

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 461 Session of  
2005

INTRODUCED BY BOSCOLA, PIPPY, C. WILLIAMS, STOUT, STACK, LOGAN,  
LAVALLE, KITCHEN, COSTA AND FERLO, MARCH 28, 2005

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,  
MARCH 28, 2005

AN ACT

1 Requiring health care entities and health care professionals to  
2 notify the Bureau of Professional and Occupational Affairs of  
3 certain health care professional conduct; providing  
4 exceptions; requiring records of complaints and disciplinary  
5 proceedings; providing for issuance and renewal of licenses,  
6 for immunity from civil damages and for confidentiality; and  
7 prescribing penalties.

8 TABLE OF CONTENTS

9 Section 1. Short title.  
10 Section 2. Definitions.  
11 Section 3. Notification by health care entity.  
12 Section 4. Records.  
13 Section 5. Licenses.  
14 Section 6. Civil damages.  
15 Section 7. Confidentiality.  
16 Section 8. Notification by health care professionals.  
17 Section 9. Responsibilities of bureau.  
18 Section 10. Fraud, misrepresentation or deception.  
19 Section 11. Request for information between health care  
20 entities.

1 Section 12. Severability.

2 Section 13. Effective date.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Health Care  
7 Professional Responsibility and Reporting Act.

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall  
10 have the meanings given to them in this section unless the  
11 context clearly indicates otherwise:

12 "Bureau." The Bureau of Professional and Occupational  
13 Affairs in the Department of State.

14 "Health care entity." A health care facility, health  
15 maintenance organization, managed care plan, State or county  
16 psychiatric hospital, State developmental center or a home care  
17 services agency or any other medical institution licensed or  
18 approved by the Commonwealth to provide health care or medical  
19 services.

20 "Health care professional." A person who is licensed,  
21 approved or otherwise authorized by the Commonwealth to provide  
22 health care or medical services.

23 Section 3. Notification by health care entity.

24 (a) General rule.--A health care entity shall notify the  
25 bureau in writing if a health care professional:

26 (1) has full or partial privileges summarily or  
27 temporarily revoked or suspended or permanently reduced,  
28 suspended or revoked;

29 (2) has been removed from the list of eligible employees  
30 of a health services firm;

1           (3) has been discharged;

2           (4) has had a contract to render professional services  
3 terminated or rescinded;

4           (5) has conditions or limitations placed on the exercise  
5 of clinical privileges or practice within the health care  
6 entity for reasons relating to incompetence or professional  
7 misconduct which relates adversely to patient care or safety;

8           (6) voluntarily resigns from the staff, if the health  
9 care entity:

10           (i) is reviewing the health care professional's  
11 patient care;

12           (ii) is reviewing whether the health care  
13 professional's conduct demonstrates incompetence or  
14 unprofessional conduct which relates adversely to patient  
15 care or safety; or

16           (iii) has expressed an intention to do such a  
17 review; or

18           (7) while under or subsequent to a review by the health  
19 care entity of the health care professional's patient care or  
20 professional conduct, is granted a leave of absence for  
21 reasons relating to a physical, mental or emotional condition  
22 or drug or alcohol use which impairs the health care  
23 professional's ability to practice with reasonable skill and  
24 safety, except that no report is required for pregnancy-  
25 related leaves of absence or if the health care professional  
26 has sought assistance from an approved professional  
27 assistance or intervention program.

28       As used in this subsection, incompetence, professional  
29 misconduct and unprofessional conduct does not include personal  
30 conduct such as tardiness, insubordination or other similar

1 behavior that does not relate to patient care or safety.

2 (b) Additional notification requirements.--

3 (1) A health care entity shall notify the bureau in  
4 writing if it is in possession of information that indicates  
5 a health care professional has failed to comply with a  
6 request to seek assistance from an approved professional  
7 assistance or intervention program.

8 (2) A health care entity shall notify the bureau in  
9 writing if any health care professional who has been the  
10 subject of a report under this section:

11 (i) has had conditions or limitations on the  
12 exercise of clinical privileges or practice within the  
13 health care entity altered, or privileges restored; or

14 (ii) has resumed exercising clinical privileges that  
15 had been voluntarily relinquished.

16 (3) In the case of a health care professional who  
17 provides services at a health care entity pursuant to an  
18 agreement with a health care services firm and is the subject  
19 of a notice pursuant to this section, the health care entity  
20 shall, when it submits a notice to the bureau, also provide a  
21 copy of the notice to the health care services firm.

22 (4) A health care entity shall provide the health care  
23 professional who is the subject of a notice pursuant to this  
24 section with a copy of the notice provided to the bureau when  
25 the health care entity submits the notice to the bureau.

26 (c) Forms.--All notification forms required by this section  
27 shall be prescribed by the Secretary of State.

28 (d) Penalties.--A health care entity that fails to provide  
29 notice to the bureau as required under this section or fails to  
30 cooperate with a request for information by the bureau under

1 this act shall be subject to such penalties as the Department of  
2 Health may determine.

3 Section 4. Records.

4 (a) Duty to maintain.--A health care entity shall maintain  
5 all records or all documented complaints of events related to  
6 patient care and disciplinary proceedings or actions against a  
7 health care professional who is employed by or has an  
8 affiliation with the health care entity. The health care entity  
9 shall retain the information for a period of seven years and  
10 shall make the records available to the bureau and the  
11 Department of Health upon request.

12 (b) Penalties.--A health care entity that fails to maintain  
13 the records required by this section shall be subject to such  
14 penalties as the Department of Health shall determine.

15 Section 5. Licenses.

16 (a) Background check as prerequisite.--

17 (1) A professional and occupational licensing board  
18 within the Department of State that regulates the practice of  
19 a health care professional shall not issue an initial license  
20 or other authorization to practice a health care profession  
21 that is regulated by that board if the board determines that  
22 criminal history information exists on file in the Federal  
23 Bureau of Investigation or in the Pennsylvania State Police  
24 central repository that would disqualify the applicant from  
25 being licensed or otherwise authorized to practice as a  
26 health care professional.

27 (2) A professional and occupational licensing board  
28 within the Department of State shall not renew a license or  
29 other authorization to practice a health care profession that  
30 is regulated by that board of any applicant and shall revoke

1 a license or other such authorization if the board determines  
2 that criminal history information exists on file in the  
3 Federal Bureau of Investigation or in the Pennsylvania State  
4 Police central repository which may provide grounds for the  
5 refusal to renew or to revoke the license or other  
6 authorization to practice as a health care professional.

7 (b) Implementation.--The Secretary of State shall establish  
8 by regulation a schedule of dates by which the requirements of  
9 this section shall be implemented so that all licenses will have  
10 been required to submit a criminal history record background  
11 check beginning no later than four years after the effective  
12 date of this section.

#### 13 Section 6. Civil damages.

14 A health care entity, health care professional or any other  
15 person who provides to the bureau, in good faith and without  
16 malice, any information concerning an act by a health care  
17 professional that the health care entity, health care  
18 professional or person has reasonable cause to believe involves  
19 misconduct that may be subject to disciplinary action by the  
20 bureau, or any information relating to such conduct requested by  
21 the bureau in the exercise of its statutory responsibilities or  
22 which may be required by statute, shall not be liable for civil  
23 damages in any cause of action arising out of the provision of  
24 such information.

#### 25 Section 7. Confidentiality.

26 Any information provided to the bureau concerning the conduct  
27 of a health care professional shall be treated as confidential  
28 pending final disposition of the inquiry or investigation,  
29 except for information that is required to be shared with the  
30 Attorney General, Department of Health or any other government

1 agency.

2 Section 8. Notification by health care professionals.

3 (a) General rule.--Except as otherwise provided in  
4 subsection (b), a health care professional shall promptly notify  
5 the bureau if that health care professional is in possession of  
6 information that reasonably indicates that another health care  
7 professional has demonstrated impairment, incompetence or  
8 unprofessional conduct that would present an imminent danger to  
9 an individual patient or to the public health, safety or  
10 welfare. A health care professional who fails to so notify the  
11 bureau is subject to disciplinary action according to law.

12 (b) Exception.--A health care professional is not required  
13 to provide notification pursuant to this section about an  
14 impaired or incompetent health care professional if the health  
15 care professional's knowledge of the impairment or incompetence  
16 was obtained as a result of rendering treatment to that health  
17 care professional.

18 (c) Prompt notice.--A health care professional shall be  
19 deemed to have satisfied the reporting requirement concerning  
20 another health care professional's impairment by promptly  
21 providing notice to the bureau or to an approved professional  
22 assistance or intervention program.

23 (d) No private right of action.--There shall be no private  
24 right of action against:

25 (1) A health care professional for failure to comply  
26 with the notification requirements of this section.

27 (2) A health care entity if a health care professional  
28 who is employed by, under contract to render professional  
29 services to or has privileges granted by that health care  
30 entity, or who provides such services pursuant to an

1 agreement with a health care services firm, fails to comply  
2 with the notification requirements of this section.

3 (e) Civil immunity.--A health care professional who provides  
4 notification to the bureau, in good faith and without malice,  
5 about a health care professional who is impaired, incompetent or  
6 who has demonstrated unprofessional conduct, pursuant to this  
7 section, is not liable for civil damages to any person in any  
8 cause of action arising out of the notification.

9 Section 9. Responsibilities of bureau.

10 (a) Notice to licensure board.--

11 (1) Upon receipt of notice from a health care entity or  
12 any employee thereof or information concerning the conduct of  
13 a health care professional pursuant to sections 3 (relating  
14 to notification by health care entity) and 8 (relating to  
15 notification by health care professionals), the bureau shall  
16 promptly notify the board that issued the license or other  
17 authorization to practice to the person to whom the notice  
18 relates.

19 (2) The bureau shall initiate an investigation  
20 concerning the information received and shall obtain any  
21 additional information that may be necessary in order to  
22 determine if disciplinary action should be pursued or if the  
23 health care professional's license should be limited,  
24 suspended or revoked.

25 (b) Assistance.--The bureau may seek the assistance of a  
26 consultant or other knowledgeable person in evaluating the  
27 information and may request additional assistance from the  
28 Attorney General.

29 (c) Notification to health care entities of adverse  
30 action.--If the Attorney General files charges based on



1 information derived from the notice from a health care entity or  
2 if the bureau revokes or permanently or temporarily suspends or  
3 otherwise limits the license or other authorization to practice  
4 of a health care professional, the bureau shall notify each  
5 health care entity with which the health care professional is  
6 affiliated.

7 Section 10. Fraud, misrepresentation or deception.

8 A health care professional who:

9 (1) seeks to become employed by, enter into a contract  
10 to render professional services to or obtain privileges at a  
11 health care entity or provide professional services pursuant  
12 to an agreement with a health care services firm; or

13 (2) engages in fraud, misrepresentation or deception in  
14 the application or credentialing process;

15 shall be subject to disciplinary proceedings.

16 Section 11. Request for information between health care  
17 entities.

18 (a) General rule.--A health care entity, upon the inquiry of  
19 another health care entity, shall truthfully disclose whether,  
20 within seven years preceding the inquiry, it provided any notice  
21 to the bureau with respect to the health care professional about  
22 whom the inquiry has been made and a copy of the form of  
23 notification and any supporting documentation that was provided  
24 to the bureau.

25 (b) Job performance data.--

26 (1) A health care entity, upon the inquiry of another  
27 health care entity, shall truthfully provide information  
28 about a current or former employee's job performance as it  
29 relates to patient care and in the case of a former employee,  
30 the reason for the employee's separation.

(2) For purposes of this section, job performance shall relate to the suitability of the employee for reemployment at a health care entity and the employee's skills and abilities as they relate to future employment at a health care entity.

(3) Information about a current or former employee's job performance pursuant to this section shall be based on the employee's performance evaluation and provided to another health care entity only if:

(i) The evaluation has been signed by the evaluator and shared with the employee.

(ii) The employee has had the opportunity to respond.

(iii) The employee's response, if any, has been taken into consideration when providing the information to another health care entity.

(c) Civil immunity.--A health care entity, or any employee designated by the entity, that pursuant to this section provides information in good faith and without malice to another health care entity concerning a health care professional, including information about a current or former employee's job performance as it relates to patient care, shall not be liable for civil damages in any cause of action arising out of the provision or reporting of the information.

(d) Penalties.--A health care entity that fails to truthfully disclose information to another health care entity making an inquiry pursuant to this section or fails to cooperate with such request for information by the other health care entity shall be subject to such penalties as the Department of State shall determine.

Section 12. Severability.

1       The provisions of this act are severable. If any portion of  
2 this act or its application to any person or circumstance is  
3 held invalid, the invalidity shall not affect other provisions  
4 or applications of this act which can be given effect without  
5 the invalid provision or application.

6 Section 13. Effective date.

7       This act shall take effect in 60 days.