

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 751 Session of
2003

INTRODUCED BY DENT, ORIE, WONDERLING, KITCHEN, MOWERY, BOSCOLA,
CORMAN AND ARMSTRONG, JUNE 3, 2003

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JUNE 3, 2003

AN ACT

1 Amending the act of December 20, 1985 (P.L.457, No.112),
2 entitled "An act relating to the right to practice medicine
3 and surgery and the right to practice medically related acts;
4 reestablishing the State Board of Medical Education and
5 Licensure as the State Board of Medicine and providing for
6 its composition, powers and duties; providing for the
7 issuance of licenses and certificates and the suspension and
8 revocation of licenses and certificates; providing penalties;
9 and making repeals," further providing for respiratory care
10 practitioners; and providing for refusal or suspension or
11 revocation of respiratory care practitioner certificates, for
12 automatic suspension and temporary suspension of respiratory
13 care practitioners, for impaired professionals and for
14 continuing respiratory care education.

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

17 Section 1. Section 13.1(a) of the act of December 20, 1985
18 (P.L.457, No.112), known as the Medical Practice Act of 1985,
19 added July 2, 1993 (P.L.424, No.60), is amended to read:

20 Section 13.1. Respiratory care practitioners.

21 (a) Certificate required.--[Eighteen months after the
22 effective date of this section, it]

23 (1) It shall be unlawful for any person to hold himself

1 out to the public as a respiratory care practitioner and to
2 practice or offer to practice respiratory care unless he
3 holds a valid, current temporary permit or certificate issued
4 by the board.

5 (2) Beginning with the renewal cycle which commences
6 after the effective date of this paragraph, the board shall
7 refuse to renew a certificate issued to a respiratory care
8 practitioner unless he has completed 20 credit hours of
9 approved continuing education offered by providers approved
10 by the board by regulation.

11 (3) The board shall not issue a certificate to an
12 applicant who has been convicted of a felony under the act of
13 April 14, 1972 (P.L.233, No.64), known as The Controlled
14 Substance, Drug, Device and Cosmetic Act, or of an offense
15 under the laws of another jurisdiction which, if committed in
16 this Commonwealth, would be a felony under The Controlled
17 Substance, Drug, Device and Cosmetic Act, unless:

18 (i) at least ten years have elapsed from the date of
19 conviction;

20 (ii) the applicant satisfactorily demonstrates to
21 the board that he has made significant progress in
22 personal rehabilitation since the conviction such that
23 certification of the applicant should not be expected to
24 create a substantial risk of harm to the health and
25 safety of patients or the public or a substantial risk of
26 further criminal violations; and

27 (iii) the applicant otherwise satisfies the
28 qualifications contained in or authorized by this act.

29 As used in this subsection, the term "convicted" includes a
30 finding or verdict of guilt, an admission of guilt or a plea of

1 nolo contendere.

2 * * *

3 Section 2. The act is amended by adding sections to read:

4 Section 13.3. Refusal or suspension or revocation of
5 certificate.

6 (a) General rule.--The board shall refuse to issue a
7 respiratory care practitioner certificate to any person and,
8 after notice and hearing in accordance with rules and
9 regulations, may suspend or revoke the certificate of any person
10 who has:

11 (1) attempted or obtained certification by fraud or
12 misrepresentation;

13 (2) committed repeated occasion of negligence or
14 incompetence in the practice of respiratory therapy;

15 (3) been convicted of a felony in a Federal court or in
16 the courts of this Commonwealth or any other state, territory
17 or country;

18 (4) habitually indulged in the use of narcotics or other
19 habit-forming drugs or excessively indulged in the use of
20 alcoholic liquors;

21 (5) been found guilty of unprofessional conduct;

22 (6) treated or undertaken to treat human ailments
23 otherwise than by respiratory therapy as defined in this act;

24 (7) had his certificate or license to practice
25 respiratory therapy revoked or suspended or had other
26 disciplinary action taken or his application for a
27 certificate or license revoked or suspended by the proper
28 certifying or licensing authority of another state, territory
29 or country; or

30 (8) made a misleading, deceptive, untrue or fraudulent

representation in violation of this act or otherwise in the
practice of the profession.

(b) Procedure.--All action of the board shall be taken
subject to the right of notice, hearing and adjudication and the
right of appeal therefrom in accordance with 2 Pa.C.S. (relating
to administrative law and procedure).

(c) Reinstatement.--Unless ordered to do so by a court, the
board shall not reinstate the certificate of a person to
practice as a respiratory therapist which has been revoked, and
such person shall be required to apply for a certificate after a
five-year period if he desires to practice at any time after
such revocation.

(d) Definitions.--As used in this section, the following
words and phrases shall have the meanings given to them in this
subsection:

"Convicted." Includes a finding or verdict of guilt, an
admission of guilt or a plea of nolo contendere.

"Unprofessional conduct." Includes any departure from or the
failure to conform to the minimal standards of acceptable and
prevailing respiratory therapy practice, in which proceeding
actual injury to a patient need not be established.

Section 13.4. Automatic suspension of respiratory care
practitioners.

(a) General rule.--A certificate issued under section 13.1
shall automatically be suspended upon:

(1) the legal commitment of a certificate holder to an
institution because of mental incompetence from any cause
upon filing with the board a certified copy of such
commitment; or

(2) conviction of a felony under the act of April 14,

1 1972 (P.L.233, No.64), known as The Controlled Substance,
2 Drug, Device and Cosmetic Act.

3 (b) Stay prohibited.--Automatic suspension under this
4 section shall not be stayed pending an appeal of a conviction.

5 (c) Restoration.--Restoration of such certificate shall be
6 made as provided in this act for revocation or suspension of
7 such certificate holder.

8 (d) Definitions.--As used in this section, "conviction"
9 includes a finding or verdict of guilt, an admission of guilt or
10 a plea of nolo contendere.

11 Section 13.5. Temporary suspension of respiratory care
12 practitioners.

13 (a) Standard for suspension.--The board shall temporarily
14 suspend a certificate issued under section 13.1 under
15 circumstances as determined by the board to be an immediate and
16 clear danger to the public health or safety.

17 (b) Procedure.--The board shall issue an order to that
18 effect without a hearing, but upon due notice, to the
19 certificate holder concerned at his last known address, which
20 shall include a written statement of all allegations against the
21 certificate holder. The board shall thereupon commence formal
22 action to suspend, revoke or restrict the certificate of the
23 person concerned as otherwise provided for in this act. All
24 actions shall be taken promptly and without delay.

25 (c) Preliminary hearing.--Within 30 days following the
26 issuance of an order temporarily suspending a certificate, the
27 board shall conduct, or cause to be conducted, a preliminary
28 hearing to determine whether there is a prima facie case
29 supporting the suspension. The certificate holder whose
30 certificate has been temporarily suspended may be present at the

1 preliminary hearing and may be represented by counsel, cross-
2 examine witnesses, inspect physical evidence, call witnesses,
3 offer evidence and testimony and make a record of the
4 proceedings. If it is determined that there is not a prima facie
5 case, the suspended certificate shall be immediately restored.

6 (d) Suspension period.--The temporary suspension shall
7 remain in effect until vacated by the board, but in no event
8 longer than 180 days.

9 Section 13.6. Impaired professionals.

10 (a) Consultant to board.--The board, with the approval of
11 the commissioner, shall appoint and fix the compensation of a
12 professional consultant who shall be a licensee of the board or
13 such other professional, as the board may determine, with
14 education and experience in the identification, treatment and
15 rehabilitation of persons with physical or mental impairments.
16 This consultant shall be accountable to the board and shall act
17 as a liaison between the board and treatment programs, such as
18 alcohol and drug treatment programs licensed by the Department
19 of Health, psychological counseling and impaired professional
20 support groups which are approved by the board and which provide
21 services to licensees, registrants or certificate holders under
22 this act.

23 (b) Deferral and dismissal of corrective action.--

24 (1) The board may defer and ultimately dismiss any of
25 the types of corrective actions set forth in this act for an
26 impaired professional so long as the professional:

27 (i) is progressing satisfactorily in an approved
28 treatment program; and

29 (ii) has not been convicted of a felonious act
30 prohibited by the act of April 14, 1972 (P.L.233, No.64),

1 known as The Controlled Substance, Drug, Device and
2 Cosmetic Act, or convicted of a felony relating to a
3 controlled substance in a court of law of the United
4 States or any other state, territory or country.

5 (c) Disclosure of information to consultant.--An approved
6 program provider shall upon request disclose to the consultant
7 such information in its possession regarding an impaired
8 professional in treatment which the program provider is not
9 prohibited from disclosing by an act of this Commonwealth,
10 another state or the United States. The requirement of
11 disclosure by an approved program provider shall apply in the
12 case of impaired professionals who:

13 (1) Enter an agreement in accordance with this section.

14 (2) Are the subject of a board investigation or
15 disciplinary proceeding.

16 (3) Voluntarily enter a treatment program other than
17 under the provisions of this section but who fail to complete
18 the program successfully or to adhere to an aftercare plan
19 developed by the program provider.

20 (d) Agreement with board required.--

21 (1) An impaired professional who enrolls in an approved
22 treatment program shall enter into an agreement with the
23 board under which the professional's license, registration or
24 certificate shall be suspended or revoked and under which
25 enforcement of that suspension or revocation may be stayed
26 for the length of time the professional remains in the
27 program and makes satisfactory progress, complies with the
28 terms of the agreement and adheres to any limitations on his
29 practice imposed by the board to protect the public.

30 (2) Failure to enter into such an agreement shall

1 disqualify the professional from the impaired professional
2 program and shall activate an immediate investigation and
3 disciplinary proceeding by the board.

4 (e) Consultant report to board.--If, in the opinion of the
5 consultant after consultation with the provider, an impaired
6 professional who is enrolled in an approved treatment program
7 has not progressed satisfactorily, the consultant shall report
8 to the board all information in his possession regarding the
9 professional, and the board shall institute proceedings to
10 determine if the stay of the enforcement of the suspension or
11 revocation of the impaired professional's license, registration
12 or certificate shall be vacated.

13 (f) Immunity for provider.--An approved program provider who
14 makes a disclosure pursuant to this section shall not be subject
15 to civil liability for such disclosure or its consequences.

16 (g) Health professional duty to report.--

17 (1) Any hospital or health care facility or home health
18 care operation, peer or colleague who has substantial
19 evidence that a professional has an active addictive disease
20 for which the professional is not receiving treatment, is
21 diverting a controlled substance or is mentally or physically
22 incompetent to carry out the duties of his license or
23 registration or certification shall make or cause to be made
24 a report to the board.

25 (2) A person or facility who acts in a treatment
26 capacity to an impaired professional in an approved treatment
27 program shall not be subject to the mandatory reporting
28 requirements of this subsection.

29 (3) Any person or facility who reports pursuant to this
30 subsection in good faith and without malice shall be immune

1 from a civil or criminal liability arising from such report.

2 (4) Failure to provide a report under this subsection
3 within a reasonable time from receipt of knowledge of
4 impairment shall subject the person or facility to a fine not
5 to exceed \$1,000. The board shall levy this penalty only
6 after affording the party the opportunity for a hearing, as
7 provided in 2 Pa.C.S. (relating to administrative law and
8 procedure).

9 Section 3. This act shall take effect in 60 days.