

No. 1987-39

AN ACT

SB 56

Licensing and regulating the practice of social work; providing penalties; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the Social Workers' Practice Act.

Section 2. Legislative intent.

The practice of social work within this Commonwealth is hereby declared to affect the public safety and welfare and to be subject to regulation and control in the public interest to protect the public from unprofessional, improper, unauthorized and unqualified practice of licensed social work. This act regulates only those who hold themselves out as licensed social workers. Acquisition of a license under this act shall not be made a condition of the employment of a person by the Commonwealth or any of its political subdivisions or by nonprofit agencies.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Board.” The State Board of Social Work Examiners under the Bureau of Professional and Occupational Affairs within the Department of State.

“Commissioner.” The Commissioner of Professional and Occupational Affairs.

“Licensed social worker.” A social worker who holds a current license under this act.

“Practice of social work.” Holding oneself out to the public by any title or description of services incorporating the term “licensed social worker,” or using any words or symbols indicating or tending to indicate that he or she is a licensed social worker and, under such description, offering to render or rendering a service in which a special knowledge of social resources, human personality and capabilities and therapeutic techniques is directed at helping people to achieve adequate and productive personal, interpersonal and social adjustments in their individual lives, in their families and in their community.

“Provisional licensed social worker.” A social worker who holds a current provisional license under this act.

Section 4. Social work license required.

It shall be unlawful for any person to hold himself or herself forth as a licensed social worker unless he or she shall first have obtained a license pursuant to this act.

Section 5. State Board of Social Work Examiners.

(a) Creation.—There is hereby created the State Board of Social Work Examiners, a departmental administrative board in the Department of State. The board shall consist of seven members who are citizens of the United States and who have been residents of this Commonwealth for a two-year period, two of whom shall be public members, four of whom shall be persons who meet the educational qualifications for licensure as specified in section 7 and one of whom shall be the Commissioner of Professional and Occupational Affairs.

(b) Term of office.—The members shall serve for four-year terms, except as provided in subsection (c), and shall be appointed by the Governor by and with the advice and consent of a majority of the members elected to the Senate.

(c) Initial appointments.—Within 90 days of the effective date of this act, the Governor shall nominate one professional member to serve a four-year term; one public member and one professional member to serve three-year terms; one public member and one professional member to serve two-year terms; and one professional member to serve a one-year term.

(d) Continuation in office.—Each board member shall continue in office until a successor is duly appointed and qualified but no longer than six months after the expiration of the term. In the event that a board member shall die, resign or otherwise become disqualified during the term of office, a

successor shall be appointed in the same way and with the same qualifications as set forth in this section and shall hold office for the unexpired portion of the unexpired term.

(e) **Limit on terms.**—No board member shall be eligible for appointment to serve more than two consecutive four-year terms.

(f) **Forfeiture of membership.**—A board member who fails to attend three consecutive meetings shall forfeit his or her seat unless the commissioner, 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.

(g) **Compensation.**—Each member of the board, except the commissioner, shall receive per diem compensation at the rate of \$60 per diem when actually attending to the work of the board. Members shall also receive reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(h) **Forfeiture for nonattendance.**—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, 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) **Quorum.**—A majority of the members of the board serving in accordance with law shall constitute a quorum for purposes of conducting the business of the board. Except for temporary and automatic suspensions under section 11(d) and (e), 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.

(j) **Meetings.**—The board shall meet at least four times a year in Harrisburg.

(k) **Notice.**—Reasonable notice of all meetings shall be given in conformity with the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

(l) **Operating procedures.**—The board shall meet within 30 days after the appointment of its initial members and set up operating procedures and an application form for licensing social workers. It shall be the responsibility of the board to circulate these forms and educate the public to the requirements of licensing in order to hold oneself out as a licensed social worker within the Commonwealth.

Section 6. Powers and functions of board.

The board shall have the following powers:

(1) To pass upon the qualifications and fitness of applicants for licenses and reciprocal licenses and to adopt and revise rules and regulations requiring applicants to pass examinations relating to their qualifications as a prerequisite to the issuance of a license.

(2) To adopt and, from time to time, revise such rules and regulations as may be necessary to carry into effect the provisions of this act. Such reg-

ulations may include, but shall not be limited to, standards of professional practice and conduct for licensed social workers in Pennsylvania.

(3) To examine for, deny, approve, issue, revoke, suspend or renew licenses of social workers pursuant to this act and to conduct hearings in connection therewith.

(4) To conduct hearings upon complaints concerning violations of the provisions of this act and the rules and regulations adopted pursuant to this act and seek the prosecution and enjoinder of all such violations.

(5) To expend moneys necessary to the proper carrying out of its assigned duties.

(6) To waive examination and grant a license in cases deemed exceptional by the board and in accordance with regulations promulgated by the board.

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

(8) To submit annually to the Appropriations Committees of the House of Representatives and the Senate, 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 of State.

Section 7. Qualifications for license.

(a) Regular license.—An applicant shall be qualified for a license to hold oneself out as a licensed social worker, provided he or she submits proof satisfactory to the board that:

(1) He or she is of good moral character.

(2) He or she has received a master's degree from an accredited school of social work or social welfare or a doctoral degree in social work.

(3) He or she has passed an examination duly adopted by the board.

(4) His or her application has been accompanied by the application fee.

(5) He or she has not been convicted 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 of an offense under the laws of another jurisdiction, which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless:

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

(ii) the applicant satisfactorily demonstrates to the board that he or she 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 his or her clients or the public or a substantial risk of further criminal violations; and

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

As used in this paragraph, the term "convicted" shall include a judgment, an admission of guilt or a plea of nolo contendere.

(b) Provisional license.—An applicant shall be qualified for a provisional license to hold oneself out as a social worker with a provisional license, provided he or she submits proof satisfactory to the board that:

- (1) He or she is of good moral character.
- (2) He or she has received a bachelor's degree in social work from an accredited school of social work or social welfare and has three years' experience under the supervision of a social worker who has graduated with a master's degree from an accredited school of social work or social welfare.
- (3) He or she offers proof of current enrollment in a master's degree program at an accredited school of social work or social welfare.
- (4) He or she passed an examination duly adopted by the board.
- (5) His or her application has been accompanied by the application fee.
- (6) He or she has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act, or of an offense under the laws of another jurisdiction, which, if committed in this Commonwealth, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless:
 - (i) at least ten years have elapsed from the date of conviction;
 - (ii) the applicant satisfactorily demonstrates to the board that he or she 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 his or her clients or the public or a substantial risk of further criminal violations; and
 - (iii) the applicant otherwise satisfies the qualifications contained in or authorized by this act.

As used in this paragraph, the term "convicted" shall include a judgment, an admission of guilt or a plea of nolo contendere.

(c) Limitation on provisional licenses.—No applicant may be issued more than three provisional licenses.

Section 8. Procedures for licensing.

(a) Affidavit required.—Each application form for an applicant submitted to the board for examination or licensure shall have attached as part of the form an affidavit or affirmation for the applicant to complete as to the veracity of the information on the application.

(b) Issuance of license.—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 hold himself or herself out as a licensed social worker or as a provisional social worker.

Section 9. Exemption from examination.

The requirements of section 7(a)(3) shall not apply and a license shall be issued without examination to any person who has submitted an application for license, accompanied by the required fee, within two years after the effective date of this act, who is a resident of this Commonwealth, who has submitted proof of his or her practice of social work for a two-year period and who, on the effective date of this act, holds a master's degree in social work from an accredited school of social work or social welfare or a doctoral degree in social work.

Section 10. Reciprocity.

The board shall have the power to grant a reciprocal license to an applicant who is licensed or certified as a social worker in another state and has demonstrated qualifications which equal or exceed those required pursuant to this act in the determination of the board, provided that no license shall be granted under this section to an applicant unless the state in which the applicant is licensed affords reciprocal treatment to persons who are residents of this Commonwealth and who are licensed pursuant to this act.

Section 11. Refusal, suspension and revocation of licenses.

(a) **Grounds.**—The board may refuse, suspend, revoke, limit or restrict a license or reprimand a licensee for any of the following:

(1) Being convicted of a felony or a crime of moral turpitude in any state or Federal court or being convicted of the equivalent of a felony in any foreign country, territory or possession. As used in this paragraph, the term "convicted" includes a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere or receiving probation without verdict, disposition in lieu of trial or an accelerated rehabilitative disposition in the disposition of felony charges.

(2) Being found guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from or failure to conform to the standards of acceptable and prevailing social work practice. In proceedings based on this paragraph, actual injury to the client need not be established.

(3) Violating standards of professional practice or conduct adopted by the board.

(4) Presenting false credentials or documents or making a false statement of fact in support of his or her application for a license.

(5) Submitting a false or deceptive biennial renewal to the board.

(6) Having a license to practice social work suspended, revoked or refused or receiving other disciplinary action by the proper social work licensing authority of any other state, territory, possession or country.

(7) Violating a regulation promulgated by the board, including, but not limited to, standards of professional practice and conduct, or violating an order of the board previously entered in a disciplinary proceeding.

(8) Being unable to practice social work with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material, or as a result of any mental or physical condition. In enforcing this paragraph, the board shall, upon

probable cause, have authority to compel a social worker to submit to a mental or physical examination by a physician approved by the board. Failure of a social worker to submit to such examination when directed by the board, unless such failure is due to circumstances beyond his or her control, shall constitute an admission of the allegations against him or her, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A social worker affected under this paragraph shall at reasonable intervals, as determined by the board, be afforded an opportunity to demonstrate that he or she can resume the competent practice of social work with reasonable skill and safety.

(b) Board action.—When the board finds that the license or application for license of any person may be refused, revoked, restricted 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 designated by the board.

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

(6) Restore a suspended license to practice social work and impose any disciplinary or corrective measure which it might originally have imposed.

(c) Hearing.—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 Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

(d) Temporary suspension.—The board shall temporarily suspend a license under circumstances as determined by the board to be an immediate and clear danger to the 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 subsection (c) 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 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 180 days.

(e) Automatic suspension.—A license issued under this act shall automatically be suspended upon the legal commitment of a licensee to an institution because of mental incompetence from any cause upon filing with the board of 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 this Commonwealth, 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 section shall not be stayed pending an appeal or conviction. Restoration of such license shall be made as provided in this act for revocation or suspension of such license.

Section 12. 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 as a social worker pursuant to this act, which has been revoked. Any person whose license has been revoked may apply for reinstatement, after a period of at least five years, but must meet all of the licensing qualifications of this act, including the examination requirement, if he or she desires to practice as a social worker pursuant to this act at any time after such revocation.

Section 13. Reporting of multiple licensure.

Any licensed social worker of this Commonwealth who is also licensed to practice social work in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in any other state, territory or country shall be reported to the board on the biennial renewal application, or within 90 days of disposition, whichever is sooner. Multiple licensure shall be noted by the board on the licensed social worker’s record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said licensed social worker in this Commonwealth.

Section 14. Surrender of suspended or revoked license.

The board shall require a person whose license or registration has been suspended or revoked to return the license or registration in such manner as the board directs. Failure to do so shall be a misdemeanor of the third degree.

Section 15. Impaired professional.

(a) Appointment of professional consultant.—The board, with the approval of the commissioner, shall appoint and fix the compensation of a professional consultant who is a licensee of the board, or such other professional as the board may determine 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 professional support groups, which are approved by the board and which provide services to licensees under this act.

(b) **Subsequent action by board.**—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 professional is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a professional 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, pleaded guilty to, or entered a plea of *nolo contendere* to 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 any impaired professional 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 aftercare plan developed by the program provider.

(c) **Agreement.**—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 the 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 or her practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.

(d) **Report by provider.**—If, in the opinion of the consultant after consultation with the provider, an impaired professional 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 relevant to the issue of impairment regarding said professional, 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) **Immunity.**—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) **Reports by others.**—Any hospital or health care facility, peer or colleague who has substantial evidence that a professional 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 or her 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 an impaired professional in an approved treatment program is exempt from the mandatory reporting requirements 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 \$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 16. Restrictions on the use of title "Licensed Social Worker."

Only individuals who have received a license under this act may style themselves as licensed social workers and use the letters "L.S.W." in connection with their names, and it shall be unlawful for an individual to style himself or herself as a licensed social worker or use any words or symbols indicating or tending to indicate that he or she is a licensed social worker without holding a license in good standing under this act.

Section 17. Penalties.

(a) **Criminal penalties.**—A person who violates this act commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of up to \$1,000 or to imprisonment for not more than 90 days, or both.

(b) **Civil penalty.**—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 three members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current licensee who violates any provision of this act or on any person who holds himself or herself out as a licensed social worker without being so licensed pursuant to 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).

(c) **Disposition.**—All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure-Augmentation Account.

Section 18. License renewal; records and fees.

(a) **Renewal term.**—Renewal of license shall be on a biennial basis. The board may by regulation require evidence of professional activity or continuing education as a condition of license renewal. No credit shall be given for any course in office management or practice building.

(b) **Records.**—A record of all persons licensed to practice as social workers in Pennsylvania shall be kept in the office of the board and shall be open to public inspection and copying upon payment of a nominal fee for copying the record.

(c) **Fees.**—

(1) All fees required pursuant to 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 fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

(2) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board pursuant to paragraph (1) 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 so that adequate revenues are raised to meet the required enforcement effort.

Section 19. Subpoenas.

(a) Power to issue.—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. Client records may not be subpoenaed without consent of the client 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 client confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.

(b) Notification of board.—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 reports of alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

Section 20. Unlawful practice.

(a) Unlawful practice prohibited.—It shall be unlawful for any person to hold himself or herself out as a licensed social worker without possessing a valid, unexpired, unrevoked and unsuspended license issued under this act.

(b) Injunction.—Unlawful practice may be enjoined by the courts upon petition of the commissioner or the board. In any proceeding under this section, it shall not be necessary to show that any person is individually injured by the actions complained of. If the court finds that the respondent has violated this section, it shall enjoin him or her from so practicing until he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit.

(c) Remedy cumulative.—The injunctive remedy provided in this section shall be in addition to any other civil or criminal prosecution and punishment.

Section 21. Appropriation.

The sum of \$85,000, or as much thereof as may be necessary, is hereby appropriated from the Professional Licensure Augmentation Account within the General Fund to the Bureau of Professional and Occupational Affairs in the Department of State for the payment of costs of processing licenses and renewals, for the operation of the board and for other general costs of the bureau operations relating to this act. The appropriation granted shall be repaid by the board within three years of the beginning of issuance of licenses by the board.

Section 22. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 23. Effective date.

This act shall take effect as follows:

- (1) Sections 16 and 20 of this act shall take effect in 18 months.
- (2) The remainder of this act shall take effect in 90 days.

APPROVED—The 9th day of July, A. D. 1987.

ROBERT P. CASEY