

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2784 Session of 1980

INTRODUCED BY MR. POLITE, JUNE 24, 1980

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 15, 1980

AN ACT

1 Amending the act of June 22, 1970 (P.L.378, No.122), entitled
2 "An act concerning nursing homes; providing for the licensing
3 of persons charged with the general administration of such
4 homes; prescribing the powers and duties of the State Board
5 of Examiners of Nursing Home Administrators; fixing fees and
6 making certain acts unlawful," providing for hearing <—
7 examiners and making an editorial change FURTHER PROVIDING <—
8 FOR HEARINGS BY THE BOARD OR A HEARING EXAMINER AND PROVIDING
9 FOR LEGISLATIVE OVERSIGHT.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 12, THE act of June 22, 1970 (P.L.378, <—
13 No.122), known as the "Nursing Home Administrators License Act,"
14 is amended BY ADDING A SECTION to read: <—

15 Section 12. Disciplinary Proceedings. (a) The license <—
16 and/or registration of any person practicing or offering to
17 practice nursing home administration, or the license of a
18 provisional nursing home administrator, may be revoked or
19 suspended, or such licensee may be reprimanded, censured or
20 otherwise disciplined in accordance with the provisions of this

1 ~~section upon decision and after due hearing in any of the~~
2 ~~following cases:~~

3 ~~(1) Upon proof that such licensee is unfit or incompetent by~~
4 ~~reason of negligence, habits or other causes.~~

5 ~~(2) Upon proof that such licensee has wilfully or repeatedly~~
6 ~~violated any of the provisions of this act or the rules enacted~~
7 ~~in accordance therewith, or wilfully or repeatedly acted in a~~
8 ~~manner inconsistent with the health and safety of the patients~~
9 ~~of the home in which he is the administrator.~~

10 ~~(3) Upon proof that such licensee is guilty of fraud or~~
11 ~~deceit in the practice of nursing home administration or in his~~
12 ~~admission to such practice.~~

13 ~~(4) Upon proof that such licensee has been convicted in a~~
14 ~~court of competent jurisdiction, either within or without this~~
15 ~~Commonwealth, of a felony.~~

16 ~~(b) The members of the board shall have jurisdiction to hear~~
17 ~~all charges brought under the provisions of this section against~~
18 ~~persons licensed and registered as nursing home administrators~~
19 ~~or licensed as provisional nursing home administrators, and upon~~
20 ~~such hearings shall determine such charges upon their merits. If~~
21 ~~the board determines that such person is guilty of the charges,~~
22 ~~the board may revoke his or her license or registration, suspend~~
23 ~~him or her from practice, or reprimand, censure or otherwise~~
24 ~~discipline such licensee.~~

25 ~~(c) Proceedings under this section shall be begun by filing~~
26 ~~with the board charges in writing and under oath. The charges~~
27 ~~may be preferred by any person or by the board. Thereupon the~~
28 ~~chairman of the board shall designate three or more members~~
29 ~~thereof as a hearing committee to hear the charges and to report~~
30 ~~to the board thereon.~~

1 ~~(d) [At the hearing the licensee shall have the right to~~
2 ~~appear either personally or by counsel, or both, to produce~~
3 ~~witnesses and evidence on his own behalf, to cross examine~~
4 ~~witnesses and to have subpoenas issued in his behalf by the~~
5 ~~hearing committee. The hearing committee shall make a written~~
6 ~~report to the board of the findings and recommendations which~~
7 ~~shall be considered by the board in arriving at its~~
8 ~~determination.] The board shall appoint, with the approval of~~
9 ~~the Governor, such hearing examiners as shall be necessary to~~
10 ~~conduct hearings as may be required under this section. The~~
11 ~~board shall have the power to adopt and promulgate rules and~~
12 ~~regulations setting forth the functions, powers, standards and~~
13 ~~duties to be followed by the hearing examiners. The hearing~~
14 ~~examiners shall have the power to conduct hearings in accordance~~
15 ~~with the regulations of the board, and to issue subpoenas~~
16 ~~requiring the attendance and testimony of individuals or the~~
17 ~~production of, pertinent books, records, documents and papers by~~
18 ~~persons whom they believe to have information relevant to any~~
19 ~~matter pending before the examiner. Such examiner shall also~~
20 ~~have the power to administer oaths. The hearing examiner shall~~
21 ~~hear evidence submitted and arguments of counsel, if any, with~~
22 ~~reasonable dispatch, and shall promptly record his decision,~~
23 ~~supported by findings of fact, and a copy thereof shall~~
24 ~~immediately be sent to the board and to counsel of record, or~~
25 ~~the parties, if not represented. If application for review is~~
26 ~~made to the board within twenty days from the date of any~~
27 ~~decision made as a result of a hearing held by a hearing~~
28 ~~examiner, the board shall review the evidence, and if deemed~~
29 ~~advisable by the board, hear argument and additional evidence.~~
30 ~~As soon as practicable, the board shall make a decision and~~

1 ~~shall file the same with its finding of the facts on which it is~~
2 ~~based and send a copy thereof to each of the parties in dispute.~~

3 ~~[(e) Members of the hearing committee shall exercise any of~~
4 ~~the powers set forth in subsection (b) of section 4 as may be~~
5 ~~necessary for the proper conduct of the hearing.~~

6 ~~(f)] (e) Appeals shall be in accordance with [the act of~~
7 ~~June 4, 1945 (P.L.1388), known as the "Administrative Agency~~
8 ~~Law."] Title 2 of the Pennsylvania Consolidated Statutes~~
9 ~~(relating to administrative law and procedure).~~

10 SECTION 12.1. LICENSING POWERS; HEARINGS; LEGISLATIVE <—
11 OVERSIGHT.--(A) THE BOARD SHALL HAVE THE FOLLOWING POWERS:

12 (1) TO GRANT, REFUSE, REVOKE OR SUSPEND ANY LICENSE TO
13 PRACTICE AS A NURSING HOME ADMINISTRATOR IN THIS COMMONWEALTH
14 PURSUANT TO THE PROVISIONS OF THIS ACT.

15 (2) TO CONDUCT HEARINGS, INVESTIGATIONS AND DISCOVERY
16 PROCEEDINGS; TO ADMINISTER OATHS OR AFFIRMATIONS TO WITNESSES,
17 TAKE TESTIMONY, ISSUE SUBPOENAS TO COMPEL ATTENDANCE OF
18 WITNESSES OR THE PRODUCTION OF RECORDS, DOCUMENTS OR OTHER
19 MATTER: TO EXERCISE ALL POWER GRANTED BY LAW OR REGULATION IN
20 ACCORDANCE WITH THE GENERAL RULES OF ADMINISTRATIVE PRACTICE AND
21 PROCEDURE. SAID HEARING MAY BE CONDUCTED BY THE BOARD, OR A
22 DESIGNATED REPRESENTATIVE THEREOF, OR BY SUCH HEARING EXAMINER
23 AS SHALL BE APPOINTED BY THE BOARD AND APPROVED BY THE GOVERNOR.
24 THE BOARD SHALL HAVE THE POWER TO ADOPT AND PROMULGATE RULES AND
25 REGULATIONS SETTING FORTH THE FUNCTIONS, POWERS, STANDARDS AND
26 DUTIES TO BE FOLLOWED BY ANY HEARING EXAMINERS APPOINTED BY IT.
27 THE HEARING EXAMINER SHALL HAVE ALL THOSE POWERS THAT ARE VESTED
28 IN THE BOARD TO CONDUCT HEARINGS. UPON CONCLUSION OF THE
29 PRESENTATION OF THE CASE BY ALL PARTIES INVOLVED, THE EXAMINER
30 SHALL REPORT HIS FINDINGS IN WRITING TO THE BOARD, WHICH

1 WRITINGS SHALL INCLUDE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
2 RECOMMENDED SANCTION, WHICH SHALL THEREUPON BE REVIEWED BY THE
3 BOARD AND AN ORDER ISSUED UPON A MAJORITY VOTE OF THOSE MEMBERS
4 OF THE BOARD.

5 (B) RULES AND REGULATIONS PROPOSED UNDER SUBSECTION (A)(2)
6 SHALL FIRST BE SUBMITTED TO THE SECRETARY OF THE SENATE AND THE
7 CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES WHO SHALL CAUSE THE
8 PROPOSED RULES AND REGULATIONS TO BE PRINTED AND DISTRIBUTED
9 AMONG ALL MEMBERS OF BOTH CHAMBERS IN THE SAME MANNER AS A
10 REORGANIZATION PLAN. IF BOTH BODIES FAIL TO ACT WITHIN 60 DAYS
11 OF RECEIPT OF SUCH RULES AND REGULATIONS, OR WITHIN TEN
12 LEGISLATIVE DAYS AFTER RECEIPT, WHICHEVER SHALL LAST OCCUR,
13 PROPOSED RULES AND REGULATIONS ADOPTED BY THE BOARD SHALL BE
14 PROMULGATED PURSUANT TO THE PROVISIONS OF THE ACT OF JULY 31,
15 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
16 DOCUMENTS LAW AND 45 PA.C.S. PART II (RELATING TO PUBLICATION
17 AND EFFECTIVENESS OF COMMONWEALTH DOCUMENTS). IF EITHER CHAMBER
18 DISAPPROVES ANY SUCH RULE OR REGULATION, SUCH INFORMATION SHALL
19 BE CERTIFIED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR
20 PRESIDENT PRO TEMPORE OF THE SENATE TO THE BOARD AND THE
21 PROPOSED RULES OR REGULATIONS SHALL NOT BE PROMULGATED.

22 Section 2. This act shall take effect in 60 days.