

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 1845 Session of 1995

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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

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

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## 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       (5) a case in which civil penalties are imposed under  
2       section 5(a); and

3       (6) a case in which disciplinary action is automatic  
4       under the applicable law.

5       (B) MENTAL OR PHYSICAL EXAMINATION.-- <—

6       (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A  
7       HEARING EXAMINER MAY ISSUE AN ORDER COMPELLING A LICENSEE TO  
8       SUBMIT TO A MENTAL OR PHYSICAL EXAMINATION UPON A SHOWING OF  
9       PROBABLE CAUSE BY THE OFFICE OF PROSECUTION.

10       (2) THIS SUBSECTION SHALL APPLY ONLY IN CASES WHERE THE  
11       LICENSING BOARD OR COMMISSION IS AUTHORIZED BY LAW TO ISSUE  
12       ORDERS COMPELLING LICENSEES TO SUBMIT TO A MENTAL OR PHYSICAL  
13       EXAMINATION.

14       ~~(b)~~ (C) Additional use of examiners.--In addition to the <—  
15       disciplinary matters required by subsection (a) to be  
16       adjudicated by a hearing examiner, each licensing board or  
17       commission shall have the power to direct that a specific  
18       disciplinary matter or type of disciplinary matter be heard by  
19       the licensing board or commission or by a hearing examiner.

20       ~~(e)~~ (D) Procedures.--Hearings shall be conducted in <—  
21       accordance with applicable law pursuant to section 3(b).

22       Section 4. All guidelines, rules and regulations in effect  
23       on the effective date of this act shall remain in full force and  
24       effect until amended or repealed pursuant to this act.

25       Section 5. All acts and parts of acts are repealed insofar  
26       as they are inconsistent with this act.

27       Section 6. Nothing herein shall be construed to alter the  
28       powers and duties of the various licensing boards and

29       commissions ~~to issue~~ SUBSEQUENT TO THE ISSUANCE OF temporary <—  
30       suspensions under the applicable law in effect on the effective

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.