# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>iii</td>
</tr>
<tr>
<td>Corporations</td>
<td>1</td>
</tr>
<tr>
<td>Board of Directors Duties</td>
<td>3</td>
</tr>
<tr>
<td>Standard of Care</td>
<td>6</td>
</tr>
<tr>
<td>Composition of the Board</td>
<td>7</td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>9</td>
</tr>
<tr>
<td>Board of Directors Meetings</td>
<td>13</td>
</tr>
<tr>
<td>Committee Meetings</td>
<td>15</td>
</tr>
<tr>
<td>Officers</td>
<td>16</td>
</tr>
<tr>
<td>Best Practice Guidelines</td>
<td>17</td>
</tr>
<tr>
<td>Overview of Community Care Licensing Requirements</td>
<td>21</td>
</tr>
<tr>
<td>Appendix</td>
<td>26</td>
</tr>
<tr>
<td>Index of Frequently Asked Questions</td>
<td>28</td>
</tr>
</tbody>
</table>
INTRODUCTION

The California Department of Social Services licenses crisis nurseries and oversees an array of programs that provide care, supervision, and services for children at risk. The Department’s goal is to protect the health and safety of the children who stay in crisis nurseries. The purpose of the booklet is to provide all crisis nursery boards of directors with information about their duties and responsibilities and to enhance their knowledge regarding the operation of crisis nurseries.

This booklet is being provided to all crisis nursery boards of directors. This information is so important that it must be read by every crisis nursery board member. All crisis nursery board of director members must sign a statement that they have read this booklet. This statement is located on the next page as form LIC 165 (8/07) a Board of Director Statement.

This booklet is designed to provide information about the obligations of boards of directors for crisis nurseries. However, this information serves only as a guide. Do not rely on this booklet for all of your legal responsibilities as a member of the board of directors. This booklet does not constitute legal advice. For more information, please contact your attorney.

It would be prudent for potential members of the board of directors for a proposed nonprofit public benefit corporation to seek out the assistance of an attorney with the appropriate expertise before taking any steps in forming the corporation.

As a member of the board of directors, you must be familiar with the laws and regulations that govern crisis nurseries. Knowledge of these rules is important when making decisions. When you make decisions, it is also important to know the needs of children who are placed in your facilities.

It is also important that you understand what is in this booklet. If you have any questions about crisis nursery rules, you may call your local licensing regional office to request information. You may refer to your local telephone directory under California State Government for the telephone number of your local Community Care Licensing Regional Office to call for assistance.
Licensees are required to provide a copy of the Community Care Licensing’s publication, Facts You Need To Know, Crisis Nursery Board of Directors, to each member of their board of directors. The members of the board of directors are required to read and sign the statement below. This form must be completed by all board members. The signing of this form by all members of the board of directors is a condition of licensure.

I have read and understand my legal duties and obligations as a member of the board of directors and I also understand that the crisis nursery operation is governed by laws and regulations that are enforced by the Department of Social Services, as set forth in the publication, Facts You Need To Know, Crisis Nursery Board of Directors.

I declare that I have received a copy and I have read and understand the information contained in the publication, Facts You Need To Know, Crisis Nursery Board of Directors.

1. Facility Name ____________________________ 2. Facility Number ____________________________
3. Your Name (Print Clearly) __________________ 4. Daytime Telephone No. __________________
5. Your Mailing Address ______________________ 6. City ____________________________
7. State ________________ 8. Zip ________________
9. Signature ____________________________ Date ____________________________

Note: The publication, Facts You Need To Know, Crisis Nursery Board of Directors booklet is only as current as the initial publishing date or any later revision date. Therefore, the booklet may not include information on the most current law and regulation changes that you may need to know. Boards of directors should ensure that they are informed of law and regulation changes.

NOTE: The most current and fillable version of form LIC 165 is available online at http://www.cdss.ca.gov/cdssweb/entres/forms/English/lic165.pdf
BOARDS OF DIRECTORS STATEMENT
INSTRUCTIONS

General Information

As stated on the front side, each member of the board of directors must sign this form. Also, board members must read the Board of Directors booklet and sign this form before joining the board. This form may be copied and given to each of your members for their signature. The signed forms must be kept at the crisis nursery administrative office. The signed forms must be available to licensing staff for inspection upon request.

Instructions

Please type or clearly print the information being requested by each item number.

Items 1. and 2. Enter the facility name and number. When a corporate licensee has more than one facility, it is important that the same facility number is used for all board members. This ensures that each and all board members are associated and identified with the correct corporate licensee. It is acceptable to enter this on behalf of the board member.

Items 3. - 9. The board member enters his or her name, daytime telephone number, complete mailing address, signature and date. All signatures must be original.

NOTE: The most current and fillable version of form LIC 165 is available online at http://www.cdss.ca.gov/cdssweb/entres/forms/English/lic165.pdf
A corporation is a distinct legal entity under California law. A new corporation is formed when its articles of incorporation are filed with the Secretary of State. A nonprofit (public benefit) corporation is different from a for-profit corporation. While a for-profit corporation has owners whose goal is to create a profitable return on their investment, a nonprofit corporation is created for charitable or educational purposes, (i.e., to benefit the public at large). In the case of a crisis nursery nonprofit corporation, charitable purposes would include providing shelter, care and guidance to at risk children. The basic steps and minimum requirements for forming a nonprofit corporation are summarized in the question and answer format below.

**FREQUENTLY ASKED QUESTIONS**

*How is a nonprofit corporation formed?*

Non-profit corporations, like other corporations, are formed by filing with the California Secretary of State the required forms, starting with the Articles of Incorporation Nonprofit Benefit Form ARTS-PB-501(c)(3) along with any other forms required such as the Statement of Information (SI-100). Please consult with your legal advisor.

*What are Articles of Incorporation?*

The articles of incorporation include: 1) the official name of the corporation, 2) a statement that the corporation is a nonprofit corporation 3) the name and address of a person in California who will accept legal notices and 4) the initial street address and mailing address, if different from the street address, of the corporation. (California Corporations Code section 5130). Please refer to California Secretary of State at http://www.sos.ca.gov/business-programs/ for more information.

*What are Bylaws?*

The bylaws provide the rules for governing and operating the corporation (California Corporations Code section 5151). While your corporation may put these rules in its articles of incorporation, most elect to place them in bylaws because it is simpler to change them. Bylaws, and changes to them, do not need to be filed with the Secretary of State.

Your bylaws must state the number of directors of the corporation unless it is stated in the articles. Unless restricted by law or the articles of incorporation, the board of directors can set, adopt and amend bylaw provisions. The following are typical provisions included in bylaws:
• The time, place, and method used to call meetings of members, directors, and committees.

• The duties, method of election and qualification of directors.

• The length of directors’ terms.

• The manner of appointment, duties, compensation, and the length of officers’ terms.

• The requirements of reports to members.

• The rules for admitting and removing members.

• The appointment and authority of committees.

• The special requirements for the percentage of member and director votes needed to take certain actions.

• The number of directors needed to make a quorum.

**Where do I keep my Articles of Incorporations and Bylaws?**

Current copies of the articles of incorporation and bylaws must be kept at your principal California office (California Corporations Code section 5160). A copy of the bylaws and articles of incorporation should be kept up to date by filing copies of amendments as they are adopted by resolutions of the board of directors (California Corporations Code sections 5215 and 5810-5820).

**What is a Board of Directors?**

The board of directors (“board”) is the governing body of the corporation. The board consists of persons named in the articles of incorporation or bylaws or elected by the creators of the corporation and later board members to act as members of the board.
The directors are given the authority and responsibility for managing the nonprofit corporation so that it can prosper and meet its mission by adopting ethical and lawful governance and sound financial management policies. The directors meet and make decisions together as the board of directors ("board"). The board is ultimately responsible for making sure a corporation is run properly. If it fails to do this, individual directors may be held responsible.

All corporate powers are exercised under the board's direction (California Corporations Code section 5210). While certain powers may be assigned to committees, officers, or employees, their use of that power and their actions are subject to the board's review, direction and control.

As a practical matter, the day-to-day activities should be assigned to a particular staff member, sometimes called an Executive Director, or to an administrator. While some important decisions may be delegated, those decisions must be reviewed and approved by the board. The board cannot simply abdicate its responsibility by delegating power and responsibility to the Executive Director and/or staff without ensuring appropriate oversight.

The board and each director have a special legal relationship to the corporation called a fiduciary relationship. As fiduciaries, directors must place the interests of the corporation before their own or others’ interests. To protect the corporation’s interest, the board must guard against harm to the corporation caused by any unfair or unreasonable transactions, conflict of interest or self-dealing transactions. To accomplish this, the board must take an active role in overseeing the corporation.

The duties of a Crisis Nursery’s board of directors include those duties specified in the California Code of Regulations, Title 22, Section 86563:

- Establishing and approving policies and procedures governing the operation of the crisis nursery.
- Approving and monitoring the corporation’s operating budget.
- Assessing and maintaining the level of funds necessary to cover the costs of operating the crisis nursery.
- Employing an administrator who meets the requirements of Section 86564(d).
• Completing a written statement describing the duties delegated to the administrator, providing a copy of it to the administrator, and maintaining a copy in the crisis nursery’s file.

• Requiring that the administrator, or a designee be present at all board of directors’ meetings during which the operation or policies of the crisis nursery are discussed.

• Conducting board of directors’ meetings at least on a quarterly basis to review and discuss the crisis nursery’s operation, as specified in Section 86563(b)(7).

• Based upon the review, to ensure the crisis nursery complies with all applicable regulations.

• Ensuring that minutes of all board of directors’ meetings are kept and retained as a permanent record, and that they reflect the board’s discussion of the documents specified in Section 86563(b)(7).

• Ensuring that all minutes of board of directors’ meetings are available for review by the Department.

• Submitting copies of all corporate documents to the Department at the time they are submitted to the Secretary of State.

Additionally, the board of directors is ultimately responsible for the following:

• Making and approving long-range goals and objectives.

  Actively participating in making and authorizing the corporation’s long-term direction; approving annual objectives and prioritizing long-range goals.

• Developing a financial plan to ensure that there are adequate funds to pay expenses and long-range goals and objectives.

  This could include fund raising to supplement your program.

• Making and adopting policies for internal control.

  Establishing the limits of the Executive Director’s authority to budget, administer finances and compensation, establishing programs, and otherwise managing the corporation. Ensuring development of procedures to govern operations and ensuring adequate internal controls.
• Selecting, employing, assessing and, if necessary, dismissing the Chief Executive Officer.

Providing support, comments and criticism, when needed; holding the staff accountable for carrying out plans and policy decisions; providing a formal performance review and appraisal.

• Adopting and monitoring the corporation’s operating budget, financial development plan and insurance program.

Reviewing and understanding the financial statements on a regular basis to ensure the financial health of the corporation and that the corporate funds are being spent appropriately and in accordance with the board’s financial plan and budget. Directors have an absolute right at any reasonable time to inspect and copy all books, records and documents of every kind pertaining to the corporation and its finances.

• Performing its legal responsibilities.

To act for the corporation as outlined in the articles of incorporation, constitution and/or bylaws.

• Protecting the assets of the corporation.

Ensuring that no board members, management, or staffs are overpaid or unfairly or unreasonably profiting from business dealings with the corporation. Ensuring the corporation’s equipment is not being misused. Ensuring all important purchases and leases have fair and reasonable terms, and representing the best deal possible to the corporation.

• Board development (recruiting, orienting and assessing the board).

Aside from attending board meetings, it is also recommended that directors take the time to get to know the facility. Conduct regular on-site facility visits. When appropriate, take the time to talk with the staff. This hands-on approach will provide valuable information about the operations of the facility.
STANDARD OF CARE

Directors are fiduciaries of the corporations on whose board they serve and are expected to perform their service in accordance with what is known as the “Duty of Care” and the “Duty of Loyalty.”

THE DUTY OF CARE

The director’s duty of care means that the director must perform with the level of care that an ordinarily prudent person in a like position would use. A director should review the governing documents of the corporation, including the bylaws and articles of incorporation, to understand the company’s mission, along with the role of the board in ensuring that mission.

Directors need to stay informed of the operations of their corporation by regularly attending board meetings and serving on board committees. Directors need to obtain the information they need to make an informed decision. They should form their own decisions and not rely on the recommendations of others. A board member should be willing to ask difficult questions and to ensure that each matter is subject to adequate deliberation.

A board member has the right to look into the corporation’s finances and can ask for access to management, advisors, auditors and others to obtain that information. A director can rely on reports made by committees appointed by the board, on officers and managers that the director thinks are reliable and competent, on counsel, independent accountants and others with professional expertise. In relying on others, the director should act in good faith and perform a reasonable inquiry where necessary.

THE DUTY OF LOYALTY

The director’s duty of loyalty means that the director must act in the best interests of the corporation. This means that the director is obligated to act with undivided loyalty, which is to say that they must be fair in their dealings with the nonprofit and should not seek to use their position to benefit personally or financially from their work as a director.

The duty of loyalty is most likely to be at issue when a director enters into transactions with the corporation, in which there is the potential for the director to enrich themselves at the expense of the corporation. Whenever a director enters into a transaction with the corporation, the director should seek approval of the board, and the board needs to determine that the deal is in fact in the best interests of the corporation. A more complete discussion of this can be found in the section of this pamphlet addressing self-dealing transactions.
COMPOSITION OF THE BOARD

While it is convenient to have employees or their relatives on the board, it is not always in the corporation’s best interest because these individuals are likely “interested persons.” There is a built-in conflict of interest if too many directors receive money from the corporation or if too many directors are related to employees of the corporation.

No more than 49% of the board of directors may be “interested persons.” “Interested persons” include any director who has received payment for services rendered within the past 12 months whether as an employee (full or part time), independent contractor, or otherwise. If a director is related to anyone who has received payment from the corporation, that director may also be an “interested person.” (California Corporations Code section 5227)

There is a good reason for this rule. Directors may have to decide whether to use corporate money for their own payment (or other interests) or for the corporation’s charitable purposes. By limiting the number of “interested persons” serving as directors, the corporation limits the potential for self-dealing transactions and other conflicts of interest.

FREQUENTLY ASKED QUESTIONS

If I have seven board members, how many can be “interested persons”?

A maximum of three persons. The remaining four board members cannot be paid by the corporation in a non-director capacity or be related by blood or marriage to any other person paid by the corporation in a non-director capacity.

What can be done to prevent the board of directors from having too many “interested persons”?

One way to prevent a board from exceeding the number of interested parties is to periodically determine that no more than 49% of its directors have received payment during the past year and whether they may receive payment for the coming year (California Corporations Code section 5227). The corporation should also determine if any director’s relative has or will receive payment for services rendered. If there are more than 49% “interested persons” serving as directors, the board must correct the situation.
Is a director considered an “interested person” if they receive reimbursement for actual costs incurred while performing their duties as directors?

No, this is not considered payment for purposes of identifying the number of “interested persons.”
CONFLICT OF INTEREST

When a director or staff member has an interest that may affect his or her ability to put the interest of the corporation before their personal interest, conflict of interest exists. Because directors (and their family and friends) are likely employed outside of the board and are associated with organizations in their communities, it is not unusual for actual or potential conflict of interest to arise.

Directors must follow specific procedures in approving transactions involving the corporation and one or more directors who have a material financial interest in the transaction, as is the case in a self-dealing transaction (California Corporations Code section 5233).

SELF-DEALING TRANSACTION

A “self-dealing transaction” is, with limited exceptions, one in which the corporation is a party and one or more of the directors has a “material financial interest.” (California Corporations Code section 5233). Any director who has a “material financial interest” in the transaction is an “interested director” and as such has a duty to disclose their interest in the transaction to the board.

Any financial interest is “material” if it is large enough to create an appearance of a conflict of interest. Actual conflict is not required to trigger the duty to disclose to the board. So the director must honestly disclose any potential interest and let the board make a determination.

Transactions involving a third party such as a director’s spouse, other relative, or an entity (partnerships, corporations, or trusts) with which the director or relative is associated, may also be self-dealing situations. It may not be obvious that a director or relative is affiliated with the entity. So, all possible associations must be reported by a director to the board.

Once it has been apprised of a potentially self-dealing transaction, the board must then determine whether the transaction will be allowed. The board must decide if the transaction is fair and reasonable and in the corporation’s best interests, in accordance with California Corporations Code section 5233(d)(2) and (3). When a board is apprised of a potentially self-dealing transaction, it should exercise due diligence and may want to seek legal advice.

Example: Self-dealing transactions between a corporation and director include the renting or selling of real property (house, structure, land, etc.); the renting or selling of personal property (furniture, appliances, office equipment, etc.); contracting for services; payment of a salary to an employee who is also a board member; and any transaction where a director may earn a commission.
What happens when an unfair self-dealing transaction occurs?

When a transaction that is unfair to the corporation occurs, the charity suffers damage to its assets. The Attorney General, and others, may sue the responsible directors for damages to the corporation, plus interest, and in some cases punitive damages (California Corporations Code section 5233). Self-dealing directors and other responsible directors can be removed from the board of directors or may be subject to administrative action by the Department (Health and Safety Code section 1500 et seq.).

Under what circumstances can a board approve a potentially self-dealing transaction with an interested director?

Not all transactions between a corporation and an interested director are unfair to the corporation. If the transaction benefits the corporation, is fair and reasonable, and is the best deal the board could reasonably obtain under the circumstances, such a transaction may be allowed. Corporations Code section 5233(d) describes the circumstances under which a board may approve such a transaction. It also describes the different procedures which must be used if the transaction is to be approved by the board in advance, or after the fact.

Failure to abide by the requirements of section 5233(d) could lead to the board and its members being sued for any losses sustained by the corporation, as set out in section 5233(h), and could lead to possible administrative action by the Department.

What is “Due Diligence”?

In exercising due diligence, the directors must conduct a reasonable investigation into the facts. For example, assume the corporation is considering hiring one of its directors to perform bookkeeping services. An independent person or committee should be appointed to conduct an investigation into the facts. At a minimum, the facts considered should include what bookkeeping services are required and what other bookkeepers charge for similar services. The fair market rates should then be compared to that of the “interested director.” The directors must review in good faith all the information gathered by the independent investigation, and all other relevant information, and ask all necessary questions in order to make an honest and informed decision. This review and comparison will indicate to the board whether the transaction is “fair and reasonable” to the corporation.

As a practical matter, thorough and complete board minutes should be kept of any board meeting where a self-dealing transaction is reviewed and approved. All
information gathered by the independent review and any written reports relied upon by the directors should be included or attached to the minutes.

The actions of the board must appear proper; the intent must be proper; and the outcome must be in the best interest of the corporation. If these actions are not performed, the transaction could project the appearance of fraud and collusion by the directors, and all directors could be held liable for damages to the corporation.

**What are some other examples of transactions that may be improper?**

A loan made by a corporation to a director, officer, or relative of either, or a third party associated with those persons, may be improper. Directors may be held personally liable for making a loan of charitable assets. Prior approval from a court or the Attorney General is required for most loans from a public benefit corporation to an officer or director (California Corporations Code section 5236).

Certain distribution of corporate assets is prohibited, such as: (1) transfers of corporate funds or assets to directors, officers, or members without fair consideration; (2) payment of excessive or unauthorized salaries or “bonuses”; (3) improper gifts of charitable assets to individuals; and (4) other uses of corporate assets unrelated to carrying out the charitable purposes of the corporation. A director may be personally liable for making or receiving a prohibited “distribution” of the public benefit corporation’s assets.

**How do I know if staff compensation is fair and reasonable?**

There is no precise formula to evaluate whether staff compensation is fair and reasonable. The following questions may be considered in such an evaluation.

- How much does staff (including the executive director and program administrator) get paid?

- Are there other monies or things of value (such as reduced time schedule, overtime pay, benefits, bonuses, or the use of a car) given to staff in addition to wages?

- How was the compensation determined?

- What are the job duties of the staff person?

- How qualified and experienced are the staff?
• What do other similarly situated staff who work in similar sized nonprofit businesses earn?

• Is the compensation necessary for the crisis nursery to hire and retain quality staff?

• What percentage of operating expenses goes for employee compensation?
BOARDS OF DIRECTORS MEETINGS

Crisis Nursery Board of directors’ meetings must be held no less than quarterly. At these meetings, the board of directors shall review and discuss the crisis nursery’s operation, licensing reports (e.g., Complaint Report and Facility Evaluation Report), financial and program audit reports of its crisis nursery(s) operations, incident reports filed by the crisis nursery with Community Care Licensing, and any administrative action against the licensee or its employees. Based on its review, the board must ensure that the crisis nursery complies with all applicable regulations.

It is acceptable for the board to designate a committee to review and to provide a complete report to the full board. However, each director remains responsible to exercise a duty of due care in their actions.

Any discussions involving specific children living in the crisis nursery or specific employees must be kept confidential. Their names should not appear in the minutes. The minutes shall reflect the board’s discussion of these documents and the crisis nursery’s operation. The board of directors shall require the administrator, or a designee, be present at all meetings during which the operation or the policies of the crisis nursery are discussed.

FREQUENTLY ASKED QUESTIONS

Where can board of directors meetings be held?

Board of directors meetings can be held anywhere stated in the notice, bylaws or board resolution. If the meeting place is not stated in any of these ways, then it must be held at the principal office of the corporation.

How many votes are required for a decision of the board to be official?

In order for any act or decision of the board of directors to be official, it must be voted on by a quorum. A quorum is the number of members necessary to take action at a meeting (California Corporations Code section 5211). The quorum may be stated in the articles of incorporation or bylaws and must meet the legal rules.

Normally a quorum will be found where a majority of the authorized number of directors is present. The bylaws may allow for a smaller number, but in no event can the number be less than a third of the authorized number of directors, or two, whichever is larger.
**Must we keep minutes of our board meetings?**

Yes, a nonprofit corporation must keep a written record of the meetings of its board and committees of the board (California Corporations Code section 6320 and the California Code of Regulations, Title 22, section 86563). For example, minutes must be retained as a permanent record and shall reflect the board’s discussions of specified documents. Additionally, the minutes of the board meetings must be made available to California Department of Social Services staff upon request.

The primary purpose for keeping minutes is to have documentation that explains the actions of the board. The law requires the minutes to contain enough information to make a clear written record for future use. Although minutes need not be a word-for-word record of everything said at a board meeting, they must present an accurate record of what was done, such as time, place, who was present, what was discussed, results of all votes taken, and what decisions were made and why.

Also, any documents the board or committee uses to make decisions (including financial statements) should be attached to the minutes if they are not confidential. If these documents are confidential, they must be clearly identified in the minutes. However, if the documents are usually a part of the corporation’s permanent records, they must either be attached to the minutes or clearly identified in the minutes.
COMMITTEE MEETINGS

FREQUENTLY ASKED QUESTIONS

**Must we keep minutes of committee meetings?**

Yes, if the committee is acting on behalf of the board of directors, such as an executive committee.

**Who can take the minutes?**

Usually the Secretary of the corporation is responsible for preparing the minutes and distributes them either in advance of the next board meeting or at the meeting. A vote to approve the minutes is required only when board members want to make changes to the minutes as presented by the Secretary. Lastly, the minutes should be certified by the Secretary (California Corporations Code section 5215).
OFFICERS

California nonprofit corporations must have at least three officers: a President or Chair of the board, a Secretary, and a Treasurer or Chief Financial Officer (California Corporations Code section 5213). The board may also have other officers as provided in the bylaws. Officers are in charge of carrying out the day-to-day business of the corporation. Chief Executive Officers and Chief Financial Officers may serve as paid staff and may or may not have a seat on the board of directors. The powers, duties and responsibilities of corporate officers are set by the articles of incorporation, bylaws, or by resolution of the board of directors. Officers owe a fiduciary duty to the corporation and must act honestly and in the best interest of the corporation. Officers serve at the pleasure of the board, and may be terminated by vote of the board, subject to the rights, if any, of an officer under an employment contract.

FREQUENTLY ASKED QUESTION

Can one person serve as the Secretary and Treasurer?

Yes, one person may fill one or more of the officer positions. However, the person or persons who hold(s) the offices of Secretary and Treasurer cannot also be President.
The responsibilities of the board of directors of a non-profit corporation are fairly well defined. What can be unclear is how board members are to meet their responsibilities. The following are a few suggestions to have an effective board of directors that practices good governance and oversight of the agency.

Boards of directors vary in size and are responsible for governing agencies that serve children with a variety of needs.

This requires flexibility in how boards are structured and how they fulfill their responsibilities. The following answers to frequently asked questions summarize some good business practices for a board of directors.

**FREQUENTLY ASKED QUESTIONS**

*What orientation methods can be used to familiarize potential and new members to the board and the agency?*

- Develop a board manual of materials that includes the following items: introduction letter, mission statement, description of program(s), bylaws, list of board members, list of board committees, board calendar, last meeting minutes, and the most current audit reports (Refer to the list at the end of this section for other suggested information).
- Interview current board members.
- Tour the agency.
- Visit and talk to staff.

*What are some strategies for creating and keeping a strong board?*

- Recruit persons with the experience and education the board needs (e.g., accountant and mental health professional).
- Orient and train new and existing board members.
- Assess how well the board and the individual members are meeting the needs of the corporation.
• Stagger board members’ terms to bring fresh ideas and skills while maintaining consistency.

What are some strategies for effective, productive board meetings and involved board members?

• Provide notification of meeting and agenda items in advance to all board members and require a response from each indicating whether he or she will attend.

• Identify issues and recommendations of major agenda items.

• Designate a timekeeper, if needed, to keep the meeting on track, particularly with controversial agenda items.

• Follow rules to maintain an orderly meeting, (e.g., Robert’s Rules of Order.)

• Establish committees among board members to deal with personnel issues, nominations for board members, and other ongoing functions.

• Have board retreats or annual meetings to develop a strategic plan for the agency (should invite agency staff members).

• Invite board members to agency functions.

• Solicit input from “silent” members.

• Have breaks during the meeting.

• Provide refreshments, breakfast, or lunch.

How can the board meet its duty to review licensing reports, financial reports, and incident reports at the meetings?

The board is responsible for finding ways to address problems identified in licensing reports, audit reports, incident reports and administrative actions. The law requires the board to meet quarterly to discuss these documents. The board can meet these obligations by, among other things:

• Placing these reports on the agenda and attaching the reports to the agenda, if feasible, or summarizing lengthy incident reports. (Information including, but not limited to, information and records regarding a minor client, is confidential and must be protected consistent with applicable laws and regulations.)
• Recording the outcome of discussions on these reports in the minutes.

• Designating an individual or committee that reports to the board on these matters.

• Obtaining training on evaluating and understanding financial statements.

_How can the board ensure that the agency follows California Department of Social Services (CDSS) regulations?_

• Invite representatives of the Department for updates at board meetings.

• Review program and fiscal audits reports.

• Visit the facility; talk to staff and children, as appropriate. (Board members may be required to obtain criminal background clearance or exemption prior to their initial presence in the facility, as specified in Section 86519.)

• Obtain current copies of the program statement and applicable CDSS regulations.

• Attend CDSS sponsored trainings or seminars.

_What other practices should board members consider?_

• Evaluate the Executive Director annually.

• Attend meetings regularly and record attendance or absence, include reasons for absence.

• Obtain Director’s and Officer’s insurance.

• Obtain and review the Attorney General’s Guide for Charities.

• Be familiar with the organization’s articles of incorporation and bylaws.

• Require dual signatures, when feasible, on all bank accounts.

• Ensure objections to board decisions are reflected in the minutes.

• Have professional members and community representatives on the Board to contribute their knowledge and experience.
• Attend workshops and conferences for non-profit corporations.

One of the best methods to be an effective and responsible board member is to keep informed about the organization in order to make knowledgeable decisions. The list below contains suggested items to include in a board manual.

1. List of current board members' telephone numbers, addresses, and their committee assignments.

2. Board calendar with important dates.

3. List of current agency staff and their responsibilities.

4. Organizational chart.

5. Agency bylaws.

6. Recent financial audit, balance sheet, operating statement, and other financial statements.

7. Recent reports to funding sources, and a list of all funding sources.

8. Minutes of recent Board meetings.

9. Update on current programs and projects.

10. Program statement, which outlines services to children.

11. Guidebook for crisis nursery providers (Establishing and Maintaining Positive Relationships in the Community).

12. Staff personnel policies manual.


14. Other written policies as appropriate to exercise oversight without micromanaging the agency.
The Community Care Licensing Division (CCLD) is the state agency responsible for licensing and monitoring all crisis nurseries. These responsibilities are accomplished by on-site visits to crisis nurseries performed by licensing staff from regional offices located throughout California. The purpose of these visits is to ensure that crisis nurseries follow the relevant laws and regulations contained in the California Community Care Facilities Act (Health and Safety Code commencing with section 1500) and California Code of Regulations, Title 22, Division 6, Chapter 7.5. It is the responsibility of board members to be familiar with these laws and regulations. Knowledge of the rules will be important when making decisions about the crisis nursery’s operations.

To obtain a copy of the regulations:

- Ask your administrator for a copy of the regulations that should be kept in each facility;

-or-


-or-

- Obtain copies of the regulations and/or the Health and Safety Code by contacting:

  Barclay’s West Group  
  (800) 888-3600

This section of the crisis nursery booklet provides a general overview of Community Care Licensing and board members’ responsibilities. This overview does not explain every law and regulation that may apply to crisis nurseries. However, the following information gives a general idea of the required basic services to be provided by a crisis nursery and the resources available through Community Care Licensing to assist with compliance.
FREQUENTLY ASKED QUESTIONS

Who is Community Care Licensing?

Community Care Licensing (CCL) is a division of the California Department of Social Services (CDSS). The mission of CCL is to ensure the health, safety and well-being of children, adults and elders in out-of-home care through the enforcement of licensing requirements found in applicable laws and regulations. Licensing staff throughout the state are responsible for processing applications for licensure, performing unannounced licensing visits, responding to complaints that licensing laws and regulations are being violated, developing plans to correct problems and violations, and helping crisis nurseries follow licensing requirements.

How does the licensing agency monitor compliance?

The licensing agency makes unannounced visits to all crisis nursery facilities. During the visit, records pertaining to staff, children and administrative requirements are reviewed. Based on a review of the crisis nursery program statement, staff may be interviewed to ensure the program described is in place and services are being provided. Buildings, grounds, equipment and furnishings are reviewed to ensure that they are clean, sanitary, sufficient in quantity, and in good repair. In addition, the following are reviewed for facility compliance: emergency plans; discipline policies; activity programs; visiting policies; neighbor and child complaint policies; personnel policies; job descriptions; resident roster; medication records; Board of Directors meeting notes; staff training plan; resident accounting records; and staff criminal record clearances. At the conclusion of the review, licensing staff prepare a written report, which is discussed with the appropriate facility staff persons. If any areas do not meet requirements a notice of deficiency is issued citing the law or regulation that has been violated, and a manner and time for correction is agreed upon. A follow-up plan of correction visit may be conducted to ensure that all deficiencies have been corrected.

In addition, the licensing agency makes an unannounced visit when it receives a complaint against a facility alleging violations of applicable laws or regulations, as set forth in Health and Safety Code section 1538. The complaint visit occurs within 10 days after receipt of a complaint. During the course of a complaint investigation the Licensing Program Analyst may conduct an inspection of the buildings and grounds, staff and client records, and conduct interviews with staff, among other things. At the end of the investigation, licensing staff prepares a written report. Violations are identified along with the relevant regulations and/or laws, which are discussed with the appropriate facility staff persons. A manner and time for correction are agreed upon, if applicable. A follow-up plan of correction visit may be conducted to ensure that violations have been corrected.
Facility staff should forward copies of written Inspection and Complaint reports discussed above to the board for its review. This notification will assist the board in its general supervision of the crisis nursery’s operations for which the board is accountable.

**What can happen if a violation of licensing requirements occurs?**

When a crisis nursery licensee, employee, or board member has violated an applicable law or regulation, or engaged in activities that endanger the health and safety of children in their care, the Department can take action against the licensee, employee, and/or board member (Health and Safety Code Sections 1500 et seq, California Code of Regulations, Title 22, Sections 86500 et seq). The Department’s enforcement options may include, but are not limited to, those listed below.

- **Civil Penalty** – The licensing agency can levy different types of civil penalties against a licensee for failure to comply with licensing requirements. For example, at the time of the follow-up visit, it can levy a civil penalty against a licensee when areas that do not meet requirements are not corrected within the time specified in the plan of correction agreed to by the licensee. In addition, the Department can levy civil penalties for certain violations, such as repeat violations, as specified in applicable law. The licensee has a right to request a formal review of a civil penalty assessed, as set forth in applicable law.

- **License Revocation** – The Department can revoke a crisis nursery license for any of the following:

  1. **Violation of, or aiding, abetting or permitting the violation of, the Community Care Facilities Act or associated regulations.**

  2. **Conduct which is inimical to the health, morals, welfare, or safety of either the people of this state or an individual receiving services from the crisis nursery.**

  3. **The conviction of a licensee or other specified persons of specified crimes**

  4. **The licensee or person providing direct care or supervision or other specified person knowingly allows any child to have illegal drugs or alcohol.**

  5. **Engaging in acts of financial malfeasance concerning the operation of the crisis nursery.**

The licensee has a right to request a hearing before an Administrative Law Judge.
• Temporary Suspension Order (TSO) – The Director may temporarily suspend any license prior to any hearing when, in the opinion of the Director, the action is urgent to protect residents or clients of the crisis nursery from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The licensee has a right to request a hearing on the TSO before an Administrative Law Judge.

• Employee or board member actions – The Department may prohibit any person from employment or presence in licensed facilities, certified family homes or resource family homes, and may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee. (See, for example, Health and Safety Code section 1558). The individual has a right to request a hearing before an Administrative Law Judge.

How does the corporation become a licensee?

The board of directors sends a designee and administrator to attend an orientation and participate in the application process. During this process a completed application is submitted and reviewed for compliance by the local licensing office staff. In addition, among other things, a fire clearance approval is obtained from the local fire department, other local approvals that may be required are received, corporate assets are confirmed, and criminal record clearances are completed. Licensing staff make a site visit to the facility to confirm that the facility and furnishings/equipment are in place and in good order. A corporation may apply for more than one crisis nursery license. Each application submitted will go through the application process before a license to operate is issued.

When can the facility begin operating?

It is against the law for a crisis nursery to begin operation without a license. Each crisis nursery operated by the corporation must have a license issued before the facility is allowed to begin operation.

As a board member, am I responsible for the facility’s day-to-day operation?

The board may delegate the day-to-day operations of the corporation to a person, such as an executive director, or to a management company, provided that the activities and affairs of the corporation are exercised under the ultimate direction of the board. The board is accountable for the general oversight of the crisis nursery, the establishment of policies and procedures concerning its operation, ensuring that there are adequate internal controls, and that finances are appropriately managed. In addition, as noted above, the board is responsible for finding ways to address problems identified in licensing reports, audit reports, incident reports and
administrative actions. The law requires the board to meet quarterly to discuss these documents.

**As a board member, how am I responsible for ensuring accountability?**

As a member of the board, you can help the board ensure that the licensee has a robust system of internal controls, as discussed above and as required by California Code of Regulations, Title 22, Section 86563.

**Where can I get copies of licensing evaluation reports?**

You can get a copy of any licensing report from either the Administrator of your crisis nursery or from your local licensing regional office.

**What happens if we have to move to another location or we want to add another facility?**

Crisis nursery licenses are not transferable either to a new licensee or to a different/additional location. Therefore, when a move or expansion is being considered, allow time for a full application to be submitted and processed.
The California Legislature has enacted many statutes that apply to crisis nursery providers and nonprofit corporations. This appendix includes some of these laws and regulations referenced in this booklet. However, there may be other laws and regulations applicable to crisis nurseries and nonprofit corporations that are not included in this appendix or booklet.

CALIFORNIA CORPORATIONS CODE ORGANIZATION AND BYLAWS

1. Formation ................................................................. 5120-5122
2. Articles of Incorporation .......................................... 5130-5134
3. Amendment of Articles of Incorporation ................ 5810-5820
4. Powers ........................................................................ 5140-5142
5. Bylaws ........................................................................ 5150-5153
6. Location and Inspection of Articles and Bylaws ...... 5160

DIRECTORS AND MANAGEMENT

1. General Provisions ...................................................... 5047, 5210-5215
2. Composition, Selection, Removal and Resignation of Directors ........................................ 5220-5227, 5520-5527
3. Standards of Conduct of Directors ......................... 5230-5239
4. Duties and Liabilities of Directors ......................... 5230-5232
5. Self-dealing Transactions by Directors ..................... 5233
6. Compensation of Directors ........................................... 5234
MEETINGS AND VOTING

1. General Provisions ................................................................. 5211, 5510-5517
2. Additional Provisions Relating to Election of Directors ...................... 5520-5527
3. Quorum ......................................................................................... 5211
4. Voting of Memberships ................................................................ 5610-5617
5. Board Meeting Minutes ................................................................ 6320

CRISIS NURSERY LICENSING STATUTES AND REGULATIONS

1. Health and Safety Code Sections 1500 et seq.
2. California Code of Regulations, Title 22, Sections 86500 et seq.

You may access these laws on the CDSS website at:

http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/Community-Care-Licensing-Regulations
# INDEX OF FREQUENTLY ASKED QUESTIONS

## CORPORATIONS

- How is a nonprofit corporation formed? ................................................................. 1
- What are Articles of Incorporation? ................................................................. 1
- What are Bylaws? ........................................................................................................ 1
- Where do I keep my Articles of Incorporations and Bylaws? ................................. 2
- What is a Board of Directors? .................................................................................. 2

## COMPOSITION OF THE BOARD

- If I have seven board members, how many can be “interested persons”? ............ 7
- What can be done to prevent the board of directors from having too many “interested persons”? .......................................................................................... 7
- Is a director considered an “interested person” if they receive reimbursement for actual costs incurred while performing their duties as directors? ..................... 8

## CONFLICT OF INTEREST

- What happens when an unfair self-dealing transaction occurs? ......................... 10
- Under what circumstances can a board approve a potentially self-dealing transaction with an interested director? ................................................................. 10
- What is “Due Diligence”? ...................................................................................... 10
- What are some other examples of transactions that may be improper? ............... 11
- How do I know if staff compensation is fair and reasonable? .......................... 11
BOARD OF DIRECTORS MEETINGS

Where can board of directors meetings be held? ........................................................... 13

How many votes are required for a decision of the board to be official? ....................... 13

Must we keep minutes of our board meetings? .............................................................. 14

COMMITTEE MEETINGS

Must we keep minutes of committee meetings? ............................................................. 15

Who can take the minutes? ............................................................................................ 15

OFFICERS

Can one person serve as the Secretary and Treasurer? .................................................. 16

BEST PRACTICE GUIDELINES

What orientation methods can be used to familiarize potential and new members to the board and the agency? ............................................................................. 17

What are some strategies for creating and keeping a strong board? .............................. 17

What are some strategies for effective, productive board meetings and involved board members? ............................................................................. 18

How can the board meet its duty to review licensing reports, financial reports, and incident reports at the meetings? ................................................................. 18

How can the board ensure that the agency follows California Department of Social Services (CDSS) regulations? ................................................................. 19

What other practices should board members consider? .................................................. 19

OVERVIEW OF COMMUNITY CARE LICENSING REQUIREMENTS

Who is Community Care Licensing? ........................................................................... 22
<table>
<thead>
<tr>
<th>Question</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>How does the licensing agency monitor compliance?</td>
<td>22</td>
</tr>
<tr>
<td>What can happen if a violation of licensing requirements occurs?</td>
<td>23</td>
</tr>
<tr>
<td>How does the corporation become a licensee?</td>
<td>24</td>
</tr>
<tr>
<td>When can the facility begin operating?</td>
<td>24</td>
</tr>
<tr>
<td>As a board member, am I responsible for the facility’s day-to-day operation?</td>
<td>24</td>
</tr>
<tr>
<td>As a board member, how am I responsible for ensuring accountability?</td>
<td>25</td>
</tr>
<tr>
<td>Where can I get copies of licensing evaluation reports?</td>
<td>25</td>
</tr>
<tr>
<td>What happens if we have to move to another location or we want to add another facility?</td>
<td>25</td>
</tr>
</tbody>
</table>