

**BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS - REPORTING OF
SANCTIONS AND CRIMINAL PROCEEDINGS, SUSPENSION AND CIVIL
PENALTIES**

Act of Feb. 15, 2018, P.L. 14, No. 6
Session of 2018
No. 2018-6

Cl. 63

SB 354

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 definitions; providing for reporting of sanctions and criminal proceedings and for suspension; and further providing for civil penalties.

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

Section 1. Section 1 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 by adding definitions to read:
Section 1. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

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

- (1) permanently sealing the affected record from public access ;
- (2) deeming the proceedings to which the affected record refers as not having occurred ; and
- (3) except with respect to any subsequent application for expungement, affording the affected party the right to represent that no record exists regarding the subject matter of the affected record.

"Licensee." Any person holding a license, registration, certificate or permit with a licensing board or commission under the Bureau of Professional and Occupational Affairs in the Department of State.

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Section 2. The act is amended by adding sections to read:
Section 2.1. Reporting of sanctions and criminal proceedings.

(a) Duty.--A licensee, as a condition of licensure, certification, registration or holding a permit, shall provide written notice of the following to the appropriate licensing board or commission within 30 days:

- (1) A disciplinary action taken against the licensee by a licensing agency of another jurisdiction.

(2) A finding or verdict of guilt, an admission of guilt, a plea of nolo contendere, probation without verdict, a disposition in lieu of trial or an Accelerated Rehabilitative Disposition of any felony or misdemeanor offense.

(b) Sanctions.--A licensing board or licensing commission may take disciplinary action against a licensee who violates this section.

Section 3.1. Suspension.

(a) Temporary suspension.--A licensing board or commission may temporarily suspend a license, certificate, registration or permit under circumstances as determined by the board or commission to be an immediate and clear danger to public health and safety. The licensing board or commission shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at the licensee's last known address, which shall include a written statement of all allegations against the licensee. After issuing the order, the licensing board or commission shall commence formal action to suspend, revoke or restrict the license, certificate, registration or permit of the person concerned as otherwise provided for by law. All actions shall be taken promptly and without delay.

(b) Hearing.--Within 30 days following the issuance of an order of temporary suspension, the licensing board or commission shall conduct or cause to be conducted a preliminary hearing to determine whether there is a prima facie case supporting the suspension. The licensee whose license, certificate, registration or permit has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license, certificate, registration or permit shall be immediately restored. The temporary suspension shall remain in effect until vacated by the licensing board or commission, but in no event longer than 180 days.

(c) Restoration.--Restoration of a license, certificate, registration or permit shall be made as provided by law in the case of revocation or suspension of the license, certificate, registration or permit.

Section 3. Section 5(a), (b), (d.1), (d.3) and (d.4) of the act are amended to read:

Section 5. Civil penalties.

(a) Authorization.--

(1) 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).

(2) The Commissioner of Professional and Occupational Affairs shall expunge the disciplinary record of a licensee, registrant, certificate holder or permit holder if the imposition of discipline was for a violation involving failure to complete continuing education requirements or practicing for six months or less on a lapsed license, registration, certificate or permit, subject to the following:

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

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

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

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

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

(vi) Disciplinary records involving imposition of discipline for violations other than those identified in this paragraph shall not be eligible for expungement.

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

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

(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, 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, 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 \$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.

(6) To collect all fees, costs, fines and penalties assessed as a result of a disciplinary proceeding before a licensing board or commission.

(7) To deny, suspend or revoke a license, registration, certification or permit for failure to pay any penalty, fee, interest or cost assessed as a result of a disciplinary proceeding before a licensing board or commission.

* * *

(d.1) Entry of judgment.--Within 60 months of the final disposition of a disciplinary case, if an unpaid civil penalty, fee, interest and cost of a licensee[, registrant, certificate holder or permit holder] total \$1,000 or more, the licensing board or commission, or its respective agent, may transmit a copy of the final disposition to the prothonotary of the court of common pleas in the county where the licensee[, registrant, certificate holder or permit holder,] or property of the licensee[, registrant, certificate holder or permit holder,] upon whom the penalty, fee, interest and cost are imposed is located. The prothonotary shall enter and docket the same without requiring payment of costs as a condition precedent to the entry thereof. The total of the penalty, fee, interest and cost shall be entered as a judgment upon the licensee[, registrant, certificate holder or permit holder] regardless of whether the amount has been ordered to be paid in installments.

* * *

(d.3) Execution.--A writ of execution may directly issue upon the lien without the issuance and prosecution to judgment of a writ of scire facias, provided that a notice of the filing and the effect of the lien be provided to the licensee[, registrant, certificate holder or permit holder] not less than ten days before the execution on the lien. Notice may be sent by registered mail to the last known address of the licensee[, registrant, certificate holder or permit holder].

(d.4) Exception to execution.--The lien shall have no effect upon any stock of goods, wares or merchandise regularly sold or leased in the ordinary course of business by the licensee[, registrant, certificate holder or permit holder] against whom the lien has been entered, unless and until a writ of execution has been issued and a levy made upon the stock of goods, wares and merchandise.

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Section 4. This act shall take effect in 60 days.

APPROVED--The 15th day of February, A.D. 2018.

TOM WOLF