

THE GENERAL ASSEMBLY OF PENNSYLVANIA

# HOUSE BILL

No. 743 Session of  
2007

INTRODUCED BY DeLUCA, BARRAR, BENNINGTON, CALTAGIRONE, CASORIO,  
CURRY, DALEY, FABRIZIO, GERGELY, MELIO, MOUL, MUNDY, MURT,  
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MARCH 19, 2007

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 19, 2007

AN ACT

1 Amending the act of September 27, 1961 (P.L.1700, No.699),  
2 entitled "An act relating to the regulation of the practice  
3 of pharmacy, including the sales, use and distribution of  
4 drugs and devices at retail; and amending, revising,  
5 consolidating and repealing certain laws relating thereto,"  
6 further providing for definitions; providing for licensure  
7 and permits for pharmacy technicians; and further providing  
8 for multiple licensure, for sanctions, for administration,  
9 for reinstatement, for penalties and for injunctions.

10 The General Assembly of the Commonwealth of Pennsylvania  
11 hereby enacts as follows:

12 Section 1. Section 2 of the act of September 27, 1961  
13 (P.L.1700, No.699), known as the Pharmacy Act, is amended by  
14 adding clauses to read:

15 Section 2. Definitions.--As used in this act:

16 \* \* \*

17 (19) "Pharmacy technician" means an individual who is  
18 licensed by the State Board of Pharmacy under section 2.1 to  
19 assist in the practice of pharmacy.

20 (20) "Pharmacy technician trainee" means an individual who

holds a temporary permit issued by the State Board of Pharmacy  
under section 2.1.

(21) "Direct, immediate and personal supervision of a  
pharmacist" means:

(i) review by the pharmacist of the prescription or drug  
order prior to dispensing;

(ii) verification by the pharmacist of the final product;  
and

(iii) the pharmacist's immediate availability on the  
premises to direct the work of the supervised individual and to  
respond to questions or problems.

Section 2. The act is amended by adding a section to read:

Section 2.1. Licenses and Permits for Pharmacy  
Technicians.--(a) The board may license as a pharmacy  
technician any individual who pays an application fee prescribed  
by regulation; who files an application for licensure,  
subscribed by the individual under oath or affirmation,  
containing information the board requires; and who, except as  
set forth in subsection (b), complies with all of the following:

(1) Is not less than eighteen years of age and is a citizen  
of the United States.

(2) Has a high school diploma or its equivalent.

(3) Has satisfied the board that the applicant is of good  
moral character and is not unfit or unable to practice as a  
pharmacy technician by reason of the extent or manner of his use  
of alcoholic beverages or controlled substances or by reason of  
a physical or mental disability.

(4) Has completed a pharmacy technician training program  
approved by the board.

(5) Has passed a nationally recognized pharmacy technician

1 certification examination approved by the board.

2 (6) Has not been convicted of a felonious act prohibited by  
3 the act of April 14, 1972 (P.L.233, No.64), known as "The  
4 Controlled Substance, Drug, Device and Cosmetic Act," or  
5 convicted of a felony relating to a controlled substance in a  
6 court of law of the United States or any other state, territory  
7 or country unless:

8 (i) at least ten years have elapsed from the date of  
9 conviction; and

10 (ii) the applicant satisfactorily demonstrates to the board  
11 that the applicant has made significant progress in personal  
12 rehabilitation since the conviction such that licensure of the  
13 applicant should not be expected to create a substantial risk of  
14 harm to the health and safety of patients or the public or a  
15 substantial risk of further criminal violations.

16 As used in this clause the term "convicted" shall include a  
17 judgment, an admission of guilt or a plea of nolo contendere. An  
18 applicant's statement on the application declaring the absence  
19 of a conviction shall be deemed satisfactory evidence of the  
20 absence of a conviction, unless the board has some evidence to  
21 the contrary.

22 (b) The following apply:

23 (1) Notwithstanding subsection (a)(4) and (5), the board  
24 shall issue a license to all of the following:

25 (i) An individual who, at the time of filing an application,  
26 has obtained a license or its equivalent as a pharmacy  
27 technician in another state, territory or possession of the  
28 United States which has licensing requirements comparable to  
29 those set forth in this section and regulations of the board.

30 (ii) An individual who:

1     (A) applies for licensure within one year after the  
2     effective date of this section; and

3     (B) on the effective date of this section maintains a  
4     current certification by a nationally recognized pharmacy  
5     technician association.

6     (2) Notwithstanding subsection (a)(2), (4) and (5), the  
7     board shall issue a license to an individual who:

8         (i) applies for licensure within one year after the  
9         effective date of this section; and

10        (ii) demonstrates to the satisfaction of the board proof of  
11        practice as a pharmacy technician for at least two thousand  
12        hours immediately prior to the date of application.

13        (c) A license shall authorize the licensee to assist in the  
14        practice of pharmacy under the direct, immediate and personal  
15        supervision of a pharmacist.

16        (d) A license is subject to biennial renewal. The board  
17        shall establish a fee for renewal by regulation.

18        (e) The following apply to pharmacy technician trainees:

19        (1) The board shall issue a temporary permit to practice as  
20        a pharmacy technician trainee to an applicant who is 17 years of  
21        age or older and meets the requirements of subsection (a)(3) and  
22        (6).

23        (2) A temporary practice permit shall be issued for one year  
24        and may be extended for a single six-month period upon  
25        verification to the satisfaction of the board that the trainee  
26        has completed the board-approved training program.

27        (3) A temporary permit shall not be reissued.

28        (4) A temporary permit shall authorize the permittee to  
29        perform the duties of a pharmacy technician under the direct,  
30        immediate and personal supervision of a pharmacist.

1     (f) Identification requirements are as follows:

2     (1) A pharmacy technician shall wear a name tag that clearly  
3     identifies the pharmacy technician with the title "licensed  
4     pharmacy technician."

5     (2) A holder of a temporary permit shall wear a name tag  
6     that clearly identifies the temporary permit holder with the  
7     title "pharmacy technician trainee."

8     (g) This section shall not apply to a student who is  
9     enrolled in an accredited school of pharmacy and who is in the  
10    first or second year of the program.

11     Section 3. Section 3.2 of the act, added December 20, 1985  
12    (P.L.433, No.111), is amended to read:

13     Section 3.2. Reporting of Multiple Licensure.--Any  
14    [licensed] pharmacist or pharmacy technician of this  
15    Commonwealth who is also licensed [to practice pharmacy] in any  
16    other state, territory or country shall report this information  
17    to the board on the biennial registration application. Any  
18    disciplinary action taken in other states, territories and  
19    countries shall be reported to the board on the biennial  
20    registration application or within ninety days of final  
21    disposition, whichever is sooner. Multiple licensure shall be  
22    noted by the board on the [pharmacist's] licensee's record, and  
23    such state, territory or country shall be notified by the board  
24    of any disciplinary actions taken against [said pharmacist] that  
25    licensee in this Commonwealth.

26     Section 4. Section 5(c) of the act, amended December 20, 1985  
27    (P.L.433, No.111), is amended and the section is amended by  
28    adding a subsection to read:

29     Section 5. Refusal to Grant, Revocation and Suspension.--\* \*

30    \*

1     (a.1) The board shall have the power to refuse, revoke or  
2     suspend the license of any pharmacy technician upon proof  
3     satisfactory to it that the pharmacy technician has done any of  
4     the following:

5         (1) Procured a personal license through fraud,  
6         misrepresentation or deceit.

7         (2) Has been found guilty, pleaded guilty, entered a plea of  
8         nolo contendere, or has received probation without verdict,  
9         disposition in lieu of trial or an Accelerated Rehabilitative  
10        Disposition in the disposition of felony charges, to any offense  
11        in connection with the practice of pharmacy or any offense  
12        involving moral turpitude before any court of record of any  
13        jurisdiction.

14        (3) Is unfit to practice as a pharmacy technician because of  
15        intemperance in the use of alcoholic beverages, controlled  
16        substances or any other substance which impairs the intellect  
17        and judgment to such an extent as to impair the performance of  
18        professional duties.

19        (4) Is unfit or unable to practice as a pharmacy technician  
20        by reason of a physical or mental disease or disability. In  
21        enforcing this clause, the board shall, upon probable cause,  
22        have authority to compel a pharmacy technician to submit to a  
23        mental or physical examination by physicians or psychologists  
24        approved by the board. Failure of a pharmacy technician to  
25        submit to examination when directed by the board, unless due to  
26        circumstances beyond the pharmacy technician's control, shall  
27        constitute an admission of the allegations against the pharmacy  
28        technician, consequent upon which a default and final order may  
29        be entered without the taking of testimony or presentation of  
30        evidence. A pharmacy technician affected under this clause shall

1 at reasonable intervals be afforded an opportunity to  
2 demonstrate that ability to resume a competent practice as a  
3 pharmacy technician with reasonable skill and safety to  
4 patients.

5 (5) Has had a license to practice as a pharmacy technician  
6 denied, revoked or suspended by an appropriate pharmacy  
7 technician licensing authority or has received disciplinary  
8 action from an appropriate pharmacy technician licensing  
9 authority.

10 (6) Has acted in such a manner as to present an immediate  
11 and clear danger to the public health or safety.

12 (7) Is guilty of incompetence, gross negligence or other  
13 malpractice, or the departure from, or failure to conform to,  
14 the standards of acceptable and prevailing pharmacy technician  
15 practice, in which case actual injury need not be established.

16 \* \* \*

17 (c) When the board finds that [the] a license [of any  
18 pharmacist] may be refused, revoked or suspended under the terms  
19 of subsection (a) or (a.1), the board may:

20 (1) Deny the application for a license.

21 (2) Administer a public reprimand.

22 (3) Revoke, suspend, limit or otherwise restrict a license  
23 as determined by the board.

24 (4) Require a licensee to submit to the care, counseling or  
25 treatment of a physician or a psychologist designated by the  
26 board. This clause does not apply to a pharmacy technician.

27 (5) Suspend enforcement of its finding thereof and place a  
28 licensee on probation with the right to vacate the probationary  
29 order for noncompliance.

30 (6) Restore or reissue, in its discretion, a suspended

1 license [to practice pharmacy] and impose any disciplinary or  
2 corrective measure which it might originally have imposed.

3 \* \* \*

4 Section 5. Section 6(k) of the act, amended December 20,  
5 1985 (P.L.433, No.111), is amended to read:

6 Section 6. State Board of Pharmacy.--\* \* \*

7 (k) The board shall have the power, and it shall be its  
8 duty:

9 (1) To regulate the practice of pharmacy and of pharmacy  
10 technicians;

11 (2) To determine the nature of examinations for all  
12 applicants for [pharmacists'] licenses;

13 (3) To examine, inspect and investigate all applications and  
14 all applicants for licensure as pharmacists, pharmacy  
15 technicians, pharmacies or registration as pharmacy interns and  
16 to grant certificates of licensure or registration to all  
17 applicants whom it shall judge to be properly qualified;

18 (4) With the approval of the Commissioner of Professional  
19 and Occupational Affairs, to prepare position descriptions,  
20 employ inspectors who shall be licensed pharmacists and employ  
21 appropriate consultants to assist it for any purposes which it  
22 may deem necessary, provided that the board may not delegate any  
23 of its final decisionmaking responsibilities to any consultant;

24 (5) To investigate or cause to be investigated all  
25 violations of the provisions of this act and its regulations and  
26 to cause prosecutions to be instituted in the courts upon advice  
27 from the Attorney General;

28 (6) To make or order inspections of all pharmacies, except  
29 health care facilities, as defined in the act of July 19, 1979  
30 (P.L.130, No.48), known as the "Health Care Facilities Act," and



1 which are periodically inspected by the Department of Health in  
2 accordance with the standards in this act and the board's  
3 regulations promulgated thereto: Provided, That the Department  
4 of Health shall forward a copy of their inspection report to the  
5 board noting any violations of the act: And, provided further,  
6 That, if a violation is reported, the board shall have the power  
7 to inspect such pharmacies and take appropriate action as  
8 specified in this act; and to make or order inspections of other  
9 places in which drugs or devices are stored, held, compounded,  
10 dispensed or sold to a consumer, to take and analyze any drugs  
11 or devices and to seize and condemn any drugs or devices which  
12 are adulterated, misbranded or stored, held, dispensed,  
13 distributed or compounded in violation of the provisions of this  
14 act or the provisions of the act of April 14, 1972 (P.L.233,  
15 No.64), known as "The Controlled Substance, Drug, Device and  
16 Cosmetic Act";

17 (7) To conduct hearings for the revocation or suspension of  
18 licenses, permits or registrations, for which hearings the board  
19 shall have the power to subpoena witnesses;

20 (8) To assist the regularly constituted enforcement agencies  
21 of this Commonwealth in enforcing all laws pertaining to drugs,  
22 controlled substances, and practice of pharmacy;

23 (8.1) To approve programs for the training of pharmacy  
24 technicians.

25 (9) To promulgate rules and regulations to effectuate the  
26 purposes of this act and to regulate the distribution of drugs  
27 and devices and the practice of pharmacy for the protection and  
28 promotion of the public health, safety and welfare.

29 \* \* \*

30 Section 5.1. Section 7 of the act is amended by adding a

1 subsection to read:

2 Section 7. Hearings and Suspensions.--\* \* \*

3 (e) Notwithstanding any other provision, subsections (d.3),  
4 (d.4), (d.5), (d.6), (d.7) and (d.8) shall not apply to pharmacy  
5 technicians.

6 Section 5.2. Sections 7.1, 8(2) and (8) and 8.1 of the act,  
7 amended or added December 20, 1985 (P.L.433, No.111), are  
8 amended to read:

9 Section 7.1. Reinstatement of License, Certificate or  
10 Registration.--Unless ordered to do so by Commonwealth Court or  
11 an appeal therefrom, the board shall not reinstate the license,  
12 certificate or registration of a person to practice [pharmacy]  
13 pursuant to this act which has been revoked. Any person whose  
14 license, certificate or registration has been revoked may apply  
15 for reinstatement, after a period of at least five years, but  
16 must meet all of the licensing qualifications of this act for  
17 the license applied for, to include the examination requirement,  
18 if he or she desires to practice at any time after such  
19 revocation.

20 Section 8. Unlawful Acts.--It shall be unlawful for:

21 \* \* \*

22 (2) Any person not duly licensed as a pharmacist, pursuant  
23 to section 3 hereof, to engage in the practice of pharmacy,  
24 including the preparing, compounding, dispensing, selling or  
25 distributing at retail to any person any drug, except by a  
26 pharmacy intern, pharmacy technician or such other authorized  
27 personnel under the direct and immediate personal supervision of  
28 a pharmacist: Provided, however, That nothing herein shall be  
29 construed to prevent a duly licensed medical practitioner from  
30 dispensing, compounding or otherwise giving any drug to his own

1 patients after diagnosis or treatment of said patient, if such  
2 compounding, preparing and dispensing is done by said licensee  
3 himself, nor shall anything herein prevent any person from  
4 selling or distributing at retail household remedies or  
5 proprietary medicines when the same are offered for sale or sold  
6 in the original packages which have been put up ready for sale  
7 to consumers, provided household remedies or proprietary  
8 medicines shall not include any controlled substances or non-  
9 proprietary drug under the act of April 14, 1972 (P.L.233,  
10 No.64), known as "The Controlled Substance, Drug, Device and  
11 Cosmetic Act."

12 \* \* \*

13 (8) Any person, firm or corporation to use the title  
14 "pharmacist", "assistant pharmacist", "pharmacy technician",  
15 "pharmacy technician trainee", "druggist"[,] or "apothecary",  
16 except a person duly licensed as a pharmacist or a pharmacy  
17 technician in Pennsylvania, or any person to conduct or transact  
18 business under a name which contains as part thereof the words  
19 "drug store", "pharmacy", "drugs", "medicine store",  
20 "medicines", "drug shop," "apothecary," "pharmaceutical,"  
21 "homeopathic," "homeopathy" or any term having a similar  
22 meaning, or in any manner by advertisement, display of show  
23 globes or otherwise describe or refer to the place of the  
24 conducted business or person, unless the place is a pharmacy  
25 duly issued a permit by the State Board of Pharmacy.

26 \* \* \*

27 Section 8.1. Injunction.--It shall be unlawful for any  
28 person to practice or attempt to offer to practice pharmacy or  
29 as a pharmacy technician, as defined in this act, without having  
30 at the time of so doing a valid, unexpired, unrevoked and

1   unsuspended license issued under this act. The unlawful practice  
2   of pharmacy as defined in this act may be enjoined by the courts  
3   on petition of the board or the Commissioner of Professional and  
4   Occupational Affairs. In any such proceeding it shall not be  
5   necessary to show that any person is individually injured by the  
6   actions complained of. If it is found that the respondent has  
7   engaged in the unlawful practice of pharmacy, the court shall  
8   enjoin him or her from so practicing unless and until he or she  
9   has been duly licensed. Procedure in such cases shall be the  
10  same as in any other injunction suit. The remedy by injunction  
11  hereby given is in addition to any other civil or criminal  
12  prosecution and punishment.

13       Section 6. The State Board of Pharmacy shall promulgate  
14  regulations to implement section 2.1 of the act within 18 months  
15  of the effective date of this section.

16       Section 7. No individual is required to be licensed as a  
17  pharmacy technician under section 2.1 of the act until 18 months  
18  after the State Board of Pharmacy has promulgated regulations  
19  under section 6 of this act.

20       Section 8. This act shall take effect immediately.