
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 27

Session of
1993

INTRODUCED BY LLOYD, TOMLINSON, GEIST, PETRARCA, COY, DeLUCA,
DeWEESE, FEE, HERMAN, PESCI, FAIRCHILD, MUNDY, LAUGHLIN,
CAPPABIANCA, BATTISTO, CESSAR, JOSEPHS, TIGUE, PISTELLA AND
FARGO, JANUARY 27, 1993

REFERRED TO COMMITTEE ON RULES, JANUARY 27, 1993

AN ACT

1 Empowering the General Counsel or his designee to issue
2 subpoenas for certain licensing board activities; providing
3 for hearing examiners in the Bureau of Professional and
4 Occupational Affairs; providing additional powers to the
5 Commissioner of Professional and Occupational Affairs;
6 further providing for civil penalties and license suspension;
7 and making repeals.

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

10 Section 1. Definitions.

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

14 "Licensing boards." Those departmental or administrative
15 boards under the Bureau of Professional and Occupational Affairs
16 in the Department of State.

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

1 Section 2. Investigatory subpoena power.

2 The General Counsel or his designee shall have the power and
3 his duty shall be to issue subpoenas upon application of an
4 attorney responsible for representing the Commonwealth in
5 disciplinary matters before a licensing board or commission for
6 the purpose of investigating alleged violations of the
7 disciplinary provisions administered by a licensing board or
8 commission; provided that, if their disclosure is subject to a
9 privilege provided by law, patient or client records may not be
10 subpoenaed without the consent of the patient or client or
11 without order of a court of competent jurisdiction showing that
12 the records are reasonably necessary for the conduct of the
13 investigation. The court may impose such limitation on the scope
14 of the subpoena as may be necessary to prevent unnecessary
15 intrusion into patient or client confidential information. The
16 attorney responsible for representing the Commonwealth in
17 disciplinary matters before a licensing board or commission is
18 authorized to apply to Commonwealth Court to enforce the
19 subpoenas. Nothing in this clause shall be construed to excuse a
20 person from producing documents and records as requested by a
21 licensing board or commission under any other provision of law.

22 Section 3. Hearing examiners.

23 (a) Appointment.--Notwithstanding any other provision of
24 law, the Commissioner of the Bureau of Professional and
25 Occupational Affairs, after consultation with the licensing
26 boards and commissions, shall appoint such hearing examiners as
27 may be necessary to conduct hearings in disciplinary matters
28 before a licensing board or commission.

29 (b) Regulations.--The Commissioner of Professional and
30 Occupational Affairs, after consultation with the licensing

1 boards and commissions, shall have the power to promulgate
2 regulations setting forth the functions, powers, standards,
3 procedures and duties to be followed by any such hearing
4 examiners appointed to conduct hearings in disciplinary matters
5 before a licensing board or commission.

6 (c) Powers.--Such hearing examiners shall have the power to
7 conduct hearings in accordance with applicable statutes and
8 regulations and to issue subpoenas requiring the attendance and
9 testimony of individuals or the production of pertinent records
10 or other papers by persons whom they believe have information
11 relevant to any matters pending before the examiner.

12 (d) Time periods.--In all disciplinary matters before a
13 licensing board or commission, hearings shall commence within 90
14 days after the date on which an answer is filed. Any continuance
15 granted prior to the commencement of the hearing shall toll the
16 90-day requirement by the period of the continuance. A decision
17 shall be rendered within 180 days after the record is closed.
18 The board or commission shall render a final adjudication or
19 decision on any exceptions to the decision of a hearing examiner
20 or any applications for review within 90 days of the filing of
21 such exceptions or applications, provided that a board or
22 commission may delegate to a hearing examiner the authority to
23 render a final adjudication or decision in such cases as deemed
24 appropriate.

25 Section 4. Additional powers for Commissioner of Professional
26 and Occupational Affairs.

27 In addition to the powers and duties imposed under law, the
28 Commissioner of Professional and Occupational Affairs, or his
29 designee, shall be a member of each of the licensing boards and
30 commissions except the State Board of Certified Real Estate

1 Appraisers and the Navigation Commission for the Delaware River
2 and its Navigable Tributaries. The Commissioner of Professional
3 and Occupational Affairs, or his designee, may serve as the
4 designee of the Secretary of the Commonwealth on the Navigation
5 Commission for the Delaware River and its Navigable Tributaries.
6 Section 5. Civil penalties.

7 (a) Authorization.--The Commissioner of Professional and
8 Occupational Affairs, after consultation with the licensing
9 boards and commissions, shall have the power to adopt a schedule
10 of civil penalties for operating without a current, registered,
11 unsuspended and unrevoked license, registration, certificate or
12 permit and for violating any provision of their respective acts
13 or regulations relating to the conduct or operation of a
14 business or facility licensed by such licensing boards and
15 commissions. The schedule of penalties, guidelines for their
16 imposition and procedures for appeal shall be published in the
17 Pennsylvania Bulletin, provided that the commissioner shall,
18 within two years of such publication, promulgate a regulation
19 setting forth the schedule of penalties, guidelines and
20 procedures. Any such penalty shall not exceed the sum of \$500.
21 Duly authorized agents of the bureau shall have the power and
22 authority to issue citations and impose penalties for any such
23 violations. Any such penalty imposed may be appealed to a
24 hearing examiner or the licensing board or commission pursuant
25 to the regulations promulgated under section 3(b). If the appeal
26 is initially to a hearing examiner, the relevant licensing board
27 or commission shall render a decision on any exceptions to the
28 decision of the hearing examiner or on any applications for
29 review in accordance with section 3(d). All proceedings shall be
30 conducted in accordance with the provisions of 2 Pa.C.S.

1 (relating to administrative law and procedure). If a penalty is
2 imposed under this subsection, no additional civil penalty may
3 be imposed for the same act.

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

9 (1) To impose discipline on any licensee, registrant,
10 certificate holder or permit holder who violates a lawful
11 disciplinary order of the board.

12 (2) To impose discipline on any licensee, registrant,
13 certificate holder or permit holder who aids and abets the
14 unlicensed practice of a profession, occupation or business.

15 (3) To levy a civil penalty of not more than \$1,000 on
16 any corporation, partnership, institution or association,
17 which aids and abets any individual in the unlicensed
18 practice of a profession. This penalty shall not, however, be
19 levied against any person solely as a consequence of that
20 person being a patient or client of the unlicensed
21 individual.

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

1 (d) Definition.--As used in this section, the term

2 "unlicensed practice" means:

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

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

13 Section 6. Suspensions.

14 (a) Automatic suspension.--A license, registration,
15 certificate or permit of a person shall automatically be
16 suspended upon imprisonment because of conviction under Federal
17 or State law or the laws of any other state of insurance fraud
18 or Medicaid or Medicare fraud, such suspension to be concurrent
19 with the period during which such person is imprisoned because
20 of the conviction.

21 (b) Required proceedings.--An immediate investigation shall
22 be initiated to determine if the license, registration,
23 certificate or permit of a person should be suspended as
24 follows:

25 (1) Upon denial of participation in the Medicaid or
26 Medicare program because of a violation of either program as
27 determined under Federal or State law or the laws of any
28 other state.

29 (2) Upon suspension or revocation by the United States
30 or any other state of a license, registration, certificate or

1 permit to practice in the United States or other state.

2 (c) Longer suspensions.--Nothing in this section shall be
3 construed to prohibit a licensing board or commission from
4 imposing a longer suspension than prescribed by subsection (a),
5 provided that the board or commission shall impose a longer
6 suspension only after notice and an opportunity to be heard and
7 that the automatic suspension shall not be stayed pending a
8 decision by the board or commission on whether to impose a
9 longer suspension.

10 (d) Definition.--As used in this section, the term
11 "conviction" shall include a finding or an admission of guilt, a
12 plea of nolo contendere, probation without verdict, Accelerated
13 Rehabilitative Disposition or disposition in lieu of trial.

14 Section 7. Reports.

15 Licensing boards and commissions shall submit annually to the
16 Consumer Protection and Professional Licensure Committee of the
17 Senate and to the Professional Licensure Committee of the House
18 of Representatives a report containing the following:

19 (1) Description of the types of complaints received.

20 (2) Status of cases.

21 (3) Total number of cases and type of disciplinary
22 action taken.

23 (4) Percentage of disciplinary actions in relation to
24 the total number of licensees.

25 (5) Number of closed cases.

26 (6) Average number of days to close a case.

27 (7) Number of revocations and suspensions.

28 (8) Percentage of revocations and suspensions in
29 relation to the total number of licensees.

30 Section 8. Repeals.

1 All acts or parts of acts are repealed insofar as they are
2 inconsistent with the provisions of this act.

3 Section 9. Applicability.

4 Section 5 of this act shall apply only to disciplinary
5 proceedings commenced on or after the effective date of this
6 act.

7 Section 10. Effective date.

8 This act shall take effect in 60 days.