

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 646 Session of
2007

INTRODUCED BY CIVERA, DeLUCA, THOMAS, CALTAGIRONE, CAPPELLI,
DENLINGER, FABRIZIO, GERGELY, GINGRICH, HENNESSEY, W. KELLER,
MURT, REICHLEY, STERN, WATSON AND YOUNGBLOOD, MARCH 7, 2007

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 7, 2007

AN ACT

1 Amending the act of September 27, 1961 (P.L.1700, No.699),
2 entitled "An act relating to the regulation of the practice
3 of pharmacy, including the sales, use and distribution of
4 drugs and devices at retail; and amending, revising,
5 consolidating and repealing certain laws relating thereto,"
6 further providing for definitions; providing for licensure
7 and permits for pharmacy technicians; and further providing
8 for multiple licensure, for sanctions, for administration,
9 for reinstatement, for penalties and for injunctions.

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

12 Section 1. Section 2 of the act of September 27, 1961
13 (P.L.1700, No.699), known as the Pharmacy Act, is amended by
14 adding clauses to read:

15 Section 2. Definitions.--As used in this act:

16 * * *

17 (19) "Pharmacy technician" means an individual who is
18 licensed by the State Board of Pharmacy under section 2.1 to
19 assist in the practice of pharmacy.

20 (20) "Pharmacy technician trainee" means an individual who
21 holds a temporary permit issued by the State Board of Pharmacy

1 under section 2.1.

2 (21) "Direct, immediate and personal supervision of a
3 pharmacist" means:

4 (i) review by the pharmacist of the prescription or drug
5 order prior to dispensing;

6 (ii) verification by the pharmacist of the final product;
7 and

8 (iii) the pharmacist's immediate availability on the
9 premises to direct the work of the supervised individual and to
10 respond to questions or problems.

11 Section 2. The act is amended by adding a section to read:

12 Section 2.1. Licenses and Permits for Pharmacy

13 Technicians.--(a) The board may license as a pharmacy

14 technician any individual who pays an application fee prescribed

15 by regulation; who files an application for licensure,

16 subscribed by the individual under oath or affirmation,

17 containing information the board requires; and who, except as

18 set forth in subsection (b), meets all of the following

19 requirements:

20 (1) Is not less than eighteen years of age and is a citizen
21 of the United States.

22 (2) Has a high school diploma or its equivalent.

23 (3) Has satisfied the board that the applicant is of good

24 moral character, and is not unfit or unable to practice as a

25 pharmacy technician by reason of the extent or manner of his use

26 of alcoholic beverages or controlled substances or by reason of

27 a physical or mental disability.

28 (4) Has completed a pharmacy technician training program

29 approved by the board.

30 (5) Has passed a nationally recognized pharmacy technician

1 certification examination approved by the board.

2 (6) Has not been convicted of a felonious act prohibited by
3 the act of April 14, 1972 (P.L.233, No.64), known as "The
4 Controlled Substance, Drug, Device and Cosmetic Act," or
5 convicted of a felony relating to a controlled substance in a
6 court of law of the United States or any other state, territory
7 or country unless:

8 (i) at least ten years have elapsed from the date of
9 conviction; and

10 (ii) the applicant satisfactorily demonstrates to the board
11 that the applicant has made significant progress in personal
12 rehabilitation since the conviction such that licensure of the
13 applicant should not be expected to create a substantial risk of
14 harm to the health and safety of patients or the public or a
15 substantial risk of further criminal violations.

16 As used in this clause the term "convicted" shall include a
17 judgment, an admission of guilt or a plea of nolo contendere. An
18 applicant's statement on the application declaring the absence
19 of a conviction shall be deemed satisfactory evidence of the
20 absence of a conviction, unless the board has some evidence to
21 the contrary.

22 (b) The following apply:

23 (1) Notwithstanding subsection (a)(4) and (5), the board
24 shall issue a license to all of the following:

25 (i) An individual who, at the time of filing an application,
26 has obtained a license or its equivalent as a pharmacy
27 technician in another state, territory or possession of the
28 United States which has licensing requirements comparable to
29 those set forth in this section and regulations of the board.

30 (ii) An individual who:

1 (A) applies for licensure within one year after the
2 effective date of this section; and

3 (B) on the effective date of this section maintains a
4 current certification by a nationally recognized pharmacy
5 technician association.

6 (2) Notwithstanding subsection (a)(2), (4) and (5), the
7 board shall issue a license to an individual who:

8 (i) applies for licensure within one year after the
9 effective date of this section; and

10 (ii) demonstrates to the satisfaction of the board proof of
11 practice as a pharmacy technician for at least two thousand
12 hours immediately prior to the date of application.

13 (c) A license shall authorize the licensee to assist in the
14 practice of pharmacy under the direct, immediate and personal
15 supervision of a pharmacist.

16 (d) A license is subject to biennial renewal. The board
17 shall establish a fee for renewal by regulation.

18 (e) The following apply to temporary permits to practice as
19 a pharmacy technician trainee:

20 (1) The board shall issue a temporary permit to practice as
21 a pharmacy technician trainee to an applicant who is seventeen
22 years of age or older and meets the requirements of subsection
23 (a)(3) and (6).

24 (2) A temporary practice permit shall be issued for one year
25 and may be extended for a single six-month period upon
26 verification to the satisfaction of the board that the trainee
27 has completed the board-approved training program.

28 (3) A temporary permit shall not be reissued.

29 (4) A temporary permit shall authorize the permittee to
30 perform the duties of a pharmacy technician under the direct,

1 immediate and personal supervision of a pharmacist.

2 (f) Identification requirements are as follows:

3 (1) A pharmacy technician shall wear a name tag that clearly
4 identifies the pharmacy technician with the title "licensed
5 pharmacy technician."

6 (2) A holder of a temporary permit shall wear a name tag
7 that clearly identifies the temporary permit holder with the
8 title "pharmacy technician trainee."

9 (g) This section shall not apply to a student who is
10 enrolled in an accredited school of pharmacy and who is in the
11 first or second year of the program.

12 Section 3. Section 3.2 of the act, added December 20, 1985
13 (P.L.433, No.111), is amended to read:

14 Section 3.2. Reporting of Multiple Licensure.--Any
15 [licensed] pharmacist or pharmacy technician of this
16 Commonwealth who is also licensed [to practice pharmacy] in any
17 other state, territory or country shall report this information
18 to the board on the biennial registration application. Any
19 disciplinary action taken in other states, territories and
20 countries shall be reported to the board on the biennial
21 registration application or within ninety days of final
22 disposition, whichever is sooner. Multiple licensure shall be
23 noted by the board on the [pharmacist's] licensee's record, and
24 such state, territory or country shall be notified by the board
25 of any disciplinary actions taken against [said pharmacist] that
26 licensee in this Commonwealth.

27 Section 4. Section 5(c) of the act, amended December 20, 1985
28 (P.L.433, No.111), is amended and the section is amended by
29 adding a subsection to read:

30 Section 5. Refusal to Grant, Revocation and Suspension.--* *

1 *

2 (a.1) The board shall have the power to refuse, revoke or
3 suspend the license of any pharmacy technician upon proof
4 satisfactory to it that the pharmacy technician has done any of
5 the following:

6 (1) Procured a personal license through fraud,
7 misrepresentation or deceit.

8 (2) Has been found guilty, pleaded guilty, entered a plea of
9 nolo contendere, or has received probation without verdict,
10 disposition in lieu of trial or an Accelerated Rehabilitative
11 Disposition in the disposition of felony charges, to any offense
12 in connection with the practice of pharmacy or any offense
13 involving moral turpitude before any court of record of any
14 jurisdiction.

15 (3) Is unfit to practice as a pharmacy technician because of
16 intemperance in the use of alcoholic beverages, controlled
17 substances or any other substance which impairs the intellect
18 and judgment to such an extent as to impair the performance of
19 professional duties.

20 (4) Is unfit or unable to practice as a pharmacy technician
21 by reason of a physical or mental disease or disability. In
22 enforcing this clause, the board shall, upon probable cause,
23 have authority to compel a pharmacy technician to submit to a
24 mental or physical examination by physicians or psychologists
25 approved by the board. Failure of a pharmacy technician to
26 submit to examination when directed by the board, unless due to
27 circumstances beyond the pharmacy technician's control, shall
28 constitute an admission of the allegations against the pharmacy
29 technician, consequent upon which a default and final order may
30 be entered without the taking of testimony or presentation of

1 evidence. A pharmacy technician affected under this clause shall
2 at reasonable intervals be afforded an opportunity to
3 demonstrate that ability to resume a competent practice as a
4 pharmacy technician with reasonable skill and safety to
5 patients.

6 (5) Has had a license to practice as a pharmacy technician
7 denied, revoked or suspended by an appropriate pharmacy
8 technician licensing authority or has received disciplinary
9 action from an appropriate pharmacy technician licensing
10 authority.

11 (6) Has acted in such a manner as to present an immediate
12 and clear danger to the public health or safety.

13 (7) Is guilty of incompetence, gross negligence or other
14 malpractice, or the departure from, or failure to conform to,
15 the standards of acceptable and prevailing pharmacy technician
16 practice, in which case actual injury need not be established.

17 * * *

18 (c) When the board finds that [the] a license [of any
19 pharmacist] may be refused, revoked or suspended under the terms
20 of subsection (a) or (a.1), the board may:

21 (1) Deny the application for a license.

22 (2) Administer a public reprimand.

23 (3) Revoke, suspend, limit or otherwise restrict a license
24 as determined by the board.

25 (4) Require a licensee to submit to the care, counseling or
26 treatment of a physician or a psychologist designated by the
27 board. This clause does not apply to a pharmacy technician.

28 (5) Suspend enforcement of its finding thereof and place a
29 licensee on probation with the right to vacate the probationary
30 order for noncompliance.

1 (6) Restore or reissue, in its discretion, a suspended
2 license [to practice pharmacy] and impose any disciplinary or
3 corrective measure which it might originally have imposed.

4 * * *

5 Section 5. Section 6(k) of the act, amended December 20,
6 1985 (P.L.433, No.111), is amended to read:

7 Section 6. State Board of Pharmacy.--* * *

8 (k) The board shall have the power, and it shall be its
9 duty:

10 (1) To regulate the practice of pharmacy and of pharmacy
11 technicians;

12 (2) To determine the nature of examinations for all
13 applicants for [pharmacists'] licenses;

14 (3) To examine, inspect and investigate all applications and
15 all applicants for licensure as pharmacists, pharmacy
16 technicians, pharmacies or registration as pharmacy interns and
17 to grant certificates of licensure or registration to all
18 applicants whom it shall judge to be properly qualified;

19 (4) With the approval of the Commissioner of Professional
20 and Occupational Affairs, to prepare position descriptions,
21 employ inspectors who shall be licensed pharmacists and employ
22 appropriate consultants to assist it for any purposes which it
23 may deem necessary, provided that the board may not delegate any
24 of its final decisionmaking responsibilities to any consultant;

25 (5) To investigate or cause to be investigated all
26 violations of the provisions of this act and its regulations and
27 to cause prosecutions to be instituted in the courts upon advice
28 from the Attorney General;

29 (6) To make or order inspections of all pharmacies, except
30 health care facilities, as defined in the act of July 19, 1979

1 (P.L.130, No.48), known as the "Health Care Facilities Act," and
2 which are periodically inspected by the Department of Health in
3 accordance with the standards in this act and the board's
4 regulations promulgated thereto: Provided, That the Department
5 of Health shall forward a copy of their inspection report to the
6 board noting any violations of the act: And, provided further,
7 That, if a violation is reported, the board shall have the power
8 to inspect such pharmacies and take appropriate action as
9 specified in this act; and to make or order inspections of other
10 places in which drugs or devices are stored, held, compounded,
11 dispensed or sold to a consumer, to take and analyze any drugs
12 or devices and to seize and condemn any drugs or devices which
13 are adulterated, misbranded or stored, held, dispensed,
14 distributed or compounded in violation of the provisions of this
15 act or the provisions of the act of April 14, 1972 (P.L.233,
16 No.64), known as "The Controlled Substance, Drug, Device and
17 Cosmetic Act";

18 (7) To conduct hearings for the revocation or suspension of
19 licenses, permits or registrations, for which hearings the board
20 shall have the power to subpoena witnesses;

21 (8) To assist the regularly constituted enforcement agencies
22 of this Commonwealth in enforcing all laws pertaining to drugs,
23 controlled substances, and practice of pharmacy;

24 (8.1) To approve programs for the training of pharmacy
25 technicians.

26 (9) To promulgate rules and regulations to effectuate the
27 purposes of this act and to regulate the distribution of drugs
28 and devices and the practice of pharmacy for the protection and
29 promotion of the public health, safety and welfare.

30 * * *

1 Section 5.1. Section 7 of the act is amended by adding a
2 subsection to read:

3 Section 7. Hearings and Suspensions.--* * *

4 (e) Notwithstanding any other provision, subsections (d.3),
5 (d.4), (d.5), (d.6), (d.7) and (d.8) shall not apply to pharmacy
6 technicians.

7 Section 5.2. Sections 7.1, 8(2) and (8) and 8.1 of the act,
8 amended or added December 20, 1985 (P.L.433, No.111), are
9 amended to read:

10 Section 7.1. Reinstatement of License, Certificate or
11 Registration.--Unless ordered to do so by Commonwealth Court or
12 an appeal therefrom, the board shall not reinstate the license,
13 certificate or registration of a person to practice [pharmacy]
14 pursuant to this act which has been revoked. Any person whose
15 license, certificate or registration has been revoked may apply
16 for reinstatement, after a period of at least five years, but
17 must meet all of the licensing qualifications of this act for
18 the license applied for, to include the examination requirement,
19 if he or she desires to practice at any time after such
20 revocation.

21 Section 8. Unlawful Acts.--It shall be unlawful for:

22 * * *

23 (2) Any person not duly licensed as a pharmacist, pursuant
24 to section 3 hereof, to engage in the practice of pharmacy,
25 including the preparing, compounding, dispensing, selling or
26 distributing at retail to any person any drug, except by a
27 pharmacy intern, pharmacy technician or such other authorized
28 personnel under the direct and immediate personal supervision of
29 a pharmacist: Provided, however, That nothing herein shall be
30 construed to prevent a duly licensed medical practitioner from

1 dispensing, compounding or otherwise giving any drug to his own
2 patients after diagnosis or treatment of said patient, if such
3 compounding, preparing and dispensing is done by said licensee
4 himself, nor shall anything herein prevent any person from
5 selling or distributing at retail household remedies or
6 proprietary medicines when the same are offered for sale or sold
7 in the original packages which have been put up ready for sale
8 to consumers, provided household remedies or proprietary
9 medicines shall not include any controlled substances or non-
10 proprietary drug under the act of April 14, 1972 (P.L.233,
11 No.64), known as "The Controlled Substance, Drug, Device and
12 Cosmetic Act."

13 * * *

14 (8) Any person, firm or corporation to use the title
15 "pharmacist", "assistant pharmacist", "pharmacy technician",
16 "pharmacy technician trainee", "druggist"[,] or "apothecary",
17 except a person duly licensed as a pharmacist or a pharmacy
18 technician in Pennsylvania, or any person to conduct or transact
19 business under a name which contains as part thereof the words
20 "drug store", "pharmacy", "drugs", "medicine store",
21 "medicines", "drug shop," "apothecary," "pharmaceutical,"
22 "homeopathic," "homeopathy" or any term having a similar
23 meaning, or in any manner by advertisement, display of show
24 globes or otherwise describe or refer to the place of the
25 conducted business or person, unless the place is a pharmacy
26 duly issued a permit by the State Board of Pharmacy.

27 * * *

28 Section 8.1. Injunction.--It shall be unlawful for any
29 person to practice or attempt to offer to practice pharmacy or
30 as a pharmacy technician, as defined in this act, without having

1 at the time of so doing a valid, unexpired, unrevoked and
2 unsuspended license issued under this act. The unlawful practice
3 of pharmacy as defined in this act may be enjoined by the courts
4 on petition of the board or the Commissioner of Professional and
5 Occupational Affairs. In any such proceeding it shall not be
6 necessary to show that any person is individually injured by the
7 actions complained of. If it is found that the respondent has
8 engaged in the unlawful practice of pharmacy, the court shall
9 enjoin him or her from so practicing unless and until he or she
10 has been duly licensed. Procedure in such cases shall be the
11 same as in any other injunction suit. The remedy by injunction
12 hereby given is in addition to any other civil or criminal
13 prosecution and punishment.

14 Section 6. The State Board of Pharmacy shall promulgate
15 regulations to implement section 2.1 of the act within 18 months
16 of the effective date of this section.

17 Section 7. No individual is required to be licensed as a
18 pharmacy technician under section 2.1 of the act until 18 months
19 after the State Board of Pharmacy has promulgated regulations
20 under section 6 of this act.

21 Section 8. This act shall take effect immediately.