

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 320 Session of 2011

INTRODUCED BY DeLUCA, D. COSTA, CALTAGIRONE, HARKINS, W. KELLER, MOUL, MURT, JOSEPHS, KIRKLAND, KOTIK, M. O'BRIEN, YOUNGBLOOD, STABACK AND STURLA, JANUARY 31, 2011

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JANUARY 31, 2011

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 registration  
 7 and permits for pharmacy technicians; and further providing  
 8 for multiple licensure, for refusal to grant, revocation and  
 9 suspension, for State Board of Pharmacy, for hearings and  
 10 suspensions and for injunction.

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

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

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

17 \* \* \*

18 (10.1) "Pharmacy technician" means an individual who is  
 19 registered by the Sate Board of Pharmacy under section 2.1 to  
 20 assist in the practice of pharmacy.

21 (10.2) "Pharmacy technician trainee" means an individual who

1 holds a temporary permit issued by the State Board of Pharmacy  
2 under section 2.1.

3 (10.3) "Direct and personal supervision of a pharmacist"  
4 means:

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

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

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

12 \* \* \*

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

14 Section 2.1. Registration and Permits for Pharmacy

15 Technicians.--(a) The board may register as a pharmacy

16 technician a person who:

17 (1) Pays an application fee prescribed by the department.

18 (2) Files an application for registration, subscribed by the  
19 individual under oath or affirmation, containing information the  
20 board requires.

21 (3) Except as set forth in subsection (b), complies with all  
22 of the following:

23 (i) Is not less than eighteen years of age and is a legal  
24 resident of the United States.

25 (ii) Has a high school diploma or its equivalent.

26 (iii) Has satisfied the board that the applicant is of good  
27 moral character and is not unfit or unable to practice as a  
28 pharmacy technician by reason of the extent or manner of the  
29 applicant's use of alcoholic beverages or controlled substances  
30 or by reason of a physical or mental disability.

1 (iv) has completed a pharmacy technician training program  
2 approved by the board.

3 (v) Has received certification from a nationally recognized  
4 certifying agency approved by the board.

5 (vi) Has successfully completed an examination approved by  
6 the board and administered in accordance with the requirements  
7 set forth in section 812.1(a) of the act of April 9, 1929 (P.L.  
8 177, No.175), known as "The Administrative Code of 1929."

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

15 (A) at least ten years have elapsed from the date of  
16 conviction; and

17 (B) the applicant satisfactorily demonstrates to the board  
18 that the applicant has made significant progress in personal  
19 rehabilitation since the conviction such that licensure of the  
20 applicant should not be expected to create a substantial risk of  
21 harm to the health and safety of patients or the public or a  
22 substantial risk of further criminal violations.

23 As used in this clause, the term "convicted" shall include a  
24 judgment, an admission of guilt or a plea of nolo contendere. An  
25 applicant's statement on the application declaring the absence  
26 of a conviction shall be deemed satisfactory evidence of the  
27 absence of a conviction, unless the board has some evidence to  
28 the contrary.

29 (b) The following exceptions shall apply:

30 (1) Notwithstanding subsection (a) (3) (iv) and (v), the board

1 shall register all of the following:

2 (i) An individual who, at the time of filing an application,  
3 has proof of registration, certification or licensure or its  
4 equivalent as a pharmacy technician in another state, territory  
5 or possession of the United States that has registration,  
6 certification, licensure or equivalent requirements comparable  
7 to those set forth in this section and regulations of the board.

8 (ii) An individual who:

9 (A) applies for registration within two years after the  
10 effective date of this section; and

11 (B) on the effective date of this section maintains a  
12 current certification by a nationally recognized pharmacy  
13 technician association.

14 (2) Notwithstanding subsection (a)(3)(ii), (iv) and (v), the  
15 board shall issue registration to an individual who:

16 (i) Has been employed as a pharmacy technician for a minimum  
17 of two thousand hours during the three years immediately  
18 preceding the enactment of this act.

19 (ii) Demonstrates to the satisfaction of the board proof of  
20 practice as a pharmacy technician for at least two thousand  
21 hours immediately prior to the date of application.

22 (c) A registration shall authorize the registrant to assist  
23 in the practice of pharmacy under the direct and personal  
24 supervision of a pharmacist.

25 (d) A registration is subject to biennial renewal. The board  
26 shall establish by regulation a fee for renewal.

27 (e) The following apply to pharmacy technician trainees:

28 (1) The board may issue a temporary permit to practice as a  
29 pharmacy technician trainee to an applicant who is seventeen  
30 years of age or older and meets the requirements of subsection

1 (a)(3)(ii) and (iii) and complies with the following:

2 (i) The applicant is a student enrolled in a board-approved  
3 pharmacy technician training program and as part of the program  
4 may be required to serve an externship or internship; or

5 (ii) The individual is employed by a pharmacy and  
6 participates in a board-approved pharmacy technician training  
7 program that may include an externship or internship program.

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

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

13 (4) A temporary permit shall authorize the permittee to  
14 perform the duties of a pharmacy technician under the direct and  
15 personal supervision of a pharmacist.

16 (f) Identification requirements are as follows:

17 (1) A pharmacy technician shall wear a name tag that clearly  
18 identifies the temporary permit holder with the title "pharmacy  
19 technician trainee."

20 (g) This section shall not apply to a student who is  
21 enrolled in an accredited school of pharmacy and who is in good  
22 standing.

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

25 Section 3.2. Reporting of Multiple Licensure, Registration  
26 or its Equivalent.--Any [licensed] pharmacist or pharmacy  
27 technician of this Commonwealth who is also registered,  
28 certified or licensed [to practice pharmacy] in any other state,  
29 territory or country shall report this information to the board  
30 on the biennial registration application. Any disciplinary

1 action taken in other states, territories and countries shall be  
2 reported to the board on the biennial registration application  
3 or within ninety days of final disposition, whichever is sooner.  
4 Multiple registration, certification or licensure shall be noted  
5 by the board on the [pharmacist's] licensee's or registrant's  
6 record, and such state, territory or country shall be notified  
7 by the board of any disciplinary actions taken against [said  
8 pharmacist] that licensee or registrant in this Commonwealth.

9 Section 4. Section 5(c) of the act, amended December 20,  
10 1985 (P.L.433, No.111), is amended and the section is amended by  
11 adding a subsection to read:

12 Section 5. Refusal to Grant, Revocation and Suspension.--\* \*  
13 \*

14 (a.1) The board shall have the power to refuse, revoke or  
15 suspend the registration of any pharmacy technician upon proof  
16 satisfactory to it that the pharmacy technician has done any of  
17 the following:

18 (1) Procured a personal registration through fraud,  
19 misrepresentation or deceit.

20 (2) Has been found guilty, pleaded guilty, entered a plea of  
21 nolo contendere, or has received probation without verdict,  
22 disposition in lieu of trial or an Accelerated Rehabilitation  
23 Disposition in the disposition of felony charges, to any offense  
24 in connection with the practice of pharmacy or any offense  
25 involving moral turpitude before any court of record of any  
26 jurisdiction.

27 (3) Is unfit to practice as a pharmacy technician because of  
28 intemperance in the use of alcoholic beverages, controlled  
29 substances or any other substance which impairs the intellect  
30 and judgment to such an extent as to impair the performance of

1 professional duties.

2 (4) Is unfit or unable to practice as a pharmacy technician  
3 by reason of a physical or mental disease or disability. In  
4 enforcing this clause, the board shall, upon probable cause,  
5 have authority to compel a pharmacy technician to submit to a  
6 mental or physical examination by physicians or psychologists  
7 approved by the board. Failure of a pharmacy technician to  
8 submit to an examination when directed by the board, unless due  
9 to circumstances beyond the pharmacy technician's control, shall  
10 constitute an admission of the allegations against the pharmacy  
11 technician, consequent upon which a default and final order may  
12 be entered without the taking of testimony or presentation of  
13 evidence. A pharmacy technician affected under this clause shall  
14 at reasonable intervals be afforded an opportunity to  
15 demonstrate the ability to resume a competent practice as a  
16 pharmacy technician with reasonable skill and safety to  
17 patients.

18 (5) Has had a registration, certification or license to  
19 practice as a pharmacy technician denied, revoked or suspended  
20 by an appropriate pharmacy technician registration,  
21 certification or licensing authority or has received  
22 disciplinary action from an appropriate pharmacy technician  
23 registration, certification or licensing authority.

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

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

30 \* \* \*

1 (c) When the board finds that the registration,  
2 certification or license [of any pharmacist] may be refused,  
3 revoked or suspended under the terms of subsection (a) or (a.1),  
4 the board may:

5 (1) Deny the application for a registration, certification  
6 or license.

7 (2) Administer a public reprimand.

8 (3) Revoke, suspend, limit or otherwise restrict a  
9 registration, certification or license as determined by the  
10 board.

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

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

17 (6) Restore or reissue, in its discretion, a suspended  
18 license [to practice pharmacy] or registration and impose any  
19 disciplinary or corrective measure which it might originally  
20 have imposed.

21 \* \* \*

22 Section 5. Section 6(k) of the act, amended December 20,  
23 1985 (P.L.433, No.111), is amended to read:

24 Section 6. State Board of Pharmacy.--\* \* \*

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

27 (1) To regulate the practice of pharmacy and of pharmacy  
28 technicians;

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

1 (3) To examine, inspect and investigate all applications and  
2 all applicants for licensure as pharmacists, pharmacies or  
3 registration as pharmacy interns and pharmacy technicians, and  
4 to grant certificates of licensure or registration to all  
5 applicants whom it shall judge to be properly qualified;

6 (4) With the approval of the Commissioner of Professional  
7 and Occupational Affairs, to prepare position descriptions,  
8 employ inspectors who shall be licensed pharmacists and employ  
9 appropriate consultants to assist it for any purposes which it  
10 may deem necessary, provided that the board may not delegate any  
11 of its final decisionmaking responsibilities to any consultant;

12 (5) To investigate or cause to be investigated all  
13 violations of the provisions of this act and its regulations and  
14 to cause prosecutions to be instituted in the courts upon advice  
15 from the Attorney General;

16 (6) To make or order inspections of all pharmacies, except  
17 health care facilities, as defined in the act of July 19, 1979  
18 (P.L.130, No.48), known as the "Health Care Facilities Act," and  
19 which are periodically inspected by the Department of Health in  
20 accordance with the standards in this act and the board's  
21 regulations promulgated thereto: Provided, That the Department  
22 of Health shall forward a copy of their inspection report to the  
23 board noting any violations of the act: And, provided further,  
24 That, if a violation is reported, the board shall have the power  
25 to inspect such pharmacies and take appropriate action as  
26 specified in this act; and to make or order inspections of other  
27 places in which drugs or devices are stored, held, compounded,  
28 dispensed or sold to a consumer, to take and analyze any drugs  
29 or devices and to seize and condemn any drugs or devices which  
30 are adulterated, misbranded or stored, held, dispensed,

1 distributed or compounded in violation of the provisions of this  
2 act or the provisions of the act of April 14, 1972 (P.L.233, No.  
3 64), known as "The Controlled Substance, Drug, Device and  
4 Cosmetic Act";

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

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

11 (8.1) To approve programs for the training of pharmacy  
12 technicians;

13 (9) To promulgate rules and regulations to effectuate the  
14 purposes of this act and to regulate the distribution of drugs  
15 and devices and the practice of pharmacy for the protection and  
16 promotion of the public health, safety and welfare.

17 \* \* \*

18 Section 6. Section 7 of the act is amended by adding a  
19 subsection to read:

20 Section 7. Hearings and Suspensions.--\* \* \*

21 (e) Notwithstanding any other provision, subsections (d.3),  
22 (d.4), (d.5), (d.6), (d.7) and (d.8) shall not apply to pharmacy  
23 technicians, except as those subsections relate to the  
24 professional health monitoring program.

25 Section 7. Section 8.1 of the act, added December 20, 1986  
26 (P.L.433, No.111), is amended to read:

27 Section 8.1. Injunction.--It shall be unlawful for any  
28 person to practice or attempt to offer to practice pharmacy or  
29 as a pharmacy technician, as defined in this act, without having  
30 at the time of so doing a valid, unexpired, unrevoked and

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

14 Section 8. No person is required to be registered as a  
15 pharmacy technician under section 2.1 of the act until two years  
16 after the State Board of Pharmacy has promulgated regulations  
17 under section 8 of this act.

18 Section 9. The State Board of Pharmacy shall promulgate  
19 regulations to implement the addition of section 2.1 of the act  
20 within 18 months of the effective date of this section. The  
21 addition of section 2.1 of the act shall not be enforceable by  
22 the State Board of Pharmacy until the publication of final  
23 regulations.

24 Section 20. This act shall take effect in 60 days.