

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 969 Session of
2001

INTRODUCED BY CIVERA, CALTAGIRONE, COLAFELLA, DALEY, DeWEESE,
GODSHALL, GORDNER, HORSEY, MICOZZIE, READSHAW, SCHRODER,
J. TAYLOR, THOMAS, VANCE AND YOUNGBLOOD, MARCH 14, 2001

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 14, 2001

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 the establishment of the Office of
9 Hearing Examiner and appointment of hearing examiners;
10 further providing for powers and duties of boards and
11 commissions within the Bureau of Professional and
12 Occupational Affairs; and providing for disciplinary
13 proceedings and hearings and for prior rules and regulations.

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

16 Section 1. Section 1 of the act of July 2, 1993 (P.L.345,
17 No.48), entitled "An act empowering the General Counsel or his
18 designee to issue subpoenas for certain licensing board
19 activities; providing for hearing examiners in the Bureau of
20 Professional and Occupational Affairs; providing additional
21 powers to the Commissioner of Professional and Occupational
22 Affairs; and further providing for civil penalties and license
23 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 "Prosecuting attorney." An attorney assigned by the General
18 Counsel to represent the Commonwealth in disciplinary matters
19 before the various boards and commissions.

20 "Prosecution Division." The prosecuting office in the Bureau
21 of Professional and Occupational Affairs under the supervision
22 of the General Counsel.

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 Establishment; appointment.--The Office of Hearing Examiner is
6 hereby established in the Bureau of Professional and
7 Occupational Affairs as an office for the purpose of conducting
8 disciplinary matters. The Governor shall appoint as many hearing
9 examiners as the Commissioner of Professional and Occupational
10 Affairs, with the approval of the Governor, deems necessary for
11 the holding of hearings in disciplinary matters before licensing
12 boards and commissions within the bureau. The Governor shall
13 designate one of the hearing examiners as the Chief Hearing
14 Examiner. Hearing examiners appointed under this subsection
15 shall be learned in the law and shall be members in good
16 standing of the bar of the Supreme Court of this Commonwealth.
17 Hearing examiners shall perform no duties inconsistent with
18 their official duties and responsibilities as hearing examiners.
19 Hearing examiners may be removed or suspended by the Secretary
20 of the Commonwealth for cause, after notice and an opportunity
21 to be heard.

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. The
3 Prosecution Division may also initiate prosecutions based upon
4 information received from other sources, including, but not
5 limited to, field investigators, law enforcement agencies and
6 media reports. Notwithstanding any other provision of law, the
7 Prosecution Division shall have the power to administer
8 disciplinary matters as follows:

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

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

15 (3) to defer further investigation or action on a case
16 during the pendency of a criminal or administrative matter;

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

19 (5) to issue an order to show cause; and

20 (6) to negotiate a consent agreement imposing a penalty
21 under a licensing statute for approval by a licensing board
22 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 3.2. Temporary suspensions.

1 (a) General rule.--Upon a petition of the Prosecution
2 Division, a license may be temporarily suspended under
3 circumstances as determined by a hearing examiner to be an
4 immediate and clear danger to the public health and safety. A
5 hearing examiner shall issue an order to that effect without a
6 hearing, but upon due notice to a licensee at the licensee's
7 last known address, which shall include a written statement of
8 all allegations against the licensee. When a temporary
9 suspension is issued by a hearing examiner, the licensee shall
10 be afforded the procedural rights provided under the applicable
11 licensure law, including, but not limited to, the right to a
12 preliminary hearing within 30 days where applicable.

13 (b) Limitation.--This section shall apply only in cases
14 where the licensing board or commission is authorized by law to
15 issue temporary and automatic suspensions.

16 Section 3.3. Disciplinary hearings.

17 (a) Hearing examiners.--All of the following disciplinary
18 matters under the jurisdiction of a licensing board or
19 commission shall be initially referred to a hearing examiner:

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

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

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

1 (4) a case involving a lapsed license;
2 (5) a case in which civil penalties are imposed under
3 section 5(a);
4 (6) a case in which disciplinary action is automatic
5 under the applicable law; and
6 (7) a case involving allegations of sexual misconduct.

7 (b) Mental or physical examination.--

8 (1) Notwithstanding any other provision of law, a
9 hearing examiner, without conducting a hearing, may issue an
10 order compelling a licensee to submit to a mental or physical
11 examination upon a showing of probable cause by the
12 Prosecution Division.

13 (2) This subsection shall apply only in cases where the
14 licensing board or commission is authorized by law to issue
15 orders compelling licensees to submit to a mental or physical
16 examination.

17 (c) Additional use of examiners.--In addition to the
18 disciplinary matters required by subsection (a) to be
19 adjudicated by a hearing examiner, each licensing board or
20 commission shall have the power to direct that a specific
21 disciplinary matter or type of disciplinary matter be heard by
22 the licensing board or commission or by a hearing examiner.

23 (d) Procedures.--Hearings shall be conducted in accordance
24 with applicable law pursuant to section 3(b).

25 Section 4. Section 5(b) of the act is amended to read:

26 Section 5. Civil penalties.

27 * * *

28 (b) Additional powers.--In addition to the disciplinary
29 powers and duties of the boards and commissions within the
30 Bureau of Professional and Occupational Affairs under their

1 respective practice acts, boards and commissions shall have the
2 power, respectively:

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

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

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

16 (4) To require a licensee, as a condition of suspension,
17 to refrain from any activity which is closely related to the
18 profession for which the individual is licensed when the
19 performance of such activity by the licensee will constitute
20 a danger to the health, safety and welfare of the public.

21 * * *

22 Section 5. 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 6. All acts and parts of acts are repealed insofar
26 as they are inconsistent with this act.

27 Section 7. Nothing herein shall be construed to alter the
28 powers and duties of the various licensing boards and
29 commissions subsequent to the issuance of temporary suspensions
30 under the applicable law in effect on the effective date of this

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

4 Section 8. This act shall take effect in 180 days.