

No. 1985-106

AN ACT

SB 1103

Amending the act of June 22, 1970 (P.L. 378, No. 122), entitled "An act concerning nursing homes; providing for the licensing of persons charged with the general administration of such homes; prescribing the powers and duties of the State Board of Examiners of Nursing Home Administrators; fixing fees and making certain acts unlawful," providing for the reestablishment and continuation of the State Board of Examiners of Nursing Home Administrators, for temporary and automatic suspensions of licenses, for reporting of multiple licensure, for civil penalties and for reports; further providing for the terms of office, meetings and compensation of members, for injunctions, for powers and duties of the board, for subpoenas, for examinations, for licenses, for suspension of licenses, for disciplinary proceedings and for restoration of licenses and registrations; providing for the fixing of fees; and making repeals.

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

Section 1. The act of June 22, 1970 (P.L. 378, No. 122), known as the Nursing Home Administrators License Act, is amended by adding a section to read:

Section 3.1. State Board of Examiners of Nursing Home Administrators.—(a) The State Board of Examiners of Nursing Home Administrators shall consist of fifteen members as follows: six members shall be nursing home administrators, (two from not-for-profit facilities, two from operated-for-profit facilities and two from county facilities); three members who have been actively involved with the care of chronically ill and infirm aged patients and who represent professions or occupations other than nursing home administration, such as medicine, nursing or hospital administration; three members representative of the consumer; and the Secretary of Health, or his designee, the Director of the Bureau of Consumer Protection in the Office of Attorney General, or his designee, and the Commissioner of Professional and Occupational Affairs. No more than three professional members of the board shall be officials or full-time employes of State or local governments. No non-institutional member of the board shall have any financial interest in any nursing home. All members of the board shall be citizens of the United States and shall be residents of this Commonwealth.

(b) Hereafter, the term of office of each member shall be four years from his appointment, or until his successor has been appointed and qualified, but no longer than six months beyond the four-year period. In the event that any member shall die or resign or otherwise become disqualified during his term of office, his successor shall be appointed in the same way and with the same qualifications as above set forth and shall hold office for the unexpired term. No member shall be eligible for appointment to serve more than two consecutive full terms.

(c) *Appointments to the board shall be made by the Governor, by and with the consent of a majority of the members elected to the Senate. The Governor may remove any member for misconduct, incapacity, incompetence or neglect of duty after the member so charged has been served with a written statement of charges and has been given an opportunity to be heard.*

(d) *The professional and public members of the board shall receive sixty dollars (\$60) per diem when actually engaged in the transaction of official business. Members shall receive, in addition, the amount of reasonable travel, hotel and other necessary expenses incurred in performing their duties for the board.*

(e) *The board, with the approval of the Commissioner of Professional and Occupational Affairs, may employ and fix the compensation and duties of necessary personnel to assist it in the performance of its duties.*

(f) *The board shall elect annually from its membership a chairman, vice-chairman and secretary.*

(g) *The board shall hold two or more meetings each year. At any meeting a majority of those members appointed and qualified shall constitute a quorum. A member may not be counted as part of a quorum or vote on any issue, other than temporary and automatic suspension under section 8.1, unless he is physically in attendance at the meeting. A member of the board who fails to attend three consecutive meetings shall forfeit his 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. 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 board membership 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.*

(h) *Public notice of meetings of the board shall be given and meetings of the board shall be conducted in accordance with the act of July 19, 1974 (P.L. 486, No. 175), referred to as the Public Agency Open Meeting Law.*

Section 2. Section 4(a) of the act is amended by adding clauses to read:

Section 4. Functions and Duties of the Board.—(a) It shall be the function and duty of the board:

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(7) *To submit annually to the Appropriations Committees of the House of Representatives and the Senate, fifteen 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.*

(8) *To 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 the time from the initial complaint to final disposition.

(9) To develop standards of professional conduct appropriate to establish and maintain a high level of integrity and performance in the practice of nursing home administration.

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Section 3. Section 6(a) of the act is amended and the section is amended by adding a subsection to read:

Section 6. Qualifications for Admission to Examination.—(a) The board shall admit to examination for licensure as a nursing home administrator any candidate who pays [a fee of ten dollars (\$10)] *a fee established by the board by regulation* and submits evidence of good moral character and suitability prescribed by the board, and, that he is at least twenty-one years old, a citizen of the United States, or that he has duly declared his intention of becoming a citizen of the United States, and that he has completed preliminary education satisfactory to the board.

* * *

(g) (1) The board shall, within six months of the effective date of this act, initiate the promulgation of regulations approving specialized graduate and undergraduate courses of study in this Commonwealth, which shall be accepted by the board as relevant to the practice of nursing home administration. Such courses shall include, but not be limited to, nursing home administration, health facility administration and geriatric social work.

(2) The board shall, within six months of the effective date of this act, initiate the promulgation of regulations setting forth the practical experience acceptable in lieu of the educational requirements set forth in subsections (c) and (d).

Section 4. Section 7 of the act is amended to read:

Section 7. Examinations.—The board shall determine the subjects of examination for applicants for licensure as nursing home administrators, and the scope, content and format of such examinations which in any examination shall be the same for all candidates. The examinations shall include examination of the applicant to demonstrate his proficiency in the rules and regulations of health and safety.

Examinations shall be held at least four times for the first year and at least two times each year thereafter, at such times and places as the board shall designate.

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 the provisions of section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

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

Section 7.1. Fees.—(a) All fees required pursuant to this act shall be fixed by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues generated by fees, fines and civil penalties

imposed pursuant to this act are not sufficient to match expenditures over a two-year period, the board shall increase those fees by regulation, subject to review in accordance with the Regulatory Review Act, such 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 are inadequate to meet the minimum enforcement efforts required, then the bureau, after consultation with the board, shall increase the fees by regulation, subject to review in accordance with the Regulatory Review Act, such that adequate revenues are raised to meet the required enforcement effort.

(c) All fees, fines and civil penalties collected under the provisions of 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."

Section 6. Section 8(b), (c) and (d) of the act are repealed.

Section 7. The act is amended by adding a section to read:

Section 8.1. Temporary and Automatic Suspensions.—(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 12 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 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 days.

(b) A license issued under this act shall automatically be suspended upon the legal 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 subsec-

tion 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.

(c) 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 8. Section 9(b) of the act is amended to read:

Section 9. Registration.—***

(b) Upon making an application for a new certificate of registration such individual shall pay [a biennial registration fee of twenty dollars (\$20)] a biennial registration fee established by the board by regulation, and, at the same time shall submit evidence satisfactory to the board that during the biennial period immediately preceding such application for registration he has attended a board approved continuation education program or course of study of not less than twenty-four hours as provided in the rules and regulations of the board.

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

Section 9.1. Reporting of Multiple Licensure.—Any licensed nursing home administrator of this Commonwealth who is also licensed to practice nursing home administration in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states shall be reported to the board on the biennial renewal application or within ninety days of final disposition, whichever is sooner. Multiple licensure shall be noted by the board on the nursing home administrator's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against the nursing home administrator in this Commonwealth.

Section 10. Sections 10 and 11 of the act are amended to read:

Section 10. Reciprocity.—The board, in its discretion, and otherwise subject to the provisions of this act and the rules and regulations of the board promulgated thereunder prescribing the qualifications for a nursing home administrator license, may endorse a nursing home administrator license issued by the proper authorities of any other state, upon payment of **[a fee of two dollars (\$2)] a fee established by the board by regulation** and upon submission of evidence satisfactory to the board (i) that such other state maintained a system and standard of qualifications and examinations for a nursing home administrator license which were equivalent to those required in this State at the time such other license was issued by such other state, and (ii) that such other state gives similar recognition and endorsement to nursing home administrator licenses of this Commonwealth.

Section 11. Penalties.—(a) Whoever (i) sells or fraudulently obtains or furnishes any nursing home administrator license or aids or abets therein, or (ii) practices as a nursing home administrator under cover of any license or

registration illegally or fraudulently obtained or unlawfully issued, or (iii) practices as a nursing home administrator or uses in connection with his name any designation tending to imply that he is a nursing home administrator unless duly licensed and registered to so practice under the provisions of this act, or (iv) practices as a nursing home administrator during the time his license or registration issued under the provisions of this act shall be suspended or revoked, or (v) otherwise violates any of the provisions of this act shall, upon conviction thereof **[in a summary proceeding]** be sentenced to pay a fine of not more than **[two hundred dollars (\$200)] five hundred dollars (\$500)** or to imprisonment for not more than thirty days, or both, *and for a second or subsequent offense shall, upon conviction thereof, be sentenced to pay a fine of not more than one thousand dollars (\$1,000) or to imprisonment for not more than ninety days, 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 seven 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 home administration 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 11. Section 12(a) introductory paragraph and clause (4) of the act are amended and a clause is added to read:

Section 12. Disciplinary Proceedings.—(a) The license and/or registration of any person practicing or offering to practice nursing home administration **[, or the license of a provisional nursing home administrator,]** may be revoked or suspended, or such licensee may be reprimanded, censured or otherwise disciplined in accordance with the provisions of this section upon decision and after due hearing in any of the following cases:

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(4) Upon proof that such licensee has been convicted **[in a court of competent jurisdiction, either within or without this Commonwealth, of a felony] of a felony in the courts of this Commonwealth, the United States, or any other state, territory or country, or has received probation without verdict, disposition in lieu of trial, or an Accelerated Rehabilitative Disposition in the disposition of felony charges.**

(5) *Having a license to practice nursing home administration revoked or suspended or having other disciplinary action imposed or consenting to the imposition of such other disciplinary action by the proper licensing authority of another state, territory or country or having his application for license refused, revoked or suspended by the proper licensing authority of another state, territory or country.*

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Section 12. The act is amended by adding a section to read:

Section 12.1. Reports.—*The board, in cooperation with the Department of Health, shall develop a reporting procedure which requires the Department of Health to notify the board when deficiencies found in a licensed nursing home may be due to the practices of the nursing home administrator and which requires the board to notify the Department of Health of any disciplinary actions taken against a nursing home administrator licensed under this act. The reporting procedure so developed shall be promulgated by the board by regulation and shall be subject to review in accordance with the act of June 25, 1982 (P.L.633, No.181), known as the “Regulatory Review Act.”*

Section 13. Section 13 of the act is amended to read:

Section 13. Restoration of Licenses and/or Registrations.—(a) [The board may, in its discretion, reissue a license and/or registration to any person whose license and/or registration has been revoked except that there shall be immediate reissuance of license when an appeal has been upheld.] *Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the license or registration of a person to practice nursing home administration pursuant to this act which license or registration has been revoked. Any person whose license 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.*

(a.1) 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.

(b) Application for the reissuance of a license and/or registration shall be made in such manner as the board may direct.

(c) If a person convicted of a felony or crime deemed to be a felony is subsequently pardoned by the Governor of the state where such conviction was had or by the President of the United States, or shall receive a certificate of good conduct granted by the Board of Probation and Parole, the board may, in its discretion, on application of such person and on the submission of evidence satisfactory to the board, restore to such person the nursing home administrator's license and/or registration.

Section 14. The act is amended by adding sections to read:

Section 14.1. Injunction Against Unlawful Practice.—*It shall be unlawful for any person to practice or attempt to offer to practice nursing home administration, 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 home administration 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 the respondent is found guilty of the unlawful practice of*

nursing home administration, 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 14.2. Investigative Subpoena.—*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. Patient 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 subpoenas as are necessary to prevent unnecessary intrusion in patient confidential information. The board is authorized to apply to the Commonwealth Court to enforce its subpoenas.*

Section 15. This act with respect to the State Board of Examiners of Nursing Home Administrators 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) All fees fixed pursuant to section 213 of the act of July 1, 1978 (P.L.700, No.124), known as the Bureau of Professional and Occupational Affairs Fee Act, shall continue in full force and effect until changed as provided herein.

(b) Persons who are members of the State Board of Examiners of Nursing Home Administrators, on the effective date of this act, shall serve on the board as provided for in this act until their current terms expire, provided that any current board members whose terms have expired on or before the effective date of this act shall serve until their successors are duly appointed and qualified, but no longer than six months after the effective date of this act.

(c) Each rule and regulation of the board in effect on the effective date of this act shall remain in effect after such date until 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.

Section 17. (a) Section 470 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) The act of July 1, 1978 (P.L.700, No.124), known as the Bureau of Professional and Occupational Affairs Fee Act, is repealed insofar as it is inconsistent with this act.

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

Section 18. This act shall take effect January 1, 1986, or immediately, whichever is later.

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

DICK THORNBURGH