

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1837 Session of
2001

INTRODUCED BY J. TAYLOR, JUNE 22, 2001

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JUNE 22, 2001

AN ACT

1 Amending the act of October 5, 1978 (P.L.1109, No.261), entitled
2 "An act requiring the licensing of practitioners of
3 osteopathic medicine and surgery; regulating their practice;
4 providing for certain funds and penalties for violations and
5 repeals," further providing for respiratory care
6 practitioners certificates and permits; providing for refusal
7 or suspension or revocation of respiratory care practitioner
8 certificates, for automatic suspension and temporary
9 suspension of respiratory care practitioners, for impaired
10 professionals and for continuing respiratory care education.

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

13 Section 1. Section 10.2(b) of the act of October 5, 1978
14 (P.L.1109, No.261), known as the Osteopathic Medical Practice
15 Act, added July 2, 1993 (P.L.418, No.59), is amended and the
16 section is amended by adding a subsection to read:

17 Section 10.2. Respiratory care practitioner certificates and
18 permits.

19 * * *

20 (b) [Twelve months after the effective date of this section,
21 the] The board shall issue temporary permits for the practice of
22 respiratory care to individuals who have applied for

1 certification from the board and who meet any of the following
2 requirements:

3 (1) Graduation from an accredited respiratory care
4 training program recognized by the board.

5 (2) Enrollment in an accredited respiratory care
6 training program recognized by the board if the individual is
7 expected to graduate within 30 days from the date of
8 application.

9 (3) Designation as a "Certified Respiratory Therapy
10 Technician" or a "Registered Respiratory Therapist" by a
11 nationally recognized credentialing agency approved by the
12 board.

13 (4) Continuous provision of respiratory care services
14 for a minimum of 12 months immediately preceding the
15 effective date of this section.

16 (5) Holding certification, licensure or registration as
17 a respiratory care practitioner issued by another state, the
18 District of Columbia or a territory of the United States
19 where the requirements for licensure, registration or
20 certification are substantially similar to those required by
21 the board.

22 (b.1) Beginning with the renewal cycle which commences after
23 the effective date of this subsection, the board shall refuse to
24 renew a certificate issued to a respiratory care practitioner
25 unless he has completed 20 credit hours of approved continuing
26 education offered by providers approved by the board by
27 regulation.

28 (b.2) The board shall not issue a certificate or permit to
29 an applicant who has been convicted of a felony under the act of
30 April 14, 1972 (P.L.233, No.64), known as "The Controlled

Substance, Drug, Device and Cosmetic Act," or of an offense
under the laws of another jurisdiction which, if committed in
this Commonwealth, would be a felony under "The Controlled
Substance, Drug, Device and Cosmetic Act," unless:

(1) at least ten years have elapsed from the date of
conviction;

(2) the applicant satisfactorily demonstrates to the
board that he has made significant progress in personal
rehabilitation since the conviction such that certification
of the applicant should not be expected to create a
substantial risk of harm to the health and safety of patients
or the public or a substantial risk of further criminal
violations; and

(3) the applicant otherwise satisfies the qualifications
contained in or authorized by this act.

As used in this subsection, the term "convicted" includes a
finding or verdict of guilt, an admission of guilt or a plea of
nolo contendere.

* * *

Section 2. The act is amended by adding sections to read:
Section 10.3. Refusal or suspension or revocation of
certificate or permit.

(a) The board shall refuse to issue a respiratory care
practitioner certificate or permit to any person and, after
notice and hearing in accordance with rules and regulations, may
suspend or revoke the certificate or permit of any person who
has:

(1) attempted or obtained certification or a permit by
fraud or misrepresentation;

(2) committed repeated occasion of negligence or

1 incompetence in the practice of respiratory therapy;

2 (3) been convicted of a felony in a Federal court or in
3 the courts of this Commonwealth or any other state, territory
4 or country;

5 (4) habitually indulged in the use of narcotics or other
6 habit-forming drugs or excessively indulged in the use of
7 alcoholic liquors;

8 (5) been found guilty of unprofessional conduct;

9 (6) treated or undertaken to treat human ailments
10 otherwise than by respiratory therapy as defined in this act;

11 (7) had his certificate or permit to practice
12 respiratory therapy revoked or suspended or had other
13 disciplinary action taken or his application for a
14 certificate or permit revoked or suspended by the proper
15 certifying or licensing authority of another state, territory
16 or country; or

17 (8) made a misleading, deceptive, untrue or fraudulent
18 representation in violation of this act or otherwise in the
19 practice of the profession.

20 (b) All action of the board shall be taken subject to the
21 right of notice, hearing and adjudication and the right of
22 appeal therefrom in accordance with 2 Pa.C.S. (relating to
23 administrative law and procedure).

24 (c) Unless ordered to do so by a court, the board shall not
25 reinstate the certificate or permit of a person to practice as a
26 respiratory therapist which has been revoked, and such person
27 shall be required to apply for a certificate or permit after a
28 five-year period if he desires to practice at any time after
29 such revocation.

30 (d) As used in this section, the following words and phrases

1 shall have the meanings given to them in this subsection:

2 "Convicted." Includes a finding or verdict of guilt, an
3 admission of guilt or a plea of nolo contendere.

4 "Unprofessional conduct." Includes any departure from or the
5 failure to conform to the minimal standards of acceptable and
6 prevailing respiratory therapy practice, in which proceeding
7 actual injury to a patient need not be established.

8 Section 10.4. Automatic suspension of respiratory care
9 practitioners.

10 (a) A certificate or permit issued under section 10.2 shall
11 automatically be suspended upon:

12 (1) the legal commitment of a certificate or permit
13 holder to an institution because of mental incompetence from
14 any cause upon filing with the board a certified copy of such
15 commitment; or

16 (2) conviction of a felony under the act of April 14,
17 1972 (P.L.233, No.64), known as "The Controlled Substance,
18 Drug, Device and Cosmetic Act."

19 (b) Automatic suspension under this section shall not be
20 stayed pending an appeal of a conviction.

21 (c) Restoration of such certificate or permit shall be made
22 as provided in this act for revocation or suspension of such
23 certificate or permit holder.

24 (d) As used in this section, "conviction" includes a finding
25 or verdict of guilt, an admission of guilt or a plea of nolo
26 contendere.

27 Section 10.5. Temporary suspension of respiratory care
28 practitioners.

29 (a) The board shall temporarily suspend a certificate or
30 permit issued under section 10.2 under circumstances as

1 determined by the board to be an immediate and clear danger to
2 the public health or safety.

3 (b) The board shall issue an order to that effect without a
4 hearing, but upon due notice, to the certificate or permit
5 holder concerned at his last known address, which shall include
6 a written statement of all allegations against the certificate
7 or permit holder. The board shall thereupon commence formal
8 action to suspend, revoke or restrict the certificate or permit
9 of the person concerned as otherwise provided for in this act.

10 All actions shall be taken promptly and without delay.

11 (c) Within 30 days following the issuance of an order
12 temporarily suspending a certificate or permit, the board shall
13 conduct, or cause to be conducted, a preliminary hearing to
14 determine whether there is a prima facie case supporting the
15 suspension. The certificate or permit holder whose certificate
16 or permit has been temporarily suspended may be present at the
17 preliminary hearing and may be represented by counsel, cross-
18 examine witnesses, inspect physical evidence, call witnesses,
19 offer evidence and testimony and make a record of the
20 proceedings. If it is determined that there is not a prima facie
21 case, the suspended certificate or permit shall be immediately
22 restored.

23 (d) The temporary suspension shall remain in effect until
24 vacated by the board, but in no event longer than 180 days.

25 Section 10.6. Impaired professionals.

26 (a) The board, with the approval of the Commissioner of
27 Professional and Occupational Affairs, shall appoint and fix the
28 compensation of a professional consultant who shall be a
29 licensee of the board or such other professional, as the board
30 may determine, with education and experience in the

identification, treatment and rehabilitation of persons with physical or mental impairments. This consultant shall be accountable to the board and shall act as a liaison between the board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired professional support groups which are approved by the board and which provide services to licensees, registrants or certificate holders under this act.

(b) The board may defer and ultimately dismiss any of the types of corrective actions set forth in this act for an impaired professional so long as the professional:

(1) is progressing satisfactorily in an approved treatment program; and

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

(c) An approved program provider shall upon request disclose to the consultant such information in its possession regarding an impaired professional in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. The requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who:

(1) Enter an agreement in accordance with this section.

(2) Are the subject of a board investigation or disciplinary proceeding.

(3) Voluntarily enter a treatment program other than

1 under the provisions of this section but who fail to complete
2 the program successfully or to adhere to an aftercare plan
3 developed by the program provider.

4 (d) (1) An impaired professional who enrolls in an approved
5 treatment program shall enter into an agreement with the
6 board under which the professional's license, registration or
7 certificate shall be suspended or revoked and under which
8 enforcement of that suspension or revocation may be stayed
9 for the length of time the professional remains in the
10 program and makes satisfactory progress, complies with the
11 terms of the agreement and adheres to any limitations on his
12 practice imposed by the board to protect the public.

13 (2) Failure to enter into such an agreement shall
14 disqualify the professional from the impaired professional
15 program and shall activate an immediate investigation and
16 disciplinary proceeding by the board.

17 (e) If, in the opinion of the consultant after consultation
18 with the provider, an impaired professional who is enrolled in
19 an approved treatment program has not progressed satisfactorily,
20 the consultant shall report to the board all information in his
21 possession regarding the professional, and the board shall
22 institute proceedings to determine if the stay of the
23 enforcement of the suspension or revocation of the impaired
24 professional's license, registration or certificate shall be
25 vacated.

26 (f) An approved program provider who makes a disclosure
27 pursuant to this section shall not be subject to civil liability
28 for such disclosure or its consequences.

29 (g) (1) Any hospital or health care facility or home health
30 care operation, peer or colleague who has substantial

1 evidence that a professional has an active addictive disease
2 for which the professional is not receiving treatment, is
3 diverting a controlled substance or is mentally or physically
4 incompetent to carry out the duties of his license or
5 registration or certification shall make or cause to be made
6 a report to the board.

7 (2) A person or facility who acts in a treatment
8 capacity to an impaired professional in an approved treatment
9 program shall not be subject to the mandatory reporting
10 requirements of this subsection.

11 (3) Any person or facility who reports pursuant to this
12 subsection in good faith and without malice shall be immune
13 from a civil or criminal liability arising from such report.

14 (4) Failure to provide a report under this subsection
15 within a reasonable time from receipt of knowledge of
16 impairment shall subject the person or facility to a fine not
17 to exceed \$1,000. The board shall levy this penalty only
18 after affording the party the opportunity for a hearing, as
19 provided in 2 Pa.C.S. (relating to administrative law and
20 procedure).

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