

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," further providing for definitions and for civil
9 penalties.

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

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

20 Section 1. Definitions.

21 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Disciplinary matter." Any matter subject to a licensing
4 board's or commission's jurisdiction in which the licensing
5 board or commission has the authority to refuse, suspend, revoke
6 or limit a license, registration, certificate or permit or to
7 impose a civil penalty or other discipline under any act.

8 "Expunge" or "expungement." Removal of a disciplinary
9 record, accomplished by:

10 (1) permanently sealing the affected record from public
11 access;

12 (2) deeming the proceedings to which the affected record
13 refers as not having occurred; and

14 (3) except with respect to any subsequent application
15 for expungement, affording the affected party the right to
16 represent that no record exists regarding the subject matter
17 of the affected record.

18 "Licensing boards." Those departmental or administrative
19 boards under the Bureau of Professional and Occupational Affairs
20 in the Department of State.

21 "Licensing commissions." Those departmental or
22 administrative commissions under the Bureau of Professional and
23 Occupational Affairs in the Department of State.

24 Section 2. Section 5(a) of the act, amended July 17, 2009
25 (P.L.95, No.25), is amended to read:

26 Section 5. Civil penalties.

27 (a) Authorization.--

28 (1) The Commissioner of Professional and Occupational
29 Affairs, after consultation with the licensing boards and
30 commissions, shall have the power to adopt a schedule of

1 civil penalties for operating without a current, registered,
2 unsuspended and unrevoked license, registration, certificate
3 or permit and for violating any provision of their respective
4 acts or regulations relating to the conduct or operation of a
5 business or facility licensed by such licensing boards and
6 commissions. The schedule of penalties shall not be
7 applicable to disciplinary matters under the jurisdiction of
8 a licensing board or commission unless that licensing board
9 or commission has approved the schedule. The schedule of
10 penalties, guidelines for their imposition and procedures for
11 appeal shall be published in the Pennsylvania Bulletin,
12 provided that the commissioner shall, within two years of
13 such publication, promulgate a regulation setting forth the
14 schedule of penalties, guidelines and procedures. Any such
15 penalty shall not exceed the sum of \$1,000 per violation.
16 Duly authorized agents of the bureau shall have the power and
17 authority to issue citations and impose penalties for any
18 such violations. Any such penalty imposed may be appealed to
19 a hearing examiner or the licensing board or commission
20 pursuant to the regulations promulgated under section 3(b).
21 If the appeal is initially to a hearing examiner, the
22 relevant licensing board or commission shall render a
23 decision on any exceptions to the decision of the hearing
24 examiner or on any applications for review in accordance with
25 section 3(d). All proceedings shall be conducted in
26 accordance with the provisions of 2 Pa.C.S. (relating to
27 administrative law and procedure).

28 (2) The Commissioner of Professional and Occupational
29 Affairs shall expunge the disciplinary record of a licensee,
30 registrant, certificate holder or permit holder subject to

1 the following conditions:

2 (i) The licensee, registrant, certificate holder or
3 permit holder must make written application to the
4 commissioner for expungement not earlier than four years
5 from the final disposition of the disciplinary record.

6 (ii) The disciplinary record must be the only
7 disciplinary record that the licensee, registrant,
8 certificate holder or permit holder has with either the
9 commissioner or a licensing board or commission under the
10 commissioner's jurisdiction.

11 (iii) The licensee, registrant, certificate holder
12 or permit holder must not be the subject of an active
13 investigation related to professional or occupational
14 conduct.

15 (iv) The licensee, registrant, certificate holder or
16 permit holder must not be in a current disciplinary
17 status, and any fees or fines assessed must be paid in
18 full.

19 (v) The licensee, registrant, certificate holder or
20 permit holder must not have had a disciplinary record
21 previously expunged by the commissioner.

22 (vi) The imposition of discipline must have been for
23 a violation involving:

24 (A) Failure to complete continuing education
25 requirements or practicing for six months or less on
26 a lapsed license, registration, certificate or
27 permit. At least four years must have elapsed since
28 the final disposition of the disciplinary record at
29 the time of application for expungement.

30 (B) Any violation, except those which resulted

1 in license suspension or revocation, in which at
2 least ten years have elapsed since the final
3 disposition of the disciplinary record at the time of
4 application for expungement.

5 Disciplinary records involving imposition of discipline
6 for violations other than those identified in clauses (A)
7 and (B) shall not be eligible for expungement.

8 (vii) The licensee, registrant, certificate holder
9 or permit holder shall pay all costs associated with the
10 expungement as established by the commissioner by
11 regulation.

12 (3) Nothing in this subsection shall prohibit a
13 licensing board or commission from using a previous
14 discipline for any regulatory purpose or from releasing
15 records of a previous discipline upon request from law
16 enforcement or other governmental body as permitted by law.

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18 Section 3. This act shall take effect in 60 days.