

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1235 Session of
1995

INTRODUCED BY LLOYD, VANCE, FAIRCHILD, HERMAN, CAPPABIANCA,
PESCI, TIGUE, BELARDI, ROBINSON, COLAIZZO, WOGAN, YOUNGBLOOD,
PISTELLA, MUNDY, MIHALICH, BATTISTO, HALUSKA, ITKIN, CLYMER
AND CAWLEY, MARCH 20, 1995

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 20, 1995

AN ACT

1 Amending the act of July 2, 1993 (P.L.345, No.48), entitled "An
2 act empowering the General Counsel or his designee to issue
3 subpoenas for certain licensing board activities; providing
4 for hearing examiners in the Bureau of Professional and
5 Occupational Affairs; providing additional powers to the
6 Commissioner of Professional and Occupational Affairs; and
7 further providing for civil penalties and license
8 suspension," providing for screening panels for licensing
9 boards and commissions.

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

12 Section 1. Section 1 of the act of July 2, 1993 (P.L.345,
13 No.48), entitled "An act empowering the General Counsel or his
14 designee to issue subpoenas for certain licensing board
15 activities; providing for hearing examiners in the Bureau of
16 Professional and Occupational Affairs; providing additional
17 powers to the Commissioner of Professional and Occupational
18 Affairs; and further providing for civil penalties and license
19 suspension," is amended by adding definitions to read:

20 Section 1. Definitions.

1 The following words and phrases when used in this act shall
2 have the meanings given to them in this section unless the
3 context clearly indicates otherwise:

4 "Conviction." Includes a conviction under any of the
5 licensing or other relevant laws of a licensing board or
6 commission.

7 * * *

8 "License." A license, registration, certificate or other
9 authorization to practice a profession or occupation under the
10 jurisdiction of the Bureau of Professional and Occupational
11 Affairs.

12 * * *

13 "Prosecuting attorney." An attorney assigned by the General
14 Counsel to represent the Commonwealth in disciplinary matters
15 before the various licensing boards and commissions and to
16 advise screening panels in legal matters.

17 "Screening panel." A screening panel established under
18 section 3.1.

19 Section 2. The act is amended by adding a section to read:
20 Section 3.1. Screening panels.

21 (a) General rule.--There shall be three-member screening
22 panels, with one for each licensing board and commission under
23 the jurisdiction of the Bureau of Professional and Occupational
24 Affairs.

25 (b) Membership.--The Governor shall appoint, subject to a
26 majority vote of the members elected to the Senate, a screening
27 panel for each licensing board and commission. Each screening
28 panel shall consist of two professional members of the
29 profession or occupation licensed by the licensing board or
30 commission and a public member. No person shall serve

1 concurrently as a screening panel member and as a licensing
2 board or commission member. No screening panel member shall
3 during his term as a screening panel member be an officer or
4 agent of any Statewide association or organization representing
5 the profession or occupation subject to the action of any
6 screening panel.

7 (c) Chairman.--Each screening panel shall select annually a
8 chairman from among its members.

9 (d) Terms of office.--

10 (1) Except as provided in paragraph (2), the
11 professional and public members of the screening panel shall
12 serve four-year terms.

13 (2) Within 90 days of the effective date of this
14 section, the Governor shall nominate for each licensing board
15 and commission one professional member to serve a four-year
16 term, one public member to serve a three-year term and one
17 professional member to serve a two-year term. Thereafter, all
18 appointees shall serve a term of four years, but not longer
19 than six months beyond the four-year period.

20 (3) No screening panel member shall be eligible for
21 appointment to serve more than two consecutive four-year
22 terms.

23 (e) Continuation in office.--Each professional and public
24 member shall continue in office until a successor is duly
25 appointed and qualified, but no longer than six months after the
26 expiration of the term. In the event that a screening panel
27 member shall die, resign or become disqualified during the term
28 of office, a successor shall be appointed in the same way and
29 with the same qualifications as set forth in this section and
30 shall hold office for the unexpired portion of the unexpired

1 term.

2 (f) Compensation.--Each member of the screening panel shall
3 receive per diem compensation at the rate of \$60 when actually
4 attending to the work of the screening panel. Members shall also
5 receive reasonable traveling, hotel and other necessary expenses
6 incurred in the performance of their duties in accordance with
7 Commonwealth regulations.

8 (g) Determinations.--All decisions of the panel shall be by
9 majority vote.

10 (h) Cases exempted from screening panel review.--The
11 following types of cases shall be specifically exempt from
12 screening panel review:

13 (1) A case which is not within the jurisdiction of a
14 licensing board or commission.

15 (2) A case in which disciplinary action or refusal to
16 issue a license by a licensing board or commission would be
17 based on a conviction.

18 (3) A case in which disciplinary action by a licensing
19 board or commission would be based on disciplinary action
20 taken against a licensee by a licensing authority of another
21 state, territory, possession or country or by a branch of the
22 Federal Government.

23 (4) A case involving a lapsed license.

24 (5) A case in which civil penalties are imposed under
25 section 5(a).

26 (6) A case in which disciplinary action is automatic
27 under the applicable law.

28 (i) Powers and duties.--A screening panel shall have the
29 power and duty to review and process cases involving issues of
30 professional competence, quality of care, standards of service

1 and unlicensed activity, as follows:

2 (1) To close a case because prosecution is not warranted
3 or because there is no violation of law.

4 (2) To direct the prosecuting attorney to conduct
5 further investigation of a case, including the use of
6 investigative subpoenas in accordance with section 2.

7 (3) To defer further investigation or action on a case
8 during the pendency of a civil, criminal or administrative
9 matter.

10 (4) To refer a case to an appropriate criminal authority
11 or other governmental agency.

12 (5) To consult with the prosecuting attorney with regard
13 to factual or legal merits of a case.

14 (6) To authorize the prosecuting attorney to issue an
15 order to show cause.

16 (7) To issue an order of temporary suspension of a
17 license as permitted by law.

18 (8) To issue an order compelling a physical and/or
19 mental examination of a licensee as permitted by law.

20 (j) Confidentiality.--All business of a screening panel
21 shall be confidential. Information, documents, records and other
22 materials prepared for the panel or disclosing the initiation,
23 progress or result of an investigation shall remain confidential
24 and shall not be subject to subpoena or discovery or be
25 introduced into evidence in any judicial or administrative
26 proceeding without the written consent of the General Counsel or
27 unless made part of the public record during a hearing or
28 proceeding before a licensing board or commission. Screening
29 panel members shall not discuss cases they have reviewed with
30 members of the public or with members of a licensing board or

1 commission.

2 (k) Formal disciplinary proceedings.--A member of a
3 screening panel shall not participate in any further aspect of
4 formal disciplinary proceedings, including proceedings on
5 applications for review, and shall not be present during a
6 licensing board or commission discussion, hearing, quasi-
7 judicial deliberation or adjudication.

8 (l) Order to show cause.--If a prosecuting attorney issues
9 an order to show cause pursuant to subsection (i)(6), the
10 licensing board or commission shall initiate disciplinary action
11 and conduct disciplinary proceedings in accordance with the
12 provisions of 2 Pa.C.S. (relating to administrative law and
13 procedure).

14 (m) Recordkeeping and reports.--A screening panel shall
15 maintain records of its actions which shall not be part of the
16 minutes of the licensing board or commission or of the public
17 record. A screening panel shall submit periodic reports to the
18 licensing board or commission for which it reviews cases. Such
19 reports shall include a description of the types of complaints
20 received and the disposition of these complaints.

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