

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 528 Session of
2009

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STURLA AND WALKO, FEBRUARY 19, 2009

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 16, 2009

AN ACT

1 Amending the act of September 27, 1961 (P.L.1700, No.699),
2 entitled "An act relating to the regulation of the practice
3 of pharmacy, including the sales, use and distribution of
4 drugs and devices at retail; and amending, revising,
5 consolidating and repealing certain laws relating thereto,"
6 further providing for definitions; providing for registration
7 and permits for pharmacy technicians; and further providing
8 for multiple licensure, for refusal to grant, revocation and
9 suspension, for State Board of Pharmacy, for hearings and
10 suspensions, for unlawful acts and for injunction.

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

13 Section 1. Section 2 of the act of September 27, 1961 (P.L.
14 1700, No.699), known as the Pharmacy Act, is amended by adding
15 clauses to read:

16 Section 2. Definitions.--As used in this act:

17 * * *

18 (10.1) "Pharmacy technician" means an individual who is
19 registered by the ~~Sate~~ STATE Board of Pharmacy under section 2.1 ←
20 to assist in the practice of pharmacy.

21 (10.2) "Pharmacy technician trainee" means an individual who

holds a temporary permit issued by the State Board of Pharmacy
under section 2.1.

(10.3) "Direct and personal supervision of a pharmacist"
means:

(i) review by the pharmacist of the prescription or drug
order prior to dispensing;

(ii) verification by the pharmacist of the final product;
and

(iii) availability of the pharmacist on the premises to
direct the work of the supervised individual and to respond to
questions or problems.

* * *

Section 2. The act is amended by adding a section to read:

Section 2.1. Registration and Permits for Pharmacy
Technicians.--(a) The board may register as a pharmacy
technician a person who:

(1) Pays an application fee prescribed by the department A ←
FEE AS PRESCRIBED BY THE BOARD BY REGULATION.

(2) Files an application for registration, subscribed by the
individual under oath or affirmation, containing information the
board requires.

(3) Except as set forth in subsection (b), complies with all
of the following:

(i) Is not less than ~~eighteen~~ SEVENTEEN years of age. and is ←
a legal resident of the United States.

~~(ii) Has a high school diploma or its equivalent.~~

~~(iii) Has satisfied the board that the applicant is of good~~
~~moral character and is not unfit or unable to practice as a~~
~~pharmacy technician by reason of the extent or manner of the~~
~~applicant's use of alcoholic beverages or controlled substances~~

~~or by reason of a physical or mental disability.~~

~~(iv) has completed a pharmacy technician training program
approved by the board.~~

~~(v) Has received certification from a nationally recognized
certifying agency approved by the board.~~

~~(vi) Has successfully completed an examination approved by
the board~~

(II) HAS SATISFIED THE BOARD THAT THE APPLICANT IS OF GOOD
MORAL CHARACTER.

(III) MEETS ONE OF THE FOLLOWING REQUIREMENTS:

(A) HAS RECEIVED CERTIFICATION FROM A NATIONALLY RECOGNIZED
CERTIFYING AGENCY APPROVED BY THE BOARD; OR

(B) HAS SUCCESSFULLY COMPLETED AN EXAMINATION APPROVED BY
THE BOARD THAT WOULD REQUIRE THE APPLICANT TO DEMONSTRATE A
BASIC COMPETENCY LEVEL OF THE SKILLS REQUIRED OF A PHARMACY
TECHNICIAN and administered in accordance with the requirements
set forth in section 812.1(a) of the act of April 9, 1929 (P.L.
177, No.175), known as "The Administrative Code of 1929."

~~(vii)~~ (IV) Has not been convicted of a felonious act
prohibited by the act of April 14, 1972 (P.L.233, No.64), known
as "The Controlled Substance, Drug, Device and Cosmetic Act," or
convicted of a felony relating to a controlled substance in a
court of law of the United States or any other state, territory
or country unless:

(A) at least ten years have elapsed from the date of
conviction; and

(B) the applicant satisfactorily demonstrates to the board
that the applicant has made significant progress in personal
rehabilitation since the conviction such that licensure of the
applicant should not be expected to create a substantial risk of

harm to the health and safety of patients or the public or a
substantial risk of further criminal violations.

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

(V) HAD NOT HAD THE APPLICANT'S LICENSE TO PRACTICE AS A
PHARMACIST REVOKED OR SUSPENDED OR HAD OTHER DISCIPLINARY ACTION
TAKEN BY A PROPER LICENSING AUTHORITY.

~~(b) The following exceptions shall apply:~~

~~(1) Notwithstanding subsection (a) (3) (iv) and (v)~~
NOTWITHSTANDING SUBSECTION (A) (3) (III), the board shall register
~~all~~ AN INDIVIDUAL WHO APPLIES FOR REGISTRATION WITHIN TWO YEARS
AFTER FINAL REGULATIONS UNDER THIS SECTION ARE PROMULGATED AND
COMPLIES WITH ONE of the following:

~~(i) An individual who, at the time of filing an application,~~
~~has~~ (1) DEMONSTRATES TO THE SATISFACTION OF THE BOARD proof of
registration, certification or licensure or its equivalent as a
pharmacy technician in another state, territory or possession of
the United States that has registration, certification,
licensure or equivalent requirements comparable to those set
forth in this section and regulations of the board.

~~(ii) An individual who:~~

~~(A) applies for registration within two years after the
effective date of this section; and~~

~~(B) on the effective date of this section maintains a~~

(2) MAINTAINS A current certification by a nationally
recognized pharmacy technician association.

~~(2) Notwithstanding subsection (a) (3) (ii), (iv) and (v), the board shall issue registration to an individual who:~~

~~(i) Has been employed (3) DEMONSTRATES TO THE SATISFACTION OF THE BOARD PROOF OF EMPLOYMENT as a pharmacy technician for a minimum of two thousand hours during the three years immediately preceding the enactment of this act SECTION.~~

~~(ii) Demonstrates to the satisfaction of the board proof of practice as a pharmacy technician for at least two thousand hours immediately prior to the date of application.~~

(c) A registration shall authorize the registrant to assist in the practice of pharmacy under the direct and personal supervision of a pharmacist.

(d) A registration is subject to biennial renewal. The board shall establish by regulation a fee for renewal.

~~(e) The following apply to pharmacy technician trainees:~~

~~(1) The board may issue a temporary permit to practice as a pharmacy technician trainee to an applicant who is seventeen years of age or older and meets the requirements of subsection (a) (3) (ii) and (iii) (A) (3) (I), (II), (IV) AND (V) and complies with the following:~~

~~(i) The applicant is a student enrolled in a board approved pharmacy technician training program and as part of the program may be required to serve an externship or internship; or~~

~~(ii) The individual is employed by a pharmacy and participates in a board approved pharmacy technician training program that may include an externship or internship program.~~

(2) A temporary practice permit shall be issued for one year and may be extended for a single six-month period upon verification to the satisfaction of the board that the trainee has completed the board approved training program.

1 (3) A temporary permit shall not be reissued.

2 (4) A temporary permit shall authorize the permittee to
3 perform the duties of a pharmacy technician under the direct and
4 personal supervision of a pharmacist.

5 (f) Identification requirements are as follows:

6 (1) A pharmacy technician shall wear a name tag that clearly
7 identifies the temporary permit holder with the title "pharmacy ←
8 technician trainee." PHARMACY TECHNICIAN WITH THE TITLE ←
9 "REGISTERED PHARMACY TECHNICIAN."

10 (2) A HOLDER OF A TEMPORARY PERMIT SHALL WEAR A NAME TAG
11 THAT CLEARLY IDENTIFIES THE TEMPORARY PERMIT HOLDER WITH THE
12 TITLE "PHARMACY TECHNICIAN TRAINEE."

13 (g) This section shall not apply to a student who is
14 enrolled in an accredited school of pharmacy and who is in good
15 standing.

16 Section 3. Section 3.2 of the act, added December 20, 1985
17 (P.L.433, No.111), is amended to read:

18 Section 3.2. Reporting of Multiple Licensure, Registration
19 or its Equivalent.--Any [licensed] pharmacist or pharmacy
20 technician of this Commonwealth who is also registered,
21 certified or licensed [to practice pharmacy] in any other state,
22 territory or country shall report this information to the board
23 on the biennial registration application. Any disciplinary
24 action taken in other states, territories and countries shall be
25 reported to the board on the biennial registration application
26 or within ninety days of final disposition, whichever is sooner.
27 Multiple registration, certification or licensure shall be noted
28 by the board on the [pharmacist's] licensee's or registrant's
29 record, and such state, territory or country shall be notified
30 by the board of any disciplinary actions taken against [said

1 pharmacist] that licensee or registrant in this Commonwealth.

2 Section 4. Section 5(c) of the act, amended December 20,
3 1985 (P.L.433, No.111), is amended and the section is amended by
4 adding a subsection to read:

5 Section 5. Refusal to Grant, Revocation and Suspension.--* *

6 *

7 (a.1) The board shall have the power to refuse, revoke or
8 suspend the registration of any pharmacy technician upon proof
9 satisfactory to it that the pharmacy technician has done any of
10 the following:

11 (1) Procured a personal registration through fraud,
12 misrepresentation or deceit.

13 (2) Has been found guilty, pleaded guilty, entered a plea of
14 nolo contendere, or has received probation without verdict,
15 disposition in lieu of trial or an Accelerated Rehabilitation
16 Disposition in the disposition of felony charges, to any offense
17 in connection with the practice of pharmacy or any offense
18 involving moral turpitude before any court of record of any
19 jurisdiction.

20 (3) Is unfit to practice as a pharmacy technician because of
21 intemperance in the use of alcoholic beverages, controlled
22 substances or any other substance which impairs the intellect
23 and judgment to such an extent as to impair the performance of
24 professional duties.

25 (4) Is unfit or unable to practice as a pharmacy technician
26 by reason of a physical or mental disease or disability. In
27 enforcing this clause, the board shall, upon probable cause,
28 have authority to compel a pharmacy technician to submit to a
29 mental or physical examination by physicians or psychologists
30 approved by the board. Failure of a pharmacy technician to

1 submit to an examination when directed by the board, unless due
2 to circumstances beyond the pharmacy technician's control, shall
3 constitute an admission of the allegations against the pharmacy
4 technician, consequent upon which a default and final order may
5 be entered without the taking of testimony or presentation of
6 evidence. A pharmacy technician affected under this clause shall
7 at reasonable intervals be afforded an opportunity to
8 demonstrate the ability to resume a competent practice as a
9 pharmacy technician with reasonable skill and safety to
10 patients.

11 (5) Has had a registration, certification or license to
12 practice as a pharmacy technician denied, revoked or suspended
13 by an appropriate pharmacy technician registration,
14 certification or licensing authority or has received
15 disciplinary action from an appropriate pharmacy technician
16 registration, certification or licensing authority.

17 (6) Has acted in such a manner as to present an immediate
18 and clear danger to the public health or safety.

19 (7) Is guilty of incompetence, gross negligence or other
20 malpractice, or the departure from, or failure to conform to,
21 the standards of acceptable and prevailing pharmacy technician
22 practice, in which case actual injury need not be established.

23 * * *

24 (c) When the board finds that the registration,
25 certification or license [of any pharmacist] may be refused,
26 revoked or suspended under the terms of subsection (a) or (a.1),
27 the board may:

28 (1) Deny the application for a registration, certification
29 or license.

30 (2) Administer a public reprimand.

(3) Revoke, suspend, limit or otherwise restrict a
registration, certification or license as determined by the
board.

(4) Require a licensee to submit to the care, counseling or
treatment of a physician or a psychologist designated by the
board. This clause does not apply to a pharmacy technician.

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

(6) Restore or reissue, in its discretion, a suspended
license [to practice pharmacy] or registration and impose any
disciplinary or corrective measure which it might originally
have imposed.

* * *

Section 5. Section 6(k) of the act, amended December 20,
1985 (P.L.433, No.111), is amended to read:

Section 6. State Board of Pharmacy.--* * *

(k) The board shall have the power, and it shall be its
duty:

(1) To regulate the practice of pharmacy and of pharmacy
technicians;

(2) To determine the nature of examinations for all
applicants for [pharmacists'] licenses;

(3) To examine, inspect and investigate all applications and
all applicants for licensure as pharmacists, pharmacies or
registration as pharmacy interns and pharmacy technicians, and
to grant certificates of licensure or registration to all
applicants whom it shall judge to be properly qualified;

(4) With the approval of the Commissioner of Professional
and Occupational Affairs, to prepare position descriptions,

1 employ inspectors who shall be licensed pharmacists and employ
2 appropriate consultants to assist it for any purposes which it
3 may deem necessary, provided that the board may not delegate any
4 of its final decisionmaking responsibilities to any consultant;

5 (5) To investigate or cause to be investigated all
6 violations of the provisions of this act and its regulations and
7 to cause prosecutions to be instituted in the courts upon advice
8 from the Attorney General;

9 (6) To make or order inspections of all pharmacies, except
10 health care facilities, as defined in the act of July 19, 1979
11 (P.L.130, No.48), known as the "Health Care Facilities Act," and
12 which are periodically inspected by the Department of Health in
13 accordance with the standards in this act and the board's
14 regulations promulgated thereto: Provided, That the Department
15 of Health shall forward a copy of their inspection report to the
16 board noting any violations of the act: And, provided further,
17 That, if a violation is reported, the board shall have the power
18 to inspect such pharmacies and take appropriate action as
19 specified in this act; and to make or order inspections of other
20 places in which drugs or devices are stored, held, compounded,
21 dispensed or sold to a consumer, to take and analyze any drugs
22 or devices and to seize and condemn any drugs or devices which
23 are adulterated, misbranded or stored, held, dispensed,
24 distributed or compounded in violation of the provisions of this
25 act or the provisions of the act of April 14, 1972 (P.L.233, No.
26 64), known as "The Controlled Substance, Drug, Device and
27 Cosmetic Act";

28 (7) To conduct hearings for the revocation or suspension of
29 licenses, permits or registrations, for which hearings the board
30 shall have the power to subpoena witnesses;

1 (8) To assist the regularly constituted enforcement agencies
2 of this Commonwealth in enforcing all laws pertaining to drugs,
3 controlled substances, and practice of pharmacy;

4 ~~(8.1) To approve programs for the training of pharmacy~~
5 ~~technicians;~~

6 (9) To promulgate rules and regulations to effectuate the
7 purposes of this act and to regulate the distribution of drugs
8 and devices and the practice of pharmacy for the protection and
9 promotion of the public health, safety and welfare.

10 * * *

11 Section 6. Section 7 of the act is amended by adding a
12 subsection to read:

13 Section 7. Hearings and Suspensions.--* * *

14 (e) Notwithstanding any other provision, subsections (d.3),
15 (d.4), (d.5), (d.6), ~~(d.7)~~ and ~~(d.8)~~ AND (D.7) shall not apply
16 to pharmacy technicians, except as those subsections relate to
17 the professional health monitoring program.

18 Section 7. Sections 8(2) and (8) and 8.1 of the act, amended
19 or added December 20, 1986 (P.L.433, No.111), are amended to
20 read:

21 Section 8. Unlawful Acts.--It shall be unlawful for:

22 * * *

23 (2) Any person not duly licensed as a pharmacist, pursuant
24 to section 3 hereof, to engage in the practice of pharmacy,
25 including the preparing, compounding, dispensing, selling or
26 distributing at retail to any person any drug, except by a
27 pharmacy intern, pharmacy technician or such other authorized
28 personnel under the direct and [immediate] personal supervision
29 of a pharmacist: Provided, however, That nothing herein shall be
30 construed to prevent a duly licensed medical practitioner from

1 dispensing, compounding or otherwise giving any drug to his own
2 patients after diagnosis or treatment of said patient, if such
3 compounding, preparing and dispensing is done by said licensee
4 himself, nor shall anything herein prevent any person from
5 selling or distributing at retail household remedies or
6 proprietary medicines when the same are offered for sale or sold
7 in the original packages which have been put up ready for sale
8 to consumers, provided household remedies or proprietary
9 medicines shall not include any controlled substances or non-
10 proprietary drug under the act of April 14, 1972 (P.L.233, No.
11 64), known as "The Controlled Substance, Drug, Device and
12 Cosmetic Act."


13 * * *

14 (8) Any person, firm or corporation to use the title
15 "pharmacist", "assistant pharmacist", "pharmacy technician",
16 "pharmacy technician trainee", "druggist"[,] or "apothecary",
17 except a person duly licensed as a pharmacist or registered as a
18 pharmacy technician in Pennsylvania, or any person to conduct or
19 transact business under a name which contains as part thereof
20 the words "drug store", "pharmacy", "drugs", "medicine store",
21 "medicines", "drug shop," "apothecary," "pharmaceutical,"
22 "homeopathic," "homeopathy" or any term having a similar
23 meaning, or in any manner by advertisement, display of show
24 globes or otherwise describe or refer to the place of the
25 conducted business or person, unless the place is a pharmacy
26 duly issued a permit by the State Board of Pharmacy.

27 * * *

28 Section 8.1. Injunction.--It shall be unlawful for any
29 person to practice or attempt to offer to practice pharmacy or
30 as a pharmacy technician, as defined in this act, without having

1 at the time of so doing a valid, unexpired, unrevoked and
2 unsuspended license or registration issued under this act. The
3 unlawful practice of pharmacy as defined in this act may be
4 enjoined by the courts on petition of the board or the
5 Commissioner of Professional and Occupational Affairs. In any
6 such proceeding it shall not be necessary to show that any
7 person is individually injured by the actions complained of. If
8 it is found that the respondent has engaged in the unlawful
9 practice of pharmacy, the court shall enjoin him or her from so
10 practicing unless and until he or she has been duly licensed.
11 Procedure in such cases shall be the same as in any other
12 injunction suit. The remedy by injunction hereby given is in
13 addition to any other civil or criminal prosecution and
14 punishment.

15 Section 8. No person is required to be registered as a
16 pharmacy technician under section 2.1 of the act until two years
17 after the State Board of Pharmacy has promulgated regulations
18 under section 8 9 of this act. 

19 Section 9. The State Board of Pharmacy shall promulgate
20 regulations to implement the addition of section 2.1 of the act
21 within 18 months of the effective date of this section. The
22 addition of section 2.1 of the act shall not be enforceable by
23 the State Board of Pharmacy until the publication of final
24 regulations.

25 Section 20. This act shall take effect in 60 days.