

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 44

## **HOUSE BILL 2274**

AN ACT

AMENDING SECTION 36-446.07, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF EXAMINERS OF NURSING CARE ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 36-446.07, Arizona Revised Statutes, is amended to  
3 read:

4 36-446.07. Disciplinary actions; grounds for disciplinary  
5 action; renewal; continuing education; inactive  
6 status; hearings; settlement; judicial review

7 A. The board may suspend or revoke the license of any nursing care  
8 institution administrator, censure or place on probation any licensed nursing  
9 care institution administrator or deny a license as a nursing care  
10 institution administrator to any person for any of the following reasons:

- 11 1. Conviction of a felony or conviction of any misdemeanor involving  
12 moral turpitude.
- 13 2. Obtaining or renewing a license by fraud or deceit.
- 14 3. Unprofessional conduct.
- 15 4. Practicing without biennial licensure.
- 16 5. Addiction to or dependency on drugs or alcohol.
- 17 6. Wrongful transfer of a license or falsely impersonating another  
18 licensee.
- 19 7. Unauthorized disclosure of information relating to a patient or a  
20 patient's records.
- 21 8. Payment to any person for solicitation or procurement, either  
22 directly or indirectly, of nursing home patronage.
- 23 9. Violation of this article or a rule adopted pursuant to this  
24 article.

25 B. The board may suspend or revoke the certificate of an assisted  
26 living facility manager, censure or place on probation an assisted living  
27 facility manager or deny a certificate as an assisted living facility manager  
28 to a person for any of the following reasons:

- 29 1. Conviction of a felony or conviction of a misdemeanor involving  
30 moral turpitude.
- 31 2. Obtaining or renewing a certificate by fraud or deceit.
- 32 3. Unprofessional conduct.
- 33 4. Practicing without biennial certification.
- 34 5. Addiction to or dependency on drugs or alcohol.
- 35 6. Wrongful transfer of a certificate or falsely impersonating another  
36 certificate holder.
- 37 7. Unauthorized disclosure of information relating to a resident or a  
38 resident's records.
- 39 8. Violation of this article or a rule adopted pursuant to this  
40 article.

41 C. The board may impose a civil penalty in an amount of not to exceed  
42 five hundred dollars on any nursing care institution administrator or  
43 assisted living facility manager who violates this article or any rule  
44 adopted pursuant to this article. Actions to enforce the collection of these  
45 penalties shall be brought in the name of this state by the attorney general

1 or the county attorney in the justice court or the superior court in the  
2 county in which the violation occurred. Penalties imposed under this section  
3 are in addition to and not in limitation of other penalties imposed pursuant  
4 to this article.

5 D. The board may file a letter of concern if, in the opinion of the  
6 board, while there is insufficient evidence to support direct action against  
7 the license of the administrator or the certificate of the manager, there is  
8 sufficient evidence for the board to notify the administrator or manager of  
9 its concern.

10 E. Every holder of a nursing care institution administrator's license  
11 shall renew it biennially by making application to the board. The renewals  
12 shall be granted as a matter of course if the holder has successfully  
13 completed at least fifty hours of continuing education every two years as  
14 established by the board in its rules, unless the applicant has acted or  
15 failed to act in such a manner or under such circumstances as would  
16 constitute grounds for taking any of the disciplinary actions permitted by  
17 this section. The board shall maintain a log of each complaint substantiated  
18 by the board or deficiency report concerning an administrator and shall  
19 retain in the administrator's file a copy of each such complaint or report  
20 and the action taken on it, if any. The board shall review and consider the  
21 administrator's file in determining whether to renew the administrator's  
22 license.

23 F. Every holder of an assisted living facility manager's certificate  
24 shall renew it biennially by making application to the board. The renewals  
25 shall be granted as a matter of course if the holder has successfully  
26 completed continuing education every two years as established by the board in  
27 its rules, unless the applicant has acted or failed to act in a manner or  
28 under circumstances that constitute grounds for taking disciplinary action  
29 permitted by this section. The board shall maintain a log of each complaint  
30 substantiated by the board or deficiency report concerning a manager and  
31 shall retain in the manager's file a copy of each complaint or report and the  
32 action taken on it, if any. The board shall review and consider the  
33 manager's file in determining whether to renew the manager's certificate.

34 G. Failure on the part of any licensed nursing care institution  
35 administrator or certified assisted living facility manager to furnish  
36 evidence of having attended the required continuing education hours during  
37 the preceding two years shall preclude renewal of the license or certificate  
38 unless the continuing education requirement is fulfilled within one hundred  
39 twenty days.

40 H. On written request to the board, a nursing care institution  
41 administrator in good standing may cause the administrator's name and license  
42 to be transferred to an inactive list. Any nursing care institution  
43 administrator on inactive license status shall pay a license renewal fee. On  
44 written request to the board, and subsequent approval by the board, a nursing  
45 care institution administrator on inactive license status may resume active

1 license status on meeting twenty-five hours of continuing education  
2 requirements within six months and payment of the current fee.

3 I. On written request to the board, the board shall transfer an  
4 assisted living facility manager in good standing to an inactive list. An  
5 assisted living facility manager on inactive certificate status shall pay a  
6 certificate renewal fee prescribed by the board of not more than one hundred  
7 dollars every two years. On written request to the board, and subsequent  
8 approval by the board, an assisted living facility manager on inactive  
9 certificate status may resume active certificate status on meeting  
10 requirements for six hours of continuing education within six months and  
11 payment of the current fee.

12 J. Suspension, revocation or denial of renewal of a license or  
13 certificate or censure or probation of a licensee or certificate holder by  
14 the board becomes effective only on the board's first giving the licensee or  
15 certificate holder prior written notice and affording the licensee or  
16 certificate holder the right to request a hearing within ~~twenty~~ THIRTY-FIVE  
17 days of the receipt of notice. A hearing is not required before the denial  
18 of an original application for a license or a certificate. All hearings  
19 shall be conducted pursuant to title 41, chapter 6, article 10.

20 K. Any person wishing to make a complaint against a licensee or  
21 certificate holder under this article shall file a written complaint with the  
22 board within one year from the date of the action causing the complaint. If  
23 the board determines that the charges made in the complaint are sufficient,  
24 if true, to warrant suspension or revocation of a license or certificate  
25 issued under this article or censure or probation of a licensee or  
26 certificate holder under this article, it shall issue an order fixing the  
27 time and place for a hearing and requiring the licensee or certificate holder  
28 complained against to appear and answer the complaint. The order shall have  
29 affixed to it a copy of the complaint, and both shall be served on the  
30 licensee or certificate holder either personally or by certified mail sent to  
31 the licensee's or the certificate holder's last known address at least ~~twenty~~  
32 THIRTY-FIVE days before the date set for the hearing. All hearings shall be  
33 conducted pursuant to title 41, chapter 6, article 10.

34 L. The board and an administrator or manager may enter into a  
35 settlement of any matter under investigation either before or after a notice  
36 of the hearing has been issued if the board determines that the proposed  
37 settlement adequately protects the public safety, health and welfare. The  
38 board shall record the terms of each settlement entered into and shall make  
39 the record available for public inspection.

40 M. Except as provided in section 41-1092.08, subsection H, final  
41 decisions of the board are subject to judicial review pursuant to title 12,  
42 chapter 7, article 6.

1 N. If the board has initiated an investigation pursuant to this  
2 section, the board may continue the investigation and discipline the person  
3 under investigation even if that person resigns from practice after the board  
4 has initiated the investigation.

5 O. A LICENSEE OR CERTIFICATE HOLDER SHALL RESPOND IN WRITING TO THE  
6 BOARD WITHIN THIRTY-FIVE DAYS AFTER THE BOARD SERVES THE COMPLAINT AND NOTICE  
7 OF A FORMAL HEARING BY CERTIFIED MAIL. SERVICE IS COMPLETE ON THE DATE THE  
8 BOARD PLACES THE NOTICE IN THE MAIL. THE BOARD SHALL CONSIDER A LICENSEE'S  
9 OR CERTIFICATE HOLDER'S FAILURE TO RESPOND TO THE NOTICE WITHIN THIRTY-FIVE  
10 DAYS AS AN ADMISSION BY DEFAULT TO THE ALLEGATIONS STATED IN THE COMPLAINT.  
11 THE BOARD MAY THEN TAKE DISCIPLINARY ACTION AGAINST THE LICENSEE OR  
12 CERTIFICATE HOLDER WITHOUT CONDUCTING A FORMAL HEARING.

13 P. THE BOARD MAY SET ASIDE AN ADMISSION BY DEFAULT IF A LICENSEE OR  
14 CERTIFICATE HOLDER SHOWS GOOD CAUSE. A LICENSEE OR CERTIFICATE HOLDER WHO  
15 APPLIES TO THE BOARD TO SET ASIDE AN ADMISSION BY DEFAULT SHALL DEMONSTRATE  
16 THE FOLLOWING TO THE SATISFACTION OF THE BOARD:

17 1. THE FAILURE TO RESPOND TO THE NOTICE OF THE BOARD WAS DUE TO  
18 EXCUSABLE NEGLIGENCE.

19 2. THE LICENSEE OR CERTIFICATE HOLDER HAS A MERITORIOUS DEFENSE.

20 3. THE LICENSEE OR CERTIFICATE HOLDER MADE PROMPT APPLICATION TO THE  
21 BOARD FOR RELIEF.

22 Q. THE BOARD SHALL NOT CONSIDER AN APPLICATION TO SET ASIDE AN  
23 ADMISSION BY DEFAULT FILED LATER THAN ONE HUNDRED EIGHTY DAYS AFTER THE  
24 BOARD'S ENTRY OF THE ADMISSION BY DEFAULT.

APPROVED BY THE GOVERNOR APRIL 16, 2008.

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