

No. 1985-109

AN ACT

SB 1116

Amending the act of May 22, 1951 (P.L.317, No.69), entitled, as amended, "An act relating to the practice of professional nursing; providing for the licensing of nurses and for the revocation and suspension of such licenses, subject to appeal, and for their reinstatement; providing for the renewal of such licenses; regulating nursing in general; prescribing penalties and repealing certain laws," reestablishing the State Board of Nurse Examiners as the State Board of Nursing; providing for its composition, powers and duties; changing provisions relating to the issuance of licenses and the suspension and revocation of licenses; providing for fees; providing for penalties; and making repeals.

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

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

Section 1. *Short Title.*—This act shall be known and may be cited as "The Professional Nursing Law."

Section 2. Sections 2 and 2.1 of the act, added or amended July 3, 1974 (P.L.432, No.151), are amended to read:

Section 2. *Definitions.*—When used in this act, the following words and phrases shall have the following meanings unless the context provides otherwise:

(1) The "Practice of Professional Nursing" means diagnosing and treating human responses to actual or potential health problems through such services as casefinding, health teaching, health counseling, and provision of care supportive to or restorative of life and well-being, and executing medical regimens as prescribed by a licensed physician or dentist. The foregoing shall not be deemed to include acts of medical diagnosis or prescription of medical therapeutic or corrective measures, except as may be authorized by rules and regulations jointly promulgated by the State Board of **[Medical Education and Licensure] Medicine** and the Board, which rules and regulations shall be implemented by the Board.

(2) "Board" means the State Board of **[Nurse Examiners] Nursing**.

(3) "Approved" means approved by the State Board of **[Nurse Examiners] Nursing**.

(4) "Diagnosing" means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.

(5) "Treating" means selection and performance of those therapeutic measures essential to the effective execution and management of the nursing regimen, and execution of the prescribed medical regimen.

(6) "Human responses" means those signs, symptoms and processes which denote the individual's interaction with an actual or potential health problem.

Section 2.1. *State Board of Nursing.*—(a) *The State Board of Nursing shall consist of the Commissioner of Professional and Occupational Affairs, three members appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate, who shall be persons representing the public at large, and seven members appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate, five of whom shall be registered nurses, graduated from schools of nursing where practical and theoretical instruction is given, at least three of whom shall possess Masters' degrees in nursing, and two of whom shall be licensed practical nurses, and all of whom shall have been engaged in nursing in this Commonwealth for the five-year period immediately preceding appointment. In making appointments to the Board, the Governor shall give due consideration to providing representation from diversified fields of nursing, including, but not limited to, specialized nurses of all types.*

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

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

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

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

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

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

(h) *A public member who fails to attend two consecutive statutorily mandated training seminars in accordance with section 813(e) of the act of*

April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

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

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

(k) The Board shall have the right and duty to establish rules and regulations for the practice of professional nursing and the administration of this act. Copies of such rules and regulations shall be available for distribution to the public.

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

Section 2.2. Communication with Licensees.—The Board shall communicate with licensees on issues affecting the education, practice and regulation of nursing on at least an annual basis.

Section 4. Sections 3 and 4 of the act, amended July 3, 1974 (P.L.432, No.151), are amended to read:

Section 3. Registered Nurse, Use of Title and Abbreviation "R.N.," Credentials; Fraud.—Any person who holds a license to practice professional nursing in this Commonwealth, or who is maintained on inactive status in accordance with section 11 of this act, shall have the right to use the title "registered nurse" and the abbreviation "R.N." No other person shall engage in the practice of professional nursing or use the title "registered nurse" or the abbreviation "R.N." to indicate that the person using the same is a registered nurse. No person shall sell or fraudulently obtain or fraudulently furnish any nursing diploma, license, record, or registration or aid or abet therein.

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

(1) Home care of the sick by friends, domestic servants, nursemaids, companions, or household aides of any type, so long as such persons do not represent or hold themselves out to be licensed nurses, licensed registered nurses, or registered nurses; or use in connection with their names, any designation tending to imply that they are licensed to practice under the provisions of this act nor services rendered by any physicians, osteopaths, dentists or chiropractors, podiatrists, optometrists, or any person licensed pursuant to the act of March 2, 1956 (P.L.1211, No.376), known as the "Practical Nurse Law."

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

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

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

(5) The practice of professional nursing, *pursuant to a temporary practice permit*, by a person who holds a current license or other evidence of the right to practice professional nursing, as that term is defined in this act, issued by any other state, territory or possession of the United States or the Dominion of Canada, during the period that an application filed by such person for licensure in Pennsylvania is pending before the Board, but not for a period of more than one (1) year *and during such additional period as the Board may in each case especially permit*.

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

Section 5. The act is amended by adding a section to read:

Section 4.1. Temporary Practice Permit.—*In order for a person to practice professional nursing during the one (1) year period from completion of his or her education program or the one (1) year period from the application for licensure by a person who holds a current license issued by any other state, territory or possession of the United States or the Dominion of Canada, the Board may issue a temporary practice permit which is nonrenewable and valid for a period of one (1) year and during such additional period as the Board may in each case especially permit, except that the temporary practice permit shall expire if such person fails the licensing examination.*

Section 6. Section 5 of the act, amended July 3, 1974 (P.L.432, No.151), is amended to read:

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

(b) The Board may admit to examination any person who has satisfactorily completed an approved nursing education program for the preparation of registered professional nurses in Pennsylvania or such a program in any other state, territory or possession of the United States, considered by the

Board to be equivalent to that required in this Commonwealth at the time such program was completed, and who meets the requirements of character and preliminary education.

(c) The Board may admit to examination any person who has satisfactorily completed a nursing education program for the preparation of registered professional nurses in a country or territory not mentioned above who has been licensed, registered, or duly recognized there as a professional nurse provided such a program is considered by the Board to be equal to that required in this Commonwealth at the time such program was completed and who meets the requirements of character and preliminary education.

Section 7. Section 6 of the act, amended May 2, 1985 (P.L.22, No.10), is amended to read:

Section 6. *Fees; Qualifications for Licensure.*—No application for licensure as a registered nurse shall be considered unless accompanied by a fee [of **ten dollars (\$10)**] *determined by the Board by regulation.* Every applicant, to be eligible for examination for licensure as a registered nurse, shall furnish evidence satisfactory to the Board that he or she is of good moral character, has completed work equal to a standard high school course as evaluated by the Board and has satisfactorily completed an approved program of professional nursing [and has not]. *The Board shall not issue a license or certificate to an applicant who has 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:*

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

(2) the applicant satisfactorily demonstrates to the Board that he 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; and

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

As used in this subsection 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.

Section 8. Sections 6.1, 6.2, 7, 8 and 11 of the act, amended July 3, 1974 (P.L.432, No.151), are amended to read:

Section 6.1. *Education Programs, Standards and Approval.*—The Board shall establish standards for the operation and approval of nursing education programs for the preparation of registered professional nurses and for the carrying out of the rights given to the Board under this act. Programs for the preparation of registered professional nurses shall be established or conducted only with the approval of the Board. *Initial approval shall be followed by submission of an annual report by the program to the Board and a*

site visit of the program at least once every three years to assure maintenance of acceptable standards.

[The Board shall establish standards and approve organized programs of study offered to foreign graduate nurses in the United States on nonimmigration status who are studying in this Commonwealth. Initial approval shall be followed by at least annual survey and review of the program to assure maintenance of acceptable standards. Such programs shall be conducted only with approval of the Board. Each hospital maintaining an exchange visitor educational program for foreign graduate nurses shall pay a fee as established by the Board. Such fee shall be related to the actual costs incurred by the Board in rendering services in connection with such programs.]

Section 6.2. *Education Programs, Approved Lists, Distribution; Student Credits Where School Removed from List.*—The Board shall annually prepare and make available for public distribution a list of all programs approved and classified by it. Any student who shall be enrolled in any school which shall be removed from the approved list shall be given credit toward the satisfaction of the Board's requirements for examination for such of the requirements of the Board which any said student shall satisfactorily complete prior to the removal of said school from the approved list, and said student shall upon the satisfactory completion of the remainder of said requirements in any approved school be eligible for examination for licensure. The Board may withhold or remove any school from the approved list if the school fails to meet and maintain minimum standards, as established by regulation of the Board, of education, curriculum, administration, qualifications of the faculty, organization and function of the faculty, staff and facilities.

Section 7. *Graduates of Schools of Other States, Territories or Dominion of Canada.*—(a) The Board may issue a license without examination to a graduate of a school of nursing who has completed a course of study in nursing considered by the Board to be equivalent to that required in this State at the time such course was completed, and who is registered or licensed by examination in any other state, or territory of the United States or the Dominion of Canada, and who has met all the foregoing requirements as to character, and preliminary education.

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

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

Section 11. *Licenses; Duration; Renewal Fee; Inactive Status.*—

(a) Licenses issued pursuant to this act shall expire on the thirty-first day of October of each biennium, or on such other biennial expiration date as may be established by regulation of the Board. Application for renewal of a license shall biennially be forwarded to each registrant holding a current license prior to the expiration date of the current renewal biennium. The application form may be completed and returned to the Board, accompanied by the required fee [of four dollars (\$4)] *as determined by the Board by regulation*; upon approval of each application, the applicant shall receive a renewal of license.

(b) Any registrant licensed under this act may request an application for inactive status. The application form may be completed and returned to the Board. Upon receipt of each application, the applicant shall be maintained on inactive status without fee and shall be entitled to apply at any time [and to receive a current license by filing a renewal application as in subsection (a) hereof]. *Any person who requests an active status license who has been on inactive status for a period of five (5) consecutive years shall prior to receiving an active license satisfy the requirements of the Board's regulations for ensuring continued competence and remit the required fee. A person shall not be denied active status as a result of any increased educational requirements for licensure since the time he or she received his or her original license.*

Section 9. The act is amended by adding sections to read:

Section 11.1. Reporting of Multiple Licensure.—Any licensed professional nurse of this Commonwealth who is also licensed to practice nursing in any other state, territory, possession or country shall report this information to the Board on the biennial registration application. Any disciplinary action taken in other states shall be reported to the Board on the biennial registration application or within ninety (90) days of final disposition, whichever is sooner. Multiple licensure shall be noted by the Board on the nurse's record, and such state, territory, possession or country shall be notified by the Board of any disciplinary actions taken against said nurse in this Commonwealth.

Section 11.2. Setting of Fees and Disposition of Fees, Fines and Civil Penalties.—(a) All fees required under this act shall be fixed by the Board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by the fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the Board shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures.

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the Board under subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the Board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(c) *All fees, fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account established pursuant to, and for use in accordance with, the act of July 1, 1978 (P.L. 700, No. 124), known as the "Bureau of Professional and Occupational Affairs Fee Act."*

(d) *The Board may charge a fee, as set by the Board by regulation, for all examinations, registrations, renewals, certifications, licenses or applications permitted by this act or regulations thereunder.*

Section 11.3. Reports of the Board.—(a) The Board shall submit annually to the Department of State an estimate of the financial requirements of the Board for its administrative, investigative, legal and miscellaneous expenses.

(b) *The Board shall submit annually to the House and Senate Appropriations Committees, fifteen (15) days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the Board previously submitted to the department.*

(c) *The Board shall submit annually a report, to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate, containing a description of the types of complaints received, status of cases, Board action which has been taken and the length of time from the initial complaint to final Board resolution.*

Section 10. Sections 13 and 14 of the act, amended July 3, 1974 (P.L. 432, No. 151), are amended to read:

Section 13. *Punishment for Violations.—(a) Any person, or the responsible officers or employees of any corporation, copartnership, institution or association violating any of the provisions of this act, [shall, upon summary] or any rule or regulation of the Board, commits a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of [three hundred dollars (\$300); and in default of the payment of such fine and costs, to undergo imprisonment for a period of ninety (90) days, unless nonpayment of said fine is shown by affidavit made by the defendant to the court, to be the result of the defendant's indigency.] not more than one thousand dollars (\$1,000), or undergo imprisonment for not more than six (6) months for the first violation. On the second and each subsequent conviction, he shall be sentenced to pay a fine of not more than two thousand dollars (\$2,000), or undergo imprisonment for not less than six (6) months or more than one (1) year in jail, or both.*

(b) *In addition to any other civil remedy or criminal penalty provided for in this act, the Board, by a vote of the majority of the maximum number of the authorized membership of the Board as provided by law or by a vote of the majority of the duly qualified and confirmed membership or a minimum of five (5) members, whichever is greater, may levy a civil penalty of up to one thousand dollars (\$1,000) on any current licensee who violates any provision of this act or on any person who practices nursing without being properly licensed to do so under this act or on the responsible officers or employees*

of any corporation, copartnership, institution or association violating any of the provisions of this act. The Board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 14. *Refusal, Suspension or Revocation of Licenses.—(a)* The Board may *refuse*, suspend or revoke any license in any case where the Board shall find that—

(1) The licensee is on repeated occasions negligent or incompetent in the practice of professional nursing.

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

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

(4) The licensee has committed fraud or deceit in the practice of nursing, or in securing his or her admission to such practice *or nursing school*.

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

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

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

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

(b) When the Board finds that the license of any nurse may be refused, revoked or suspended under the terms of subsection (a), the Board may:

- (1) *Deny the application for a license.*
- (2) *Administer a public reprimand.*
- (3) *Revoke, suspend, limit or otherwise restrict a 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.*
- (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 professional or practical nursing and impose any disciplinary or corrective measure which it might originally have imposed.*

Section 11. The act is amended by adding a section to read:

Section 14.1. Impaired Nurses Program.—(a) The Board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the Board with education and experience in the identification, treatment and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the Board and shall act as a liaison between the Board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired nurses support groups approved by the Board and which provide services to nursing licensees.

(b) The Board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the licensee is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a licensee who has been convicted of, pleaded guilty to or entered a plea of nolo contendere to 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 the conviction of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant such information in its possession regarding an impaired nurse in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. Such requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who enter an agreement in accordance with this section, impaired professionals who are the subject of a Board investigation or disciplinary proceeding and impaired professionals who voluntarily enter a treatment program other than under the provisions of this section but who fail to complete the program successfully or to adhere to an after-care plan developed by the program provider.

(c) An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the Board under which the professional's license shall be suspended or revoked but enforcement of that suspension or revocation may be stayed for the length of time the professional

remains in the program and makes satisfactory progress, complies with the terms of the agreement, and adheres to any limitations on his practice imposed by the Board to protect the public. Failure to enter into such an agreement shall disqualify the nurse from the impaired nurse program and shall activate an immediate investigation and disciplinary proceeding by the Board.

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

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

(f) Any hospital or health care facility, peer or colleague who has substantial evidence that a nurse has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his license shall make or cause to be made a report to the Board: Provided, That any person or facility who acts in a treatment capacity to impaired nurses in an approved treatment program is exempt from the mandatory reporting requirement of this subsection. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed one thousand dollars (\$1,000). The Board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 12. Section 15 of the act is amended to read:

Section 15. *Suspensions and Revocations, How Made, Notice, Hearing, Adjudication and Appeal; Reissuance of License.*—All suspensions and revocations shall be made only in accordance with the regulations of the Board, and only by majority vote of the members of the Board after a full and fair hearing before the Board. All actions of the Board shall be taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom, in accordance with the provisions [of the Administrative Agency Law, approved the fourth day of June, one thousand nine hundred forty-five (Pamphlet Laws 1388)] *in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure)*, or any amendment or reenactment thereof, relating to adjudication procedure. The Board, by majority action and in accordance with its regulations, may reissue any license which has been suspended [or revoked]. *If a license has been revoked, the Board can reissue a license only in accordance with section 15.2.*

Section 13. The act is amended by adding sections to read:

Section 15.1. Temporary and Automatic Suspensions.—(a) *A license issued under this act may be temporarily suspended under circumstances determined by the Board to be an immediate and clear danger to public health and safety. The Board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his or her last known address, which shall include a written statement of all allegations against the licensee. The provisions of section 15 shall not apply to temporary suspension. The Board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty (30) days following the issuance of an order temporarily suspending a license, the Board shall conduct or cause to be conducted a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the Board, but in no event longer than one hundred eighty (180) days.*

(b) *A license issued under this act shall automatically be suspended upon the legal commitment to an institution because of mental incompetency from any cause upon filing with the Board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this subsection shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as hereinafter provided in the case of revocation or suspension of such license.*

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

Section 15.3. Surrender of Suspended or Revoked License.—*The Board shall require a person whose license has been suspended or revoked to return the license in such manner as the Board directs. Failure to do so, and upon conviction thereof, shall be a misdemeanor of the third degree.*

Section 15.4. Injunction or Other Process.—*It shall be unlawful for any person to practice or attempt to offer to practice nursing, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of nursing as defined in this act may be enjoined by the courts on petition of the Board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it is determined that the respondent has engaged in the unlawful practice of nursing, the court shall enjoin him or her from so practicing unless and until he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.*

Section 15.5. Subpoenas; Oaths.—*(a) The Board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the Board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the Board. The Board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses and to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation or hearing held or had by it. Medical records may not be subpoenaed without consent of the patient or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion into patient confidential information. The Board is authorized to apply to Commonwealth Court to enforce its subpoenas.*

(b) An attorney responsible for representing the Commonwealth in disciplinary matters before the Board shall notify the Board immediately upon receiving notification of an alleged violation of this act. The Board shall maintain current records of all reported alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

Section 14. Section 16.1 of the act is repealed.

Section 15. This act, with respect to the State Board of Nurse Examiners, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 16. (a) Section 418 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 17. The presently confirmed members of the State Board of Nurse Examiners constituted under section 418 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of December 31, 1985, shall continue to serve as board members until their

present terms of office expire, provided that any present board member whose term has expired on or before the effective date of this act shall serve until a successor has been appointed and qualified, but no longer than six months after the effective date of this act.

Section 18. Each rule and regulation of the board in effect on December 31, 1985, and *not inconsistent with this act*, or the act of March 2, 1956 (1955 P.L.1211, No.376), known as the Practical Nurse Law, shall remain in effect after such date until repealed or amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act. Each fee of the board in effect on December 31, 1985, and not inconsistent with this act or the Practical Nurse Law, shall remain in effect after such date until repealed or amended in accordance with the provisions of this act.

Section 19. Any person who holds a valid license issued by the State Board of Nurse Examiners under the act of May 22, 1951 (P.L.317, No.69), known as The Professional Nursing Law, relating to the practice of nursing, prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Board of Nursing as provided for in this amendatory act.

Section 20. This act shall take effect January 1, 1986, or immediately, whichever is later.

APPROVED—The 20th day of December, A. D. 1985.

DICK THORNBURGH