

The Essentials of Professional Licensure Practice and Procedure

Bernadette Paul, Esq.

Deputy Chief Counsel
PA Department of State

Clifford D. Swift III, Esq.

Law Office of Clifford D. Swift III
Lancaster

DEPARTMENT OF STATE, BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

The Department of State, Bureau of Professional and Occupational Affairs (BPOA) is charged with the responsibility of regulating twenty-nine Boards & Commissions.

Accountancy CPA Law: 63 P.S. § 9.1 <i>et seq.</i> Regulations: 49 Pa. Code § 11.1 <i>et seq.</i>	Nursing The Professional Nursing Law: 63 P.S. § 211 <i>et seq.</i> Practical Nurse Law: 63 P.S. § 651 <i>et seq.</i> Regulations: 49 Pa. Code § 21.1 <i>et seq.</i>
Architects Architects Licensure Law: 63 P.S. 34.1 <i>et seq.</i> Regulations: 49 Pa. Code § 9.1 <i>et seq.</i>	Nursing Home Administrators Nursing Home Administrator License Act: 63 P.S. § 1101 <i>et seq.</i> Regulations: 49 Pa. Code § 39.1 <i>et seq.</i>
Auctioneer Examiners Auctioneer Licensing and Trading Registration Act: 63 P.S. § 734.1 <i>et seq.</i> Regulations: 49 Pa. Code § 1.1 <i>et seq.</i>	Occupational Therapy Occupational Therapy Practice Act: 63 P.S. § 1501 <i>et seq.</i> Regulations: 49 Pa. Code § 42.1 <i>et seq.</i>
Barber Examiners Barber License Law: 63 P.S. § 551 <i>et seq.</i> Regulations: 49 Pa. Code § 3.1 <i>et seq.</i>	Optometry Optometric Practice and Licensure Act: 63 P.S. § 244.1 <i>et seq.</i> Regulations: 49 Pa. Code § 23.1 <i>et seq.</i>
Certified Real Estate Appraisers Real Estate Appraisers Certification Act: 63 P.S. § 457.1 <i>et seq.</i> Regulations: 49 Pa. Code § 36.1 <i>et seq.</i>	Osteopathic Medicine Osteopathic Medical Practice Act: 63 P.S. 271.1 <i>et seq.</i> Mcare Act: 40 P.S. § 1303.101 <i>et seq.</i> Regulations: 49 Pa. Code § 25.1 <i>et seq.</i>
Chiropractic Chiropractic Practice Act: 63 P.S. 625.101 <i>et seq.</i> Regulations: 49 Pa. Code § 5.1 <i>et seq.</i>	Pharmacy Pharmacy Act: 63 P.S. § 390.1 <i>et seq.</i> Regulations: 49 Pa. Code § 27.1 <i>et seq.</i>
Cosmetology Beauty Culture Act: 63 P.S. 507 <i>et seq.</i> Regulations: 49 Pa. Code § 7.1 <i>et seq.</i>	Physical Therapy Physical Therapy Practice Act: 63 P.S. § 1301 <i>et seq.</i> Regulations: 49 Pa. Code § 40.1 <i>et seq.</i>
Crane Operators Crane Operator Licensure Act: 63 P.S. § 2400.101 <i>et seq.</i> Regulations: 409 Pa. Code § 6.1 <i>et seq.</i>	Podiatry Podiatry Practice Act: 63 P.S. § 41.1 <i>et seq.</i> Regulations: 49 Pa. Code § 29.1 <i>et seq.</i>
Dentistry The Dental Law: 63 P.S. § 120 <i>et seq.</i> Regulations: 49 Pa. Code § 33.1 <i>et seq.</i>	Psychology Professional Psychologist Practice Act: 63 P.S. § 1201 <i>et seq.</i> Regulations: 49 Pa. Code § 41.1 <i>et seq.</i>

Engineers, Land Surveyors, Geologists Engineer, Land Surveyors and Geologist Registration Law: 63 P.S. § 148 <i>et seq.</i> Regulations: 49 Pa. Code § 37.1 <i>et seq.</i>	Real Estate Commission Real Estate Licensing and Registration Act: 63 P.S. § 455.101 <i>et seq.</i> Regulations: 49 Pa. Code § 35.1 <i>et seq.</i>
Funeral Directors Funeral Director Law: 63 P.S. § 479.1 <i>et seq.</i> Regulations: 49 Pa. Code § 13.1 <i>et seq.</i>	Social Workers, Marriage & Family Therapists, Professional Counselors Social Workers, Marriage and Family Therapists and Professional Counselors Act: 63 P.S. § 1901 <i>et seq.</i> Regulations: 49 Pa. Code § 47.1 <i>et seq.</i>
Landscape Architects Landscape Architects' Registration Law: 63 P.S. § 901 <i>et seq.</i> Regulations: 49 Pa. Code § 15.1 <i>et seq.</i>	Speech-Language Pathology and Audiology Speech-Language Pathologists and Audiologists Licensure Act: 63 P.S. § 1701 <i>et seq.</i> Regulations: 49 Pa. Code § 45.1 <i>et seq.</i>
Massage Therapy Massage Therapy Law: 63 P.S. § 627.1 <i>et seq.</i> Regulations: 49 Pa. Code § 20.1 <i>et seq.</i>	Vehicle Manufacturers, Dealers & Salespersons Board of Vehicles Act: 63 P.S. § 818.1 <i>et seq.</i> Regulations: 49 Pa. Code § 19.1 <i>et seq.</i>
Medicine Medical Practice Act: 63 P.S. § 422.1 <i>et seq.</i> Mcare Act: 40 P.S. § 1303.101 <i>et seq.</i> Regulations: 49 Pa. Code § 16.1 <i>et seq.</i>	Veterinary Medicine Veterinary Medicine Practice Act: 63 P.S. 485.1 <i>et seq.</i> Regulations: 49 Pa. Code § 31.1 <i>et seq.</i>
Navigation Commission (The Navigation Commission for the Delaware River and its Navigable Tributaries): 71 P.S. § 180-5; Administrative Code of 1929 § 475	

In addition to the statutes and regulations cited above 49 Pa. Code § 43(b)(1) *et seq.* (Act 48) provides a schedule of Civil Penalties which various Boards and Commissions may impose for specified offenses. These offenses include typically minor violations such as failure to display a license, practicing on an expired license, failure to complete required continuing education, etc...

I. COMPLAINTS

The BPOA receives complaints from a variety of sources, including but not limited to:

- Consumer or Patient Complaints;
- Reports by Colleagues, Hospitals or Employers
- Self-Report either on Biennial Registration or as required by a Licensing Act;
- Reports from National Practitioner Data Bank;
- Reports of Federation of State Medical Boards;
- Media Reports;
- Reports of Disciplinary Action from other states;
- JNET; etc...

II. INVESTIGATIONS

Investigations are conducted on behalf of the BPOA by the Bureau of Enforcement and Investigation (BEI). All investigations and investigative files are confidential.¹

In general, there is no duty to cooperate with BPOA or BEI investigators, although it is very important to read the applicable practice Act and regulations as there are some specific niches where failure to cooperate has disciplinary consequences. The Boards and Commissions do have the power to issue investigative subpoenas which may be enforced in the Commonwealth Court pursuant to 63 P.S. § 2022 which states:

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. 63 P.S. § 2022.

¹ MCARE Act 40 P.S. § 1303.903; Right to Know Law, 65 P.S. § 67.708(b)(17);

III. ORDER TO SHOW CAUSE

Formal action against a licensee (known as “Respondent”) are initiated by the filing of an Order to Show Cause (OSC). 1 Pa. Code § 35.14. Formal hearings are conducted under the Administrative Agency Law, 2 Pa. C.S.A. § 501-55, and the General Rules of Administrative Practice and Procedure (GRAPP), 1 Pa. Code § 31.1 *et. seq.*

Whenever an agency desires to institute a proceeding against a person under statutory or other authority, the agency may commence the action by an order to show cause setting forth the grounds for the action. The order will contain a statement of the particulars and matters concerning which the agency is inquiring, which shall be deemed to be tentative and for the purpose of framing issues for consideration and decision by the agency in the proceeding, and the order will require that the respondent named respond orally, or in writing (as provided in § 35.37 (relating to answers to orders to show cause)) or both. See, 1 Pa. Code § 35.14; State Dental Council and Examining Board v. Pollack, 318 A.2d 910, 915 (Pa. 1974).

A. Notice and Opportunity to be Heard - 2 Pa. C.S.A. § 504

No adjudication of a Commonwealth agency shall be valid as to any party unless he shall have been afforded reasonable notice of a hearing and an opportunity to be heard. All testimony shall be stenographically recorded and a full and complete record shall be kept of the proceedings.

B. Appearance/Representation - 1 Pa. Code § 31.21

An individual may appear in his own behalf. A member of a partnership may represent the partnership, a bona fide officer of a corporation, trust or association may represent the corporation, trust or association, and an officer or employee of another agency or of a political subdivision may represent the agency or political subdivision in presenting any submittal to an agency subject to these rules. Parties, except individuals appearing in their own behalf, shall be represented in adversary proceedings only under § 31.22 (relating to appearance by attorney). See also, 2 Pa. C.S.A. § 502

A person may be represented in a proceeding by an attorney at law admitted to practice before the Supreme Court of Pennsylvania, or, if a similar agency of another jurisdiction accords like privileges to members of the bar of this Commonwealth, the highest court of such other jurisdiction. 1 Pa. Code § 31.22.

C. Delegation to Hearing Examiner

A Board may delegate a matter to a Hearing Examiner.

Presiding officers designated by the agency head to preside at hearings shall have the authority, within the powers and subject to the regulations of the agency, as follows:

(1) To regulate the course of hearings, including the scheduling thereof, subject to the approval of the agency head, and the recessing, reconvening, and the adjournment thereof, unless otherwise provided by the agency head, as provided in § 35.102(b) (relating to hearing calendar).

- (2) To administer oaths and affirmations.
- (3) To issue subpoenas.
- (4) To rule upon offers of proof and receive evidence.
- (5) To take or cause depositions to be taken.
- (6) To hold appropriate conferences before or during hearings.
- (7) To dispose of procedural matters but not, before their proposed report, if any, to dispose of motions made during hearings to dismiss proceedings or other motions which involve final determination of proceedings.
- (8) Within their discretion, or upon direction of the agency head, to certify any question to the agency head for consideration and disposition by the agency head.
- (9) To submit their proposed reports in accordance with § 35.202 (relating to proceedings in which proposed reports are prepared).
- (10) To take other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the agency functions and with the regulations and policies of the agency.

D. Types of Discipline

A Licensing Board may impose a number of sanctions against a licensee that include, but are not limited to:

- Revocation;
- Suspension;
- Civil Penalty (up to \$10,000.00 per count; up to \$1,000.00 per count for citations);
- Probation (with terms);
- Written Reprimand;

E. Professional Health Monitoring Programs

Certain health related boards may defer and ultimately dismiss corrective action for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program, under certain terms and conditions. Felony convictions under the Drug Act will disqualify the licensee.

- Voluntary Recovery Program – non-public and non disciplinary
- Disciplinary Monitoring Unit – public and disciplinary

IV. Answer/Request for Hearing

A. Number of Copies of Pleadings - 1 Pa Code § 33.15.

Except as may be otherwise provided by statute or ordered or requested by an agency, and except as provided by §§ 35.193 and 35.212(d) (relating to filing and service of briefs; and content and form of briefs on exceptions), at the time pleadings, submittals or documents other than correspondence are filed with the agency, there shall be furnished to the agency an original and two conformed copies of the papers, including exhibits, if any.

B. Contents of Answer - 1 Pa. Code § 35.37

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. A respondent failing to file answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

Note: Answers and Requests for hearing must be filed within the time set forth in the OSC which is usually 30 days of the filing of the OSC or risk default.

C. Request for Hearing – 1 Pa. 35.101

A Request for Hearing must be included as either part of the answer or as a separate document filed concurrently with the answer or a request for hearing will be deemed waived.

D. Motions as to answer.

Except as provided in § 35.39 (relating to replies to respondents seeking affirmative relief), no replication to the answer shall be filed, but a participant may file, within 10 days after the filing of an answer, a motion that the answer be made more definite and certain, the motion to point out the defects complained of and the details desired. Answers or objections to Motions must be filed within 10 days. 1 Pa. Code § 35.179.

Note: Motions to Dismiss will not be acted upon by a Hearing Examiner as they lack the authority to make final determinations. 1 Pa. Code § 35.180. Motions for a more specific pleading may be filed to test the adequacy of the OSC.

D. Service by a participant - 1 Pa Code § 33.32

Pleadings, submittals, briefs and other documents, filed in proceedings pending before an agency, when filed or tendered to the agency for filing, shall be served upon all participants in the proceeding. The service shall be made by delivering in person or by mailing, properly addressed with postage prepaid, the requisite number of copies to each participant as provided in § 33.37 (relating to number of copies).

V. Settlement

Resolution of charges filed against a licensee may be resolved at anytime before, during or after a hearing by way of a Consent Agreement. The terms of the Consent Agreement are negotiated directly with the Prosecuting Attorney assigned to the matter, but must be approved by the Board with jurisdiction over the Licensee.

A. Offers of Settlement – 1 Pa. Code 35.115

Nothing contained in these rules shall be construed as precluding a participant in a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the agency, or to staff counsel for transmittal to the agency, or from requesting conferences for that purpose. Unaccepted proposals of settlement or of adjustment or as to procedure to be followed and proposed stipulations not agreed to shall be privileged and are not admissible in evidence against a counsel or person claiming such privilege.

B. Factors considered by the Prosecuting Attorney include, but are not limited to:

- Severity of the allegations;
- Prior disciplinary history;
- Types of discipline or consent agreements previously approved by the Board in similar circumstances;
- Mitigating factors;
- Ability of Licensee to pay fine;

Note: Mitigation can include any information or documents that the Respondent deems relevant (and are permitted by the Prosecuting Attorney to be included in the Consent Agreement). These can include facts concerning medical or psychiatric treatment; letters of support from patients, family, pastor; evidence of continuing education or practice changes to address practice/business deficiencies, etc...

VI. Pre-Hearing Conferences

Note: There is no discovery in administrative hearings before a State Licensing Board except by agreement of the parties or in the context of a Pre-Hearing Conference. If the prosecuting attorney will not voluntarily provide evidence supporting the Commonwealth's

case, such as expert reports and records, Respondent's counsel should immediately file a request for pre-hearing conference, bearing in mind that the obligation to exchange information applies to both parties.

A. Conferences to Expedite Hearings 1 Pa. Code §35.112.

At a prehearing or other conferences which may be held to expedite the orderly conduct and disposition of a hearing, there may be considered, in addition to offers of settlement or proposals of adjustment, the possibility of the following:

- (1) The simplification of the issues.
- (2) The exchange and acceptance of service of exhibits proposed to be offered in evidence.
- (3) The obtaining of admission as to, or stipulations of, facts not remaining in dispute, or the authenticity of documents which might properly shorten the hearing.
- (4) The limitation of the number of witnesses.
- (5) The discovery or production of data.
- (6) Other matters as may properly be dealt with to aid in expediting the orderly conduct and disposition of the proceeding.

A Hearing Examiner will request that the parties exchange Pre-Hearing Statement at least 14 days before the scheduled conference. The Hearing Examiner will typically require that the statement include the following:

- An estimate of the length of time which will be required to present the party's case;
- A concise statement of the oral and documentary evidence to be offered at hearing;
- The names and addresses of all persons who may be called as witnesses and a brief summary of their testimony;
- A copy of the report of any expert whose opinion will be offered into evidence; the report shall include the findings and conclusions of the expert;
- The curriculum vitae of any expert witness whose opinion will be offered into evidence;
- A list of all exhibits and copies of all exhibits which a party may use at hearing;
- A statement of any question of law anticipated with respect to issues in the case. All such questions shall be presented with a statement of authority supporting the position.

Note: All documentary evidence should be submitted separately rather than attached to the pre-hearing statement with a cover letter indicating that they are not to be filed by the prothonotary as a public record, but are to be provided to the hearing examiner for review prior to the pre-hearing conference.

B. Refusal to make admissions or stipulate – 1 Pa. Code § 35.116

If a party attending a conference convened under these rules refuses to admit or stipulate the genuineness of a document or the truth of a matter of fact and if the participant requesting the admissions or stipulations thereafter proves the genuineness of the document or the truth of the matter of fact, he may apply to the agency head or presiding officer for an order requiring the other party to pay him the reasonable expenses incurred in making such proof, including reasonable attorney's fees. Unless the agency head or presiding officer finds that there were good reasons for the refusal to admit or stipulate or that the admissions or stipulations sought were of no substantial importance, the order shall be made. An appeal may be taken to the agency head immediately from any such order made by a presiding officer. If a party refuses to comply with such order after it becomes final, the agency may strike all or any part of such pleadings of such party or limit or deny further participation by such party.

C. Subpoenas – 1 Pa. Code § 35.142

(a) Issuance. Subpoenas for the attendance of witnesses or for the production of documentary evidence, unless directed by the agency upon its own motion, will issue only upon application in writing to the agency head or the presiding officer, except that during sessions of a hearing in a proceeding, such application may be made orally on the record before the agency head or presiding officer, who is hereby given authority to determine the relevancy and materiality of the evidence sought and to issue such subpoenas in accordance with such determination. Such written applications shall specify as nearly as may be the general relevance, materiality, and scope of the testimony or documentary evidence sought, including as to documentary evidence, specification as nearly as may be, of the documents desired and the facts to be proved by them in sufficient detail to indicate the materiality and relevance of such documents.

(b) Service and return. If service of subpoena is made by a sheriff or like officer or his deputy, such service shall be evidenced by his return thereof. If made by another person, such person shall make affidavit thereof, describing the manner in which service was made, and shall return such affidavit on or with the original subpoena. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service, a copy of the subpoena shall be exhibited to and left with the person to be served. The original subpoena, bearing or accompanied by the authorized return, affidavit, or statement, shall be returned forthwith to the office of the agency or, if so directed on the subpoena, to the presiding officer before whom the person named in the subpoena is required to appear.

(c) Fees of witnesses. Witnesses who are subpoenaed shall be paid fees as provided in § 35.139 (relating to fees of witnesses).

Note: Do not wait for the pre-hearing conference to request a subpoena as you will not have time to have the subpoena issued and served. In addition to the application for subpoena, Respondent is required to provide the hearing examiner with a the completed subpoena for signature. You must request a blank subpoena from the prothonotary or from another source. Attached to these materials is a blank subpoena.

Current witness fee is \$5.00 per day and \$.07 per mile. 42 Pa.C.S.A. § 5903

VII. Formal Hearings

A. Order of Procedure – 1 Pa. Code § 35.125

(a) In hearings upon applications, formal complaints or petitions, the complainant, petitioner or other party having the burden of proof, shall open and close, unless otherwise directed by the presiding officer. In hearings on investigations and in proceedings which have been consolidated for hearing, the presiding officer may direct who shall open and close.

Note: The degree of proof required to establish a case before an administrative tribunal is preponderance of the evidence. Lansbury v. Pennsylvania Public Utility Commission, 578 A.2d 600, 602 (Pa. Cmwlth. 2002). The Commonwealth therefore has the burden of proving the charges against the Respondent with evidence that is substantial and legally credible, not by “mere suspicion” or by only a “scintilla” of evidence. Lansbury, 578 A.2d at 602

B. Presentation by the Parties – 1 Pa. Code § 35.126

(a) Parties and staff counsel shall have the right of presentation of evidence, cross-examination, objection, motion and argument. The taking of evidence and subsequent proceedings shall proceed with reasonable diligence and with the least practicable delay.

(b) When objections to the admission or exclusion of evidence before the agency head or the presiding officer are made, the grounds relied upon shall be stated briefly. Formal exceptions are unnecessary and may not be taken to rulings thereon.

VII. Briefs

Note: At the close of the formal proceeding, both the Commonwealth and Respondent will have the opportunity to present closing arguments and will advise the Hearing Examiner if they intend to file post-hearing briefs.

A. Proceedings in which briefs are to be filed – 1 Pa. Code § 35.191

Unless waived by the participants with the consent of the presiding officer, whether oral argument is heard or not, at the close of the taking of testimony in each proceeding, the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the nature of the proceeding, the magnitude of the record and the complexity or importance of the issues involved; and he shall fix the order in which the briefs shall be filed. The first or initial brief shall be filed by the participant or participants upon whom rests the burden of proof, except that the presiding officer, when in his judgment the circumstances or exigencies require, may direct that briefs shall be filed simultaneously. In no proceeding, whether briefs are to be filed simultaneously or otherwise, shall a participant upon whom rests the burden of proof be denied the right to file a reply brief.

B. Content and form of briefs 1 Pa. Code § 35.192.

(a) Briefs shall contain the following:

- (1) A concise statement of the case.
 - (2) An abstract of the evidence relied upon by the participant filing, preferably assembled by subjects, with references to the pages of the record or exhibits where the evidence appears.
 - (3) Proposed findings and conclusions and, if desired, a proposed form of order or regulation, together with the reasons and authorities therefor, separately stated.
- (b) Exhibits should not be reproduced in the brief, but may, if desired, be reproduced in an appendix to the brief. An analysis of exhibits relied on should be included in the part of the brief containing the abstract of evidence under the subjects to which they pertain. Every brief of more than 20 pages shall contain on its front leaves a subject index, with page references and a list of cases cited, alphabetically arranged, with references to the pages where the citations appear. Briefs shall be as concise as possible.

VIII. Adjudication

Note: A Hearing Examiner may issue a Proposed Adjudication and Order or a Final Adjudication and Order depending upon the type of delegation order issued. 1 Pa. Code § 35.187.

A. Proceedings in which proposed reports are prepared - 1 Pa. Code § 35.202.

In proceedings in which prior to the conclusion of the hearing, the agency head, with notice to the parties, directs (in specific cases or by regulation) the presiding officer to prepare a proposed report, the presiding officer shall retain the record, hold oral argument as he deems necessary under § 35.204 (relating to oral argument before presiding officer), review the record in light of the applicable law, and prepare, certify and file with the office of the agency:

- (1) A proposed report.
- (2) A copy of the record of the hearing.
- (3) The briefs, if any, filed in the proceeding.

B. All adjudications must be in writing and include factual findings and the reasons for the decision. 2 Pa. C.S.A. § 507; 1 Pa. Code § 35.205.

C. Procedure to except to proposed report. 1 Pa. Code § 35.211.

A participant desiring to appeal to the agency head shall, within 30 days after the service of a copy of a proposed report or such other time as may be fixed by the agency head, file exceptions to the proposed report or part thereof in a brief (designated “brief on exceptions”). “Briefs

opposing exceptions” may be filed in response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the agency head. No further response will be entertained unless the agency head, with or without motion, so orders.

IX. Criminal and other conduct which may implicate disciplinary action

- Conviction of a felony or a misdemeanor crime related to the profession or a crime of moral turpitude in the courts of this state or any other state, territory or country, which if committed in this state would be deemed a felony or misdemeanor crime related to the profession or a crime of moral turpitude and suspension or revocation of the license is in the best interest of the public health and general safety and welfare of the public;
- Conviction of a violation of the Controlled Substance, Drug, Device and Cosmetic Act;
- Mental Health Commitment;
- Non-compliance with mandatory insurance requirements;
- Delinquent child support, 23 Pa. C.S. § 4355.

A. Controlled Substance, Drug, Device and Cosmetic Act 35 P.S. § 780-123.

Revocation of licenses of practitioners

(a) Any license or registration heretofore issued to any practitioner may either be revoked or suspended by the proper officers or boards having power to issue licenses or registration to any of the foregoing, upon proof that the licensee or registrant is a drug dependent person on the use of any controlled substance, after giving such licensee or registrant reasonable notice and opportunity to be heard.

(b) The appropriate licensing boards in the Department of State are hereby authorized to revoke or suspend the registration or license of any practitioner when such person has pleaded guilty or nolo contendere or has been convicted of a felony under this act or any similar State or Federal law. Before any such revocation or suspension, the licensee or registrant shall be given a hearing before the appropriate board. At such hearing the accused may be represented by counsel and shall be entitled to compulsory attendance of witnesses.

Note: Reinstatement of a revoked license must wait for 10 years from date of conviction under Medical Practice Act and Osteopathic Medicine Practice Act.

(c) The appropriate licensing boards in the Department of State shall automatically suspend, for a period not to exceed one year, the registration or license of any practitioner when the person has pleaded guilty or nolo contendere or has been convicted of a misdemeanor under this act. The district attorney of each county shall immediately notify the appropriate State licensing board of practitioners subject to the provisions of this section. However, the provisions of such automatic suspension may be stayed by the appropriate State licensing board in those cases where a practitioner has violated the provisions of this act only for the personal use of controlled substances by the practitioner and the practitioner participates in the impaired professional program approved by the appropriate State licensing board for a period of between three and five years, as directed by the appropriate licensing board. If the practitioner

fails to comply in all respects with the standards of such a program, the appropriate licensing board shall immediately vacate the stay of the enforcement of the suspension provided for herein. Automatic suspension shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as in the case of a suspension of license.

B. Moral Turpitude

The licensing statutes do not define moral turpitude. However, the Commonwealth Court has held that the term is not unconstitutionally vague and “is capable of being defined as evidenced by court decisions which determine that certain offenses are crimes involving moral turpitude.” Foose v. State Bd. of Vehicle Mfrs., Dealers & Salespersons, 135 Pa.Cmwlth. 62, 578 A.2d 1355, 1357 (1990). In Moretti v. State Board of Pharmacy, 2 Pa.Cmwlth. 121, 277 A.2d 516 (1971), the Commonwealth Court defined “moral turpitude” as “anything done knowingly contrary to justice, [h]onesty, or good morals.” *Id.* at 518. A “[d]etermination of whether a crime involves moral turpitude turns on the elements of the crime, not on an independent examination of the details of the behavior underlying the crime.” Startzel v. Dep’t of Educ., 128 Pa.Cmwlth. 110, 562 A.2d 1005, 1007 (1989).