

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2584 Session of
2000

INTRODUCED BY GODSHALL, BAKER, BARD, BARRAR, BELARDI, BUNT,
BUXTON, M. COHEN, FRANKEL, HALUSKA, HASAY, HESS, HORSEY,
LEDERER, MAYERNIK, McCALL, MELIO, S. MILLER, MUNDY, NAILOR,
PETRARCA, PETRONE, PIPPY, PISTELLA, RAMOS, RUBLEY, SEYFERT,
B. SMITH, SOLOBAY, STABACK, STERN, STEVENSON, TRAVAGLIO,
WILT, WOJNAROSKI AND YOUNGBLOOD, JUNE 6, 2000

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, JUNE 6, 2000

AN ACT

1 Amending the act of May 22, 1951 (P.L.317, No.69), entitled, as
2 amended, "An act relating to the practice of professional
3 nursing; providing for the licensing of nurses and for the
4 revocation and suspension of such licenses, subject to
5 appeal, and for their reinstatement; providing for the
6 renewal of such licenses; regulating nursing in general;
7 prescribing penalties and repealing certain laws," regulating
8 the practice and licensure of dietetics and nutrition;
9 further providing for penalties; and making an appropriation.

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

12 Section 1. Section 2 of the act of May 22, 1951 (P.L.317,
13 No.69), known as The Professional Nursing Law, is amended by
14 adding clauses to read:

15 Section 2. Definitions.--When used in this act, the
16 following words and phrases shall have the following meanings
17 unless the context provides otherwise:

18 * * *

19 (7) The "Practice of dietetics-nutrition" means the

integration and application of principles derived from the sciences of food nutrition, biochemistry, physiology, management and behavior to provide for all aspects of nutrition therapy for individuals and groups, including nutrition therapy services and medical nutrition therapy.

(8) "Department" means the Department of State of the Commonwealth.

(9) "Dietitian-nutritionist," "Dietitian" or "Nutritionist" means a person licensed under this act.

(10) "Medical nutrition therapy" means the component of nutrition therapy that concerns determining and recommending nutrient needs based on nutritional assessment and medical problems relative to diets prescribed by a licensed physician including:

(i) tube feedings;
(ii) specialized intravenous solutions;
(iii) specialized oral solutions; and
(iv) interactions of prescription drugs with food or nutrients.

(11) "Nutrition therapy services" means assessing the nutritional needs of individuals and groups, considering the resources and constraints in the practice setting, providing nutrition counseling in health and disease, developing, implementing and managing:

(i) nutrition therapy of; and
(ii) food service systems for individuals and groups and maintaining appropriate standards of quality in food and nutrition therapy services for individuals and groups.

Section 2. Sections 2.1 and 2.2 of the act, amended or added

1 December 20, 1985 (P.L.409, No.109), are amended to read:

2 Section 2.1. State Board of Nursing.--(a) The State Board
3 of Nursing shall consist of the Commissioner of Professional and
4 Occupational Affairs, three members appointed by the Governor,
5 with the advice and consent of a majority of the members elected
6 to the Senate, who shall be persons representing the public at
7 large, and [seven] nine members appointed by the Governor, with
8 the advice and consent of a majority of the members elected to
9 the Senate, five of whom shall be registered nurses, graduated
10 from schools of nursing where practical and theoretical
11 instruction is given, at least three of whom shall possess
12 Masters' degrees in nursing, [and] two of whom shall be licensed
13 practical nurses, and two of whom shall be dietitians-
14 nutritionists chosen from a list submitted by the Pennsylvania
15 Dietetic Association of names and addresses of qualified
16 dietitians-nutritionists willing to serve on the Board and
17 licensed to practice in this Commonwealth, except that those
18 first appointed shall be qualified to receive licensure under
19 the terms of this act, provided they have had at least five
20 years' working experience in this Commonwealth as dietitians-
21 nutritionists immediately preceding appointment, and all of whom
22 shall have been engaged in nursing or the practice of dietetics-
23 nutrition in this Commonwealth for the five-year period
24 immediately preceding appointment. In making appointments to the
25 Board, the Governor shall give due consideration to providing
26 representation from diversified fields of nursing or dietetics-
27 nutrition, including, but not limited to, specialized nurses or
28 dietitians-nutritionists of all types. The persons representing
29 the public at large may not have a financial interest in the
30 provision of goods and services for dietitians-nutritionists and

1 may not be a dietitian-nutritionist or have a household member
2 who is a dietitian-nutritionist.

3 (b) The terms of the members of the Board shall be six years
4 or until his or her successor has been appointed and qualified
5 but not longer than six months beyond the six-year period. In
6 the event that any of said members shall die or resign or
7 otherwise become disqualified during his or her term, his or her
8 successor shall be appointed in the same way and with the same
9 qualifications and shall hold office for the unexpired term. No
10 member shall be eligible for appointment to serve more than two
11 consecutive terms.

12 (c) A majority of the members of the Board serving in
13 accordance with law shall constitute a quorum. Except for
14 temporary and automatic suspensions under section 15.1 of this
15 act or section 17.1 of the act of March 2, 1956 (1955 P.L.1211,
16 No.376), known as the "Practical Nurse Law," a member may not be
17 counted as part of a quorum or vote on any issue, unless he or
18 she is physically in attendance at the meeting.

19 (d) The Board shall select annually a chairman from among
20 its members. The Board shall select an executive secretary who,
21 with the approval of the Commissioner of Professional and
22 Occupational Affairs, need not be a member of the Board.

23 (e) Each member of the Board, except the Commissioner of
24 Professional and Occupational Affairs, shall receive sixty
25 dollars (\$60) per diem when actually attending to the work of
26 the Board. Members shall also receive the amount of reasonable
27 traveling, hotel and other necessary expenses incurred in the
28 performance of their duties in accordance with Commonwealth
29 regulations.

30 (f) The Board is subject to evaluation, review and

1 termination within the time and in the manner provided in the
2 act of December 22, 1981 (P.L.508, No.142), known as the "Sunset
3 Act."

4 (g) A member of the Board who fails to attend three
5 consecutive meetings shall forfeit his or her seat unless the
6 Commissioner of Professional and Occupational Affairs, upon
7 written request from the member, finds that the member should be
8 excused from a meeting because of illness or the death of a
9 family member.

10 (h) A public member who fails to attend two consecutive
11 statutorily mandated training seminars in accordance with
12 section 813(e) of the act of April 9, 1929 (P.L.177, No.175),
13 known as "The Administrative Code of 1929," shall forfeit his or
14 her seat unless the Commissioner of Professional and
15 Occupational Affairs, upon written request from the public
16 member, finds that the public member should be excused from a
17 meeting because of illness or the death of a family member.

18 (i) The Board, with the approval of the Commissioner of
19 Professional and Occupational Affairs, shall also appoint and
20 fix the compensation of one or more State educational advisors
21 of schools of nursing and one or more State practice advisors,
22 who shall have the same qualifications as the nurse members of
23 the Board who hold Masters' degrees in nursing.

24 (j) The Board shall meet at least once every two months and
25 at such additional times as may be necessary to conduct the
26 business of the Board.

27 (k) The Board shall have the right and duty to establish
28 rules and regulations for the practice of professional nursing,
29 the practice of dietetics-nutrition and the administration of
30 this act. Copies of such rules and regulations shall be

1 available for distribution to the public.

2 Section 2.2. Communication with Licensees.--The Board shall
3 communicate with licensees on issues affecting the education,
4 practice and regulation of nursing or dietetics-nutrition on at
5 least an annual basis.

6 Section 3. The act is amended by adding a section to read:

7 Section 3.1. Dietitian-Nutritionist, Use of Title and
8 Abbreviation "L.D.N."; Credentials; Fraud.--Any person who holds
9 a license to practice dietetics-nutrition in this Commonwealth,
10 or who is maintained on inactive status in accordance with
11 section 11, shall have the right to use the title "dietitian-
12 nutritionist", "dietitian" or "nutritionist," and the
13 abbreviation "L.D.N." No other person shall engage in the
14 practice of dietetics-nutrition or use the title "dietitian-
15 nutritionist," "dietitian," "nutritionist" or the abbreviation
16 "L.D.N." to indicate that the person using the same is a
17 dietitian-nutritionist, dietitian or nutritionist. No person
18 shall sell or fraudulently obtain or fraudulently furnish any
19 dietetics, nutrition or food system management diploma, license,
20 record, or registration or aid or abet therein.

21 Section 4. Section 4 of the act, amended December 20, 1985
22 (P.L.409, No.109), is amended to read:

23 Section 4. Unauthorized Practices; Acts not Prohibited.--
24 This act confers no authority to practice dentistry, podiatry,
25 optometry, chiropractic, medicine or surgery, nor does it
26 prohibit--

27 (1) Home care of the sick by friends, domestic servants,
28 nursemaids, companions, or household aides of any type, so long
29 as such persons do not represent or hold themselves out to be
30 licensed nurses, licensed registered nurses, or registered

1 nurses; or use in connection with their names, any designation
2 tending to imply that they are licensed to practice under the
3 provisions of this act nor services rendered by any physicians,
4 osteopaths, dentists or chiropractors, podiatrists,
5 optometrists, or any person licensed pursuant to the act of
6 March 2, 1956 (P.L.1211, No.376), known as the "Practical Nurse
7 Law."

8 (2) Care of the sick, with or without compensation or
9 personal profit, when done solely in connection with the
10 practice of the religious tenets of any church by adherents
11 thereof.

12 (3) The practice of professional nursing by a person
13 temporarily in this Commonwealth licensed by another state,
14 territory or possession of the United States or a foreign
15 country, in compliance with an engagement made outside of this
16 Commonwealth, which engagement requires that such person
17 accompany and care for a patient while temporarily in this
18 Commonwealth: Provided, however, That said engagement shall not
19 be of more than six (6) months' duration.

20 (4) The practice of professional nursing, pursuant to a
21 temporary practice permit, by a graduate of an approved program
22 of professional nursing in Pennsylvania or any other state,
23 working under qualified supervision, during the period not to
24 exceed one (1) year between completion of his or her program and
25 notification of the results of a licensing examination taken by
26 such person, and during such additional period as the Board may
27 in each case especially permit.

28 (5) The practice of professional nursing, pursuant to a
29 temporary practice permit, by a person who holds a current
30 license or other evidence of the right to practice professional

1 nursing, as that term is defined in this act, issued by any
2 other state, territory or possession of the United States or the
3 Dominion of Canada, during the period that an application filed
4 by such person for licensure in Pennsylvania is pending before
5 the Board, but not for a period of more than one (1) year and
6 during such additional period as the Board may in each case
7 especially permit.

8 (6) The practice of professional nursing, within the
9 definition of this act, by any person when such person is
10 engaged in the practice of nursing as an employee of the United
11 States.

12 (7) Engaging in the profession or occupation for which a
13 person is licensed in accordance with the provisions of another
14 law of this Commonwealth.

15 (8) Furnishing general nutrition information on food, food
16 materials or dietary supplements by a person who does not hold
17 himself out to be a dietitian-nutritionist, dietitian or
18 nutritionist.

19 (9) Engaging in the explanation to customers about foods or
20 food products in connection with the marketing and distribution
21 of these products.

22 (10) Participating in the practice of dietetics-nutrition as
23 part of a program by a student enrolled in an approved
24 dietetics-nutrition education program recognized by the Board.

25 (11) Discharging official duties by a person employed by an
26 agency, bureau or division of the Federal Government, or bound
27 by the regulations of the Federal Government: Provided, however,
28 That if the person engages in the practice of dietetics-
29 nutrition in this Commonwealth outside the scope of official
30 duty, the person must be licensed as provided in this act.

1 (12) Activities and services of food service directors,
2 other food service management personnel, and educators in
3 elementary or secondary schools, or accredited degree granting
4 educational institutions. This exemption shall apply only to the
5 duties performed by the person when engaged in that capacity.

6 (13) Assisting a licensed dietitian-nutritionist under their
7 direct and personal supervision, by an employee who is not
8 required to be licensed under this act.

9 (14) Providing food and services embodying accurate
10 nutrition information for a day-care provider, church, nursery
11 school, kindergarten, elementary school or secondary school,
12 which does not provide more than one full meal per day, by a
13 person who is not required to be licensed under this act.

14 (15) Providing food and nutrition services to needy persons
15 through a nonprofit soup kitchen, food bank or food cupboard or
16 similar program by a person who is not required to be licensed
17 under this act.

18 Section 5. Section 5 of the act, amended or added December
19 20, 1985 (P.L.409, No.109) and December 15, 1986 (P.L.1607,
20 No.179), is amended to read:

21 Section 5. Examinations and Certificates.--(a) The Board
22 shall, once every year and at such other times and under such
23 conditions as shall be provided by its regulations, examine all
24 eligible applicants for licensure; and shall, subject to the
25 provisions of section 6 of this act, issue a license to each
26 person passing said examination to the satisfaction of the
27 Board.

28 (b) The Board may admit to examination any person who has
29 satisfactorily completed an approved nursing education program
30 for the preparation of registered professional nurses or an

1 approved dietetics-nutrition education program in Pennsylvania
2 or such a program in any other state, territory or possession of
3 the United States, considered by the Board to be equivalent to
4 that required in this Commonwealth at the time such program was
5 completed, and who meets the requirements of character and
6 preliminary education.

7 (c) The Board may admit to examination any person who has
8 satisfactorily completed a nursing education program for the
9 preparation of registered professional nurses or an approved
10 dietetics-nutrition education program in a country or territory
11 not mentioned above who has been licensed, registered, or duly
12 recognized there as a professional nurse, dietitian-
13 nutritionist, dietitian or nutritionist provided such a program
14 is considered by the Board to be equal to that required in this
15 Commonwealth at the time such program was completed and who
16 meets the requirements of character and preliminary education.

17 (d) In establishing the education requirements for
18 admittance to the nursing licensure examination under this
19 section, the Board shall not deny access to the examination for
20 licensure as a registered nurse to a graduate of a State-
21 approved associate degree, diploma or baccalaureate degree
22 nursing program.

23 (e) In establishing the education requirements for
24 admittance to the dietitian-nutritionist licensure examination
25 under this section, the Board shall not deny access to the
26 examination for licensure as a dietitian-nutritionist to a
27 graduate of a State-approved baccalaureate or higher degree
28 dietetics-nutrition program.

29 (f) The examination for dietetics-nutrition licensure shall
30 test the person's knowledge of the basic and clinical sciences

1 relating to dietetics-nutrition theory and practice, including
2 the person's professional skill and judgment in the utilization
3 of dietetics-nutrition techniques and methods, and other
4 subjects as the Board considers useful to determine the person's
5 fitness to practice.

6 (g) A person who meets the requirements of section 6, and
7 who, in addition, has been engaged in the practice of dietetics-
8 nutrition for a period of three (3) years during the ten (10)
9 years immediately preceding the effective date of this section,
10 or a person who provides evidence of current registration as a
11 Registered Dietitian-Nutritionist by the Commission of Dietetic
12 Registration of the American Dietetic Association, shall be
13 considered to meet the requirements of this act. This person
14 shall be licensed without the necessity of taking the
15 examination if an application is made to the Board within six
16 (6) months of the effective date of this section and the
17 appropriate fee is paid.

18 Section 6. Section 6 of the act, amended December 15, 1986
19 (P.L.1607, No.179), is amended to read:

20 Section 6. Fees; Qualifications for Licensure.--(a) No
21 application for licensure as a registered nurse shall be
22 considered unless accompanied by a fee determined by the Board
23 by regulation. Every applicant, to be eligible for examination
24 for licensure as a registered nurse, shall furnish evidence
25 satisfactory to the Board that he or she is of good moral
26 character, has completed work equal to a standard high school
27 course as evaluated by the Board and has satisfactorily
28 completed an approved program of professional nursing. Approved
29 programs shall include baccalaureate degree, associate degree
30 and diploma nursing programs.

1 (b) No application for licensure as a dietitian-nutritionist
2 shall be considered unless accompanied by a fee determined by
3 the Board by regulation. Every applicant, to be eligible for
4 examination for licensure as a dietitian-nutritionist, shall
5 furnish evidence satisfactory to the Board that he or she is of
6 good moral character, has completed work equal to a standard
7 high school course as evaluated by the Board and has
8 satisfactorily completed an approved program of dietetics-
9 nutrition. Approved programs for dietetics-nutrition shall
10 include a baccalaureate or higher degree program from a
11 regionally accredited college or university, including a major
12 course of study in human nutrition, food and nutrition,
13 nutrition education, dietetics or food systems management. An
14 applicant for dietetics-nutrition licensure shall also have
15 completed a planned continuous pre-professional experience
16 component in dietetic practice of not less than nine hundred
17 (900) hours under the supervision of a registered dietitian, a
18 dietitian-nutritionist licensed under this act or an individual
19 with a doctoral degree conferred by a regionally accredited
20 college or university in the United States with a major course
21 of study in human nutrition, food and nutrition, nutrition
22 education, dietetics or food systems management and have
23 satisfactorily completed an examination approved by the Board or
24 provide evidence of certification by the American College of
25 Nutrition or the Certification Board for Nutrition Specialists.

26 (c) The Board shall not issue a license or certificate to an
27 applicant who has been convicted of a felonious act prohibited
28 by the act of April 14, 1972 (P.L.233, No.64), known as "The
29 Controlled Substance, Drug, Device and Cosmetic Act," or
30 convicted of a felony relating to a controlled substance in a

1 court of law of the United States or any other state, territory
2 or country unless:

3 (1) at least ten (10) years have elapsed from the date of
4 conviction;

5 (2) the applicant satisfactorily demonstrates to the Board
6 that he has made significant progress in personal rehabilitation
7 since the conviction such that licensure of the applicant should
8 not be expected to create a substantial risk of harm to the
9 health and safety of patients or the public or a substantial
10 risk of further criminal violations; and

11 (3) the applicant otherwise satisfies the qualifications
12 contained in or authorized by this act.

13 As used in this subsection the term "convicted" shall include a
14 judgment, an admission of guilt or a plea of nolo contendere. An
15 applicant's statement on the application declaring the absence
16 of a conviction shall be deemed satisfactory evidence of the
17 absence of a conviction, unless the Board has some evidence to
18 the contrary.

19 Section 7. Sections 7, 8, 11, 11.1 and 13 of the act,
20 amended or added December 20, 1985 (P.L.409, No.109), are
21 amended to read:

22 Section 7. Graduates of Schools of Other States, Territories
23 or Dominion of Canada.--(a) The Board may issue a license
24 without examination to a graduate of a school of nursing or a
25 dietetics-nutrition program who has completed a course of study
26 in nursing or dietetics-nutrition considered by the Board to be
27 equivalent to that required in this State at the time such
28 course was completed, and who is registered or licensed by
29 examination in any other state, or territory of the United
30 States or the Dominion of Canada, and who has met all the

1 foregoing requirements as to character, and preliminary
2 education.

3 (b) The Board may issue a certification to registered nurse
4 practitioners who have completed a course of study considered by
5 the Board to be equivalent to that required in this State at the
6 time such course was completed or who is licensed or certified
7 by another state, territory or possession of the United States
8 or a foreign country as deemed equivalent to Pennsylvania's
9 certification requirements in accordance with the joint rules
10 and regulations of the Boards of Nursing and Medicine.

11 Section 8. Persons Entitled to Practice.--(a) The Board
12 shall issue to each person who meets the professional nursing
13 licensure requirements of this act, a certificate setting forth
14 that such person is licensed to engage in the practice of
15 professional nursing and entitled to use the title "registered
16 nurse" and the letters "R.N."

17 (b) The Board shall issue to each person who meets the
18 dietitian-nutritionist licensure requirements of this act, a
19 certificate setting forth that such person is licensed to engage
20 in the practice of dietetics-nutrition and entitled to use the
21 title "dietitian-nutritionist," "dietitian" or "nutritionist"
22 and the letters "L.D.N." A record of all persons licensed to
23 practice as dietitians-nutritionists, dietitians or
24 nutritionists in this Commonwealth shall be kept in the office
25 of the Board and shall be open to public inspection and copying
26 upon payment of a nominal fee for copying the record.

27 Section 11. Licenses; Duration; Renewal Fee; Inactive
28 Status.--(a) Licenses issued pursuant to this act shall expire
29 on the thirty-first day of October of each biennium, or on such
30 other biennial expiration date as may be established by

1 regulation of the Board. Application for renewal of a license
2 shall biennially be forwarded to each registrant holding a
3 current license prior to the expiration date of the current
4 renewal biennium. The application form may be completed and
5 returned to the Board, accompanied by the required fee as
6 determined by the Board by regulation; upon approval of each
7 application, the applicant shall receive a renewal of license.

8 (b) Any registrant licensed under this act may request an
9 application for inactive status. The application form may be
10 completed and returned to the Board. Upon receipt of each
11 application, the applicant shall be maintained on inactive
12 status without fee and shall be entitled to apply at any time.
13 Any person who requests an active status license who has been on
14 inactive status for a period of five (5) consecutive years shall
15 prior to receiving an active license satisfy the requirements of
16 the Board's regulations for ensuring continued competence and
17 remit the required fee. A person shall not be denied active
18 status as a result of any increased educational requirements for
19 licensure since the time he or she received his or her original
20 license.

21 (c) A dietetics-nutrition license issued under this act
22 shall not be renewed unless the licensee applying for renewal
23 submits proof to the Board that, during the two (2) calendar
24 years immediately preceding the application for renewal, the
25 licensee has satisfactorily completed a minimum of thirty (30)
26 hours of continuing dietetic-nutrition education approved by the
27 Board.

28 Section 11.1. Reporting of Multiple Licensure.--Any licensed
29 professional nurse or dietitian-nutritionist of this
30 Commonwealth who is also licensed to practice nursing or

1 dietetics-nutrition in any other state, territory, possession or
2 country shall report this information to the Board on the
3 biennial registration application. Any disciplinary action taken
4 in other states shall be reported to the Board on the biennial
5 registration application or within ninety (90) days of final
6 disposition, whichever is sooner. Multiple licensure shall be
7 noted by the Board on the [nurse's] licensee's record, and such
8 state, territory, possession or country shall be notified by the
9 Board of any disciplinary actions taken against said [nurse]
10 licensee in this Commonwealth.

11 Section 13. Punishment for Violations.--(a) Any person, or
12 the responsible officers or employees of any corporation,
13 copartnership, institution or association violating any of the
14 provisions of this act, or any rule or regulation of the Board,
15 commits a misdemeanor and, upon conviction thereof, shall be
16 sentenced to pay a fine of not more than one thousand dollars
17 (\$1,000), or undergo imprisonment for not more than six (6)
18 months for the first violation. On the second and each
19 subsequent conviction, he shall be sentenced to pay a fine of
20 not more than two thousand dollars (\$2,000), or undergo
21 imprisonment for not less than six (6) months or more than one
22 (1) year in jail, or both.

23 (b) In addition to any other civil remedy or criminal
24 penalty provided for in this act, the Board, by a vote of the
25 majority of the maximum number of the authorized membership of
26 the Board as provided by law or by a vote of the majority of the
27 duly qualified and confirmed membership or a minimum of five (5)
28 members, whichever is greater, may levy a civil penalty of up to
29 one thousand dollars (\$1,000) on any current licensee who
30 violates any provision of this act or on any person who

1 practices nursing or dietetics-nutrition without being properly
2 licensed to do so under this act or on the responsible officers
3 or employes of any corporation, copartnership, institution or
4 association violating any of the provisions of this act. The
5 Board shall levy this penalty only after affording the accused
6 party the opportunity for a hearing, as provided in Title 2 of
7 the Pennsylvania Consolidated Statutes (relating to
8 administrative law and procedure).

9 Section 8. Section 14 of the act, amended December 20, 1985
10 (P.L.409, No.109) and May 27, 1994 (P.L.248, No.35), is amended
11 to read:

12 Section 14. Refusal, Suspension or Revocation of Licenses.--

13 (a) The Board may refuse, suspend or revoke any license in any
14 case where the Board shall find that--

15 (1) The licensee is on repeated occasions negligent or
16 incompetent in the practice of professional nursing or
17 dietetics-nutrition.

18 (2) The licensee is unable to practice professional nursing
19 with reasonable skill and safety to patients by reason of mental
20 or physical illness or condition or physiological or
21 psychological dependence upon alcohol, hallucinogenic or
22 narcotic drugs or other drugs which tend to impair judgment or
23 coordination, so long as such dependence shall continue. In
24 enforcing this clause (2), the Board shall, upon probable cause,
25 have authority to compel a licensee to submit to a mental or
26 physical examination as designated by it. After notice, hearing,
27 adjudication and appeal as provided for in section 15, failure
28 of a licensee to submit to such examination when directed shall
29 constitute an admission of the allegations against him or her
30 unless failure is due to circumstances beyond his or her

1 control, consequent upon which a default and final order may be
2 entered without the taking of testimony or presentation of
3 evidence. A licensee affected under this paragraph shall at
4 reasonable intervals be afforded an opportunity to demonstrate
5 that he or she can resume a competent practice of professional
6 nursing with reasonable skill and safety to patients.

7 (2.1) The licensee is unable to practice dietetics-nutrition
8 with reasonable skill and safety to individuals or groups by
9 reason of mental or physical illness or condition or
10 physiological or psychological dependence upon alcohol,
11 hallucinogenic or narcotic drugs or other drugs which tend to
12 impair judgment or coordination, so long as such dependence
13 shall continue. In enforcing this clause (2.1), the Board shall,
14 upon probable cause, have authority to compel a licensee to
15 submit to a mental or physical examination as designated by it.
16 After notice, hearing, adjudication and appeal as provided for
17 in section 15, failure of a licensee to submit to such
18 examination when directed shall constitute an admission of the
19 allegations against him or her unless failure is due to
20 circumstances beyond his or her control, consequent upon which a
21 default and final order may be entered without the taking of
22 testimony or presentation of evidence. A licensee affected under
23 this paragraph shall at reasonable intervals be afforded an
24 opportunity to demonstrate that he or she can resume a competent
25 practice of dietetics-nutrition with reasonable skill and safety
26 to individuals or groups.

27 (3) The licensee has wilfully or repeatedly violated any of
28 the provisions of this act or of the regulations of the Board.

29 (4) The licensee has committed fraud or deceit in:

30 (i) the practice of nursing, or in securing his or her

1 admission to such practice or nursing school; or
2 (ii) the practice of dietetics-nutrition, or in securing his
3 or her admission to such practice or dietetics-nutrition school.

4 (5) The licensee has been convicted, or has pleaded guilty,
5 or entered a plea of nolo contendere, or has been found guilty
6 by a judge or jury, of a felony or a crime of moral turpitude,
7 or has received probation without verdict, disposition in lieu
8 of trial or an Accelerated Rehabilitative Disposition in the
9 disposition of felony charges, in the courts of this
10 Commonwealth, the United States or any other state, territory,
11 possession or country.

12 (6) The licensee has his or her license suspended or revoked
13 or has received other disciplinary action by the proper
14 licensing authority in another state, territory, possession or
15 country.

16 (7) The licensee has acted in such a manner as to present an
17 immediate and clear danger to the public health or safety.

18 (8) The licensee possessed, used, acquired or distributed a
19 controlled substance or caution legend drug for other than an
20 acceptable medical purpose.

21 (9) The licensee has been guilty of immoral or
22 unprofessional conduct. Unprofessional conduct shall include
23 departure from or failing to conform to an ethical or quality
24 standard of the profession. The ethical and quality standards of
25 the profession are those embraced by the professional community
26 in this Commonwealth. In proceedings based on this clause,
27 actual injury to a patient or individual or group need not be
28 established.

29 (b) When the Board finds that the license of any nurse or
30 dietitian-nutritionist may be refused, revoked or suspended

1 under the terms of subsection (a), the Board may:

2 (1) Deny the application for a license.

3 (2) Administer a public reprimand.

4 (3) Revoke, suspend, limit or otherwise restrict a license
5 as determined by the Board.

6 (4) Require a licensee to submit to the care, counseling or
7 treatment of a physician or a psychologist designated by the
8 Board.

9 (5) Suspend enforcement of its finding thereof and place a
10 licensee on probation with the right to vacate the probationary
11 order for noncompliance.

12 (6) Restore or reissue, in its discretion, a suspended
13 license to practice professional or practical nursing or
14 dietetics-nutrition and impose any disciplinary or corrective
15 measure which it might originally have imposed.

16 Section 9. Section 14.1 of the act, added December 20, 1985
17 (P.L.409, No.109), is amended to read:

18 Section 14.1. Impaired [Nurses] Professionals Program.--(a)
19 The Board, with the approval of the Commissioner of Professional
20 and Occupational Affairs, shall appoint and fix the compensation
21 of a professional consultant who is a licensee of the Board with
22 education and experience in the identification, treatment and
23 rehabilitation of persons with physical or mental impairments.
24 Such consultant shall be accountable to the Board and shall act
25 as a liaison between the Board and treatment programs, such as
26 alcohol and drug treatment programs licensed by the Department
27 of Health, psychological counseling and impaired [nurses]
28 professionals support groups approved by the Board and which
29 provide services to [nursing] licensees under this act.

30 (b) The Board may defer and ultimately dismiss any of the

1 types of corrective action set forth in this act for an impaired
2 professional so long as the licensee is progressing
3 satisfactorily in an approved treatment program, provided that
4 the provisions of this subsection shall not apply to a licensee
5 who has been convicted of, pleaded guilty to or entered a plea
6 of nolo contendere to a felonious act prohibited by the act of
7 April 14, 1972 (P.L.233, No.64), known as "The Controlled
8 Substance, Drug, Device and Cosmetic Act," or the conviction of
9 a felony relating to a controlled substance in a court of law of
10 the United States or any other state, territory or country. An
11 approved program provider shall, upon request, disclose to the
12 consultant such information in its possession regarding an
13 impaired [nurse] professional in treatment which the program
14 provider is not prohibited from disclosing by an act of this
15 Commonwealth, another state or the United States. Such
16 requirement of disclosure by an approved program provider shall
17 apply in the case of impaired professionals who enter an
18 agreement in accordance with this section, impaired
19 professionals who are the subject of a Board investigation or
20 disciplinary proceeding and impaired professionals who
21 voluntarily enter a treatment program other than under the
22 provisions of this section but who fail to complete the program
23 successfully or to adhere to an after-care plan developed by the
24 program provider.

25 (c) An impaired professional who enrolls in an approved
26 treatment program shall enter into an agreement with the Board
27 under which the professional's license shall be suspended or
28 revoked but enforcement of that suspension or revocation may be
29 stayed for the length of time the professional remains in the
30 program and makes satisfactory progress, complies with the terms

1 of the agreement, and adheres to any limitations on his practice
2 imposed by the Board to protect the public. Failure to enter
3 into such an agreement shall disqualify the [nurse] professional
4 from the impaired [nurse] professional program and shall
5 activate an immediate investigation and disciplinary proceeding
6 by the Board.

7 (d) If, in the opinion of such consultant after consultation
8 with the provider, an impaired [nurse] professional who is
9 enrolled in an approved treatment program has not progressed
10 satisfactorily, the consultant shall disclose to the Board all
11 information in his or her possession regarding such [nurse]
12 professional, and the Board shall institute proceedings to
13 determine if the stay of the enforcement of the suspension or
14 revocation of the impaired professional's license shall be
15 vacated.

16 (e) An approved program provider who makes a disclosure
17 pursuant to this section shall not be subject to civil liability
18 for such disclosure or its consequences.

19 (f) Any hospital or health care facility, peer or colleague
20 who has substantial evidence that a [nurse] professional has an
21 active addictive disease for which the professional is not
22 receiving treatment, is diverting a controlled substance or is
23 mentally or physically incompetent to carry out the duties of
24 his license shall make or cause to be made a report to the
25 Board: Provided, That any person or facility who acts in a
26 treatment capacity to impaired [nurses] professionals in an
27 approved treatment program is exempt from the mandatory
28 reporting requirement of this subsection. Any person or facility
29 who reports pursuant to this section in good faith and without
30 malice shall be immune from any civil or criminal liability

1 arising from such report. Failure to provide such report within
2 a reasonable time from receipt of knowledge of impairment shall
3 subject the person or facility to a fine not to exceed one
4 thousand dollars (\$1,000). The Board shall levy this penalty
5 only after affording the accused party the opportunity for a
6 hearing, as provided in Title 2 of the Pennsylvania Consolidated
7 Statutes (relating to administrative law and procedure).

8 Section 10. Sections 15.2 and 15.4 of the act, added
9 December 20, 1985 (P.L.409, No.109), are amended to read:

10 Section 15.2. Reinstatement of License.--Unless ordered to
11 do so by Commonwealth Court or an appeal therefrom, the Board
12 shall not reinstate the license of a person to practice nursing
13 or dietetics-nutrition which has been revoked. Any person whose
14 license has been revoked may reapply for a license, after a
15 period of at least five (5) years, but must meet all of the
16 licensing qualifications of this act for the license applied
17 for, to include the examination requirement, if he or she
18 desires to practice at any time after such revocation.

19 Section 15.4. Injunction or Other Process.--It shall be
20 unlawful for any person to practice or attempt to offer to
21 practice nursing or dietetics-nutrition, as defined in this act,
22 without having at the time of so doing a valid, unexpired,
23 unrevoked and unsuspended license issued under this act. The
24 unlawful practice of nursing or dietetics-nutrition as defined
25 in this act may be enjoined by the courts on petition of the
26 Board or the Commissioner of Professional and Occupational
27 Affairs. In any such proceeding, it shall not be necessary to
28 show that any person is individually injured by the actions
29 complained of. If it is determined that the respondent has
30 engaged in the unlawful practice of nursing or dietetics-

1 nutrition, the court shall enjoin him or her from so practicing
2 unless and until he or she has been duly licensed. Procedure in
3 such cases shall be the same as in any other injunction suit.
4 The remedy by injunction hereby given is in addition to any
5 other civil or criminal prosecution and punishment.

6 Section 11. The sum of \$95,000, or as much thereof as may be
7 necessary, is hereby appropriated from the Professional
8 Licensure Augmentation Account in the General Fund to the Bureau
9 of Professional and Occupational Affairs in the Department of
10 State for the operation of the State Board of Nursing for the
11 additional duties imposed by this act. The appropriation shall
12 be repaid by the board within three years of the beginning of
13 issuance of dietitian-nutritionist licenses by the board.

14 Section 12. This act shall take effect in 90 days.