

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1188 Session of
2007

INTRODUCED BY GOODMAN, CASORIO, COHEN, HENNESSEY, PHILLIPS,
PRESTON, RUBLEY, SOLOBAY, STURLA, YOUNGBLOOD, HARPER AND
BELFANTI, MAY 2, 2007

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MAY 2, 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," providing for duties of licensees, registrants,
9 certificate holders and permit holders; further providing for
10 civil penalties; and making related repeals.

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

13 Section 1. The act of July 2, 1993 (P.L.345, No.48) entitled
14 "An act empowering the General Counsel or his designee to issue
15 subpoenas for certain licensing board activities; providing for
16 hearing examiners in the Bureau of Professional and Occupational
17 Affairs; providing additional powers to the Commissioner of
18 Professional and Occupational Affairs; and further providing for
19 civil penalties and license suspension," is amended by adding a
20 section to read:

21 Section 4.1. Duty of licensees, registrants, certificate

1 holders and permit holders.

2 (a) General rule.--Except where the disclosure of requested
3 information, documents or materials is subject to a privilege
4 provided by law, a licensee, registrant, certificate holder or
5 permit holder shall have a duty to provide information,
6 documents and records requested by a licensing board or
7 commission or by a representative of a licensing board or
8 commission who is investigating or prosecuting a disciplinary
9 matter. Except as otherwise provided in applicable licensing
10 acts pertaining to the release of patient records by health care
11 licensees in the absence of a patient release, no investigative
12 subpoena or subpoena duces tecum shall be required.

13 (b) Unprofessional conduct.--Notwithstanding any other
14 provisions of law to the contrary, failure to provide
15 information, documents or records requested by a licensing board
16 or commission as set forth in subsection (a) shall constitute
17 unprofessional conduct and shall be subject to any penalty
18 authorized under section 5.

19 Section 2. Section 5 of the act is amended to read:

20 Section 5. Civil penalties.

21 (a) Authorization.--The Commissioner of Professional and
22 Occupational Affairs, after consultation with the licensing
23 boards and commissions, shall have the power to adopt a schedule
24 of civil penalties for operating without a current, registered,
25 unsuspended and unrevoked license, registration, certificate or
26 permit and for violating any provision of their respective acts
27 or regulations relating to the conduct or operation of a
28 business or facility licensed by such licensing boards and
29 commissions. The schedule of penalties shall not be applicable
30 to disciplinary matters under the jurisdiction of a licensing

1 board or commission unless that licensing board or commission
2 has approved the schedule. The schedule of penalties, guidelines
3 for their imposition and procedures for appeal shall be
4 published in the Pennsylvania Bulletin, provided that the
5 commissioner shall, within two years of such publication,
6 promulgate a regulation setting forth the schedule of penalties,
7 guidelines and procedures. Any such penalty shall not exceed the
8 sum of [\$1,000] \$10,000 per violation. Duly authorized agents of
9 the bureau shall have the power and authority to issue citations
10 and impose penalties for any such violations. Any such penalty
11 imposed may be appealed to a hearing examiner or the licensing
12 board or commission pursuant to the regulations promulgated
13 under section 3(b). If the appeal is initially to a hearing
14 examiner, the relevant licensing board or commission shall
15 render a decision on any exceptions to the decision of the
16 hearing examiner or on any applications for review in accordance
17 with section 3(d). All proceedings shall be conducted in
18 accordance with the provisions of 2 Pa.C.S. (relating to
19 administrative law and procedure).

20 (b) Additional powers.--In addition to the disciplinary
21 powers and duties of the boards and commissions within the
22 Bureau of Professional and Occupational Affairs under their
23 respective practice acts, boards and commissions shall have the
24 power, respectively:

25 (1) To impose discipline, including, but not limited to,
26 a civil penalty of up to \$10,000 per violation on any
27 licensee, registrant, certificate holder or permit holder who
28 violates a lawful disciplinary order of the board.

29 (2) To impose discipline, including, but not limited to,
30 a civil penalty of up to \$10,000 per violation on any

licensee, registrant, certificate holder or permit holder who aids and abets the unlicensed practice of a profession, occupation or business.

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

(4) To levy a civil penalty of not more than \$10,000 per violation on any licensee, registrant, certificate holder or permit holder who violates any provision of the applicable licensing act or board regulation.

(5) To assess against the respondent determined to be in violation of the disciplinary provisions administered by a licensing board or commission in a disciplinary proceeding pending before the board or commission for final determination, as part of the sanction, the costs of investigation underlying that disciplinary action.

(c) Restrictions.--Any decisions rendered by a licensing board or commission on any exceptions to the decision of a hearing examiner or on any application for review in accordance with section 3(d) to impose a civil penalty pursuant to this section shall require the same number of votes required for the licensing board or commission to impose a civil penalty under any other act. Nothing in this section shall be construed to restrict the powers and duties under any other act of a licensing board or commission in disciplinary matters, except that a licensing board or commission may not impose a civil

1 penalty under any other act for the same violation for which a
2 civil penalty has been imposed pursuant to this section.

3 (d) Status of civil penalty.--Any civil penalty imposed
4 pursuant to this section or imposed by any licensing board or
5 commission under any other act shall be a judgment in favor of
6 the Bureau of Professional and Occupational Affairs upon the
7 person or the property of the person upon whom the civil penalty
8 is imposed. The Attorney General shall be responsible for
9 enforcing such judgments in courts of competent jurisdiction in
10 accordance with the provisions of 42 Pa.C.S. (relating to
11 judiciary and judicial procedure).

12 (e) Definition.--As used in this section, the term
13 "unlicensed practice" means:

14 (1) practicing a profession or occupation or operating a
15 business for which a license, registration, certificate or
16 permit is required without holding a valid, unexpired,
17 unrevoked or unsuspended authority to do so; or

18 (2) representing to the public or any person, through
19 offerings, advertisements or the use of a title, that the
20 individual is qualified to practice a profession, occupation
21 or business for which a license, registration, certificate or
22 permit is required without holding a valid, unexpired,
23 unrevoked or unsuspended authority to do so.

24 Section 3. The following provisions are repealed insofar as
25 they are inconsistent with the amendment of section 5 of the
26 act:

27 (1) Section 15(b.3) of the act of June 19, 1931
28 (P.L.589, No.202), referred to as the Barbers' License Law.

29 (2) Section 10.1 of the act of May 1, 1933 (P.L.216,
30 No.76), known as The Dental Law.

1 (3) Section 20(c.2) of the act of May 3, 1933 (P.L.242,
2 No.86), referred to as the Cosmetology Law.

3 (4) Section 11(b) of the act of May 23, 1945 (P.L.913,
4 No.367), known as the Engineer, Land Surveyor and Geologist
5 Registration Law.

6 (5) Section 16(c) of the act of May 26, 1947 (P.L.318,
7 No.140), known as the CPA Law.

8 (6) Section 13(b) of the act of May 22, 1951 (P.L.317,
9 No.69), known as The Professional Nursing Law.

10 (7) Section 17(b) of the act of January 14, 1952 (1951
11 P.L.1898, No.522), known as the Funeral Director Law.

12 (8) Section 13(b) of the act of March 2, 1956 (1955
13 P.L.1206, No.375), known as the Podiatry Practice Act.

14 (9) Section 15(b) of the act of March 2, 1956 (1955
15 P.L.1211, No.376), known as the Practical Nurse Law.

16 (10) Section 8(15.1) of the act of September 27, 1961
17 (P.L.1700, No.699), known as the Pharmacy Act.

18 (11) Section 11(b) of the act of January 24, 1966 (1965
19 P.L.1527, No.535), known as the Landscape Architects'
20 Registration Law.

21 (12) Section 11(b) of the act of June 22, 1970 (P.L.378,
22 No.122), known as the Nursing Home Administrators License
23 Act.

24 (13) Section 11(b) of the act of March 23, 1972
25 (P.L.136, No.52), known as the Professional Psychologists
26 Practice Act.

27 (14) Section 28(c) of the act of December 27, 1974
28 (P.L.995, No.326), known as the Veterinary Medicine Practice
29 Act.

30 (15) Section 12(c) of the act of October 10, 1975

(P.L.383, No.110), known as the Physical Therapy Practice Act.

(16) Section 305 of the act of February 19, 1980 (P.L.15, No.9), known as the Real Estate Licensing and Registration Act.

(17) Section 8(c) of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act.

(18) Section 20(d) of the act of December 14, 1982 (P.L.1227, No.281), known as the Architects Licensure Law.

(19) Section 28(c) of the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act.

(20) Section 29(b) of the act of December 22, 1983 (P.L.327, No.85), known as the Auctioneer and Auction Licensing Act.

(21) Section 703 of the act of December 16, 1986 (P.L.1646, No.188), known as the Chiropractic Practice Act.

(22) Section 17(b) of the act of July 9, 1987 (P.L.220, No.39), known as the Social Workers, Marriage and Family Therapists and Professional Counselors Act.

(23) Section 15(b) of the act of July 10, 1990 (P.L.404, No.98), known as the Real Estate Appraisers Certification Act.

(24) Section 908 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act.

Section 4. The following provisions shall apply to violations which take place on or after the effective date of this section:

(1) The amendment of section 5 of the act.

(2) Section 2 of this act.

1 Section 5. This act shall take effect in 60 days.