
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1845 Session of
1995

INTRODUCED BY CIVERA, GANNON, RAYMOND, HERMAN, GIGLIOTTI, PESCI,
E. Z. TAYLOR, GORDNER, PISTELLA, BELARDI, TRELLO, MERRY,
VANCE, FAIRCHILD, MICOZZIE, WAUGH, ALLEN, DURHAM, ADOLPH,
SCHULER, TRUE, KING, BOYES AND NYCE, JUNE 21, 1995

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 1996

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 creation and appointment, for
9 disciplinary proceedings and hearings and for prior rules and
10 regulations.

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

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

1 Section 1. Definitions.

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

5 "Conviction." Includes a judgment, an admission of guilt or
6 a plea of nolo contendere, being convicted of a felony or a
7 misdemeanor relating to the practice of a licensed profession,
8 receiving probation without verdict or disposition in lieu of
9 trial, or receiving an Accelerated Rehabilitative Disposition of
10 felony charges.

11 * * *

12 "License." A license, registration, certificate or other
13 authorization to practice a profession or occupation under the
14 jurisdiction of the Bureau of Professional and Occupational
15 Affairs.

16 * * *

17 "Office of prosecution." The prosecuting office in the
18 Bureau of Professional and Occupational Affairs under the
19 supervision of the General Counsel.

20 "Prosecuting attorney." An attorney assigned by the General
21 Counsel to represent the Commonwealth in disciplinary matters
22 before the various boards and commissions.

23 Section 2. Section 3 of the act is amended to read:

24 Section 3. Hearing examiners.

25 (a) [Appointment.--Notwithstanding any other provision of
26 law, the Commissioner of the Bureau of Professional and
27 Occupational Affairs, after consultation with the licensing
28 boards and commissions, shall appoint such hearing examiners as
29 may be necessary to conduct hearings in disciplinary matters
30 before a licensing board or commission. Each licensing board and

1 commission shall have the power to decide if a specific
2 disciplinary matter or type of disciplinary matter is to be
3 heard by the licensing board or commission itself or by a
4 hearing examiner appointed pursuant to this subsection.]
5 Creation; appointment.--The Office of Hearing Examiner is hereby
6 established in the Bureau of Professional and Occupational
7 Affairs as an autonomous office. The Governor shall appoint from
8 a list of qualified candidates submitted by the State Civil
9 Service Commission, after appropriate examination under the act
10 of August 5, 1941 (P.L.752, No.286), known as the Civil Service
11 Act, as many hearing examiners as the Commissioner of
12 Professional and Occupational Affairs, with the approval of the
13 Governor, deems necessary for the holding of hearings in
14 disciplinary matters before licensing boards and commissions
15 within the bureau. The Governor shall designate one of the
16 hearing examiners as the Chief Hearing Examiner. Hearing
17 examiners appointed under this subsection shall be learned in
18 the law and shall be members in good standing of the bar of the
19 Supreme Court of this Commonwealth. Hearing examiners shall
20 perform no duties inconsistent with their official duties and
21 responsibilities as hearing examiners.

22 (b) Regulations.--The Commissioner of Professional and
23 Occupational Affairs, after consultation with the licensing
24 boards and commissions, shall have the power to promulgate
25 regulations setting forth the procedural rules to be followed by
26 any such hearing examiners in the conduct of hearings in
27 disciplinary matters before a licensing board or commission. All
28 proceedings shall be conducted in accordance with the provisions
29 of 2 Pa.C.S. (relating to administrative law and procedure).

30 (c) Powers.--[Such hearing] Hearing examiners shall have the

1 power:

2 (1) to conduct hearings in accordance with applicable
3 statutes, rules and regulations[,];

4 (2) to issue subpoenas requiring the attendance and
5 testimony of individuals or the production of pertinent
6 records or other papers by persons whom they believe have
7 information relevant to any matters pending before the
8 examiner [and to issue];

9 (3) to impose sanctions, revocations, suspensions, civil
10 penalties and other disciplinary and corrective measures as
11 permitted by law;

12 (4) to issue temporary and automatic suspensions as
13 authorized by law; and

14 (5) to issue findings of facts, conclusions of law and
15 decisions.

16 (d) Time periods.--In all disciplinary matters before a
17 licensing board or commission, hearings shall commence within 90
18 days after the date on which an answer is filed. Any continuance
19 granted prior to the commencement of the hearing shall toll the
20 90-day requirement by the period of the continuance. A decision
21 shall be rendered within 180 days after the record is closed.
22 The board or commission shall render a final adjudication or
23 decision on any exceptions to the decision of a hearing examiner
24 or any applications for review within 90 days of the filing of
25 such exceptions or applications, provided that a board or
26 commission may delegate to a hearing examiner the authority to
27 render a final adjudication or decision in such cases as deemed
28 appropriate.

29 Section 3. The act is amended by adding sections to read:

30 Section 3.1. Disciplinary proceedings.

1 (a) Initiation.--Any person may submit a written complaint
2 to the Bureau of Professional and Occupational Affairs.

3 Notwithstanding any other provision of law, the office of
4 prosecution shall have the power to dispose of complaints as
5 follows:

6 (1) to close a case because prosecution is not
7 warranted, because there is no violation of law or because
8 the case is not within the jurisdiction of a licensing board
9 or commission;

10 (2) to conduct further investigation of a case,
11 including the use of investigative subpoenas under section 2;

12 (3) to defer further investigation or action on a case
13 during the pendency of a civil, criminal or administrative
14 matter;

15 (4) to refer a case to an appropriate criminal authority
16 or other government agency;

17 (5) to issue an order to show cause; AND <—

18 ~~(6) to issue an order compelling a physical or mental~~ <—
19 ~~examination of a licensee, or both, as permitted by law; and~~

20 ~~(7) (6) to negotiate a consent agreement imposing a~~ <—
21 ~~penalty under a licensing statute for approval by a licensing~~
22 ~~board or commission.~~

23 (b) Consultants.--In cases which may involve, but are not
24 limited to, issues of professional competence, quality of care
25 and standards of service, a prosecuting attorney may consult
26 with an individual with expertise in the subject who contracts
27 with the bureau to evaluate cases and advise prosecuting
28 attorneys. No prosecuting attorney shall consult for such
29 purpose with any member of a licensing board or commission.

30 Section 3.1a 3.2. Temporary suspensions. <—

~~A hearing examiner shall have the authority to issue a temporary suspension under the applicable law upon a finding of probable cause upon a motion of the office of prosecution.~~

(A) GENERAL RULE.--UPON A PETITION OF THE OFFICE OF PROSECUTION, A LICENSE MAY BE TEMPORARILY SUSPENDED UNDER CIRCUMSTANCES AS DETERMINED BY A HEARING EXAMINER TO BE AN IMMEDIATE AND CLEAR DANGER TO THE PUBLIC HEALTH AND SAFETY. A HEARING EXAMINER SHALL ISSUE AN ORDER TO THAT EFFECT WITHOUT A HEARING, BUT UPON DUE NOTICE TO A LICENSEE AT THE LICENSEE'S LAST KNOWN ADDRESS, WHICH SHALL INCLUDE A WRITTEN STATEMENT OF ALL ALLEGATIONS AGAINST THE LICENSEE.

(B) LIMITATION.--THIS SECTION SHALL APPLY ONLY IN CASES WHERE THE LICENSING BOARD OR COMMISSION IS AUTHORIZED BY LAW TO ISSUE TEMPORARY AND AUTOMATIC SUSPENSIONS.

~~Section 3.2~~ 3.3. Disciplinary hearings.

(a) Hearing examiners.--A hearing examiner shall adjudicate all of the following disciplinary matters under the jurisdiction of a licensing board or commission:

(1) a case subject to the provisions of sections 901 through 905 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act;

(2) a case in which disciplinary action or refusal to issue a license by a licensing board or commission would be based on a conviction;

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

(4) a case involving a lapsed license;

1 date of this act, except that all powers to issue temporary
2 suspensions are hereby transferred exclusively to the office of
3 hearing examiner under section 3 of the act.

4 Section 7. This act shall take effect in 180 days.