

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 339 Session of  
2007

INTRODUCED BY BARRAR, BOYD, CALTAGIRONE, DALEY, DENLINGER,  
GRUCELA, JAMES, REICHLEY, THOMAS AND TRUE, FEBRUARY 9, 2007

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,  
FEBRUARY 9, 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," defining "discipline" and "victim"; further  
9 providing for additional powers of the boards and commissions  
10 within the Bureau of Professional and Occupational Affairs;  
11 and providing for mandatory restitution and mandatory  
12 repayment of cost of prosecution.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Sections 1 and 5(b) of the act of July 2, 1993  
16 (P.L.345, No.48), entitled, "An act empowering the General  
17 Counsel or his designee to issue subpoenas for certain licensing  
18 board activities; providing for hearing examiners in the Bureau  
19 of Professional and Occupational Affairs; providing additional  
20 powers to the Commissioner of Professional and Occupational  
21 Affairs; and further providing for civil penalties and license  
22 suspension," are amended 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 "Disciplinary matter." Any matter subject to a licensing  
6 board's or commission's jurisdiction in which the licensing  
7 board or commission has the authority to refuse, suspend, revoke  
8 or limit a license, registration, certificate or permit or to  
9 impose a civil penalty or other discipline under any act.

10 "Discipline." A sanction imposed by a licensing board or  
11 licensing commission upon an individual for a violation of a  
12 practice act or a regulation of a licensing board or licensing  
13 commission.

14 "Licensing boards." Those departmental or administrative  
15 boards under the Bureau of Professional and Occupational Affairs  
16 in the Department of State.

17 "Licensing commissions." Those departmental or  
18 administrative commissions under the Bureau of Professional and  
19 Occupational Affairs in the Department of State.

20 "Victim." An individual who has sustained injury to person  
21 or property as a direct result of acts or omissions on the part  
22 of an individual upon whom discipline is being imposed in a  
23 disciplinary matter.

24 Section 5. Civil penalties.

25 \* \* \*

26 (b) Additional powers.--In addition to the disciplinary  
27 powers and duties of the boards and commissions within the  
28 Bureau of Professional and Occupational Affairs under their  
29 respective practice acts, boards and commissions shall have the  
30 power, respectively:

1           (1) To impose discipline on any licensee, registrant,  
2       certificate holder or permit holder who violates a lawful  
3       disciplinary order of the board.

4           (2) To impose discipline on any licensee, registrant,  
5       certificate holder or permit holder who aids and abets the  
6       unlicensed practice of a profession, occupation or business.

7           (3) To levy a civil penalty of not more than \$1,000 on  
8       any corporation, partnership, institution, association or  
9       sole proprietorship which aids and abets any individual in  
10      the unlicensed practice of a profession. This penalty shall  
11      not, however, be levied against any person solely as a  
12      consequence of that person being a patient or client of the  
13      unlicensed individual.

14          (4) To impose mandatory restitution and mandatory  
15      repayment of the cost of investigation and prosecution in a  
16      disciplinary matter as set forth in section 5.1.

17      \* \* \*

18      Section 2. The act is amended by adding a section to read:  
19      Section 5.1. Mandatory restitution and mandatory repayment of  
20      cost of prosecution.

21      (a) Requirement.--In all disciplinary matters before a  
22      licensing board or commission where the board or commission  
23      imposes discipline, the licensing board or commission shall  
24      order the individual to make restitution to the victim. In  
25      addition, the licensing board or commission shall order the  
26      individual to repay the cost of investigation and prosecution by  
27      the Department of State. Restitution and repayment of  
28      investigation and prosecution costs shall be in addition to any  
29      other sanction imposed by a licensing board or commission.

30      (b) Losses recoverable.--A victim may recover losses

sustained to person or property as a direct result of acts or omissions on the part of an individual upon whom discipline is imposed in a disciplinary matter, as set forth in this section.

(c) Mandatory nature.--The licensing board or commission shall order full restitution to the victim and full repayment of the cost of investigation and prosecution regardless of the financial resources of the individual.

(d) Reduction.--The licensing board or commission shall not reduce a restitution award by any amount received from the Crime Victim's Compensation Fund or any other governmental agency but shall order that the individual pay any restitution ordered for losses previously compensated by the Crime Victim's Compensation Fund or other governmental agency to the fund or the agency. Further, the licensing board or commission shall not reduce a restitution award by any amount received by an insurance company but shall order the individual to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

(e) Priority.--If restitution to more than one victim is set by the licensing board or commission, the board or commission shall set the priority of payment. However, when establishing priorities, the licensing board or commission shall order payment in the following order:

(1) The victim.

(2) The Crime Victim's Compensation Fund.

(3) Another governmental agency which has provided reimbursement to the victim as a result of the individual's conduct.

(4) An insurance company which has provided reimbursement to the victim as a result of the individual's

1 conduct.

2 (f) Judgment.--Restitution to the victim and repayment of  
3 costs ordered pursuant to this section shall be a judgment in  
4 favor of the Bureau of Professional and Occupational Affairs  
5 upon the individual subject to the order of the licensing board  
6 or commission. The Attorney General shall be responsible for  
7 enforcing the judgment in courts of competent jurisdiction.

8 (g) Preservation of assets subject to restitution.--Upon  
9 application of the Attorney General, the court may enter a  
10 restraining order or injunction or take any other action to  
11 preserve the availability of property which may be necessary to  
12 satisfy a restitution or repayment order.

13 (h) Period of time.--Notwithstanding any provision of law to  
14 the contrary, the period of time during which a judgment shall  
15 have full effect may exceed the maximum period for the  
16 revocation or suspension of a license, registration, certificate  
17 or permit.

18 (i) Collection.--Restitution shall be made by the individual  
19 to the licensing board or commission. Notwithstanding any  
20 provision of law to the contrary, the Commissioner of  
21 Professional and Occupational Affairs shall collect the  
22 restitution on behalf of the licensing board or commission. The  
23 commissioner shall maintain records of the restitution order and  
24 its satisfaction and shall forward to the victim the restitution  
25 ordered.

26 (j) Cost of investigation and prosecution.--Repayment of  
27 costs associated with investigation and prosecution shall be  
28 made by the individual to the licensing board or commission.  
29 Notwithstanding any provision of law to the contrary, the  
30 Commissioner of Professional and Occupational Affairs shall

1 collect the cost of repayment on behalf of the licensing board  
2 or commission. The moneys shall be deposited into the  
3 Professional Licensure Augmentation Account.

4 (k) Payment.--Not less than 75% of all moneys collected by  
5 the Commissioner of Professional and Occupational Affairs shall,  
6 until satisfaction of the individual's restitution obligation,  
7 be used to pay restitution to a victim. Any remaining money  
8 shall be used to repay the cost of investigation and  
9 prosecution.

10 (l) Amount.--At the time of imposition of discipline, the  
11 licensing board or commission shall specify the amount of  
12 restitution to the victim and the amount of repayment to the  
13 Department of State. The order of restitution and the order to  
14 repay the cost of investigation and prosecution may be made in a  
15 lump sum, by monthly installments or any other method the  
16 licensing board or commission deems just. The amount and the  
17 method of payment shall not be reviewable in any court.

18 (m) Responsibility of prosecuting attorney.--It shall be the  
19 responsibility of the prosecuting attorney of a licensing board  
20 or commission to:

21 (1) Make a recommendation to the licensing board or  
22 commission as to the amount of restitution to be ordered. The  
23 recommendation shall be based on information solicited by the  
24 prosecuting attorney and received from the victim, the  
25 victim's family or victim's representative. If the  
26 prosecuting attorney has solicited information from the  
27 victim, the victim's family or victim's representative and  
28 has received no response, the prosecuting attorney shall,  
29 based upon available information, make a recommendation.

30 (2) Provide the licensing board or commission a

1     calculation of the cost of investigation and prosecution  
2     incurred by the Department of State.

3     (n) Alteration of restitution order.--The licensing board or  
4     commission may order the amount of restitution recommended by  
5     the prosecuting attorney or order another sum. If the licensing  
6     board or commission orders a sum other than that recommended by  
7     the prosecuting attorney, the board or commission shall state on  
8     the record its reasons and conclusions.

9     (o) Preservation of private remedies.--No judgment or order  
10    of restitution shall prevent the victim from recovering, by  
11    appropriate action, compensation from the individual as  
12    otherwise provided by law. However, any civil award shall be  
13    reduced by any amount paid pursuant to the restitution ordered  
14    pursuant to this section.

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