

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1188 Session of
2007

INTRODUCED BY GOODMAN, CASORIO, COHEN, HENNESSEY, PHILLIPS,
PRESTON, RUBLEY, SOLOBAY, STURLA, YOUNGBLOOD, HARPER,
BELFANTI AND SIPTROTH, MAY 2, 2007

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, DECEMBER 12, 2007

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 duties of licensees, registrants,~~ <—
9 ~~certificate holders and permit holders;~~ further providing for
10 civil penalties; and making related repeals.

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

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

21 ~~Section 4.1. Duty of licensees, registrants, certificate~~

~~holders and permit holders.~~

~~(a) General rule. Except where the disclosure of requested information, documents or materials is subject to a privilege provided by law, a licensee, registrant, certificate holder or permit holder shall have a duty to provide information, documents and records requested by a licensing board or commission or by a representative of a licensing board or commission who is investigating or prosecuting a disciplinary matter. Except as otherwise provided in applicable licensing acts pertaining to the release of patient records by health care licensees in the absence of a patient release, no investigative subpoena or subpoena duces tecum shall be required.~~

~~(b) Unprofessional conduct. Notwithstanding any other provisions of law to the contrary, failure to provide information, documents or records requested by a licensing board or commission as set forth in subsection (a) shall constitute unprofessional conduct and shall be subject to any penalty authorized under section 5.~~

~~Section 2. Section 5 of the act is amended to read:~~

SECTION 1. SECTION 5 OF THE ACT OF JULY 2, 1993 (P.L.345, NO.48) ENTITLED "AN ACT EMPOWERING THE GENERAL COUNSEL OR HIS DESIGNEE TO ISSUE SUBPOENAS FOR CERTAIN LICENSING BOARD ACTIVITIES; PROVIDING FOR HEARING EXAMINERS IN THE BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS; PROVIDING ADDITIONAL POWERS TO THE COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS; AND FURTHER PROVIDING FOR CIVIL PENALTIES AND LICENSE SUSPENSION," IS AMENDED TO READ:

Section 5. Civil penalties.

(a) Authorization.--The Commissioner of Professional and Occupational Affairs, after consultation with the licensing

1 boards and commissions, shall have the power to adopt a schedule
2 of civil penalties for operating without a current, registered,
3 unsuspended and unrevoked license, registration, certificate or
4 permit and for violating any provision of their respective acts
5 or regulations relating to the conduct or operation of a
6 business or facility licensed by such licensing boards and
7 commissions. The schedule of penalties shall not be applicable
8 to disciplinary matters under the jurisdiction of a licensing
9 board or commission unless that licensing board or commission
10 has approved the schedule. The schedule of penalties, guidelines
11 for their imposition and procedures for appeal shall be
12 published in the Pennsylvania Bulletin, provided that the
13 commissioner shall, within two years of such publication,
14 promulgate a regulation setting forth the schedule of penalties,
15 guidelines and procedures. Any such penalty shall not exceed the
16 sum of ~~+\$1,000~~ \$10,000 per violation. Duly authorized agents of <—
17 the bureau shall have the power and authority to issue citations
18 and impose penalties for any such violations. Any such penalty
19 imposed may be appealed to a hearing examiner or the licensing
20 board or commission pursuant to the regulations promulgated
21 under section 3(b). If the appeal is initially to a hearing
22 examiner, the relevant licensing board or commission shall
23 render a decision on any exceptions to the decision of the
24 hearing examiner or on any applications for review in accordance
25 with section 3(d). All proceedings shall be conducted in
26 accordance with the provisions of 2 Pa.C.S. (relating to
27 administrative law and procedure).

28 (b) Additional powers.--In addition to the disciplinary
29 powers and duties of the boards and commissions within the
30 Bureau of Professional and Occupational Affairs under their

1 respective practice acts, boards and commissions shall have the
2 power, respectively:

3 (1) To impose discipline, including, but not limited to,
4 a civil penalty of up to \$10,000 per violation on any
5 licensee, registrant, certificate holder [or], permit holder <—
6 OR UNLICENSED PERSON who violates a lawful disciplinary order <—
7 of the board.

8 (2) To impose discipline, including, but not limited to,
9 a civil penalty of up to \$10,000 per violation on any
10 licensee, registrant, certificate holder [or], permit holder <—
11 OR UNLICENSED PERSON who aids and abets the unlicensed <—
12 practice of a profession, occupation or business.

13 (3) To levy a civil penalty of not more than [\$1,000]
14 \$10,000 per violation on any corporation, partnership,
15 institution, association or sole proprietorship which aids
16 and abets any individual in the unlicensed practice of a
17 profession. This penalty shall not, however, be levied
18 against any person solely as a consequence of that person
19 being a patient or client of the unlicensed individual.

20 (4) To levy a civil penalty of not more than \$10,000 per
21 violation on any licensee, registrant, certificate holder or, <—
22 permit holder OR UNLICENSED PERSON who violates any provision <—
23 of the applicable licensing act or board regulation.

24 (5) To assess against the respondent determined to be in
25 violation of the disciplinary provisions administered by a
26 licensing board or commission in a disciplinary proceeding
27 pending before the board or commission for final
28 determination, as part of the sanction, the costs of
29 investigation underlying that disciplinary action. THE COST <—
30 OF INVESTIGATION SHALL NOT INCLUDE ANY ASSOCIATED LEGAL FEES

1 OR ANY COST OF PROSECUTION.

2 (c) Restrictions.--Any decisions rendered by a licensing
3 board or commission on any exceptions to the decision of a
4 hearing examiner or on any application for review in accordance
5 with section 3(d) to impose a civil penalty pursuant to this
6 section shall require the same number of votes required for the
7 licensing board or commission to impose a civil penalty under
8 any other act. Nothing in this section shall be construed to
9 restrict the powers and duties under any other act of a
10 licensing board or commission in disciplinary matters, except
11 that a licensing board or commission may not impose a civil
12 penalty under any other act for the same violation for which a
13 civil penalty has been imposed pursuant to this section.

14 (d) Status of civil penalty.--Any civil penalty imposed
15 pursuant to this section or imposed by any licensing board or
16 commission under any other act shall be a judgment in favor of
17 the Bureau of Professional and Occupational Affairs upon the
18 person or the property of the person upon whom the civil penalty
19 is imposed. The Attorney General shall be responsible for
20 enforcing such judgments in courts of competent jurisdiction in
21 accordance with the provisions of 42 Pa.C.S. (relating to
22 judiciary and judicial procedure).

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

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

29 (2) representing to the public or any person, through
30 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 3 2. The following provisions are repealed insofar as they are inconsistent with the amendment of section 5 of the act:

(1) Section 15(b.3) of the act of June 19, 1931 (P.L.589, No.202), referred to as the Barbers' License Law.

(2) Section 10.1 of the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law.

(3) Section 20(c.2) of the act of May 3, 1933 (P.L.242, No.86), referred to as the Cosmetology Law.

(4) Section 11(b) of the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law.

(5) Section 16(c) of the act of May 26, 1947 (P.L.318, No.140), known as the CPA Law.

(6) Section 13(b) of the act of May 22, 1951 (P.L.317, No.69), known as The Professional Nursing Law.

(7) Section 17(b) of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the Funeral Director Law.

(8) Section 13(b) of the act of March 2, 1956 (1955 P.L.1206, No.375), known as the Podiatry Practice Act.

(9) Section 15(b) of the act of March 2, 1956 (1955 P.L.1211, No.376), known as the Practical Nurse Law.

(10) Section 8(15.1) of the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act.

(11) Section 11(b) of the act of January 24, 1966 (1965 P.L.1527, No.535), known as the Landscape Architects'

1 Registration Law.

2 (12) Section 11(b) of the act of June 22, 1970 (P.L.378,
3 No.122), known as the Nursing Home Administrators License
4 Act.

5 (13) Section 11(b) of the act of March 23, 1972
6 (P.L.136, No.52), known as the Professional Psychologists
7 Practice Act.

8 (14) Section 28(c) of the act of December 27, 1974
9 (P.L.995, No.326), known as the Veterinary Medicine Practice
10 Act.

11 (15) Section 12(c) of the act of October 10, 1975
12 (P.L.383, No.110), known as the Physical Therapy Practice
13 Act.

14 (16) Section 305 of the act of February 19, 1980
15 (P.L.15, No.9), known as the Real Estate Licensing and
16 Registration Act.

17 (17) Section 8(c) of the act of June 6, 1980 (P.L.197,
18 No.57), known as the Optometric Practice and Licensure Act.

19 (18) Section 20(d) of the act of December 14, 1982
20 (P.L.1227, No.281), known as the Architects Licensure Law.

21 (19) Section 28(c) of the act of December 22, 1983
22 (P.L.306, No.84), known as the Board of Vehicles Act.

23 (20) Section 29(b) of the act of December 22, 1983
24 (P.L.327, No.85), known as the Auctioneer and Auction
25 Licensing Act.

26 (21) Section 703 of the act of December 16, 1986
27 (P.L.1646, No.188), known as the Chiropractic Practice Act.

28 (22) Section 17(b) of the act of July 9, 1987 (P.L.220,
29 No.39), known as the Social Workers, Marriage and Family
30 Therapists and Professional Counselors Act.

1 (23) Section 15(b) of the act of July 10, 1990 (P.L.404,
2 No.98), known as the Real Estate Appraisers Certification
3 Act.

4 (24) Section 908 of the act of March 20, 2002 (P.L.154,
5 No.13), known as the Medical Care Availability and Reduction
6 of Error (Mcare) Act.

7 Section ~~4. The following provisions~~ 3. THIS ACT shall apply <—
8 to violations which take place on or after the effective date of
9 this section. <—

10 ~~(1) The amendment of section 5 of the act.~~ <—

11 ~~(2) Section 2 of this act.~~

12 Section ~~5~~ 4. This act shall take effect in 60 days. <—