

July 20, 1973

OPINION LETTER NO. 244
Answer by letter-Card

Ms. Ann Bowling, Executive Secretary
Missouri Board of Nursing
Home Administrators
904 East High Street
Jefferson City, Missouri 65101



Dear Ms. Bowling:

This letter is in response to your request for an opinion as to whether Rule III (B) of the Board of Nursing Home Administrators is within the authority of the Board.

Rule III (B) provides:

"Every person seeking to renew a license shall annually complete a minimum of twenty-four (24) points of continuing education which are approved by the Missouri Board of Nursing Home Administrators. The Board may require evidence of attendance."

Section 344.040, RSMo Supp. 1971, which reads as follows, concerns the renewal of licenses for nursing home administrators:

"The license of every person licensed under sections 344.010 to 344.100 shall be renewed annually, except as otherwise provided in sections 344.010 to 344.100. By May first of each year, the board shall mail an application for a renewal license to every person to whom a license was issued or renewed during the current year. The applicants shall fill in the application blank and return it to the board with a renewal fee of twenty-five dollars. Upon receipt of the application and

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fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the year beginning July first, and expiring the following June thirtieth. Any licensee who fails to renew his license by June thirtieth may be reinstated by the board on payment of the current renewal fee, plus the penalty of the fifty percent of renewal fee. Any person acting as a nursing home administrator during any time period that his license has elapsed is in violation of sections 344.010 to 344.100."

Section 344.070, RSMo Supp. 1971, which concerns the powers and duties of the Missouri Board of Nursing Home Administrators, provides as follows:

"1. The board shall annually elect one of its members as president, another as vice president, another as secretary and another as treasurer. It shall adopt rules and regulations to govern its proceedings. It shall make an annual report to the governor and the general assembly. It shall file and preserve all written applications, petitions, complaints, charges or requests made or presented to it, and all affidavits and other verified documents; shall cause to be kept accurate records and minutes of its proceedings; and shall maintain a register of the names and addresses of all persons holding certificates of registration as nursing home administrators and annual permits. A copy of any entry in the register, or of any records or minutes of the board, certified by the president or secretary of the board under its seal, shall be received in evidence, to all intents and purposes as the original. The board may employ such part- or full-time clerical assistance, purchase such equipment and supplies, employ legal counsel, employ a part- or full-time investigator, and incur travel and other expense, within the limits of their appropriations.

"2. The board shall prepare and furnish application forms for licensing and renewal of license.

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"3. The board shall examine, license, and renew the license of duly qualified applicants, and shall conduct hearings upon charges calling for discipline of a licensee. The board shall cause the prosecution of any persons violating the provisions of sections 344.010 to 344.100 and may incur necessary expenses therefor."

The rule and regulation mentioned in your request purports to govern the renewal of licenses by adding a requirement of continuing education. The authority of the Missouri Board of Nursing Home Administrators to promulgate such a rule and regulation must therefore come, if at all, from the above-quoted Section 344.070. The validity of the regulation must be determined in light of the provisions of the general law governing administrative regulations and in light of the statutory section enacted by the legislature for the renewing of nursing home administrator's license.

The limitation on the powers of administrative bodies entrusted with rule-making powers are stated in 73 C.J.S. Public Administrative Bodies §94, pp. 414-415, as follows:

"A public administrative body may make only such rules and regulations as are within the limits of the powers granted to it and within the boundaries established by the standards, limitations, and policies of the statute giving it such power, and it may go no further than to make administrative rules and regulations which fill in the interstices of the dominant enactment. It may make only rules and regulations which effectuate a law already enacted, and it may not make rules and regulations which are inconsistent with the provisions of a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute, and it may not, by its rules and regulations, amend, alter, enlarge, or limit the terms of a legislative enactment."

In the case of Bresler v. Tietjen, 424 S.W.2d 65 (Mo. banc 1968), the Supreme Court of Missouri invalidated several rules of the Missouri Board of Optometry stating, l.c. 70:

". . . However, under the guise of its rule-making power the Board cannot enlarge upon the scope and terms of the statute, and it

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cannot by rule constitute certain conduct a violation of the statute, which, in the absence of the rule, could not reasonably be so construed. . . ."

In that case the Board of Optometry attempted to prohibit licensed optometrists from associating with any kind of business which advertised prices for prescription eyeglasses.

In the case of State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission, 225 S.W.2d 792 (K.C.Ct.App. 1949), the court held that an agency can only enact such rules and regulations which have been authorized by the legislature either directly or by necessary implication. An agency has no power to adopt a rule or follow a practice which results in nullifying the expressed will of the legislature.

A review of the statutes governing the licenses of nursing home administrators gives the Board limited powers to adopt rules and regulations. It only has the power to adopt rules to govern the proceedings of the Board. Rule III (B) is adding a completely additional requirement as a condition precedent for the renewal of a license above and beyond the requirements of Section 344.040. Nowhere in the statutes regulating the Missouri Board of Nursing Home Administrators is there any mention of a concept of continuing education. Contrast this with Section 331.050(2) wherein the legislature specifically placed a requirement of a two-day educational program each year as a condition for the renewal of a chiropractic license.

Therefore, it is the conclusion of this office that Rule III (B), as promulgated by the Missouri Board of Nursing Home Administrators, is null and void and of no force and effect since it is adding an additional requirement for renewal of licenses which cannot be reasonably construed as being authorized by the legislature.

Very truly yours,

JOHN C. DANFORTH
Attorney General