

No. 1993-48

AN ACT

HB 27

Empowering the General Counsel or his designee to issue subpoenas for certain licensing board activities; providing for hearing examiners in the Bureau of Professional and Occupational Affairs; providing additional powers to the Commissioner of Professional and Occupational Affairs; and further providing for civil penalties and license suspension.

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

Section 1. 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:

“Disciplinary matter.” Any matter subject to a licensing board’s or commission’s jurisdiction in which the licensing board or commission has the authority to refuse, suspend, revoke or limit a license, registration, certificate or permit or to impose a civil penalty or other discipline under any act.

“Licensing boards.” Those departmental or administrative boards under the Bureau of Professional and Occupational Affairs in the Department of State.

“Licensing commissions.” Those departmental or administrative commissions under the Bureau of Professional and Occupational Affairs in the Department of State.

Section 2. Investigatory subpoena power.

The General Counsel or his designee shall have the power and his duty shall be to issue subpoenas upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before a licensing board or commission for the purpose of investigating alleged violations of the disciplinary provisions administered by a licensing board or commission, provided that, if their disclosure is subject to a privilege provided by law, patient or client records may not be subpoenaed without the consent of the patient or client or without order of a court of competent jurisdiction showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitation on the scope of the subpoena as may be necessary to prevent unnecessary intrusion into patient or client confidential information. The attorney responsible for representing the Commonwealth in disciplinary matters before a licensing board or commission is authorized to apply to Commonwealth Court to enforce the subpoenas. Nothing in this clause shall be construed to excuse a person from producing documents and records as requested by a licensing board or commission under any other provision of law.

Section 3. Hearing examiners.

(a) Appointment.—Notwithstanding any other provision of law, the Commissioner of the Bureau of Professional and Occupational Affairs, after consultation with the licensing boards and commissions, shall appoint such hearing examiners as may be necessary to conduct hearings in disciplinary matters before a licensing board or commission. Each licensing board and commission shall have the power to decide if a specific disciplinary matter or type of disciplinary matter is to be heard by the licensing board or commission itself or by a hearing examiner appointed pursuant to this subsection.

(b) Regulations.—The Commissioner of Professional and Occupational Affairs, after consultation with the licensing boards and commissions, shall have the power to promulgate regulations setting forth the procedural rules to be followed by any such hearing examiners in the conduct of hearings in disciplinary matters before a licensing board or commission. All proceedings shall be conducted in accordance with the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

(c) Powers.—Such hearing examiners shall have the power to conduct hearings in accordance with applicable statutes, rules and regulations, to issue subpoenas requiring the attendance and testimony of individuals or the production of pertinent records or other papers by persons whom they believe have information relevant to any matters pending before the examiner and to issue decisions.

(d) Time periods.—In all disciplinary matters before a licensing board or commission, hearings shall commence within 90 days after the date on which an answer is filed. Any continuance granted prior to the commencement of the hearing shall toll the 90-day requirement by the period of the continuance. A decision shall be rendered within 180 days after the record is closed. The board or commission shall render a final adjudication or decision on any exceptions to the decision of a hearing examiner or any applications for review within 90 days of the filing of such exceptions or applications, provided that a board or commission may delegate to a hearing examiner the authority to render a final adjudication or decision in such cases as deemed appropriate.

Section 4. Additional powers for Commissioner of Professional and Occupational Affairs.

In addition to the powers and duties imposed under law, the Commissioner of Professional and Occupational Affairs or his designee shall be a member of each of the licensing boards and commissions except the State Board of Certified Real Estate Appraisers and the Navigation Commission for the Delaware River and its Navigable Tributaries. The Commissioner of Professional and Occupational Affairs or his designee may serve as the designee of the Secretary of the Commonwealth on the Navigation Commission for the Delaware River and its Navigable Tributaries.

Section 5. Civil penalties.

(a) **Authorization.**—The Commissioner of Professional and Occupational Affairs, after consultation with the licensing boards and commissions, shall have the power to adopt a schedule of civil penalties for operating without a current, registered, unsuspended and unrevoked license, registration, certificate or permit and for violating any provision of their respective acts or regulations relating to the conduct or operation of a business or facility licensed by such licensing boards and commissions. The schedule of penalties shall not be applicable to disciplinary matters under the jurisdiction of a licensing board or commission unless that licensing board or commission has approved the schedule. The schedule of penalties, guidelines for their imposition and procedures for appeal shall be published in the Pennsylvania Bulletin, provided that the commissioner shall, within two years of such publication, promulgate a regulation setting forth the schedule of penalties, guidelines and procedures. Any such penalty shall not exceed the sum of \$1,000. Duly authorized agents of the bureau shall have the power and authority to issue citations and impose penalties for any such violations. Any such penalty imposed may be appealed to a hearing examiner or the licensing board or commission pursuant to the regulations promulgated under section 3(b). If the appeal is initially to a hearing examiner, the relevant licensing board or commission shall render a decision on any exceptions to the decision of the hearing examiner or on any applications for review in accordance with section 3(d). All proceedings shall be conducted in accordance with the provisions of 2 Pa.C.S. (relating to administrative law and procedure).

(b) **Additional powers.**—In addition to the disciplinary powers and duties of the boards and commissions within the Bureau of Professional and Occupational Affairs under their respective practice acts, boards and commissions shall have the power, respectively:

(1) To impose discipline on any licensee, registrant, certificate holder or permit holder who violates a lawful disciplinary order of the board.

(2) To impose discipline on any licensee, registrant, certificate holder or permit holder who aids and abets the unlicensed practice of a profession, occupation or business.

(3) To levy a civil penalty of not more than \$1,000 on any corporation, partnership, institution, association or sole proprietorship which aids and abets any individual in the unlicensed practice of a profession. This penalty shall not, however, be levied against any person solely as a consequence of that person being a patient or client of the unlicensed individual.

(c) **Restrictions.**—Any decisions rendered by a licensing board or commission on any exceptions to the decision of a hearing examiner or on any application for review in accordance with section 3(d) to impose a civil penalty pursuant to this section shall require the same number of votes required for the licensing board or commission to impose a civil penalty under any other act. Nothing in this section shall be construed to restrict the

powers and duties under any other act of a licensing board or commission in disciplinary matters, except that a licensing board or commission may not impose a civil penalty under any other act for the same violation for which a civil penalty has been imposed pursuant to this section.

(d) Status of civil penalty.—Any civil penalty imposed pursuant to this section or imposed by any licensing board or commission under any other act shall be a judgment in favor of the Bureau of Professional and Occupational Affairs upon the person or the property of the person upon whom the civil penalty is imposed. The Attorney General shall be responsible for enforcing such judgments in courts of competent jurisdiction in accordance with the provisions of 42 Pa.C.S. (relating to judiciary and judicial procedure).

(e) Definition.—As used in this section, the term “unlicensed practice” means:

- (1) practicing a profession or occupation or operating a business for which a license, registration, certificate or permit is required without holding a valid, unexpired, unrevoked or unsuspended authority to do so; or
- (2) representing to the public or any person, through offerings, advertisements or the use of a title, that the individual is qualified to practice a profession, occupation or business for which a license, registration, certificate or permit is required without holding a valid, unexpired, unrevoked or unsuspended authority to do so.

Section 6. Reports.

Licensing boards and commissions shall submit annually to the Consumer Protection and Professional Licensure Committee of the Senate and to the Professional Licensure Committee of the House of Representatives a report containing the following:

- (1) Description of the types of complaints received.
- (2) Status of cases.
- (3) Total number of cases and type of disciplinary action taken.
- (4) Percentage of disciplinary actions in relation to the total number of licensees.
- (5) Number of closed cases.
- (6) Average number of days to close a case.
- (7) Number of revocations and suspensions.
- (8) Percentage of revocations and suspensions in relation to the total number of licensees.

Section 7. Repeals.

All acts or parts of acts are repealed insofar as they are inconsistent with the provisions of this act.

Section 8. Applicability.

Section 5 of this act shall apply only to disciplinary proceedings commenced on or after the effective date of this act.

Section 9. Effective date.

This act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 1993.

MARK S. SINGEL
ACTING GOVERNOR