

PENNSYLVANIA CANCER LAW, THE
Act of Aug. 14, 1963, P.L. 824, No. 402
AN ACT

Cl. 35

Relating to preparations, devices and procedures represented to have diagnostic or therapeutic value in the treatment or diagnosis of cancer; conferring certain powers upon the Pennsylvania Department of Health and the Pennsylvania Advisory Health Board; and prescribing certain penalties and civil remedies.

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

Section 1. Short Title.--This act shall be known and may be cited as "The Pennsylvania Cancer Law."

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

(1) "Cancer" means all malignant neoplasms, regardless of the tissue of origin, including malignant lymphoma and leukemia.

(2) "Preparation" means any article intended for internal use or consumption or for external use or application by human beings.

(3) "Person" means any individual, partnership, corporation or association.

(4) "Department" means the Pennsylvania Department of Health.

(5) "Board" means the Pennsylvania Advisory Health Board.

(6) "Secretary" means the Secretary of Health of the Commonwealth of Pennsylvania, or his duly authorized agents or employees.

Section 3. Powers and Duties of the Department.--The department shall have the power, and its duty shall be:

(1) To adopt, with the advice of the board, reasonable rules and regulations for the purpose of carrying out the provisions of this act;

(2) To investigate violations of the provisions of this act and report such violations to the proper enforcement authorities;

(3) To secure, whenever it deems it necessary, the investigation of any preparation, device or diagnostic procedure held out by any person to be of value in the diagnosis, treatment, mitigation or cure of cancer; and, for that purpose, to secure samples of any preparations or devices necessary to such investigation;

(4) To require any person engaged or representing himself or itself to be engaged in the diagnosis, treatment, mitigation or cure of cancer, or any person who manufactures, sells or offers for sale any preparation or device which is intended to be of value in the diagnosis, treatment, mitigation or cure of

cancer, or any of them, to furnish the department with such samples and information as the department may deem necessary in the investigation of the preparation or device;

(5) To contract with independent scientific consultants and laboratories for specialized services and advice;

(6) To do any and all other things necessary to carry out the provisions of this act.

Section 4. Cease and Desist Orders.--Whenever after investigation the secretary shall find that any preparation, device or diagnostic procedure is not efficacious in the diagnosis, treatment, mitigation or cure of cancer, he shall order any person or persons, whichever the case may be, to cease and desist from any one or more of the following activities in which he or they may be engaged: (1) the manufacturing, selling, offering for sale, giving away or offering to give away, or otherwise disposing of such preparation or device, or both; (2) the advertising or publication that a preparation, device or diagnostic procedure, or any one or more of them, is efficacious in the diagnosis, treatment, mitigation or cure of cancer, regardless of whether such advertising or publication be accomplished by newspaper, radio, television or other means of communication; (3) the prescribing, recommending or using such preparation, device or diagnostic procedure.

The cease and desist order of the secretary shall take effect thirty days after the receipt of such order by the person against whom it is directed, unless within such time such person shall have requested an opportunity to be heard.

Whenever any person shall request an opportunity to be heard within the time period prescribed in this section, the board shall, after giving due notice to the person of the time and place of the hearing, conduct a hearing to determine whether such preparation, device or diagnostic procedure is efficacious in the diagnosis, treatment, mitigation or cure of cancer. Based upon the record before it, the board may affirm, modify or rescind the cease and desist order of the secretary. The hearing by the board shall be the exclusive method by which the action of the secretary may be reviewed.

In the conduct of the hearings, the board shall have the power to compel the attendance of witnesses and the production of documents whenever it deems necessary to the proper conduct of a hearing.

The Administrative Agency Law, the act of June 4, 1945 (P.L.1388), as amended, shall apply to all hearings authorized by this section and to adjudications and orders of the board, and the appellate procedures provided in such law shall be the exclusive remedy available to any person against whom an order of the board shall have been issued.

Section 5. Prohibited Acts.--(a) No person shall undertake to diagnose, treat, mitigate or cure cancer by the use of drugs, surgery or radiation unless such person is a duly licensed physician or a duly licensed dentist under the laws of the Commonwealth of Pennsylvania.

(b) No person shall sell, offer to sell, give away or offer to give away, except pursuant to the prescription of a duly licensed physician, or a duly licensed dentist, any drug, medicine, compound or device which is represented by the manufacturer or seller thereof to have curative powers in the treatment of the disease of cancer.

(c) No person shall use to his own advantage, or reveal to any person other than the secretary or officers or employees of the Department of Health, or to the board or courts conducting relevant proceedings under this act, any information acquired

under the authority of this act concerning any method or process which, as a trade secret, is entitled to protection. Such information obtained under the authority of this act shall not be admitted in evidence in any proceeding before any court of the Commonwealth except in proceedings under this act.

(d) No person shall make any representation that the investigation or testing conducted by the department hereunder constitutes an endorsement of his or its activities by either the board or the department.

Section 6. Penalties.--(a) Any person who violates any of the provisions of this act or the rules, regulations or orders promulgated or issued pursuant to the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be subject to imprisonment for not more than one year, or a fine of not more than five thousand dollars (\$5000), or both.

(b) Any person having been convicted of two violations of the provisions of this act shall, upon any subsequent conviction of the provisions of this act, be subject to imprisonment for not more than five years, or a fine of not more than ten thousand dollars (\$10,000), or both.

(c) If the person violating any provision of this act, or the rules, regulations or orders promulgated or issued pursuant to the provisions of this act, is an association or co-partnership, the members thereof or, if such person be a corporation, the officers, agents, servants and employees thereof, may be subject to the penal provisions of this act.

Section 7. Scope of the Act.--Nothing in this act shall apply to the use of any preparation or device for investigational purposes by experts qualified by scientific training and experience to investigate the safety and therapeutic value thereof.

Section 8. Injunctive Relief.--The secretary, upon the advice of the Attorney General, may maintain an action for an injunction or other process against any person violating any provision of this act or a cease and desist order issued pursuant thereto. The right to maintain such action shall in no way be affected by the pendency of an appeal from an order of the board. Nor shall it be affected by the fact that the activity sought to be restrained constitutes a misdemeanor subject to the provisions of section 6.

(8 repealed in part Apr. 28, 1978, P.L.202, No.53)

Section 9. Reports.--The department, upon recommendation of the board, may from time to time publish reports based on its investigation or testing of any preparation or device prescribed, recommended or used by any individual, person, firm, association or other entity in the diagnosis, treatment, mitigation or cure of cancer. When, in the opinion of a majority of the members of the board, the use of any preparation or device in the diagnosis, treatment, mitigation or cure of cancer constitutes an imminent danger to health or a gross deception of the public, the department may take appropriate steps to publicize the same.

Section 10. The provisions of this act shall not apply, either directly or indirectly, by intent or purpose to affect the practice of medicine and surgery as authorized by the act of June 3, 1911 (P.L.639), known as the "Medical Practice Act," or the several amendments thereto, nor to affect the practice of dentistry as authorized by the act, approved July 9, 1897 (P.L.206), entitled "An act to establish a Dental Council and a State Board of Dental Examiners, to define the powers and duties of said Dental Council and said State Board of Dental

Examiners, to provide for the examination and licensing of practitioners of dentistry, and to further regulate the practice of dentistry," or the several amendments thereto, nor to affect the practice of osteopathy as authorized by the act, approved March 19, 1909 (P.L.46), entitled "An act to regulate the practice of osteopathy in the State of Pennsylvania; to provide for the establishment of a State Board of Osteopathic Examiners; to define the powers and duties of said Board of Osteopathic Examiners; to provide for the examining and licensing of osteopaths in this State; and to provide penalties for the violation of this act," nor to affect the practice of optometry as authorized by the act, approved March 30, 1917 (P.L.21), entitled "An act defining optometry; and relating to the right to practice optometry in the Commonwealth of Pennsylvania, and making certain exceptions; and providing a Board of Optometrical Education, Examination and Licensure, and means and methods whereby the right to practice optometry may be obtained; and providing for the means to carry out the provisions of this act; and providing for revocation or suspension of licenses given by said board, and providing penalties for violations thereof; and repealing all acts or parts of acts inconsistent therewith," or the several amendments thereto, nor to affect the practice of chiropractic as authorized by the act of August 10, 1951 (P.L.1182), entitled "An act relating to and defining chiropractic and the right to practice chiropractic; requiring licensure; conferring powers and imposing duties upon the State Board of Chiropractic Examiners and the Department of Public Instruction; providing for the granting, suspension and revocation of licenses issued by the board; preserving the rights of existing licensees and giving them certain personal choice as to jurisdiction; conferring jurisdiction upon the court of common pleas of Dauphin County; and prescribing penalties," or the several amendments thereto, nor to affect the practice of chiropody as authorized by the act of March 2, 1956 (P.L.1206), entitled "An act relating to and defining the practice of chiropody; conferring powers and imposing duties on the State Board of Chiropody Examiners and the Department of Public Instruction; requiring licensure; providing for the granting, cancellation, suspension and revocation of licenses; preserving the rights of existing licenses; providing for the promulgation of rules and regulations; transfer of jurisdiction and records to the board; regulation of schools of chiropody; reciprocity; and providing penalties, and remedies," or the several amendments thereto, nor to affect the practice of pharmacy as authorized by the act, approved May 24, 1887 (P.L.189), entitled "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulterations in drugs and medicinal preparations, in the State of Pennsylvania," or the several amendments thereto.