

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 407 Session of 2019

INTRODUCED BY K. WARD, FONTANA, BARTOLOTTA, REGAN, KEARNEY,
WHITE, KILLION, SCHWANK AND LEACH, MARCH 11, 2019

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
MARCH 11, 2019

AN ACT

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

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 paragraphs 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 (16) "Lactation care and services" means the clinical
20 application of scientific principles and a multidisciplinary
21 body of evidence for the evaluation, problem identification,

1 treatment, education and consultation for the provision of
2 lactation care and services to families, including:

3 (i) Clinical lactation assessment through the systematic
4 collection of subjective and objective data.

5 (ii) Analysis of data and creation of a plan of care.

6 (iii) Implementation of a lactation care plan with
7 demonstration and instruction to parents and communication to
8 primary health care providers.

9 (iv) Evaluation of outcomes.

10 (v) Provision of lactation education to parents and health
11 care providers.

12 (vi) Recommendation and use of assistive devices.

13 (17) "Licensed lactation consultant" means a lactation
14 consultant who holds a current license under this act.

15 (18) "Practice of lactation consultation" means a course of
16 business in which lactation care and services are rendered or
17 offered to an individual, family or group of two or more
18 individuals.

19 Section 2. Sections 2.1(f) and (k) and 2.2 of the act are
20 amended to read:

21 Section 2.1. State Board of Nursing.--* * *

22 [(f) The Board is subject to evaluation, review and
23 termination within the time and in the manner provided in the
24 act of December 22, 1981 (P.L.508, No.142), known as the "Sunset
25 Act."]

26 * * *

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, the practice of lactation
30 consultation and the administration of this act. Copies of such

1 rules and regulations shall be available for distribution to the
2 public.

3 * * *

4 Section 2.2. Communication with Licensees.--The Board shall
5 communicate with licensees on issues affecting the education,
6 practice and regulation of nursing [or], dietetics-nutrition and
7 lactation care and services on at least an annual basis.

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

9 Section 3.2. Licensed Lactation Consultant; License
10 Required; and Use of Title.--It shall be unlawful for an
11 individual to hold himself or herself forth as a licensed
12 lactation consultant unless he or she shall first have obtained
13 a license under this act. Only an individual who has received a
14 license as a licensed lactation consultant under this act may
15 use the title "licensed lactation consultant."

16 Section 4. Sections 6, 8 and 11 of the act are amended by
17 adding subsections to read:

18 Section 6. Fees; Qualifications for Licensure.--* * *

19 (b.1) An applicant applying for licensure as a lactation
20 consultant must pay the fee established by the Board and shall
21 submit a written application on forms provided by the Board
22 evidencing and insuring to the satisfaction of the Board that
23 the applicant is of good moral character and holds current
24 certification from the International Board of Lactation
25 Consultant Examiners (IBLCE) after demonstrating the appropriate
26 education, knowledge and experience necessary for independent
27 clinical practice.

28 * * *

29 Section 8. Persons Entitled to Practice.--* * *

30 (c) The Board shall issue to each person who meets the

1 licensure requirements of this act a certificate setting forth
2 that the person is licensed as a lactation consultant and
3 entitled to use the title "licensed lactation consultant." A
4 record of all persons licensed as lactation consultants in this
5 Commonwealth shall be kept in the office of the Board and shall
6 be open to public inspection and copying upon payment of a
7 nominal fee for copying the record.

8 Section 11. Licenses; Duration; Renewal Fee; Inactive
9 Status.--* * *

10 (d) A lactation consultant license issued under this act
11 shall not be renewed unless the licensee applying for renewal
12 submits proof to the Board that, during the two (2) calendar
13 years immediately preceding the application for renewal, the
14 licensee has satisfactorily completed a minimum of fifteen (15)
15 hours of continuing education in lactation care and services
16 approved by the Board by regulation.

17 Section 5. Sections 11.1, 13(b), 14 and 15.4 of the act are
18 amended to read:

19 Section 11.1. Reporting of Multiple Licensure.--Any licensed
20 professional nurse [or], dietitian-nutritionist or lactation
21 consultant of this Commonwealth who is also licensed to practice
22 nursing [or], dietetics-nutrition or lactation consultation in
23 any other state, territory, possession or country shall report
24 this information to the Board on the biennial registration
25 application. Any disciplinary action taken in other states shall
26 be reported to the Board on the biennial registration
27 application or within ninety (90) days of final disposition,
28 whichever is sooner. Multiple licensure shall be noted by the
29 Board on the licensee's record, and such state, territory,
30 possession or country shall be notified by the Board of any

1 disciplinary actions taken against said licensee in this
2 Commonwealth.

3 Section 13. Punishment for Violations.--* * *

4 (b) In addition to any other civil remedy or criminal
5 penalty provided for in this act, the Board, by a vote of the
6 majority of the maximum number of the authorized membership of
7 the Board as provided by law or by a vote of the majority of the
8 duly qualified and confirmed membership or a minimum of five (5)
9 members, whichever is greater, may levy a civil penalty of up to
10 one thousand dollars (\$1,000) on any current licensee who
11 violates any provision of this act or on any person who
12 practices nursing or holds himself or herself forth as a
13 licensed dietitian-nutritionist or licensed lactation consultant
14 without being properly licensed to do so under this act or on
15 the responsible officers or employes of any corporation,
16 copartnership, institution or association violating any of the
17 provisions of this act. The Board shall levy this penalty only
18 after affording the accused party the opportunity for a hearing,
19 as provided in Title 2 of the Pennsylvania Consolidated Statutes
20 (relating to administrative law and procedure).

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

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

24 (1) The licensee is on repeated occasions negligent or
25 incompetent in the practice of professional nursing [or],
26 dietetics-nutrition or lactation consultation.

27 (2) The licensee is unable to practice professional nursing
28 with reasonable skill and safety to patients by reason of mental
29 or physical illness or condition or physiological or
30 psychological dependence upon alcohol, hallucinogenic or

1 narcotic drugs or other drugs which tend to impair judgment or
2 coordination, so long as such dependence shall continue. In
3 enforcing this [clause (2)] paragraph, the Board shall, upon
4 probable cause, have authority to compel a licensee to submit to
5 a mental or physical examination as designated by it. After
6 notice, hearing, adjudication and appeal as provided for in
7 section 15, failure of a licensee to submit to such examination
8 when directed shall constitute an admission of the allegations
9 against him or her unless failure is due to circumstances beyond
10 his or her control, consequent upon which a default and final
11 order may be entered without the taking of testimony or
12 presentation of evidence. A licensee affected under this
13 paragraph shall at reasonable intervals be afforded an
14 opportunity to demonstrate that he or she can resume a competent
15 practice of professional nursing with reasonable skill and
16 safety to patients.

17 (2.1) The licensee is unable to practice dietetics-nutrition
18 with reasonable skill and safety to individuals or groups by
19 reason of mental or physical illness or condition or
20 physiological or psychological dependence upon alcohol,
21 hallucinogenic or narcotic drugs or other drugs which tend to
22 impair judgment or coordination so long as such dependence shall
23 continue. In enforcing this [clause (2.1)] paragraph, the Board
24 shall upon probable cause have authority to compel a licensee to
25 submit to a mental or physical examination as designated by it.
26 After notice, hearing, adjudication and appeal as provided for
27 in section 15, failure of a licensee to submit to such
28 examination when directed shall constitute an admission of the
29 allegations against him or her unless failure is due to
30 circumstances beyond his or her control, consequent upon which a

1 default and final order may be entered without the taking of
2 testimony or presentation of evidence. A licensee affected under
3 this paragraph shall at reasonable intervals be afforded an
4 opportunity to demonstrate that he or she can resume a competent
5 practice of dietetics-nutrition with reasonable skill and safety
6 to individuals or groups.

7 (2.2) The licensee is unable to practice lactation
8 consultation with reasonable skill and safety to individuals or
9 groups by 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 the dependence shall
13 continue. In enforcing this paragraph, the Board shall upon
14 probable cause have authority to compel a licensee to submit to
15 a mental or physical examination as designated by it. After
16 notice, hearing, adjudication and appeal as provided for in
17 section 15, failure of a licensee to submit to an examination
18 when directed shall constitute an admission of the allegations
19 against him or her unless failure is due to circumstances beyond
20 his or her control, consequent upon which a default and final
21 order may be entered without the taking of testimony or
22 presentation of evidence. A licensee affected under this
23 paragraph shall at reasonable intervals be afforded an
24 opportunity to demonstrate that he or she can resume a competent
25 practice of lactation consultation with reasonable skill and
26 safety 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 license as a dietitian-nutritionist[.]; or

4 (iii) the practice of lactation consultation or in securing
5 his or her license as a lactation consultant.

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

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

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

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

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

1 (b) When the Board finds that the license of any nurse [or],
2 dietitian-nutritionist or lactation consultant may be refused,
3 revoked or suspended under the terms of subsection (a), the
4 Board may:

5 (1) Deny the application for a license.

6 (2) Administer a public reprimand.

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

9 (4) Require a licensee to submit to the care, counseling or
10 treatment of a physician or a psychologist designated by the
11 Board.

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

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

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 hold himself or herself forth as a licensed
22 dietitian-nutritionist or licensed lactation consultant, as
23 defined in this act, without having at the time of so doing a
24 valid, unexpired, unrevoked and unsuspended license issued under
25 this act. The unlawful practice of nursing as defined in this
26 act may be enjoined by the courts on petition of the Board or
27 the Commissioner of Professional and Occupational Affairs. In
28 any such proceeding, it shall not be necessary to show that any
29 person is individually injured by the actions complained of. If
30 it is determined that the respondent has engaged in the unlawful

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

7 Section 6. The State Board of Nursing shall promulgate all
8 regulations required to implement this act within two years of
9 the effective date of this act.

10 Section 7. This act shall take effect in 90 days.