

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 383 Session of
1997

INTRODUCED BY CIVERA, LLOYD, RAYMOND, GANNON, BAKER, GORDNER,
BELARDI, OLASZ, FARGO, DeLUCA, LYNCH, ZUG, FAIRCHILD, GEIST,
HENNESSEY, PRESTON, HERMAN, McCALL, WAUGH, BOSCOLA, PERZEL,
GLADECK AND TRELLO, FEBRUARY 10, 1997

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, APRIL 1, 1997

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," providing for creation ~~and appointment~~, OF THE <—
9 OFFICE OF HEARING EXAMINER AND APPOINTMENT OF HEARING
10 EXAMINERS; FURTHER PROVIDING FOR POWERS AND DUTIES OF BOARDS
11 AND COMMISSIONS WITHIN THE BUREAU OF PROFESSIONAL AND
12 OCCUPATIONAL AFFAIRS; AND PROVIDING for disciplinary
13 proceedings and hearings and for prior rules and regulations.

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

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

1 suspension," is amended by adding definitions to read:

2 Section 1. Definitions.

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

6 "Conviction." Includes a judgment, an admission of guilt or
7 a plea of nolo contendere, being convicted of a felony, or a <—
8 misdemeanor relating to the practice of a licensed profession,
9 receiving probation without verdict or disposition in lieu of
10 trial, or receiving an Accelerated Rehabilitative Disposition of
11 felony charges.

12 * * *

13 "License." A license, registration, certificate or other
14 authorization to practice a profession or occupation under the
15 jurisdiction of the Bureau of Professional and Occupational
16 Affairs.

17 * * *

18 ~~"Office of prosecution." The prosecuting office in the~~ <—
19 ~~Bureau of Professional and Occupational Affairs under the~~
20 ~~supervision of the General Counsel.~~

21 "Prosecuting attorney." An attorney assigned by the General
22 Counsel to represent the Commonwealth in disciplinary matters
23 before the various boards and commissions.

24 "PROSECUTION DIVISION." THE PROSECUTING OFFICE IN THE BUREAU <—
25 OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS UNDER THE SUPERVISION
26 OF THE GENERAL COUNSEL.

27 Section 2. Section 3 of the act is amended to read:

28 Section 3. Hearing examiners.

29 (a) [Appointment.--Notwithstanding any other provision of
30 law, the Commissioner of the Bureau of Professional and

1 Occupational Affairs, after consultation with the licensing
2 boards and commissions, shall appoint such hearing examiners as
3 may be necessary to conduct hearings in disciplinary matters
4 before a licensing board or commission. Each licensing board and
5 commission shall have the power to decide if a specific
6 disciplinary matter or type of disciplinary matter is to be
7 heard by the licensing board or commission itself or by a
8 hearing examiner appointed pursuant to this subsection.]

9 Creation; appointment.--The Office of Hearing Examiner is hereby
10 established in the Bureau of Professional and Occupational
11 Affairs as an autonomous office FOR THE PURPOSE OF CONDUCTING <—
12 DISCIPLINARY MATTERS. The Governor shall appoint from a list of
13 qualified candidates submitted by the State Civil Service
14 Commission, after appropriate examination under the act of
15 August 5, 1941 (P.L.752, No.286), known as the Civil Service
16 Act, as many hearing examiners as the Commissioner of
17 Professional and Occupational Affairs, with the approval of the
18 Governor, deems necessary for the holding of hearings in
19 disciplinary matters before licensing boards and commissions
20 within the bureau. The Governor shall designate one of the
21 hearing examiners as the Chief Hearing Examiner. Hearing
22 examiners appointed under this subsection shall be learned in
23 the law and shall be members in good standing of the bar of the
24 Supreme Court of this Commonwealth. Hearing examiners shall
25 perform no duties inconsistent with their official duties and
26 responsibilities as hearing examiners. INDIVIDUALS EMPLOYED AS <—
27 HEARING EXAMINERS WITHIN THE BUREAU OF PROFESSIONAL AND
28 OCCUPATIONAL AFFAIRS ON OR BEFORE JANUARY 1, 1997, SHALL NOT BE
29 REQUIRED TO MEET THE REQUIREMENTS OF THE STATE CIVIL SERVICE
30 COMMISSION.

1 (b) Regulations.--The Commissioner of Professional and
2 Occupational Affairs, after consultation with the licensing
3 boards and commissions, shall have the power to promulgate
4 regulations setting forth the procedural rules to be followed by
5 any such hearing examiners in the conduct of hearings in
6 disciplinary matters before a licensing board or commission. All
7 proceedings shall be conducted in accordance with the provisions
8 of 2 Pa.C.S. (relating to administrative law and procedure).

9 (c) Powers.--[Such hearing] Hearing examiners shall have the
10 power:

11 (1) to conduct hearings in accordance with applicable
12 statutes, rules and regulations[,];

13 (2) to issue subpoenas requiring the attendance and
14 testimony of individuals or the production of pertinent
15 records or other papers by persons whom they believe have
16 information relevant to any matters pending before the
17 examiner [and to issue];

18 (3) to impose sanctions, revocations, suspensions, civil
19 penalties and other disciplinary and corrective measures as
20 permitted by law;

21 (4) to issue temporary and automatic suspensions as
22 authorized by law; and

23 (5) to issue findings of facts, conclusions of law and
24 decisions.

25 (d) Time periods.--In all disciplinary matters before a
26 licensing board or commission, hearings shall commence within 90
27 days after the date on which an answer is filed. Any continuance
28 granted prior to the commencement of the hearing shall toll the
29 90-day requirement by the period of the continuance. A decision
30 shall be rendered within 180 days after the record is closed.

1 The board or commission shall render a final adjudication or
2 decision on any exceptions to the decision of a hearing examiner
3 or any applications for review within 90 days of the filing of
4 such exceptions or applications, provided that a board or
5 commission may delegate to a hearing examiner the authority to
6 render a final adjudication or decision in such cases as deemed
7 appropriate.

8 Section 3. The act is amended by adding sections to read:

9 Section 3.1. Disciplinary proceedings.

10 (a) Initiation.--Any person may submit a written complaint
11 to the Bureau of Professional and Occupational Affairs. THE <—
12 PROSECUTION DIVISION MAY ALSO INITIATE PROSECUTIONS BASED UPON
13 INFORMATION RECEIVED FROM OTHER SOURCES, INCLUDING, BUT NOT
14 LIMITED TO, FIELD INVESTIGATORS, LAW ENFORCEMENT AGENCIES AND
15 MEDIA REPORTS. Notwithstanding any other provision of law, the
16 office of prosecution PROSECUTION DIVISION shall have the power <—
17 to dispose of complaints ADMINISTER DISCIPLINARY MATTERS as <—
18 follows:

19 (1) to close a case because prosecution is not
20 warranted, because there is no violation of law or because
21 the case is not within the jurisdiction of a licensing board
22 or commission;

23 (2) to conduct further investigation of a case,
24 including the use of investigative subpoenas under section 2;

25 (3) to defer further investigation or action on a case
26 during the pendency of a civil, criminal or administrative <—
27 matter;

28 (4) to refer a case to an appropriate criminal authority
29 or other government agency;

30 (5) to issue an order to show cause; and

1 (6) to negotiate a consent agreement imposing a penalty
2 under a licensing statute for approval by a licensing board
3 or commission.

4 (b) Consultants.--In cases which may involve, but are not
5 limited to, issues of professional competence, quality of care
6 and standards of service, a prosecuting attorney may consult
7 with an individual with expertise in the subject who contracts
8 with the bureau to evaluate cases and advise prosecuting
9 attorneys. No prosecuting attorney shall consult for such
10 purpose with any member of a licensing board or commission.

11 Section 3.2. Temporary suspensions.

12 (a) General rule.--Upon a petition of the office of <—
13 ~~prosecution~~ PROSECUTION DIVISION, a license may be temporarily <—
14 suspended under circumstances as determined by a hearing
15 examiner to be an immediate and clear danger to the public
16 health and safety. A hearing examiner shall issue an order to
17 that effect without a hearing, but upon due notice to a licensee
18 at the licensee's last known address, which shall include a
19 written statement of all allegations against the licensee. WHEN <—
20 A TEMPORARY SUSPENSION IS ISSUED BY A HEARING EXAMINER, THE
21 LICENSEE SHALL BE AFFORDED THE PROCEDURAL RIGHTS PROVIDED UNDER
22 THE APPLICABLE LICENSURE LAW, INCLUDING, BUT NOT LIMITED TO, THE
23 RIGHT TO A PRELIMINARY HEARING WITHIN 30 DAYS WHERE APPLICABLE.

24 (b) Limitation.--This section shall apply only in cases
25 where the licensing board or commission is authorized by law to
26 issue temporary and automatic suspensions.

27 Section 3.3. Disciplinary hearings.

28 (a) Hearing examiners.--A hearing examiner shall adjudicate <—
29 ~~all~~ ALL of the following disciplinary matters under the <—
30 jurisdiction of a licensing board or commission SHALL BE <—

1 INITIALLY REFERRED TO A HEARING EXAMINER:

2 (1) a case subject to the provisions of sections 901
3 through 905 of the act of October 15, 1975 (P.L.390, No.111),
4 known as the Health Care Services Malpractice Act;

5 (2) a case in which disciplinary action or refusal to
6 issue a license by a licensing board or commission would be
7 based on a conviction;

8 (3) a case in which disciplinary action by a licensing
9 board or commission would be based on disciplinary action
10 taken against a licensee by a licensing authority of another
11 state, territory, possession or country or by a branch of the
12 Federal Government;

13 (4) a case involving a lapsed license;

14 (5) a case in which civil penalties are imposed under
15 section 5(a); and <—

16 (6) a case in which disciplinary action is automatic
17 under the applicable law; AND <—

18 (7) A CASE INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT.

19 (b) Mental or physical examination.--

20 (1) Notwithstanding any other provision of law, a
21 hearing examiner, WITHOUT CONDUCTING A HEARING, may issue an <—
22 order compelling a licensee to submit to a mental or physical
23 examination upon a showing of probable cause by the office of <—
24 prosecution PROSECUTION DIVISION. <—

25 (2) This subsection shall apply only in cases where the
26 licensing board or commission is authorized by law to issue
27 orders compelling licensees to submit to a mental or physical
28 examination.

29 (c) Additional use of examiners.--In addition to the
30 disciplinary matters required by subsection (a) to be

1 adjudicated by a hearing examiner, each licensing board or
2 commission shall have the power to direct that a specific
3 disciplinary matter or type of disciplinary matter be heard by
4 the licensing board or commission or by a hearing examiner.

5 (d) Procedures.--Hearings shall be conducted in accordance
6 with applicable law pursuant to section 3(b).

7 SECTION 4. SECTION 5(B) OF THE ACT IS AMENDED TO READ: <—

8 SECTION 5. CIVIL PENALTIES.

9 * * *

10 (B) ADDITIONAL POWERS.--IN ADDITION TO THE DISCIPLINARY
11 POWERS AND DUTIES OF THE BOARDS AND COMMISSIONS WITHIN THE
12 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS UNDER THEIR
13 RESPECTIVE PRACTICE ACTS, BOARDS AND COMMISSIONS SHALL HAVE THE
14 POWER, RESPECTIVELY:

15 (1) TO IMPOSE DISCIPLINE ON ANY LICENSEE, REGISTRANT,
16 CERTIFICATE HOLDER OR PERMIT HOLDER WHO VIOLATES A LAWFUL
17 DISCIPLINARY ORDER OF THE BOARD.

18 (2) TO IMPOSE DISCIPLINE ON ANY LICENSEE, REGISTRANT,
19 CERTIFICATE HOLDER OR PERMIT HOLDER WHO AIDS AND ABETS THE
20 UNLICENSED PRACTICE OF A PROFESSION, OCCUPATION OR BUSINESS.

21 (3) TO LEVY A CIVIL PENALTY OF NOT MORE THAN \$1,000 ON
22 ANY CORPORATION, PARTNERSHIP, INSTITUTION, ASSOCIATION OR
23 SOLE PROPRIETORSHIP WHICH AIDS AND ABETS ANY INDIVIDUAL IN
24 THE UNLICENSED PRACTICE OF A PROFESSION. THIS PENALTY SHALL
25 NOT, HOWEVER, BE LEVIED AGAINST ANY PERSON SOLELY AS A
26 CONSEQUENCE OF THAT PERSON BEING A PATIENT OR CLIENT OF THE
27 UNLICENSED INDIVIDUAL.

28 (4) TO REQUIRE A LICENSEE, AS A CONDITION OF SUSPENSION,
29 TO REFRAIN FROM ANY ACTIVITY WHICH IS CLOSELY RELATED TO THE
30 PROFESSION FOR WHICH THE INDIVIDUAL IS LICENSED WHEN THE

PERFORMANCE OF SUCH ACTIVITY BY THE LICENSEE WILL CONSTITUTE
A DANGER TO THE HEALTH, SAFETY AND WELFARE OF THE PUBLIC.

* * *

Section 4 5. All guidelines, rules and regulations in effect <—
on the effective date of this act shall remain in full force and
effect until amended or repealed pursuant to this act.

Section 5 6. All acts and parts of acts are repealed insofar <—
as they are inconsistent with this act.

Section 6 7. Nothing herein shall be construed to alter the <—
powers and duties of the various licensing boards and
commissions subsequent to the issuance of temporary suspensions
under the applicable law in effect on the effective date of this
act, except that all powers to issue temporary suspensions are
hereby transferred exclusively to the office of hearing examiner
under section 3 of the act.

Section 7 8. This act shall take effect in 180 days. <—