

GENERAL COUNSEL - CIVIL PENALTIES AND CONFIDENTIALITY OF  
INFORMATION

Act of Jul. 17, 2009, P.L. 95, No. 25

Cl. 71

Session of 2009

No. 2009-25

SB 142

AN ACT

Amending the act of July 2, 1993 (P.L.345, No.48), entitled "An act empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities; providing for hearing examiners in the Bureau of Professional and Occupational Affairs; providing additional powers to the Commissioner of Professional and Occupational Affairs; and further providing for civil penalties and license suspension," further providing for civil penalties; providing for confidentiality of information; and making related repeals.

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

Section 1. Section 5 of the act of July 2, 1993 (P.L.345, No.48) entitled "An act empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities; providing for hearing examiners in the Bureau of Professional and Occupational Affairs; providing additional powers to the Commissioner of Professional and Occupational Affairs; and further providing for civil penalties and license suspension," is amended to read:

Section 5. Civil penalties.

(a) Authorization.--The Commissioner of Professional and Occupational Affairs, after consultation with the licensing boards and commissions, shall have the power to adopt a schedule of civil penalties for operating without a current, registered, unsuspended and unrevoked license, registration, certificate or permit and for violating any provision of their respective acts or regulations relating to the conduct or operation of a business or facility licensed by such licensing boards and commissions. The schedule of penalties shall not be applicable to disciplinary matters under the jurisdiction of a licensing board or commission unless that licensing board or commission has approved the schedule. The schedule of penalties, guidelines for their imposition and procedures for appeal shall be published in the Pennsylvania Bulletin, provided that the commissioner shall, within two years of such publication, promulgate a regulation setting forth the schedule of penalties, guidelines and procedures. Any such penalty shall not exceed the sum of \$1,000 **per violation**. Duly authorized agents of the bureau shall have the power and authority to issue citations and impose penalties for any such violations. Any such penalty imposed may be appealed to a hearing examiner or the licensing board or commission pursuant to the regulations promulgated under section 3(b). If the appeal is initially to a hearing examiner, the relevant licensing board or commission shall render a decision on any exceptions to the decision of the hearing examiner or on any applications for review in accordance with section 3(d). All proceedings shall be conducted in

accordance with the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

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

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

(2) To impose discipline , **including, but not limited to, a civil penalty of up to \$10,000 per violation** on any licensee, registrant, certificate holder [ or ] , permit holder **or unlicensed person** 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, permit holder or unlicensed person 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. The cost of investigation shall not include those costs incurred by the board or commission after the filing of formal actions or disciplinary charges against the respondent .

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

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

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

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

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

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

**Section 5.1. Confidentiality of records of licensure boards.**

(a) General rule.--All records under section 708(b)(17) of the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law, relating to a noncriminal investigation, including prosecutorial memos and transcripts of depositions, undertaken by the Bureau of Enforcement and Investigation and the Prosecution Division of the Department of State, Office of Chief Counsel on behalf of the licensing boards within the Department of State or concerning a licensure-related complaint filed with the department shall be confidential and privileged. No person who has investigated or has access to or custody of documents, materials or information which are confidential and privileged under this subsection shall be required to testify in any judicial or administrative proceeding unless directed to do so by a court of competent jurisdiction without the written consent of the licensing board which regulates the profession involved. This subsection shall not preclude or limit introduction of the contents of an investigative file or related witness testimony in a hearing or proceeding held before the licensing boards within the Department of State. This section shall not apply to letters to a licensee or other documents that disclose the final outcome of an investigation or to final adjudication or orders issued by the licensure board.

(b) Certain disclosure permitted.--Except as provided under subsection (a), this section shall not prevent disclosure of any documents, materials or information pertaining to the status of a license, permit or certificate issued or prepared by the licensing boards or the sharing of information with law enforcement authorities or professional licensure regulatory boards in other jurisdictions or information relating to a public disciplinary proceeding or hearing. Any other disclosure of records under section 708(b)(17) of the Right-to-Know Law relating to a noncriminal investigation, including prosecutorial memos and transcripts of depositions by employees or agents of the Department of State, Office of Chief Counsel, Bureau of Professional and Occupational Affairs and the Bureau of Enforcement and Investigation may be made only in furtherance of an investigation or prosecution of alleged violations of applicable licensing statutes, codes or regulations. Violations of this subsection shall subject the employee or agent to administrative discipline, including discharge, suspension or other formal or appropriate disciplinary action.

(c) Confidentiality affidavits.--All employees and agents of the Department of State Office of Chief Counsel, Bureau of Professional and Occupational Affairs and the Bureau of Enforcement and Investigation shall execute a confidentiality affidavit which provides that documents, materials or information under subsection (a), obtained by employees and agents of the Department of State, Office of Chief Counsel,

**Bureau of Professional and Occupational Affairs and the Bureau of Enforcement and Investigation shall be considered confidential and may be disclosed only as permitted under subsections (a) and (b).**

**(d) Waiver prohibited.--A licensing board or commission may not require an applicant to waive any confidentiality provided for under this section as a condition for the approval of a license or any other action of the board.**

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

- (1) Section 15(b.3) of the act of June 19, 1931 (P.L.589, No.202), referred to as the Barbers' License Law.
- (2) Section 10.1 of the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law.
- (3) Section 20(c.2) of the act of May 3, 1933 (P.L.242, No.86), referred to as the Cosmetology Law.
- (4) Section 11(b) of the act of May 23, 1945 (P.L.913, No.367), known as the Engineer, Land Surveyor and Geologist Registration Law.
- (5) Section 16(c) of the act of May 26, 1947 (P.L.318, No.140), known as the CPA Law.
- (6) Section 13(b) of the act of May 22, 1951 (P.L.317, No.69), known as The Professional Nursing Law.
- (7) Section 17(b) of the act of January 14, 1952 (1951 P.L.1898, No.522), known as the Funeral Director Law.
- (8) Section 13(b) of the act of March 2, 1956 (1955 P.L.1206, No.375), known as the Podiatry Practice Act.
- (9) Section 15(b) of the act of March 2, 1956 (1955 P.L.1211, No.376), known as the Practical Nurse Law.
- (10) Section 8(15.1) of the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act.
- (11) Section 11(b) of the act of January 24, 1966 (1965 P.L.1527, No.535), known as the Landscape Architects' Registration Law.
- (12) Section 11(b) of the act of June 22, 1970 (P.L.378, No.122), known as the Nursing Home Administrators License Act.
- (13) Section 11(b) of the act of March 23, 1972 (P.L.136, No.52), known as the Professional Psychologists Practice Act.
- (14) Section 28(c) of the act of December 27, 1974 (P.L.995, No.326), known as the Veterinary Medicine Practice Act.
- (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.

(25) Section 15 of the act of October 9, 2008 (P.L. 1438, No. 118), known as the Massage Therapy Law.

(26) Section 702 of the act of October 9, 2008 (P.L. 1363, No. 100), known as the Crane Operator Licensure Act. Section 4. This act shall apply to violations which take place on or after the effective date of this section. Section 5. This act shall take effect in 60 days.

APPROVED--The 17th day of July, A.D. 2009.

EDWARD G. RENDELL