
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2663 Session of
1992

INTRODUCED BY LLOYD, GEIST, VANCE, ULIANA, DeLUCA, TOMLINSON,
FARMER, MUNDY, DONATUCCI, SCRIMENTI AND CORRIGAN, MAY 6, 1992

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MAY 6, 1992

AN ACT

1 Empowering the General Counsel or his designee to issue
2 subpoenas for certain licensing board activities; providing
3 for hearing examiners in the Bureau of Professional and
4 Occupational Affairs; providing additional powers to the
5 Commissioner of Professional and Occupational Affairs;
6 further providing for civil penalties and license suspension;
7 and making a repeal.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Investigatory subpoena power.

11 The General Counsel or his designee shall have the power and
12 his duty shall be to issue subpoenas upon application of an
13 attorney responsible for representing the Commonwealth in
14 disciplinary matters before a licensing board or commission for
15 the purpose of investigating alleged violations of the
16 disciplinary provisions administered by a licensing board or
17 commission; provided that medical or client records may not be
18 subpoenaed without the consent of the patient or client or
19 without order of a court of competent jurisdiction showing that
20 the records are reasonably necessary for the conduct of the

1 investigation. The court may impose such limitation on the scope
2 of the subpoena as may be necessary to prevent unnecessary
3 intrusion into patient or client confidential information. The
4 attorney responsible for representing the Commonwealth in
5 disciplinary matters before a licensing board or commission is
6 authorized to apply to Commonwealth Court to enforce the
7 subpoenas. Nothing in this clause shall be construed to excuse a
8 person from producing documents and records as requested by a
9 licensing board or commission under any other provision of law.
10 Section 2. Hearing examiners.

11 (a) Appointment.--Notwithstanding any other provision of
12 law, the Commissioner of the Bureau of Professional and
13 Occupational Affairs shall appoint such hearing examiners as may
14 be necessary to conduct hearings in disciplinary matters before
15 a licensing board or commission.

16 (b) Regulations.--The Commissioner of Professional and
17 Occupational Affairs shall have the power to adopt and
18 promulgate regulations setting forth the functions, powers,
19 standards, procedures and duties to be followed by any such
20 hearing examiners appointed to conduct hearings in disciplinary
21 matters before a licensing board or commission.

22 (c) Powers.--Such hearing examiners shall have the power to
23 conduct hearings in accordance with applicable statutes and
24 regulations and to issue subpoenas requiring the attendance and
25 testimony of individuals or the production of pertinent records
26 or other papers by persons whom they believe have information
27 relevant to any matters pending before the examiner.

28 (d) Time periods.--In all disciplinary matters before a
29 licensing board or commission, hearings shall commence within 90
30 days after the date on which an answer is filed. Any continuance

1 granted prior to the commencement of the hearing shall toll the
2 90-day requirement by the period of the continuance. A decision
3 shall be rendered within 180 days after the record is closed.
4 The board or commission shall render a final adjudication or
5 decision on any exceptions to the decision of a hearing examiner
6 or any applications for review within 90 days of the filing of
7 such exceptions or applications, provided that a board or
8 commission may delegate to a hearing examiner the authority to
9 render a final adjudication or decision in such cases as deemed
10 appropriate.

11 Section 3. Additional powers for Commissioner of Professional
12 and Occupational Affairs.

13 In addition to the powers and duties imposed under law, the
14 Commissioner of Professional and Occupational Affairs, or his
15 designee, shall be a member of each of the said boards and
16 commissions except the State Board of Certified Real Estate
17 Appraisers and the Navigation Commission for the Delaware River
18 and its Navigable Tributaries.

19 Section 4. Civil penalties.

20 (a) Authorization.--The Commissioner of Professional and
21 Occupational Affairs, after consultation with the boards and
22 commissions, shall have the power to adopt a schedule of civil
23 penalties for operating without a current, registered,
24 unsuspended and unrevoked license, registration, certificate or
25 permit and for violating any provision of their respective acts
26 or regulations relating to the conduct or operation of a
27 business or facility licensed by such boards and commissions.
28 The schedule of penalties, guidelines for their imposition and
29 procedures for appeal shall be published in the Pennsylvania
30 Bulletin, provided that the commissioner shall, within two years

1 of such publication, promulgate a regulation setting forth the
2 schedule of penalties, guidelines and procedures. Any such
3 penalty shall not exceed the sum of \$500. Duly authorized agents
4 of the bureau shall have the power and authority to issue
5 citations and impose penalties for any such violations. Any such
6 penalty imposed may be appealed to a hearing examiner or the
7 board or commission pursuant to the regulations adopted by the
8 commissioner under subsection (b) in accordance with the
9 provisions of 2 Pa.C.S. (relating to administrative law and
10 procedure). If a penalty is imposed under this subsection, no
11 additional civil penalty may be imposed for the same act.

12 (b) Additional powers.--In addition to the disciplinary
13 powers and duties of the boards and commissions within the
14 Bureau of Professional and Occupational Affairs under their
15 respective practice acts, boards and commissions shall have the
16 power, respectively:

17 (1) To impose discipline on any licensee, registrant,
18 certificate holder or permit holder who violates a lawful
19 disciplinary order of the board.

20 (2) To impose discipline on any licensee, registrant,
21 certificate holder or permit holder who aids and abets the
22 unlicensed practice of a profession, occupation or business.

23 (c) Status of civil penalty.--Any civil penalty imposed
24 shall be a judgment in favor of the Bureau of Professional and
25 Occupational Affairs upon the person or the property of the
26 person upon whom the civil penalty is imposed. The Attorney
27 General shall be responsible for enforcing such judgments in
28 courts of competent jurisdiction in accordance with the
29 provisions of 42 Pa.C.S. (relating to judiciary and judicial
30 procedure).

(d) Definition.--As used in this section, the term "unlicensed practice" means:

(1) practicing a profession or occupation or operating a business for which a license, registration, certificate or permit is required without holding a valid, unexpired, unrevoked or unsuspended authority to do so; or

(2) representing to the public or any person, through offerings, advertisements or the use of a title that the individual is qualified to practice a profession, occupation or business for which a license, registration, certificate or permit is required without holding a valid, unexpired, unrevoked or unsuspended authority to do so.

Section 5. Automatic suspension.

(a) Automatic suspension.--A license registration, certificate or permit of a person shall automatically be suspended as follows:

(1) Upon conviction under Federal or State law or the laws of any other state of insurance fraud or Medicaid or Medicare fraud, such suspension to be either concurrent with the period during which such person is imprisoned because of the conviction or for a period of one year from the date of sentencing for the conviction, whichever is greater.

(2) Upon denial of participation in the Medicaid or Medicare program because of a violation of either program as determined under Federal or State law or the laws of any other state, such suspension to be concurrent with the period during which such person is denied participation in the Medicaid or Medicare program.

(3) Upon suspension or revocation by the United States or any other state of a license, registration, certificate or

1 permit to practice in the United States or other state, such
2 suspension to be concurrent with the period during which such
3 person's license, registration, certificate or permit is
4 suspended or revoked by the United States or such other
5 state.

6 (b) Longer suspensions.--Nothing in this section shall be
7 construed to prohibit a board or commission from imposing a
8 longer suspension than prescribed by subsection (a), provided
9 that the board or commission shall impose a longer suspension
10 only after notice and an opportunity to be heard and that the
11 automatic suspension shall not be stayed pending a decision by
12 the board or commission on whether to impose a longer
13 suspension.

14 (c) Definition.--As used in this section, the term
15 "conviction" shall include a finding or an admission of guilt, a
16 plea of nolo contendere, probation without verdict, Accelerated
17 Rehabilitative Disposition or disposition in lieu of trial.

18 Section 6. Repeal.

19 Section 810(b) of the act of April 9, 1929 (P.L.177, No.175),
20 known as The Administrative Code of 1929, is repealed insofar as
21 it is inconsistent with the provisions of this act.

22 Section 7. Applicability.

23 Sections 2 and 4 of this act shall apply only to disciplinary
24 proceedings commenced on or after the effective date of this
25 act.

26 Section 8. Effective date.

27 This act shall take effect in 60 days.