8 (b) Every licensee or temporary license holder by engaging in the practice of nursing
9 home administration in this state or by applying for the renewal of a license or temporary
10 license shall be deemed to have given consent to submit to a mental or physical examination
11 when so directed in writing by the board. The direction to submit to such an examination
12 shall contain the basis of the board's reasonable grounds to believe that the licensee is unable
13 to practice with reasonable skill and safety to residents because of a condition described in
14 section ~~12-39-111 (1)(g) or (1)(h)~~. The licensee shall be deemed to have waived all
15 objections to the admissibility of the examining physician's or other licensed health care
16 professional's testimony or examination reports on the ground of privileged communication.

17 (2) Nothing in this section shall prevent the licensee from submitting testimony or
18 examination reports of a physician or other licensed health care professional designated by
19 the licensee that pertains to a condition described in section ~~12-39-111 (1)(g) or (1)(h)~~
20 **12-265-114 (1)(g) OR (1)(h)** that may be considered by the board in conjunction with, but not
21 in lieu of, testimony and examination reports of the physician or other licensed health care
22 professional designated by the board. **<{This language was stricken from the**
23 **mental/physical exams common provision, 12-30-108 (2), so recommend retaining this**
24 **provision.}>**

25 (3) The results of any mental or physical examination ordered by the board shall not
26 be used as evidence in any proceeding other than one before the board and shall not be
27 deemed public records nor made available to the public. **<{Redundant with mental/physical**
28 **exams common provision, section 12-30-108. Recommend repealing and amending as**
29 **indicated. The 3rd sentence of 12-30-108 (2) may need to be modified or exempted here.}>**

30
31 **12-265-117. [Formerly 12-39-114] Disciplinary proceedings - administrative law**
32 **judge - judicial review - publicly recorded votes.** (1) The board, through the department
33 of regulatory agencies, has the authority to designate an administrative law judge to conduct
34 hearings on any matter within the board's jurisdiction. Any designated administrative law
35 judge shall have the powers and duties set forth in article 4 of title 24, C.R.S., and shall be
36 appointed pursuant to part 10 of article 30 of title 24, C.R.S. **<{Redundant with disciplinary**
37 **procedures/ALJ common provision, 12-20-403. Recommend repeal.}>**

38 (2) (1) Disciplinary proceedings may be commenced when the board has reasonable
39 grounds to believe that a licensee under the board's jurisdiction has committed acts in
40 violation of section ~~12-39-111~~ **12-265-114.**

41 (3) (2) Disciplinary proceedings shall be conducted in the manner prescribed by
42 **SECTION 12-20-403 AND** article 4 of title 24, C.R.S., and the hearing and opportunity for

1 review shall be conducted pursuant to said ~~article~~ THOSE LAWS by the board or an
2 administrative law judge, at the board's discretion. <{Adding reference to disciplinary
3 procedures common provision, 12-20-403.}>

4 (4) (3) No previously issued license to engage in the practice of nursing home
5 administration shall be revoked or suspended until a hearing has been conducted pursuant
6 to section 24-4-105, ~~C.R.S.~~, or, for emergency situations, pursuant to section 24-4-104 (4).
7 ~~C.R.S.~~ The denial of an application to renew an existing license shall be treated in all
8 respects as a revocation.

9 (5) Any person participating in good faith in the making of a complaint or report or
10 participating in any investigative or administrative proceeding pursuant to this article ~~265~~
11 shall be immune from any liability, civil or criminal, that otherwise might result by reason
12 of such action. <{This is the first of multiple immunity subsections. This subsection (5) is
13 redundant with immunity common provision, section 12-20-402.}>

14 (6) (4) (a) Complaints, investigations, hearings, meetings, or any other proceedings
15 of the board conducted pursuant to the provisions of this article ~~39~~ 265 and relating to
16 disciplinary proceedings are exempt from the provision of any law requiring that proceedings
17 of the board be conducted publicly or that the minutes or records of the board with respect
18 to action of the board taken pursuant to the provisions of this article ~~39~~ 265 be open to public
19 inspection; except that this exemption applies only when the board, or an administrative law
20 judge acting on behalf of the board, specifically determines that it is in the best interest of a
21 complainant or other recipient of services to keep ~~such~~ THE proceedings or documents
22 relating thereto closed to the public, or if the licensee is violating section ~~12-39-111 (1)(g)~~
23 ~~12-265-114 (1)(g)~~, participating in good faith in a substance use disorder treatment program
24 approved by the board or designed by the board to end any addiction or dependency specified
25 in ~~said~~ THAT section, and the licensee has not violated any provisions of the board order
26 regarding participation in such a treatment program. If the board determines that it is in the
27 best interest of a complainant or other recipient of services to keep ~~such~~ THE proceedings or
28 documents relating thereto closed to the public, then the final action of the board is open to
29 the public without disclosing the name of the client or other recipient.

30 (b) ~~SECTION 12-20-408 GOVERNS JUDICIAL REVIEW OF~~ final board actions and orders
31 appropriate for judicial review. ~~may be judicially reviewed in the court of appeals in~~
32 ~~accordance with section 24-4-106 (11).~~ <{The last sentence in this subsection (6) is
33 redundant with judicial review common provision. Recommend amending as indicated.}>

34 (7) ~~When a complaint or investigation discloses an instance of conduct that does not~~
35 ~~warrant formal action by the board and, in the opinion of the board, the complaint should be~~
36 ~~dismissed, but the board has noticed indications of possible errant conduct by the licensee~~
37 ~~that could lead to serious consequences if not corrected~~ THE BOARD MAY SEND a confidential
38 letter of concern ~~may be issued and sent to the~~ A licensee IN ACCORDANCE WITH SECTION
39 ~~12-20-494 (5).~~ <{Subsection (7) is redundant with confidential letters of concern common
40 provision, 12-20-404 (5). Recommend repealing.}>

41 (8) (5) All votes to impose discipline or dismiss a complaint must be recorded in the
42 board's publicly available minutes and indicate how each board member voted on the

1 question.

2
3 **12-265-118. [Formerly 12-39-115] Temporary advisory committees - immunity.**

4 (1) The board may appoint temporary advisory committees, including temporary professional
5 review committees, to assist in the performance of its duties with respect to individual
6 investigations. Each temporary advisory committee shall consist of at least three licensees
7 who have expertise in the area under review. Members of temporary advisory committees
8 shall receive no compensation for their services but shall be reimbursed for the actual and
9 necessary expenses incurred in the performance of their duties.

10 (2) If a professional review committee is established pursuant to subsection (1) of this
11 section to investigate the quality of care being given by a person licensed pursuant to this
12 article ~~such~~ **265**, THE committee shall include in its membership at least three persons
13 licensed in the same category as the licensee under review, but ~~such~~ THE committee may be
14 authorized to act only by the board.

15 (3) **IN ADDITION TO THE PERSONS SPECIFIED IN SECTION 12-20-402, any member of the**
16 **board or of a professional review committee, any member of the board's or committee's staff,**
17 **AND any person acting as a witness or consultant to the board or committee any witness**
18 **testifying in a proceeding authorized under this article, and any person who lodges a**
19 **complaint pursuant to this article shall be immune from liability in any civil action brought**
20 **against him or her for acts occurring while acting in his or her capacity as board or committee**
21 **member, staff, consultant, or witness, respectively, if such individual was acting in good faith**
22 **within the scope of his or her respective capacity, made a reasonable effort to obtain the facts**
23 **of the matter as to which he or she acted, and acted in the reasonable belief that the action**
24 **taken by him or her was warranted by the facts. Any person participating in good faith in**
25 **lodging a complaint or participating in any investigative or administrative proceeding**
26 **pursuant to this article shall be immune from any civil or criminal liability that may result**
27 **from such participation. IS GRANTED THE SAME IMMUNITY, AND IS SUBJECT TO THE SAME**
28 **CONDITIONS FOR IMMUNITY, AS SPECIFIED IN SECTION 12-20-402. <{Somewhat redundant**
29 **with immunity common provision, 12-20-402. Recommend amending as indicated.}>**

30
31 **12-265-119. [Formerly 12-39-116] Unauthorized practice - penalties.**

32 (1) Repealed.

33 (2) **Any person who practices or offers or attempts to practice as a nursing home**
34 **administrator without an active license issued under this article commits a class 2**
35 **misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., for the first**
36 **offense, and any person who commits a second or subsequent offense commits a class 6**
37 **felony and shall be punished as provided in section 18-1.3-401, C.R.S. 265 IS SUBJECT TO**
38 **PENALTIES PURSUANT TO SECTION 12-20-407 (1)(a). <{Redundant with unauthorized**
39 **practice common provision. Recommend amending as indicated.}>**

40
41 **12-265-120. [Formerly 12-39-117] Cease-and-desist orders. (1)(a) If it appears to**
42 **the board, based upon credible evidence as presented in a written complaint by any person,**

1 that a licensee is acting in a manner that is an imminent threat to the health and safety of the
2 public, or a person is acting or has acted without the required license, the board may issue
3 an order to cease and desist such activity. The order shall set forth the statutes and rules
4 alleged to have been violated, the facts alleged to have constituted the violation, and the
5 requirement that all unlawful acts or unlicensed practices immediately cease.

6 (b) Within ten days after service of the order to cease and desist pursuant to paragraph
7 (a) of this subsection (1), the respondent may request a hearing on the question of whether
8 acts or practices in violation of this article have occurred. Such hearing shall be conducted
9 pursuant to sections 24-4-104 and 24-4-105, C.R.S.

10 (2) (a) If it appears to the board, based upon credible evidence as presented in a
11 written complaint by any person, that a person has violated any other portion of this article,
12 then, in addition to any specific powers granted pursuant to this article, the board may issue
13 to such person an order to show cause as to why the board should not issue a final order
14 directing such person to cease and desist from the unlawful act or unlicensed practice.

15 (b) A person against whom an order to show cause has been issued pursuant to
16 paragraph (a) of this subsection (2) shall be promptly notified by the board of the issuance
17 of the order, along with a copy of the order, the factual and legal basis for the order, and the
18 date set by the board for a hearing on the order. Such notice may be served by personal
19 service, by first-class United States mail, postage prepaid, or as may be practicable upon any
20 person against whom such order is issued. Personal service or mailing of an order or
21 document pursuant to this subsection (2) shall constitute notice thereof to the person.

22 (c) (I) The hearing on an order to show cause shall be commenced no sooner than ten
23 and no later than forty-five calendar days after the date of transmission or service of the
24 notification by the board as provided in paragraph (b) of this subsection (2). The hearing may
25 be continued by agreement of all parties based upon the complexity of the matter, number
26 of parties to the matter, and legal issues presented in the matter, but in no event shall the
27 hearing commence later than sixty calendar days after the date of transmission or service of
28 the notification.

29 (II) If a person against whom an order to show cause has been issued pursuant to
30 paragraph (a) of this subsection (2) does not appear at the hearing, the board may present
31 evidence that notification was properly sent or served upon such person pursuant to
32 paragraph (b) of this subsection (2) and such other evidence related to the matter as the board
33 deems appropriate. The board shall issue the order within ten days after the board's
34 determination related to reasonable attempts to notify the respondent, and the order shall
35 become final as to that person by operation of law. Such hearing shall be conducted pursuant
36 to sections 24-4-104 and 24-4-105, C.R.S.

37 (III) If the board reasonably finds that the person against whom the order to show
38 cause was issued is acting or has acted without the required license, or has or is about to
39 engage in acts or practices constituting violations of this article, a final cease-and-desist order
40 may be issued, directing such person to cease and desist from further unlawful acts or
41 unlicensed practices.

42 (IV) The board shall provide notice, in the manner set forth in paragraph (b) of this

1 subsection (2), of the final cease-and-desist order within ten calendar days after the hearing
2 conducted pursuant to this paragraph (c) to each person against whom such order has been
3 issued. The final order issued pursuant to subparagraph (III) of this paragraph (c) shall be
4 effective when issued and shall be a final order for purposes of judicial review.

5 (3) If it appears to the board, based upon credible evidence presented to the board,
6 that a person has engaged in or is about to engage in any unlicensed act or practice, any act
7 or practice constituting a violation of this article, any rule promulgated pursuant to this
8 article, any order issued pursuant to this article, or any act or practice constituting grounds
9 for administrative sanction pursuant to this article, the board may enter into a stipulation with
10 such person.

11 (4) If any person fails to comply with a final cease-and-desist order or a stipulation,
12 the board may request the attorney general or the district attorney for the judicial district in
13 which the alleged violation exists to bring, and if so requested such attorney shall bring, suit
14 for a temporary restraining order and for injunctive relief to prevent any further or continued
15 violation of the final order.

16 (5) A person aggrieved by the final cease-and-desist order may seek judicial review
17 of the board's determination or of the board's final order as provided in section 12-39-114 (6).

18 THE BOARD MAY ISSUE CEASE-AND-DESIST ORDERS UNDER THE CIRCUMSTANCES AND
19 IN ACCORDANCE WITH THE PROCEDURES SPECIFIED IN SECTION 12-20-405. <{Redundant with
20 cease-and-desist orders common provision. Recommend repealing and replacing with
21 cross-reference to common provision.}>

22
23 **12-265-121. [Formerly 12-39-118] Injunctive proceedings.** The board in the name
24 of the people of the state of Colorado, may apply for SEEK injunctive relief through the
25 attorney general or the district attorney in any court of competent jurisdiction IN
26 ACCORDANCE WITH SECTION 12-20-406, BUT ONLY to enjoin any person who does not possess
27 a currently valid or active nursing home administrator's license from committing any act
28 declared to be unlawful or prohibited by this article 265. In any action taken pursuant to this
29 section, the court shall not require the board to plead or prove irreparable injury or
30 inadequacy of a remedy at law or to post a bond. If it is established that the defendant has
31 been or is committing an act declared to be unlawful or prohibited by this article, the court
32 or any judge thereof shall enter a decree perpetually enjoining said defendant from further
33 committing such act. In the case of a violation of any injunction issued under the provisions
34 of this section, the court or any judge thereof may summarily try and punish the offender for
35 contempt of court. Such injunctive proceedings shall be in addition to, and not in lieu of, all
36 penalties and other remedies provided in this article. <{Largely redundant with, but both
37 narrower than (only unlicensed persons) and broader than (no bond required), the
38 injunctive relief common provision, 12-20-406. Recommend amending as indicated.}>

39
40 **12-265-122. [Formerly 12-39-119] Administration of nursing homes relying on**
41 **treatment by spiritual means.** A person who serves as an administrator of a nursing home
42 conducted exclusively for persons who rely upon treatment by spiritual means alone, through

1 prayer in accordance with the creed or tenets of a church or religious denomination, shall be
2 exempt from the provisions of this article **265**.

3
4 **12-265-123. [Formerly 12-39-120] Records.** The board shall keep formal records of
5 all complaints it receives and of the final disposition of ~~such~~ THE complaints. The board shall
6 be responsible for implementing a tracking system to facilitate the retrieval of ~~such~~ THE
7 records.

8
9 **12-265-124. [Formerly 12-39-121] Repeal of article.** ~~(1)~~ This article ~~39 265~~ is
10 repealed, effective September 1, 2023.

11 ~~(2) Prior to BEFORE~~ the repeal, the licensing functions of the board of examiners of
12 ~~nursing home administrators~~ are scheduled for review in accordance with section 24-34-104.
13 <{*Amending this section to conform with current sunset language.*}>