

SENATE NO. 1885

AN ACT RELATIVE TO THE AUTHORITY OF THE BOARDS OF REGISTRATION

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Section 61 of Chapter 112 of the General Laws as appearing in the 2002 Official
2 Edition, is hereby amended by striking out the first paragraph and inserting in place thereof, the
3 following paragraph:-
4 Except as otherwise provided by law or by section 61A, each board of registration or
5 examination in the division of professional licensure in the office of consumer affairs and
6 business regulation or each board of registration or examination in the department of public
7 health, after a hearing, may, by a majority vote of the whole board, suspend, revoke or cancel
8 any certificate, registration, license or authority issued by it, if it appears to said board that the
9 holder of such certificate, registration, license or authority, is incapacitated by reason of mental
10 illness, or is guilty of deceit, malpractice, gross misconduct in the practice of his profession, or
11 of any offense against the laws of the commonwealth relating thereto. Any person whose
12 certificate, registration, license or authority is suspended or revoked hereunder shall also be

13 liable to such other punishment as may be provided by law. The said boards may make such
14 rules and regulations as they deem proper for the filing of charges and the conduct of hearings.

15 SECTION 2. Chapter 112 of the General Laws as so appearing, is hereby amended by inserting
16 after section 61, the following section:

17 Section 61A.

18 (a) As used in this section, "holder" means the holder of a certificate of registration issued by
19 the board, including an individual or entity licensed or registered pursuant to Chapter 112.

20 (b) As used in this section, "board" means any board of registration within the department of
21 public health.

22 (c) The board, by majority vote and upon determination made after a hearing held under chapter
23 30A that the holder has engaged in conduct enumerated in subsection (c), may undertake 1 or
24 more of the following actions:

25 (1) suspend, revoke, cancel or place on probation the holder;

26 (2) reprimand or censure the holder;

27 (3) require the holder to complete additional education or training;

28 (4) require the holder to perform, for each violation, up to 100 hours of public service in
29 a manner and time to be determined by the board;

30 (5) require the holder to practice under appropriate supervision for a period of time as
31 determined by the board;

32 (6) require the holder to participate in an alcohol or drug rehabilitation program or
33 undergo drug testing, or both; or

34 (7) assess upon a holder a civil penalty not to exceed \$1,000 for each violation, but the
35 board shall not assess a civil penalty on an individual holder if it finds that a medical
36 error resulted from systemic failure caused by another.

37 (d) The board may discipline a holder by undertaking 1 or more of the actions provided under
38 subsection (b) if the holder has:

39 (1) engaged in conduct which places into question the holder's competence to practice
40 his profession including, but not limited to, gross misconduct or misconduct in the
41 practice of the profession, or practiced the profession fraudulently, beyond its authorized
42 scope, with gross incompetence, or with gross negligence on 3 or more occasions;

43 (2) practiced the profession while the ability to practice was impaired by alcohol or
44 drugs;

45 (3) violated any law, rule or regulation of the board of registration governing the practice
46 of his profession;

47 (4) engaged in dishonesty, fraud or deceit in the practice of his profession;

48 (5) knowingly permitted, aided or abetted an unlicensed person to perform activities
49 requiring a certificate of registration;

50 (6) practiced when his certificate of registration has been suspended, revoked or
51 canceled under authority of this chapter;

52 (7) knowingly practiced when his certificate of registration has expired;

53 (8) been convicted of a criminal offense which reasonably calls into question the
54 holder's ability to practice his profession; or

55 (9) had a certificate of registration issued by another state or territory of the United
56 States, the District of Columbia or a foreign state or nation, with authority to issue a

57 certificate of registration, revoked, canceled or suspended, not renewed or otherwise
58 acted against, if the basis for the action would constitute a basis for disciplinary action in
59 the commonwealth.

60 (e) The board shall consider any relevant written policies, procedures or directions of an entity
61 holder and the entity holder's implementation of those policies, procedures or directions as they
62 relate to the conduct of an individual holder, as possible mitigating factors, in any action against
63 an individual holder under this section.

64 (f) Nothing in this section shall limit the board's authority to impose reasonable sanctions after
65 hearing or by consent agreement. The board shall promulgate regulations to implement this
66 section.

67 (g) The board may apply to the supreme judicial court for an order enjoining the unlicensed
68 practice or enforcing ordering the payment of a civil penalty assessed by the board, or both.
69 Upon a showing by the board that a person has engaged in the unlicensed practice, the court
70 shall grant an injunction, restraining order or other appropriate order.

71 (h) If the board finds that there is reason to believe that a holder committed a criminal offense,
72 the board shall notify the district attorney having jurisdiction over such individual or
73 occurrence; but the board need not notify the appropriate district attorney if the board has reason
74 to believe that the criminal offense in question involves a violation of chapter 94C or other law
75 concerning controlled substances as defined in said chapter 94C and that the said offense may
76 be related to an addiction to, dependence on or habitual use of a controlled substance on the part
77 of the holder. In such a case, the board shall notify the appropriate district attorney only when,
78 after evaluation of the holder, the board has determined that the holder has not been
79 rehabilitated and that it is unlikely that the holder can be rehabilitated without endangering the

80 public health, safety or welfare, or the board has determined that the criminal offense in
81 question was not related to an addiction to, dependence on or habitual use of a controlled
82 substance on the part of the holder.

83 (i) If the board, upon initial review, concludes that the holder's continued practice poses an
84 immediate and serious threat to the public health, safety or welfare, the board may suspend or
85 refuse to renew a holder's certificate of registration subject to notice and an opportunity for a
86 hearing on the necessity of the summary action within 7 days of the board's action. If a hearing
87 is requested but not held within 7 days of the board's action, the certificate of registration
88 against which action was taken shall be deemed reinstated. Following the hearing, any
89 continuing suspension imposed by the board shall remain in effect until the conclusion of a
90 formal proceeding on the merits of the allegations against the holder, including judicial review
91 of the proceeding or until the allegations have been withdrawn by the board. The board, after
92 proper notice and hearing, shall adopt rules and regulations governing the suspension procedure
93 authorized by this section.

94 (j) No person filing a complaint or reporting or providing information pursuant to this section or
95 assisting the board at its request in any manner in discharging its duties and functions shall be
96 liable in any cause of action arising out of the receiving of such information or assistance,
97 provided so long as the person making the complaint or reporting or providing such information
98 or assistance does so in good faith and without malice.

99 (k) The board shall keep confidential any complaint, report, record or other information
100 received or kept by the board in connection with an investigation conducted by the board under
101 this section. However, except to the extent that disclosures of records or other information may
102 be restricted as otherwise provided by law, or by the board's regulations, investigative records or

103 information of the board shall not be kept confidential after the board has disposed of the matter
104 under investigation by issuing an order to show cause, by dismissing a complaint or by taking
105 other final action. The requirement that investigative records or information be kept confidential
106 at any time shall not apply to requests from the person under investigation, the complainant, or
107 other state or federal agencies, boards or institutions as the board shall determine by regulations.

108 (l) Any employee of the board who is found to be in violation of the confidentiality provisions
109 of this section or any other confidentiality law or regulation, which applies to the board shall be
110 subject to a fine of not more than \$500. The fine shall be assessed and collected by the board.

111 SECTION 3. Section 30 of said chapter 112 of the General Laws, as appearing in the 2000
112 Official Edition, is hereby amended by striking out the second paragraph and inserting in place
113 thereof the following paragraph:-

114 Whoever violates any provision of this section shall be punished by a fine of not more than
115 \$5000 or by imprisonment in the house of correction for not more than a term of 1 year or by
116 both such fine and imprisonment, and for a second or subsequent conviction by a fine of not
117 more than \$10,000 or by imprisonment in the house of correction for not more than 2 years or
118 by both such fine and imprisonment.

119 SECTION 4. There is hereby established a special committee to review the current disciplinary
120 functions within each boards of registration under the department of public health. The
121 committee shall consist of: the secretary of the executive office of health and human services or
122 his designee; the commissioner of the department of public health or his designee; and the
123 directors of each of the boards of registration under the department of public health. The
124 committee shall, in consultation with such individuals and organizations as it deems necessary:
125 identify potential statutory or regulatory conflicts or other obstacles that would interfere with

126 the compliance with this act and recommend statutory and regulatory changes to comply with
127 this act. The committee shall report its findings, and any recommendations to the Speaker of
128 the House and the President of the Senate, to the chairs of the joint committee on health care,
129 and the house and senate committees on ways and means no later than 120 days after the
130 effective date of this act.