

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2754

By: Dank

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 Section 5, Chapter 168, O.S.L. 2005, as amended by  
9 Section 12, Chapter 291, O.S.L. 2006 (63 O.S. Supp.  
10 2007, Section 330.65), which relates to long-term  
11 care administrators; modifying complaint procedures;  
12 establishing a probable cause committee to review  
13 complaints and make recommendations; specifying  
14 certain powers of the Director of the Oklahoma State  
15 Board of Examiners for Long-Term Care Administrators;  
16 providing for confidentiality of records; specifying  
17 exceptions; providing for informal resolution  
18 process; providing for notice and hearing; providing  
19 for certain recusal; repealing Section 4, Chapter  
20 168, O.S.L. 2005, as amended by Section 11, Chapter  
21 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section  
22 330.64), which relates to complaints; and providing  
23 an effective date.

24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 5, Chapter 168, O.S.L.  
2005, as amended by Section 12, Chapter 291, O.S.L. 2006 (63 O.S.  
Supp. 2007, Section 330.65), is amended to read as follows:

Section 330.65 A. ~~Any decision by the~~ The Oklahoma State Board  
of Examiners for Long-Term Care Administrators shall be responsible  
for the enforcement of the provisions of this act against all

1 persons who are in violation thereof, including, but not limited to,  
2 individuals who are practicing or attempting to practice as long-  
3 term administrators without proper authorization from the Board  
4 ~~pursuant to a complaint received against an individual administrator~~  
5 ~~shall be voted upon by a quorum of the Board in an open meeting.~~

6 B. ~~At least five (5) working days prior~~ Any person or agency  
7 may submit to the Board a written and signed complaint against a  
8 long-term care administrator. Complaints may also be generated by  
9 the Board or staff meeting at which a decision will be made, each  
10 ~~member of the Board shall be furnished a complete written report~~  
11 ~~which shall include, but not be limited to, the following~~  
12 ~~information:~~

13 1. ~~The exact nature of the complaint(s);~~

14 2. ~~The identity of the administrator;~~

15 3. ~~A description of the investigation;~~

16 4. ~~The identity of the investigator;~~

17 5. ~~The identity of the witnesses interviewed, unless the~~

18 ~~witness wishes to remain anonymous and is a current resident, a~~

19 ~~current staff member, or the personal or legal representative of a~~

20 ~~current resident;~~

21 6. ~~A description of documents or other tangible items examined~~

22 ~~in the course of the investigation;~~

23 7. ~~All evidence obtained that would directly or by reference~~

24 ~~establish the ultimate fact of the complained act or omission; and~~

1 ~~8. All evidence that would either explain or mitigate the~~  
2 ~~complained act or omission.~~

3 C. ~~Each complaint shall be acted upon pursuant to a motion~~  
4 ~~after an opportunity for discussion by the A committee of three~~  
5 ~~Board members appointed by the chair. Following discussion of the~~  
6 ~~evidence, any member of the Board shall review complaints to~~  
7 ~~determine if probable cause exists that a violation of this act or~~  
8 ~~the rules of the Board has occurred. The committee may investigate~~  
9 ~~the allegations, and, if this committee determines that such~~  
10 ~~probable cause exists, this committee shall draft a formal complaint~~  
11 ~~against the long-term care administrator alleged to have committed~~  
12 ~~the violation make a motion to continue the investigation in order~~  
13 ~~to gather additional evidence or to make further inquiries. The~~  
14 ~~investigation may be extended for sixty (60) days upon a finding of~~  
15 ~~good cause as provided for in subsection A of Section 330.64 of this~~  
16 ~~title. If the motion to extend the investigation fails, the Board~~  
17 ~~shall vote upon the merits of the complaint.~~

18 D. ~~No recommendation on a~~ The formal complaint shall be ~~made~~  
19 ~~submitted~~ to the respondent who shall answer and may submit  
20 exculpatory evidence. Further investigation of the complaint may be  
21 conducted. Board by a subcommittee or a staff member of the Board.  
22 ~~Each member~~ The Director of the Board shall have the power to issue  
23 subpoenas for the attendance of witnesses and the furnishing of  
24 information, including documents, required by the Board or requested

1 ~~by the respondent vote based on the evidence presented in the report~~  
2 ~~required pursuant to the provisions of this section.~~

3 E. ~~The~~ To ensure the confidentiality of information obtained  
4 during the investigation, the information report furnished to the  
5 ~~Board pursuant to the provisions of this section shall be considered~~  
6 ~~a confidential investigation document until a motion to vote on the~~  
7 ~~complaint is made, at which time the report shall not be deemed to~~  
8 ~~be considered a public record as that term is defined in the~~  
9 ~~Oklahoma Open Records Act nor shall the information be subject to~~  
10 ~~subpoena or discovery in any civil or criminal proceeding, except~~  
11 ~~that the Board may give the information to law enforcement and other~~  
12 ~~state licensing agencies as necessary and appropriate in the~~  
13 ~~discharge of the duties of that agency and only under circumstances~~  
14 ~~that will ensure against unauthorized access to the information.~~  
15 ~~After the vote upon the complaint is made and recorded, the Board~~  
16 ~~shall maintain as a public record a full and complete copy of the~~  
17 ~~investigation~~ The respondent may acquire information obtained during  
18 an investigation, unless the disclosure of the information is  
19 otherwise prohibited, except for the investigative report, if the  
20 respondent signs a protective order whereby the respondent agrees to  
21 use the information solely for the purpose of defense in the Board  
22 proceeding and in any appeal therefrom and agrees not to otherwise  
23 disclose the information indexed by docket number or similar  
24 internal reference.

1        F. Upon completion of an investigation, the probable cause  
2 committee may make a recommendation to the Board for dismissal or  
3 for other action or set the case for hearing by the Board.

4        G. The respondent may be given an opportunity to participate in  
5 an informal resolution of the case. Discussions to resolve the case  
6 without a hearing may be conducted by the Director, the prosecutor  
7 of the Board, or both the Director and the prosecutor. Any  
8 recommendation for informal resolution shall be presented to the  
9 Board for its consideration and approval.

10       H. ~~Notice of a Board decision issued to a long term care~~  
11 ~~administrator who is the subject of a complaint shall be issued If~~  
12 ~~the case is not resolved, the respondent shall be afforded notice~~  
13 ~~and a hearing in accordance with the provisions of Article II of the~~  
14 ~~Administrative Procedures Act governing individual proceedings. Any~~  
15 ~~request for The members of the probable cause committee that~~  
16 ~~reviewed the complaint shall recuse themselves from any~~  
17 ~~participation in a hearing by a long term care administrator~~  
18 ~~regarding the proposed action of the Board shall be received by the~~  
19 ~~Board within ten (10) days of the receipt of the notice of the Board~~  
20 ~~decision by the long term care administrator. Any party aggrieved~~  
21 ~~by a decision of the Board following a hearing may appeal directly~~  
22 ~~to district court pursuant to the provisions of Section 318 of Title~~  
23 ~~75 of the Oklahoma Statutes.~~

1 SECTION 2. REPEALER Section 4, Chapter 168, O.S.L.  
2 2005, as amended by Section 11, Chapter 291, O.S.L. 2006 (63 O.S.  
3 Supp. 2007, Section 330.64), is hereby repealed.

4 SECTION 3. This act shall become effective November 1, 2008.

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6 51-2-9741 SAB 01/16/08  
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