

No. 1985-108

## AN ACT

SB 1115

Amending the act of October 5, 1978 (P.L.1109, No.261), entitled "An act requiring the licensing of practitioners of osteopathic medicine and surgery; regulating their practice; providing for certain funds and penalties for violations and repeals," reestablishing the State Board of Osteopathic Medical Examiners as the State Board of Osteopathic Medicine; 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. The act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, is amended by adding a section to read:

**Section 2.1. State Board of Osteopathic Medicine.**

*(a) The State Board of Osteopathic Medicine shall consist of the Commissioner of Professional and Occupational Affairs, the Secretary of Health, or his designee, two 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 five members appointed by the Governor, with the advice and consent of a majority of the members elected to the Senate, who shall be graduates of a legally incorporated and reputable college of osteopathy and shall have been licensed to practice osteopathy under the laws of this Commonwealth and shall have been engaged in the practice of osteopathy in this Commonwealth for a period of at least five years.*

*(b) The terms of each professional and public member of the board shall be four years or until his or her successor has been appointed and qualified but not longer than six months beyond the four-year period. In the event that any of said members shall die or resign or otherwise become disqualified during his or her term, a 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 for purposes of conducting the business of the board. Except for temporary and automatic suspensions under section 14 of this act, 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 and shall elect a 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 and the Secretary of Health, shall receive \$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.*

Section 2. Section 6(c) of the act, added May 2, 1985 (P.L.20, No.9), is amended to read:

Section 6. Qualifications for license.

\* \* \*

*(c) 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 shall not be licensed[.] unless:*

*(1) at least ten 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 3. The act is amended by adding a section to read:

*Section 6.1. Reporting of multiple licensure.*

*Any licensed osteopathic physician of this Commonwealth who is also licensed to practice osteopathic medicine or surgery in any other state, terri-*

*tory 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 90 days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the osteopathic physician's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said osteopathic physician in this Commonwealth.*

Section 4. Sections 8(a) and (f), 10(d), (e) and (f) and 11 of the act are amended to read:

Section 8. Meetings of the board; examinations.

(a) The board shall hold *at least* six meetings to transact its business each year in Pennsylvania at a place determined by the board. It shall hold at least two examinations for applicants for licensure each year.

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(f) [For the purpose of preparing, conducting and grading examinations the members of the board shall be compensated for their services at a reasonable rate for each activity in an amount determined from time to time by the board in addition to expenses. The total amount of compensation authorized pursuant to this subsection shall not exceed \$30 per day.] *The board shall contract with a professional testing organization for the examination of qualified applicants for licensure or certification. All written, oral and practical examinations shall be prepared and administered by a qualified and approved professional testing organization in the manner prescribed for written examinations by section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."*

Section 10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration *and continuing medical education.*

\* \* \*

(d) [A person registering with the board shall pay, for each biennial registration, a fee. It shall accompany the application for registration.] *The board shall adopt, promulgate and enforce rules and regulations establishing requirements for continuing medical education to be met by persons licensed to practice osteopathic medicine without restriction. Each person licensed to practice osteopathic medicine and surgery without restriction, during the two-year period immediately preceding a biennial date for reregistering with the board, must complete a program of continuing medical education, as defined by and acceptable to the board. The number of hours of continuing education to be met by licensees shall be set by the board by regulation. No credit shall be given for any course in office management or practice building. In issuing rules and regulations and individual orders in respect of requirements for continuing medical education, the board, in its discretion, may, among other things, use and rely upon guidelines and pronouncements of recognized educational and professional organizations; may prescribe for content, duration and organization of courses; shall take into account the accessibility of such continuing education; may waive such requirements in instances of individual hardship where good cause is shown and the board finds that the public's safety and welfare are not jeopardized by the waiver of*

*such requirements; and shall waive such requirements with respect to retired physicians not engaged in the active practice of osteopathic medicine and surgery.*

(e) *A person registering with the board shall pay, for each biennial registration, a fee. It shall accompany the application for registration. Upon receiving a proper application for registration accompanied by the fee and evidence satisfactory to the board of compliance with the continuing medical education requirements of subsection (d), the board shall issue its certificate of registration to the applicant. It and its renewals shall be good and sufficient evidence of registration.*

(f) *The board shall grant certification to physician assistants [and shall be suspect] which certification shall be subject to biennial renewal by the board. The board shall grant certification to applicants who have fulfilled the following criteria:*

(1) *Satisfactory performance on [the] a proficiency examination[, to the extent that a proficiency examination exists] approved by the board.*

(2) *Satisfactory completion of a certified program for the training and education of physician assistants approved by the board.*

*In the event that completion of a formal training and educational program is a prerequisite to taking the proficiency examination, the board shall have the power, if it determines that the experience of the applicant is of such magnitude and scope so as to render further formal training and education nonessential to the applicant in assisting a physician in the provision of medical care and services, to waive the training and education requirements under this section.*

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#### Section 11. Penalty provisions.

(a) *Violations of act.—A person, or the responsible officer or employee of any corporation or partnership, institution or association, violating any of the provisions other than section 3, or any rule or regulation of the board is guilty of a [summary offense] misdemeanor and upon conviction shall be sentenced to pay a fine of not more than [\$300] \$1,000, or undergo imprisonment for not more than six months for the first violation. On the second and each subsequent conviction, he shall be sentenced to pay a fine of not more than \$2,000, or undergo imprisonment for not less than six months or more than one year in jail, or both.*

(b) *Penalty for unlicensed practice.—A person, or the responsible officer or employee of any corporation or partnership, institution or association violating section 3 shall, upon conviction thereof, be guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$1,000, nor more than \$10,000, or to imprisonment for five years, or both.*

(c) *Board-imposed 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 four 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 practices osteopathic medicine without being properly licensed to do so under 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 5. Section 13 of the act is repealed.

Section 6. The act is amended by adding sections to read:

**Section 13.1. Fees, fines and penalties.**

*(a) 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 under 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.*

*(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 penalties imposed in accordance with this act and collected in accordance with section 907(b) of the act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act," shall be for the exclusive use by the board in carrying out the provisions of this act and shall be annually appropriated for that purpose.*

*(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 the regulations thereunder.*

**Section 13.2. 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 Senate and House Appropriations Committees, 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.*

*(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 7. Section 14 of the act, amended May 2, 1985 (P.L.20, No.9), is amended to read:

**Section 14. [Automatic] Temporary and automatic suspension.**

*(a) A license issued under this act may be temporarily suspended 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 section 15(d) 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.*

(b) A license issued under this act shall automatically be suspended upon the commitment to an institution of a licensee 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 section shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as in the case of revocation or suspension of license.

Section 8. The act is amended by adding sections to read:

**Section 14.1. Reinstatement of license, certificate or registration.**

*Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the license, certificate or registration of a person to practice osteopathic medicine pursuant to this act which has been revoked. Any person whose license, certificate or registration 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 for the license applied for, to include the examination requirement, if he or she desires to practice at any time after such revocation.*

**Section 14.2. Surrender of suspended or revoked license or certificate.**

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

Section 9. Section 15(a)(3), (b)(3) and (d) of the act are amended to read:

Section 15. Reasons for refusal, revocation or suspension of license.

(a) The board shall have authority to refuse, revoke or suspend the license of a physician for any of the following reasons:

\* \* \*

(3) Conviction of a felony, a crime involving moral turpitude, or a crime related to the practice of osteopathic medicine. Conviction shall include 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.*

\* \* \*

(b) The board shall have authority to refuse, revoke or suspend the certification of a physician assistant for any or all of the following reasons:

\* \* \*

(3) Conviction of a felony in this Commonwealth or any other state, territory or country. Conviction as used in this paragraph shall include 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.*

\* \* \*

(d) All actions of the board shall be taken subject to the right of notice, hearing, adjudication and appeal therefrom in accordance with the provisions of [the "Administrative Agency Law."] *Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).*

Section 10. The act is amended by adding sections to read:

**Section 16.1. Subpoenas.**

(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 16.2. Injunction or other process.**

*It shall be unlawful for any person to practice or attempt to offer to practice osteopathic medicine, 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 osteopathic medicine 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 found that the respondent has engaged in the unlawful practice of osteopathic medicine, 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 16.3. Impaired professional.**

*(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, 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) 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 provided shall, upon request, disclose to the consultant such information in its possession regarding an 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 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 pro-*



*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 professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.*

*(d) 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 possession 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) 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 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 osteopathic physician 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 16.4. Radiologic procedures.**

*(a) On and after January 1, 1987, no auxiliary personnel shall perform radiologic procedures on the premises of an osteopathic physician unless such person is under the direct supervision of an osteopathic physician who is on the premises at the time the X-ray is taken and unless such person has passed an examination approved by the board and administered in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."*

*(b) The board shall, by regulation, provide for the exclusion of auxiliary personnel from performing radiologic procedures if the continued performance of radiologic procedures by the auxiliary personnel is determined by the board to pose a threat to the health, safety or welfare of the public.*

*(c) It shall be unlawful under this act to knowingly permit radiologic procedures to be performed in violation of this section or in violation of the regulations promulgated or orders issued in accordance with this section.*

*(d) No auxiliary personnel who has or obtains a license, a certificate or registration issued by, or on behalf of, a board within the Bureau of Professional and Occupational Affairs shall be required to undergo any additional education or testing pursuant to this section if radiologic procedures were included in the education or the examination which he or she was required to complete successfully in order to be eligible for such license, certificate or registration.*

Section 11. This act, with respect to the State Board of Osteopathic Medical 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 12. (a) Section 416 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 or parts of acts are repealed insofar as they are inconsistent with this act.

Section 13. The presently confirmed members of the State Board of Osteopathic Medical Examiners constituted under section 464 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 14. Each rule and regulation of the board in effect on December 31, 1985, and not inconsistent with this act, 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, shall remain in effect after such date until repealed or amended in accordance with the provisions of this act.

Section 15. Any person who holds a valid license issued by the State Board of Osteopathic Medical Examiners under the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, 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 Osteopathic Medicine as provided for in this amendatory act.

Section 16. This act shall take effect January 1, 1986, or immediately, whichever is later, except for the amendments to section 10 of the act relating to continuing medical education, which shall take effect so that each person at present licensed to practice osteopathic medicine and surgery without restriction must submit to the State Board of Osteopathic Medicine evidence

of compliance with the continuing medical education requirements set forth in this act when such person applies for reregistration with the board beginning in 1988.

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

DICK THORNBURGH