

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1836 Session of  
2001

INTRODUCED BY J. TAYLOR, JUNE 22, 2001

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JUNE 22, 2001

AN ACT

1 Amending the act of December 20, 1985 (P.L.457, No.112),  
2 entitled "An act relating to the right to practice medicine  
3 and surgery and the right to practice medically related acts;  
4 reestablishing the State Board of Medical Education and  
5 Licensure as the State Board of Medicine and providing for  
6 its composition, powers and duties; providing for the  
7 issuance of licenses and certificates and the suspension and  
8 revocation of licenses and certificates; providing penalties;  
9 and making repeals," further providing for respiratory care  
10 practitioners; and providing for refusal or suspension or  
11 revocation of respiratory care practitioner certificates, for  
12 automatic suspension and temporary suspension of respiratory  
13 care practitioners, for impaired professionals and for  
14 continuing respiratory care education.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. Section 13.1(a) of the act of December 20, 1985  
18 (P.L.457, No.112), known as the Medical Practice Act of 1985,  
19 added July 2, 1993 (P.L.424, No.60), is amended to read:

20 Section 13.1. Respiratory care practitioners.

21 (a) Certificate required.--[Eighteen months after the  
22 effective date of this section, it]

23 (1) It shall be unlawful for any person to hold himself  
24 out to the public as a respiratory care practitioner and to

1 practice or offer to practice respiratory care unless he  
2 holds a valid, current temporary permit or certificate issued  
3 by the board.

4 (2) Beginning with the renewal cycle which commences  
5 after the effective date of this paragraph, the board shall  
6 refuse to renew a certificate issued to a respiratory care  
7 practitioner unless he has completed 20 credit hours of  
8 approved continuing education offered by providers approved  
9 by the board by regulation.

10 (3) The board shall not issue a certificate to an  
11 applicant who has been convicted of a felony under the act of  
12 April 14, 1972 (P.L.233, No.64), known as The Controlled  
13 Substance, Drug, Device and Cosmetic Act, or of an offense  
14 under the laws of another jurisdiction which, if committed in  
15 this Commonwealth, would be a felony under The Controlled  
16 Substance, Drug, Device and Cosmetic Act, unless:

17 (i) at least ten years have elapsed from the date of  
18 conviction;

19 (ii) the applicant satisfactorily demonstrates to  
20 the board that he has made significant progress in  
21 personal rehabilitation since the conviction such that  
22 certification of the applicant should not be expected to  
23 create a substantial risk of harm to the health and  
24 safety of patients or the public or a substantial risk of  
25 further criminal violations; and

26 (iii) the applicant otherwise satisfies the  
27 qualifications contained in or authorized by this act.

28 As used in this subsection, the term "convicted" includes a  
29 finding or verdict of guilt, an admission of guilt or a plea of  
30 nolo contendere.

1       \* \* \*

2       Section 2. The act is amended by adding sections to read:

3   Section 13.3. Refusal or suspension or revocation of  
4                   certificate.

5       (a) General rule.--The board shall refuse to issue a  
6   respiratory care practitioner certificate to any person and,  
7   after notice and hearing in accordance with rules and  
8   regulations, may suspend or revoke the certificate of any person  
9   who has:

10           (1) attempted or obtained certification by fraud or  
11   misrepresentation;

12           (2) committed repeated occasion of negligence or  
13   incompetence in the practice of respiratory therapy;

14           (3) been convicted of a felony in a Federal court or in  
15   the courts of this Commonwealth or any other state, territory  
16   or country;

17           (4) habitually indulged in the use of narcotics or other  
18   habit-forming drugs or excessively indulged in the use of  
19   alcoholic liquors;

20           (5) been found guilty of unprofessional conduct;

21           (6) treated or undertaken to treat human ailments  
22   otherwise than by respiratory therapy as defined in this act;

23           (7) had his certificate or license to practice  
24   respiratory therapy revoked or suspended or had other  
25   disciplinary action taken or his application for a  
26   certificate or license revoked or suspended by the proper  
27   certifying or licensing authority of another state, territory  
28   or country; or

29           (8) made a misleading, deceptive, untrue or fraudulent  
30   representation in violation of this act or otherwise in the

practice of the profession.

(b) Procedure.--All action of the board shall be taken subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(c) Reinstatement.--Unless ordered to do so by a court, the board shall not reinstate the certificate of a person to practice as a respiratory therapist which has been revoked, and such person shall be required to apply for a certificate after a five-year period if he desires to practice at any time after such revocation.

(d) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Convicted." Includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.

"Unprofessional conduct." Includes any departure from or the failure to conform to the minimal standards of acceptable and prevailing respiratory therapy practice, in which proceeding actual injury to a patient need not be established.

Section 13.4. Automatic suspension of respiratory care practitioners.

(a) General rule.--A certificate issued under section 13.1 shall automatically be suspended upon:

(1) the legal commitment of a certificate holder to an institution because of mental incompetence from any cause upon filing with the board a certified copy of such commitment; or

(2) conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance,

1     Drug, Device and Cosmetic Act.

2     (b) Stay prohibited.--Automatic suspension under this  
3     section shall not be stayed pending an appeal of a conviction.

4     (c) Restoration.--Restoration of such certificate shall be  
5     made as provided in this act for revocation or suspension of  
6     such certificate holder.

7     (d) Definitions.--As used in this section, "conviction"  
8     includes a finding or verdict of guilt, an admission of guilt or  
9     a plea of nolo contendere.

10    Section 13.5. Temporary suspension of respiratory care  
11                   practitioners.

12    (a) Standard for suspension.--The board shall temporarily  
13    suspend a certificate issued under section 13.1 under  
14    circumstances as determined by the board to be an immediate and  
15    clear danger to the public health or safety.

16    (b) Procedure.--The board shall issue an order to that  
17    effect without a hearing, but upon due notice, to the  
18    certificate holder concerned at his last known address, which  
19    shall include a written statement of all allegations against the  
20    certificate holder. The board shall thereupon commence formal  
21    action to suspend, revoke or restrict the certificate of the  
22    person concerned as otherwise provided for in this act. All  
23    actions shall be taken promptly and without delay.

24    (c) Preliminary hearing.--Within 30 days following the  
25    issuance of an order temporarily suspending a certificate, the  
26    board shall conduct, or cause to be conducted, a preliminary  
27    hearing to determine whether there is a prima facie case  
28    supporting the suspension. The certificate holder whose  
29    certificate has been temporarily suspended may be present at the  
30    preliminary hearing and may be represented by counsel, cross-

1 examine witnesses, inspect physical evidence, call witnesses,  
2 offer evidence and testimony and make a record of the  
3 proceedings. If it is determined that there is not a prima facie  
4 case, the suspended certificate shall be immediately restored.

5 (d) Suspension period.--The temporary suspension shall  
6 remain in effect until vacated by the board, but in no event  
7 longer than 180 days.

8 Section 13.6. Impaired professionals.

9 (a) Consultant to board.--The board, with the approval of  
10 the commissioner, shall appoint and fix the compensation of a  
11 professional consultant who shall be a licensee of the board or  
12 such other professional, as the board may determine, with  
13 education and experience in the identification, treatment and  
14 rehabilitation of persons with physical or mental impairments.  
15 This consultant shall be accountable to the board and shall act  
16 as a liaison between the board and treatment programs, such as  
17 alcohol and drug treatment programs licensed by the Department  
18 of Health, psychological counseling and impaired professional  
19 support groups which are approved by the board and which provide  
20 services to licensees, registrants or certificate holders under  
21 this act.

22 (b) Deferral and dismissal of corrective action.--

23 (1) The board may defer and ultimately dismiss any of  
24 the types of corrective actions set forth in this act for an  
25 impaired professional so long as the professional:

26 (i) is progressing satisfactorily in an approved  
27 treatment program; and

28 (ii) has not been convicted of a felonious act  
29 prohibited by the act of April 14, 1972 (P.L.233, No.64),  
30 known as The Controlled Substance, Drug, Device and

1       Cosmetic Act, or convicted of a felony relating to a  
2       controlled substance in a court of law of the United  
3       States or any other state, territory or country.

4       (c) Disclosure of information to consultant.--An approved  
5       program provider shall upon request disclose to the consultant  
6       such information in its possession regarding an impaired  
7       professional in treatment which the program provider is not  
8       prohibited from disclosing by an act of this Commonwealth,  
9       another state or the United States. The requirement of  
10       disclosure by an approved program provider shall apply in the  
11       case of impaired professionals who:

12           (1) Enter an agreement in accordance with this section.

13           (2) Are the subject of a board investigation or  
14       disciplinary proceeding.

15           (3) Voluntarily enter a treatment program other than  
16       under the provisions of this section but who fail to complete  
17       the program successfully or to adhere to an aftercare plan  
18       developed by the program provider.

19       (d) Agreement with board required.--

20           (1) An impaired professional who enrolls in an approved  
21       treatment program shall enter into an agreement with the  
22       board under which the professional's license, registration or  
23       certificate shall be suspended or revoked and under which  
24       enforcement of that suspension or revocation may be stayed  
25       for the length of time the professional remains in the  
26       program and makes satisfactory progress, complies with the  
27       terms of the agreement and adheres to any limitations on his  
28       practice imposed by the board to protect the public.

29           (2) Failure to enter into such an agreement shall  
30       disqualify the professional from the impaired professional

1 program and shall activate an immediate investigation and  
2 disciplinary proceeding by the board.

3 (e) Consultant report to board.--If, in the opinion of the  
4 consultant after consultation with the provider, an impaired  
5 professional who is enrolled in an approved treatment program  
6 has not progressed satisfactorily, the consultant shall report  
7 to the board all information in his possession regarding the  
8 professional, and the board shall institute proceedings to  
9 determine if the stay of the enforcement of the suspension or  
10 revocation of the impaired professional's license, registration  
11 or certificate shall be vacated.

12 (f) Immunity for provider.--An approved program provider who  
13 makes a disclosure pursuant to this section shall not be subject  
14 to civil liability for such disclosure or its consequences.

15 (g) Health professional duty to report.--

16 (1) Any hospital or health care facility or home health  
17 care operation, peer or colleague who has substantial  
18 evidence that a professional has an active addictive disease  
19 for which the professional is not receiving treatment, is  
20 diverting a controlled substance or is mentally or physically  
21 incompetent to carry out the duties of his license or  
22 registration or certification shall make or cause to be made  
23 a report to the board.

24 (2) A person or facility who acts in a treatment  
25 capacity to an impaired professional in an approved treatment  
26 program shall not be subject to the mandatory reporting  
27 requirements of this subsection.

28 (3) Any person or facility who reports pursuant to this  
29 subsection in good faith and without malice shall be immune  
30 from a civil or criminal liability arising from such report.



1       (4) Failure to provide a report under this subsection  
2       within a reasonable time from receipt of knowledge of  
3       impairment shall subject the person or facility to a fine not  
4       to exceed \$1,000. The board shall levy this penalty only  
5       after affording the party the opportunity for a hearing, as  
6       provided in 2 Pa.C.S. (relating to administrative law and  
7       procedure).

8       Section 3. This act shall take effect in 60 days.