

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1897 Session of
2005

INTRODUCED BY GODSHALL, ARMSTRONG, BAKER, BALDWIN, CALTAGIRONE,
CRAHALLA, CREIGHTON, GINGRICH, JAMES, KIRKLAND, KOTIK,
PHILLIPS, READSHAW, RUBLEY, SANTONI, SCAVELLO, SHANER,
E. Z. TAYLOR AND YOUNGBLOOD, JULY 28, 2005

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JULY 28, 2005

AN ACT

1 Amending the act of May 22, 1951 (P.L.317, No.69), entitled, as
2 amended, "An act relating to the practice of professional
3 nursing; providing for the licensing of nurses and for the
4 revocation and suspension of such licenses, subject to
5 appeal, and for their reinstatement; providing for the
6 renewal of such licenses; regulating nursing in general;
7 prescribing penalties and repealing certain laws," further
8 providing for definitions and for communication with
9 licensees; providing for dietetic technician licenses;
10 further providing for examinations and certificates, for fees
11 and qualifications for licensure, for graduates of schools of
12 other states, territories or Dominion of Canada, for persons
13 entitled to practice, for licenses, duration, renewal fee and
14 inactive status, for reporting of multiple licensure, for
15 punishment for violations, for refusal, suspension or
16 revocation of licenses, for reinstatement of licenses and for
17 injunction or other process; and making an appropriation.

18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 Section 1. Section 2 of the act of May 22, 1951 (P.L.317,
21 No.69), known as The Professional Nursing Law, is amended by
22 adding clauses to read:

23 Section 2. Definitions.--When used in this act, the
24 following words and phrases shall have the following meanings

1 unless the context provides otherwise:

2 * * *

3 (15) "Practice of dietetic technician services" means the
4 nutrition assessment, diagnosis, intervention, monitoring and
5 evaluation for uncomplicated instances of common conditions in
6 individuals and populations and the provision of nutrition
7 therapy services to individuals with complex medical conditions
8 under the supervision of a licensed dietitian-nutritionist.

9 (16) "Licensed dietetic technician" means a dietetic
10 technician who holds a current license under this act.

11 Section 2. Section 2.2 of the act, amended June 29, 2002
12 (P.L.651, No.99), is amended to read:

13 Section 2.2. Communication with Licensees.--The Board shall
14 communicate with licensees on issues affecting the education,
15 practice and regulation of nursing [or], dietetics-nutrition or
16 dietetics technician services on at least an annual basis.

17 Section 3. The act is amended by adding a section to read:

18 Section 3.2. Dietetic Technician License Required.--(a) It
19 shall be unlawful for any individual to hold himself or herself
20 forth as a licensed dietetic technician unless he or she shall
21 first have obtained a license pursuant to this act. Only
22 individuals who have received licenses as licensed dietetic
23 technicians pursuant to this act may use the letters "L.D.T." in
24 connection with their names.

25 (b) Nothing in this section shall be construed to require or
26 preclude third-party insurance reimbursement. Nothing herein
27 shall preclude an insurer or other third-party payor from
28 requiring that a licensed dietetic technician obtain a referral
29 from a licensed physician, dentist or podiatrist or that a
30 licensed dietetic technician file an evaluation and treatment

1 plan with the insurer or third-party payor as a precondition of
2 reimbursement.

3 Section 4. Section 5(b) and (c) of the act, amended June 29,
4 2002 (P.L.651, No.99), are amended and the section is amended by
5 adding a subsection to read:

6 Section 5. Examinations and Certificates.--* * *

7 (b) The Board may admit to examination any person who has
8 satisfactorily completed an approved nursing education program
9 for the preparation of registered professional nurses [or], an
10 approved dietetics-nutrition education program or an approved
11 dietetic technician education program in Pennsylvania or such a
12 program in any other state, territory or possession of the
13 United States, considered by the Board to be equivalent to that
14 required in this Commonwealth at the time such program was
15 completed, and who meets the requirements of character and
16 preliminary education.

17 (c) The Board may admit to examination any person who has
18 satisfactorily completed a nursing education program for the
19 preparation of registered professional nurses [or], an approved
20 dietetics-nutrition education program or an approved dietetic
21 technician education program in a country or territory not
22 mentioned above who has been licensed, registered, or duly
23 recognized there as a professional nurse, dietitian-
24 nutritionist, dietitian or nutritionist or dietetic technician
25 provided such a program is considered by the Board to be equal
26 to that required in this Commonwealth at the time such program
27 was completed and who meets the requirements of character and
28 preliminary education.

29 * * *

30 (f) A person who meets the requirements of section 6 and

1 who, in addition, has been engaged in the practice of dietetic
2 technician services for a period of five (5) years during the
3 seven (7) years immediately preceding the effective date of this
4 subsection or a person who provides evidence of current
5 registration as a Dietetic Technician, Registered, by the
6 Commission of Dietetic Registration of the American Dietetic
7 Association shall be considered to meet the requirements of this
8 act. This person shall be licensed without the necessity of
9 taking the examination if an application is made to the Board
10 within one (1) year of the effective date of this subsection and
11 the appropriate fee is paid.

12 Section 5. Section 6 of the act is amended by adding a
13 subsection to read:

14 Section 6. Fees; Qualifications for Licensure.--* * *

15 (b.1) An applicant applying for licensure as a dietetic
16 technician shall submit a written application on forms provided
17 by the Board evidencing and insuring to the satisfaction of the
18 Board that the applicant:

19 (1) Is of good moral character.

20 (2) Has received an associate's or higher degree from a
21 Board-approved, regionally accredited college or university,
22 including a major course of study in human nutrition, food and
23 nutrition, dietetics or food systems management.

24 (3) Has completed a planned continuous preprofessional
25 experience component in dietetic technician practice of not less
26 than four hundred fifty (450) hours under the supervision of a
27 registered dietitian, a dietitian-nutritionist licensed under
28 this act or an individual with a doctoral degree conferred by a
29 regionally accredited college or university in the United States
30 with a major course of study in human nutrition, food and

nutrition, nutrition education, dietetics or food systems
management as approved by the Board.

(4) Has satisfactorily completed an examination approved by
the Board. The Board shall contract with a professional testing
organization for the examination of qualified applicants for
licensure. All written, oral and practical examinations shall be
prepared and administered by a qualified and approved
professional testing organization in the manner prescribed for
written examinations under section 812.1 of "The Administrative
Code of 1929."

* * *

Section 6. Section 7(a) of the act, amended June 29, 2002
(P.L.651, No.99), is amended to read:

Section 7. Graduates of Schools of Other States, Territories
or Dominion of Canada.--(a) The Board may issue a license
without examination to a graduate of a school of nursing [or], a
dietetics-nutrition program or a dietetic technician program who
has completed a course of study in nursing [or], dietetics-
nutrition or dietetic technician services considered by the
Board to be equivalent to that required in this State at the
time such course was completed, and who is registered or
licensed by examination in any other state, or territory of the
United States or the Dominion of Canada, and who has met all the
foregoing requirements as to character, and preliminary
education.

* * *

Section 7. Sections 8 and 11 of the act are amended by
adding subsections to read:

Section 8. Persons Entitled to Practice.--* * *

(c) The Board shall issue to each person who meets the

1 dietetic technician licensure requirements of this act a
2 certificate setting forth that such person is licensed as a
3 dietetic technician and entitled to use the title "licensed
4 dietetic technician" and the letters "L.D.T." A record of all
5 person licensed as dietetic technicians in this Commonwealth
6 shall be kept in the office of the Board and shall be open to
7 public inspection and copying upon payment of a nominal fee for
8 copying the record.

9 Section 11. Licenses; Duration; Renewal Fee; Inactive
10 Status.--* * *

11 (d) A dietetic technician license issued under this act
12 shall not be renewed unless the licensee applying for renewal
13 submits proof to the Board that during the two (2) calendar
14 years immediately preceding the application for renewal the
15 licensee has satisfactorily completed a minimum of twenty (20)
16 hours of continuing dietetic technician education approved by
17 the Board by regulation.

18 Section 8. Sections 11.1, 13(b), 14, 15.2 and 15.4 of the
19 act, amended June 29, 2002 (P.L.651, No.99), are amended to
20 read:

21 Section 11.1. Reporting of Multiple Licensure.--Any licensed
22 professional nurse [or], dietitian-nutritionist or dietetic
23 technician of this Commonwealth who is also licensed to practice
24 nursing [or], dietetics-nutrition or dietetic technician
25 services in any other state, territory, possession or country
26 shall report this information to the Board on the biennial
27 registration application. Any disciplinary action taken in other
28 states shall be reported to the Board on the biennial
29 registration application or within ninety (90) days of final
30 disposition, whichever is sooner. Multiple licensure shall be

1 noted by the Board on the licensee's record, and such state,
2 territory, possession or country shall be notified by the Board
3 of any disciplinary actions taken against said licensee in this
4 Commonwealth.

5 Section 13. Punishment for Violations.--* * *

6 (b) In addition to any other civil remedy or criminal
7 penalty provided for in this act, the Board, by a vote of the
8 majority of the maximum number of the authorized membership of
9 the Board as provided by law or by a vote of the majority of the
10 duly qualified and confirmed membership or a minimum of five (5)
11 members, whichever is greater, may levy a civil penalty of up to
12 one thousand dollars (\$1,000) on any current licensee who
13 violates any provision of this act or on any person who
14 practices nursing or holds himself or herself forth as a
15 licensed dietitian-nutritionist or a licensed dietetic
16 technician without being properly licensed to do so under this
17 act or on the responsible officers or employees of any
18 corporation, copartnership, institution or association violating
19 any of the provisions of this act. The Board shall levy this
20 penalty only after affording the accused party the opportunity
21 for a hearing, as provided in Title 2 of the Pennsylvania
22 Consolidated Statutes (relating to administrative law and
23 procedure).

24 Section 14. Refusal, Suspension or Revocation of Licenses.--

25 (a) The Board may refuse, suspend or revoke any license in any
26 case where the Board shall find that--

27 (1) The licensee is on repeated occasions negligent or
28 incompetent in the practice of professional nursing [or],
29 dietetics-nutrition or dietetic technician services.

30 (2) The licensee is unable to practice professional nursing

1 with reasonable skill and safety to patients by reason of mental
2 or physical illness or condition or physiological or
3 psychological dependence upon alcohol, hallucinogenic or
4 narcotic drugs or other drugs which tend to impair judgment or
5 coordination, so long as such dependence shall continue. In
6 enforcing this clause (2), the Board shall, upon probable cause,
7 have authority to compel a licensee to submit to a mental or
8 physical examination as designated by it. After notice, hearing,
9 adjudication and appeal as provided for in section 15, failure
10 of a licensee to submit to such examination when directed shall
11 constitute an admission of the allegations against him or her
12 unless failure is due to circumstances beyond his or her
13 control, consequent upon which a default and final order may be
14 entered without the taking of testimony or presentation of
15 evidence. A licensee affected under this paragraph shall at
16 reasonable intervals be afforded an opportunity to demonstrate
17 that he or she can resume a competent practice of professional
18 nursing with reasonable skill and safety to patients.

19 (2.1) The licensee is unable to practice dietetics-nutrition
20 with reasonable skill and safety to individuals or groups by
21 reason of mental or physical illness or condition or
22 physiological or psychological dependence upon alcohol,
23 hallucinogenic or narcotic drugs or other drugs which tend to
24 impair judgment or coordination so long as such dependence shall
25 continue. In enforcing this clause (2.1), the Board shall upon
26 probable cause have authority to compel a licensee to submit to
27 a mental or physical examination as designated by it. After
28 notice, hearing, adjudication and appeal as provided for in
29 section 15, failure of a licensee to submit to such examination
30 when directed shall constitute an admission of the allegations

1 against him or her unless failure is due to circumstances beyond
2 his or her control, consequent upon which a default and final
3 order may be entered without the taking of testimony or
4 presentation of evidence. A licensee affected under this
5 paragraph shall at reasonable intervals be afforded an
6 opportunity to demonstrate that he or she can resume a competent
7 practice of dietetics-nutrition with reasonable skill and safety
8 to individuals or groups.

9 (2.2) The licensee is unable to practice dietetic technician
10 services with reasonable skill and safety to individuals or
11 groups by reason of mental or physical illness or condition or
12 physiological or psychological dependence upon alcohol,
13 hallucinogenic or narcotic drugs or other drugs which tend to
14 impair judgment or coordination so long as such dependence shall
15 continue. In enforcing this clause, the Board shall upon
16 probable cause have authority to compel a licensee to submit to
17 a mental or physical examination as designated by it. After
18 notice, hearing, adjudication and appeal as provided for in
19 section 15, failure of a licensee to submit to such examination
20 when directed shall constitute an admission of the allegations
21 against him or her unless failure is due to circumstances beyond
22 his or her control, consequent upon which a default and final
23 order may be entered without the taking of testimony or
24 presentation of evidence. A licensee affected under this
25 paragraph shall at reasonable intervals be afforded an
26 opportunity to demonstrate that he or she can resume a competent
27 practice of dietetic technician services with reasonable skill
28 and safety to individuals or groups.

29 (3) The licensee has wilfully or repeatedly violated any of
30 the provisions of this act or of the regulations of the Board.

(4) The licensee has committed fraud or deceit in:

(i) the practice of nursing, or in securing his or her admission to such practice or nursing school; [or]

(ii) the practice of dietetics-nutrition or in securing his or her license as a dietitian-nutritionist[.]; or

(iii) the practice of dietetic technician services or in securing his or her license as a dietetic technician.

(5) The licensee has been convicted, or has pleaded guilty, or entered a plea of nolo contendere, or has been found guilty by a judge or jury, of a felony or a crime of moral turpitude, or has received probation without verdict, disposition in lieu of trial or an Accelerated Rehabilitative Disposition in the disposition of felony charges, in the courts of this Commonwealth, the United States or any other state, territory, possession or country.

(6) The licensee has his or her license suspended or revoked or has received other disciplinary action by the proper licensing authority in another state, territory, possession or country.

(7) The licensee has acted in such a manner as to present an immediate and clear danger to the public health or safety.

(8) The licensee possessed, used, acquired or distributed a controlled substance or caution legend drug for other than an acceptable medical purpose.

(9) The licensee has been guilty of immoral or unprofessional conduct. Unprofessional conduct shall include departure from or failing to conform to an ethical or quality standard of the profession. The ethical and quality standards of the profession are those embraced by the professional community in this Commonwealth. In proceedings based on this clause,

1 actual injury to a patient or individual or group need not be
2 established.

3 (b) When the Board finds that the license of any nurse [or],
4 dietitian-nutritionist or dietetic technician may be refused,
5 revoked or suspended under the terms of subsection (a), the
6 Board may:

7 (1) Deny the application for a license.

8 (2) Administer a public reprimand.

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

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 professional or practical nursing [or],
19 dietetics-nutrition or dietetic technician services and impose
20 any disciplinary or corrective measure which it might originally
21 have imposed.

22 Section 15.2. Reinstatement of License.--Unless ordered to
23 do so by Commonwealth Court or an appeal therefrom, the Board
24 shall not reinstate the license of a person to practice nursing
25 [or], dietetics-nutrition or dietetic technician services which
26 has been revoked. Any person whose license has been revoked may
27 reapply for a license, after a period of at least five (5)
28 years, but must meet all of the licensing qualifications of this
29 act for the license applied for, to include the examination
30 requirement, if he or she desires to practice at any time after

1 such revocation.

2 Section 15.4. Injunction or Other Process.--It shall be
3 unlawful for any person to practice or attempt to offer to
4 practice nursing or hold himself or herself forth as a licensed
5 dietitian-nutritionist or licensed dietetic technician, as
6 defined in this act, without having at the time of so doing a
7 valid, unexpired, unrevoked and unsuspended license issued under
8 this act. The unlawful practice of nursing as defined in this
9 act may be enjoined by the courts on petition of the Board or
10 the Commissioner of Professional and Occupational Affairs. In
11 any such proceeding, it shall not be necessary to show that any
12 person is individually injured by the actions complained of. If
13 it is determined that the respondent has engaged in the unlawful
14 practice of nursing, the court shall enjoin him or her from so
15 practicing unless and until he or she has been duly licensed.
16 Procedure in such cases shall be the same as in any other
17 injunction suit. The remedy by injunction hereby given is in
18 addition to any other civil or criminal prosecution and
19 punishment.

20 Section 9. The sum of \$50,000, or as much thereof as may be
21 necessary, is hereby appropriated from the Professional
22 Licensure Augmentation Account in the General Fund to the Bureau
23 of Professional and Occupational Affairs in the Department of
24 State for the fiscal year beginning July 1, 2005, for the
25 purpose of the additional duties imposed on the State Board of
26 Nursing under this act. The appropriation shall be repaid by the
27 board within three years of the beginning of issuance of
28 dietetic technician licenses by the board.

29 Section 10. The State Board of Nursing shall promulgate all
30 regulations required to implement this act within two years of

1 the effective date of this section.

2 Section 11. This act shall take effect in 90 days.