

## 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.

Compiler's Note: Section 5 of Act 92 of 2001 provided that Act 261 is repealed insofar as it is inconsistent with Act 92.

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

Section 1. Short title.

This act shall be known and may be cited as the "Osteopathic Medical Practice Act."

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Affiliate." A member of a group of two or more fully accredited health care institutions under an agreement of affiliation approved by the board to enhance the potential of all participants in the provision of health care and osteopathic or medical education.

"Approved hospital." A hospital which has been approved by the board for providing supervised graduate osteopathic medical training.

"Athletic training services." The management and provision of care of injuries to a physically active person as defined in this act with the direction of a licensed physician. The term includes the rendering of emergency care, development of injury prevention programs and providing appropriate preventative and supporting devices for the physically active person. The term also includes the assessment, management, treatment, rehabilitation and reconditioning of the physically active person whose conditions are within the professional preparation and education of a certified athletic trainer. The term also includes the use of modalities such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage and the use of therapeutic exercises, reconditioning exercise and fitness programs. Athletic training services shall not include surgery, invasive procedures or prescription of any controlled substance. (Def. added Dec. 10, 2001, P.L.863, No.93)

"Board." The State Board of Osteopathic Medicine in the Department of State. Any reference in any statute or rule to the State Board of Osteopathic Examiners shall, on and after the effective date of this act, be construed to be a reference to the State Board of Osteopathic Medicine. (Def. amended Dec. 10, 2001, P.L.863, No.93)

"Board-regulated practitioner." An osteopathic physician, physician assistant, respiratory care practitioner or certified athletic trainer or an applicant for a license or certificate issued by the board. (Def. amended Dec. 10, 2001, P.L.863, No.93)

"Certification." The approval of programs by the board for the training and education of physician assistants. (Def. amended July 2, 2004, P.L.486, No.56)

"Certified athletic trainer." A person who is certified to perform athletic training services by the State Board of Medicine or the State Board of Osteopathic Medicine. (Def. added Dec. 10, 2001, P.L.863, No.93)

"Clinical clerk." An undergraduate student in an osteopathic medical college assigned to make patient histories, physical examinations and to perform certain procedures and laboratory tests for the purpose of instruction and experience. His notes shall become official only when edited and countersigned by a member of the hospital staff licensed pursuant to this act. Nothing contained in this act shall be construed to entitle a clinical clerk to practice medicine or surgery or to prescribe drugs.

"Direction." Supervision over the actions of a certified athletic trainer via referral by prescription to treat conditions for a physically active person from a licensed physician, dentist or podiatrist or written protocol approved by a supervising physician, dentist or podiatrist, except that the physical presence of the supervising physician, dentist or podiatrist is not required if the supervising physician, dentist or podiatrist is readily available for consultation by direct communication, radio, telephone, facsimile, telecommunications or via other electronic means. (Def. added Dec. 10, 2001, P.L.863, No.93)

"Healing art." The science and skill of diagnosis and treatment of diseases of the human body.

"Health care facility." A general, tuberculosis, mental, chronic disease or other type of hospital, an ambulatory clinic or center, a health maintenance organization, institution and corporation medical departments and centers, student health centers, a physical rehabilitation facility, a skilled or intermediate care nursing facility, a radiology laboratory, a renal dialysis center, a diagnostic center, a home health care agency, or a clinical laboratory, regardless of whether such medical care facility is for profit, nonprofit or governmental; or a program affiliated with a medical care facility which renders treatment or care for drug or alcohol abuse or dependence; or other settings where medical care and services are rendered.

"Hospital." An institution accredited by the American Osteopathic Association, the Joint Commission on Accreditation of Hospitals or regulated by the Commonwealth of Pennsylvania to render health care.

"Intern." A physician receiving supervised graduate osteopathic medical training at an approved hospital or its affiliate.

"Osteopathic medical college." An institution of higher learning accredited by the American Osteopathic Association, its successors and assigns, as an agency to provide courses in the arts and sciences of medicine and related subjects and empowered to grant academic degrees in osteopathic medicine and surgery.

"Osteopathic medicine and surgery." The art and science having for its object the cure of disease and the preservation of the health of man with or without drugs, except healing by spiritual means or prayer.

"Physically active person." An individual who participates in organized, individual or team sports, athletic games or recreational sport activity. (Def. added Dec. 10, 2001, P.L.863, No.93)

"Physician." A person who has received formal and recognized training in the art and science of osteopathic medicine qualified to seek or who has acquired a license to practice osteopathic medicine and surgery.

"Physician assistant." A person licensed by the board to assist a physician or group of physicians in the provision of medical care and services and under the supervision and direction of the physician or group of physicians. (Def. amended July 2, 2004, P.L.486, No.56)

"Proficiency examination." An examination approved by the board for the national certification of physician assistants, including those examinations, approved for such purpose by the National Commission on Certification of Physician Assistants.

"Referral." An order from a licensed physician, dentist or podiatrist to a certified athletic trainer for athletic training services. An order may be written or oral, except that an oral order must be reduced to writing within 72 hours of issuance. (Def. added Dec. 10, 2001, P.L.863, No.93)

"Resident." A physician receiving supervised graduate osteopathic medical training at an approved hospital or its affiliate.

"Respiratory care." A health care specialty employing evaluation, analysis, care and treatment of patients with cardiopulmonary disorders and related diseases. (Def. added July 2, 1993, P.L.418, No.59)

"Respiratory care practitioner." An individual who is certified to practice respiratory care by the State Board of Osteopathic Medicine. (Def. added July 2, 1993, P.L.418, No.59)

"Short-term licensee." A physician who has received approval from the board to have a short-term license not to exceed three months, to serve as a camp physician in the Commonwealth. (Def. added June 22, 1980, P.L.249, No.71)

"Written protocol." A written agreement developed in conjunction with one or more supervising physicians which identifies and is signed by the supervising physician and the certified athletic trainer. It describes the manner and frequency in which the certified athletic trainer regularly communicates with the supervising physician. It includes standard operating procedures developed in agreement with the supervising physician and certified athletic trainer that the certified athletic trainer follows when not directly supervised on site by the supervising physician. (Def. added Dec. 10, 2001, P.L.863, No.93)

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 or his designee; the Secretary of Health or his designee; two members appointed by the Governor who shall be persons representing the public at large; one member appointed by the Governor who shall be a respiratory care practitioner, a physician assistant or a certified athletic trainer; and six members appointed by the Governor who shall be graduates of a legally incorporated and reputable college of osteopathy and shall have been licensed to practice osteopathic medicine 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. All professional and public members of the board shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. The Governor shall assure that respiratory care practitioners, physician assistants and certified athletic trainers are appointed to four-year terms on a rotating basis. ((a) amended Dec. 10, 2001, P.L. , No.93)

(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.

(2.1 added Dec. 20, 1985, P.L.398, No.108)

Compiler's Note: Section 3 of Act 87 of 1996 provided that section 2.1 is repealed insofar as it is inconsistent with Act 87.

Section 3. Practice of osteopathic medicine and surgery without license prohibited.

It shall be unlawful for any person to engage in the practice of osteopathic medicine and surgery, or pretend to a knowledge of any branch or branches of osteopathic medicine and surgery, or to hold himself out as a practitioner in osteopathic medicine and surgery, or to assume the title of Doctor of Osteopathic Medicine and Surgery or doctor of any specific disease, or to diagnose diseases or to treat diseases by the use of osteopathic medicine and surgery or by any other means, or to sign any birth or death certificate unless otherwise authorized by law, or to hold himself out as able to do so, unless he has received a certificate of licensure or permission from the board which license shall be recorded in the office of the board. Nothing in this act shall be construed to prohibit services and acts rendered by a qualified physician assistant, technician or other allied medical person if such services and acts are rendered under the supervision, direction or control of a licensed physician. It shall be unlawful for any person to practice as a physician assistant unless licensed and approved by the board. It shall also be unlawful for any physician assistant to render medical care and services except under the supervision and direction of the supervising physician.

(3 amended July 2, 2004, P.L.486, No.56)

Section 4. Power to license.

The board may grant the following licenses:

(1) Unrestricted license.--A license to practice osteopathic medicine and surgery without restriction.

(2) Temporary license.--A graduate of an osteopathic medical college qualifying under this act may, on receiving his degree as a doctor of osteopathy, apply to the board for a temporary license on its form and pay the registration. A temporary license shall be valid for 12 months thereafter and shall be recognized only as conferring upon the licensee the right to participate in approved graduate osteopathic or medical training within the complex of the hospital to which he is assigned. It shall become null and void after 12 months and shall then be surrendered to the board. The board may extend the validity of a temporary license.

(3) Short-term camp physician license.--A short-term license valid for a period not to exceed three months may be granted by the board to osteopathic physicians licensed and in good standing in other states or Canada who intend to practice osteopathic medicine as osteopathic physicians in camps in the Commonwealth. Such licensees shall be deemed "health care providers" who conduct 50% or less of their health care business or practice within the Commonwealth for the purpose of the act of October 15, 1975 (P.L.390, No.111), known as the "Health Care Services Malpractice Act." ((3) added June 22, 1980, P.L.249, No.71)

Section 5. Standards for osteopathic medical training and facilities.

(a) The educational qualifications for acceptance as a matriculant in an osteopathic medical college incorporated within the Commonwealth and the curricula and training to be offered by such colleges shall meet the requirements set by the board after advice and consultation with the appropriate committees of the American Osteopathic Association or any other accrediting body which is recognized by the board.

(b) It shall be the duty of the board to periodically ascertain the character of the instruction and the facilities of the osteopathic medical colleges and hospitals offering or desiring to offer osteopathic medical training. It shall ascertain the facilities and qualifications of osteopathic medical institutions, colleges, or hospitals, outside this Commonwealth whose graduates or trainees desire to obtain osteopathic medical licensure or graduate osteopathic medical training in this Commonwealth.

(c) An osteopathic medical institution authorized to confer academic degrees in osteopathic medicine which in the judgment of the board fails to provide proper facilities, or to maintain the minimum requirements for accreditation shall be notified of such failure. Until such deficiencies are corrected its graduates shall not be eligible for licensure or graduate osteopathic medical training.

(d) Requirements for the certification of training and educational programs for licensure of physician assistants shall be formulated by the board in accordance with such national criteria as are established by national organizations or societies as the board may accept. ((d) amended July 2, 2004, P.L.486, No.56)

Section 6. Qualifications for license.

(a) A graduate of an osteopathic medical college in the United States who seeks licensure by the board shall furnish the board with evidence, prior to any examination, that he is of good moral character, is not addicted to

habit-forming drugs, and has completed the educational requirements prescribed by the board.

(b) An application to the board shall have attached to it the affidavit or affirmation of the applicant as to its verity. An applicant who knowingly makes a false statement of fact in his application shall be in violation of this act.

(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.

((c) amended Dec. 20, 1985, P.L.398, No.108)

#### Section 6.1. Reporting of multiple licensure or certificates.

Any licensed osteopathic physician of this Commonwealth who is also licensed to practice osteopathic medicine or surgery in any other state, territory or country or any other board-regulated practitioner licensed or certified to practice in any other state, territory 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 or other board-regulated practitioner's record, and such state, territory or country shall be notified by the board of any disciplinary actions taken against said osteopathic physician or other board-regulated practitioner in this Commonwealth.

(6.1 amended July 2, 1993, P.L.418, No.59)

#### Section 7. Certification of license.

The fact of licensure to practice osteopathic medicine and surgery shall be certified to by the board to other jurisdictions upon application and the payment by the licensee of a fee providing the licensee is in good standing.

##### Section 7.1. Athletic trainers.

(a) An athletic trainer certified by the board may, under the direction of a physician, podiatrist or dentist, provide athletic training services to a physically active person under the care of a physician, dentist or podiatrist. An athletic trainer certified under this section shall refer a physically active person with conditions outside the scope of athletic training services to a physician, dentist or podiatrist.

(b) Any athletic trainer who holds a valid certificate issued by the State Board of Physical Therapy under the act of October 10, 1975 (P.L.383, No.110), known as the "Physical Therapy Practice Act," relating to the practice of athletic training, prior to the effective date of this act shall, on and after the effective date hereof, be deemed to be certified by the State Board of Medicine or State Board of Osteopathic Medicine as provided for in this act.

(c) An athletic trainer who meets the requirements of this section shall be certified, may use the title "athletic trainer" or the abbreviation for the title, "A.T.C.," and may perform athletic training services. A person who is not certified under this section may not use the designation of certified athletic trainer, athletic trainer or any of the listed abbreviations for that title, including "C.A.T." or "A.T.C.," or any similar designation. This section shall not prohibit any person trained and licensed or certified under any other law from engaging in the licensed or certified practice in which the person is trained.

(d) The State Board of Osteopathic Medicine and the State Board of Medicine shall jointly promulgate regulations which:

(1) establish approved education and training programs for certification; and

(2) define the circumstances and protocol under which a certified athletic trainer may perform athletic training services.

Until such regulations are promulgated by the State Board of Osteopathic Medicine and the State Board of Medicine, the athletic trainer shall be regulated by the regulations, duly promulgated by the State Board of Physical Therapy prior to the enactment of this amendatory act governing the activities of certified athletic trainers, which are not inconsistent with this act.

(e) Notwithstanding any provision of this act to the contrary, doctors of medicine may supervise and direct the activities of athletic trainers to the same extent as physicians regulated by this act.

(f) The State Board of Osteopathic Medicine shall be responsible for the certification of athletic trainers.

Jurisdiction will be determined by the type of physician who supervises and directs the certified athletic trainer. Certified athletic trainers supervised by a doctor of osteopathy shall fall within the jurisdiction of the State Board of Osteopathic Medicine.

(7.1 added Dec. 10, 2001, P.L. , No.93)

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. ((a) amended Dec. 20, 1985, P.L.398, No.108)

(b) The examinations conducted by the board shall be in the English language. Special examinations may be designated and held at the times and places designated by the board.

(c) The board may accept by endorsement currently licensed osteopathic physicians qualified by either the National Board or by Flex examination or by any other state or territorial examination acceptable to the board for the purpose of licensure.

(d) Whenever an applicant fails an examination he shall have, after the expiration of six months and within two years, the privilege of a second examination by the board. If he fails the second examination he shall apply de novo after a year of graduate study approved by the board, and qualify for a license under the conditions existing at the time of his application.

(e) An applicant for a license to practice osteopathic medicine and surgery who has been successfully examined by an agency considered competent by the board who presents to the board satisfactory evidence of having fulfilled all the requirements of this act and the regulations of the board, may, without further examination, receive from the board a license conferring all the rights accorded by this act provided he has paid a fee and provided he has not previously failed a licensing examination given by the board.

(f) 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." ((f) amended Dec. 20, 1985, P.L.398, No.108)

Section 9. Endorsement.

Endorsement may be established at the direction of the board.

Section 10. Licenses; exemptions; nonresident practitioners; graduate students; biennial registration and

continuing medical education. (Hdg. amended Dec. 20, 1985, P.L.398, No.108)

(a) Physicians who have complied with the requirements of the board, have passed a final examination, and have otherwise complied with the provisions of this act shall receive from the Commissioner of Professional and Occupational Affairs in the Department of State, or whoever exercises equivalent authority, a license entitling them to practice osteopathic medicine and surgery without restriction in this Commonwealth. The license shall be recorded in the office of the board in a record to be kept for that purpose. It shall be open to public inspection. A certified copy of the record shall be received as evidence in all courts in this Commonwealth. This section shall not apply to medical officers in the medical service of the armed forces of the United States, the United States Public Health Service, the Veterans Administration, or physicians employed within Federal services while in discharge of their official duties, to anyone who may be a duly licensed practitioner of osteopathic medicine and surgery in any jurisdiction who may be called upon by a licensed physician of this Commonwealth to consult with him in a case under treatment, to physicians of other jurisdictions who are training for certification in special departments of osteopathic medicine and surgery, or to anyone serving as a clinical clerk under the supervision of the osteopathic medical or surgical staff in any hospital. Nothing contained in this section shall be construed to entitle a clinical clerk to practice osteopathic medicine and surgery or to prescribe drugs. A duly licensed physician residing in or maintaining his office of practice in a state near the boundary line between said state and this Commonwealth whose practice extends into this Commonwealth shall have the right to practice in this Commonwealth, at the discretion of the board, provided he files with the secretary of the board a certified copy of his license in the state where he resides, and that the board of examiners of the adjoining state reciprocates by extending the same privilege to physicians in this Commonwealth. He shall receive from the secretary of the board a license which shall automatically become null and void whenever he changes his residence or office of practice. A record of all persons so licensed shall be kept in the office of the board and shall have the same efficacy as any other license issued by the board.

(b) Physicians who are legally authorized to practice osteopathic medicine and surgery in this State or other states or territories of the United States or the Dominion of Canada who apply for training and certification in special departments of osteopathic medicine and surgery in institutions in this Commonwealth recognized by the

board with advice and consultation with the various examining boards in osteopathic medical specialties approved by the Council on Osteopathic Education of the American Osteopathic Association as proper for such training, shall receive a graduate certificate limited to said training within the complex of the hospital or its affiliates or community hospitals where he is engaged in such training. This training experience shall not be converted into a staff service. The certificate shall be valid for one year. It may be renewed from year to year. A person who has been certified in a specialty discipline recognized by the board who makes an application for licensure to practice osteopathic medicine and surgery without restriction in the Commonwealth, upon the payment of a fee may be given a qualifying examination. The examination shall emphasize the subject matter of the specialty discipline for which the applicant has been trained. It may include material from the general field of osteopathic medical science.

(c) It shall be the duty of those licensed to practice osteopathic medicine and surgery without restriction to register with the board and to reregister at such intervals and by such methods as the board shall for a period determine. Such renewal period shall not be longer than two years. The form and method of such registration shall be determined by the board.

(d) 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. ((d) amended Dec. 20, 1985, P.L.398, No.108)

(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. ((e) amended Dec. 20, 1985, P.L.398, No.108)

(f) The board shall grant licensure to physician assistants which licensure shall be subject to biennial renewal by the board. The board shall grant licensure to applicants who have fulfilled the following criteria:

- (1) Satisfactory performance on a proficiency examination approved by the board.
- (2) Satisfactory completion of a certified program for the training and education of physician assistants approved by the board.

(3) For candidates for initial licensure after January 1, 2005, obtainment of a baccalaureate or higher degree from a college or university and completion of not fewer than 60 clock hours of didactic instruction in pharmacology or other related courses as the board may approve by regulation.

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. ((f) amended July 2, 2004, P.L.486, No.56)

(g) The supervising physician shall file with the board an application to utilize a physician assistant containing a description of the manner in which the physician assistant will assist the supervising physician in his practice, the method and frequency of supervision and the geographic location of the physician assistant. In no instance may a physician supervise more than two physician assistants at any time. In cases where a group of physicians will supervise a physician assistant, the names of all supervisory physicians shall be included on the application.

(h) The board shall establish such rules and regulations, relating to physician assistants, as it deems necessary to protect the public and to implement the provisions of this act, including, but not limited to reasonable procedures for identification of physician assistants and for informing patients and the public at large of the use of physician assistants.

(i) Information concerning the use of each type of physician assistant shall be collected and reports thereof furnished to the General Assembly annually by the board, including the geographic location of physician assistants and the setting of their practice, i.e., rural, clinic, hospitals or physician's offices.

(j) Nothing in this act shall be construed to permit a licensed physician assistant to practice osteopathic medicine without the supervision and direction of a licensed physician approved by the appropriate board, but such supervision and direction shall not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. ((j) amended July 2, 2004, P.L.486, No.56)

(k) This act shall not be construed to prohibit the performance by the physician assistant of any service within his skills, which is delegated by the supervising physician, and which forms a usual component of that physician's scope of practice.

(l) Nothing in this act shall be construed to prohibit the employment of physician assistants by a health care facility where such physician assistants function under the supervision and direction of a physician or group of physicians.

(m) The physician assistant being licensed in this act and functioning under the supervision of the physician defines his/her status as an employee and subject to the normal employer/employee reimbursement procedures. ((m) amended July 2, 2004, P.L.486, No.56)

(n) No medical services may be performed by a physician assistant under this act which include the measurement of the range of powers of human vision or the determination of the refractive status of the human eye. This subsection does not prohibit the performance of routine vision screenings or the performance of refractive screenings in the physician's office.

(o) Nothing in this act shall be construed to allow physician assistants to practice chiropractic.

(p) Nothing in this act shall be construed to permit a physician assistant to independently prescribe or dispense drugs. The board and State Board of Pharmacy will jointly develop regulations to permit a physician assistant to prescribe and dispense drugs at the direction of a licensed physician.

#### Section 10.1. Respiratory care practitioners.

(a) Eighteen months after the effective date of this section, it shall be unlawful for any person to hold himself out to the public as a respiratory care practitioner and to practice or offer to practice respiratory care unless he holds a valid, current temporary permit or certificate issued by the board.

(b) A respiratory care practitioner who holds a valid, current temporary permit or certificate issued by the board may use the title respiratory care practitioner or respiratory care practitioner-certified or an appropriate abbreviation of that title, such as "R.C.P." or "R.C.P.-C."

(c) The board is authorized to promulgate regulations to implement this section.

(d) A respiratory care practitioner certified by the board may implement direct respiratory care to an individual being treated by either a licensed medical doctor or a licensed doctor of osteopathic medicine upon physician prescription or referral or under medical direction and approval consistent with standing orders or protocols of an institution or health care facility. This care may constitute indirect services, such as consultation or evaluation of an individual, and also includes, but is not limited to, the following services:

- (1) Administration of medical gases.
- (2) Humidity and aerosol therapy.
- (3) Administration of aerosolized medications.
- (4) Intermittent positive pressure breathing.
- (5) Incentive spirometry.
- (6) Bronchopulmonary hygiene.
- (7) Management and maintenance of natural airways.
- (8) Maintenance and insertion of artificial airways.
- (9) Cardiopulmonary rehabilitation.
- (10) Management and maintenance of mechanical ventilation.
- (11) Measurement of ventilatory flows, volumes and pressures.
- (12) Analysis of ventilatory gases and blood gases.

(e) This section shall not prevent or restrict the practices, services or activities of:

(1) A person licensed or certified in this Commonwealth to provide another health care service, including, but not limited to, physicians, physical therapists, chiropractors, nurses, dentists, physician assistants and podiatrists.

(2) A person rendering respiratory care services pursuant to employment by a Federal agency.

(3) A person pursuing a course of study leading to a degree or certificate in respiratory care in an accredited educational program if he is clearly designated as a student and provides care under supervision implemented through that program.

(4) A person executing or conveying medical orders pursuant to lawful delegation by a physician.

(5) A person who, pursuant to lawful delegation by a physician, delivers, installs, monitors or maintains a device which enables an individual to self-administer respiratory care.

(6) A person qualified by academic and clinical education to operate extracorporeal circulation equipment in a medical or surgical setting which requires support to or the temporary replacement of a patient's circulatory or respiratory functions.

(f) Information or allegations filed with the board against a respiratory care practitioner certified by the State Board of Medicine shall be referred to that board for appropriate action.

(10.1 added July 2, 1993, P.L.418, No.59)

Section 10.2. Respiratory care practitioner certificates and permits.

(a) A respiratory care practitioner certificate issued by the board empowers the holder to practice respiratory care under the supervision of a licensed medical doctor or a licensed doctor of osteopathic medicine. In a health care facility, that supervision may consist of standing orders or protocols approved by the institution consistent with acceptable and prevailing medical standards which may include services rendered directly to the patient in his home or other residence.

(b) The board shall issue temporary permits for the practice of respiratory care to individuals who have applied for certification from the board and who meet any of the following requirements:

(1) Graduation from an accredited respiratory care training program recognized by the board.

(2) Enrollment in an accredited respiratory care training program recognized by the board if the individual is expected to graduate within 30 days from the date of application.

(3) Designation as a "Certified Respiratory Therapist" or a "Registered Respiratory Therapist" by a nationally recognized credentialing agency approved by the board.

(4) Continuous provision of respiratory care services for a minimum of 12 months immediately preceding the effective date of this section.

(5) Holding certification, licensure or registration as a respiratory care practitioner issued by another state, the District of Columbia or a territory of the United States where the requirements for licensure, registration or certification are substantially similar to those required by the board.

((b) amended July 2, 2004, P.L.486, No.56)

(c) Temporary permits shall be valid for 12 months and for such additional period as the board may, in each case, specially determine, except that a temporary permit shall expire if the holder fails the examination. An appropriate fee for a temporary permit shall be established by the board by regulation. If he is not in violation of any other provision of this act, a holder of a temporary permit qualifies for admission to the examination and shall apply for the next regularly scheduled certification examination administered by the board. The board is authorized to promulgate regulations to establish procedures for application, credentials verification, examination and certification, together with appropriate fees.

(d) Pursuant to section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, the board shall contract for the development and administration of an examination for the certification of respiratory care practitioners. At least one administration of this examination shall be given within 12 months of the effective date of this section, and the examination shall thereafter be given at least twice per year. An individual qualifying for a temporary permit under subsection (b)(5) shall be issued a certificate by the board without examination. An individual qualifying for a temporary permit under subsection (b)(3) shall be issued a certificate by the board without examination if the individual passed an examination in order to obtain designation as a "Certified Respiratory Therapy Technician" or a "Registered Respiratory Therapist" and that examination was comparable to the examination developed and administered pursuant to this subsection.

(e) A respiratory care practitioner certificate shall be renewed biennially upon application on a form prescribed by the board and upon payment of a renewal fee adopted by the board by regulation.

(10.2 added July 2, 1993, P.L.418, No.59)

(f) (1) The board shall adopt, promulgate and enforce rules and regulations consistent with the provisions of this act establishing requirements of continuing education to be met by individuals holding certification as respiratory care practitioners under this act as a condition for certificate renewal. The regulations shall include any fees necessary for the board to carry out its responsibilities under this section.

(2) Beginning with the license period designated by regulation, certificate holders shall be required to attend and complete 20 hours of mandatory continuing education during each two-year certificate period.

(3) An individual applying for the first time for certification in this Commonwealth shall be exempted from the continuing education requirement for the biennial renewal period following initial certification.

(4) The board may waive all or a portion of the continuing education requirement for biennial renewal for a certificate holder who shows to the satisfaction of the board that the individual was unable to complete the requirements due to serious illness, military service or other demonstrated hardship. The request shall be made in writing, with appropriate documentation, and shall include a description of circumstances

sufficient to show why the certificate holder is unable to comply with the continuing education requirement. Waiver requests shall be evaluated by the board on a case-by-case basis. The board shall send the certificate holder written notification of its approval or denial of a waiver request.

(5) A certificate holder seeking to reinstate an inactive or lapsed certificate shall show proof of compliance with the continuing education requirement for the preceding biennium.

(6) All courses, locations, instructors and providers shall be approved by the board. No credit shall be given for any course in office management.

(7) The board shall initiate the promulgation of regulations to carry out the provisions of this section within one year of the effective date of this subsection. ((f) added July 2, 2004, P.L.486, No. 56)

#### 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 misdemeanor and upon conviction shall be sentenced to pay a fine of not more than \$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 five 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). ((c) amended July 2, 1993, P.L.418, No.59)

(11 amended Dec. 20, 1985, P.L.398, No.108)

#### Section 12. Examination fees.

The board shall have the power to charge a fee for examinations.

#### Section 13. Fees and fines. (13 repealed Dec. 20, 1985, P.L.398, No.108)

##### 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.

(13.1 added Dec. 20, 1985, P.L.398, No.108)

##### 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.

(13.2 added Dec. 20, 1985, P.L.398, No.108)

Section 14. Temporary and automatic suspension.

(a) A license or certificate 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 or certificate 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 or certificate, 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 or certificate 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 or certificate 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 or certificate 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 or certificate shall be made as in the case of revocation or suspension of license or certificate.

(14 amended July 2, 1993, P.L.418, No.59)

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.

(14.1 added Dec. 20, 1985, P.L.398, No.108)

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.

(14.2 added Dec. 10, 1985, P.L.398, No.108)

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:

(1) Failing to demonstrate the qualifications or standards for a license provided in this act or the regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in the practice of osteopathic medicine and surgery, practicing fraud or deceit in obtaining a license to practice osteopathic medicine and surgery, or making a false or deceptive biennial registration with the board.

(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. ((3) amended Dec. 20, 1985, P.L.398, No.108)

(4) Having a license to practice osteopathic medicine and surgery revoked or suspended or having other disciplinary action taken, or an application for a license refused, revoked or suspended by the proper licensing authority of another state, territory or country.

(5) Being unable to practice osteopathic medicine and surgery with reasonable skill and safety

to patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material, or as a result of any mental or physical condition. The board shall, upon probable cause, have authority to compel a physician to submit to a mental or physical examination by physicians designated by the board. Failure of a physician to submit to such examination when directed shall constitute an admission of the allegations against him unless it is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician affected by such action shall, at reasonable intervals, be afforded an opportunity to demonstrate that he can resume a competent practice of osteopathic medicine and surgery with reasonable skill and safety to the patients.

(6) Violating a regulation promulgated by the board or an order of the board previously entered by it in a disciplinary proceeding.

(7) Knowingly maintaining a professional connection or association with a person who is in violation of this act or the regulations of the board or knowingly aiding, assisting, procuring or advising an unlicensed person to practice osteopathic medicine and surgery contrary to this act, or the regulations of the board.

(8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or the failure to conform to, the standards of acceptable and prevailing osteopathic medical practice. Actual injury to a patient need not be established.

(b) The board shall have authority to refuse, revoke or suspend the license of a physician assistant, or the certification of a respiratory care practitioner or certified athletic trainer for any or all of the following reasons:

(1) Failing to demonstrate the qualification for licensure or certification contained in this act or regulations of the board.

(2) Making misleading, deceptive, untrue or fraudulent representations in his serving as a physician assistant; practicing fraud or deceit in obtaining a license to serve as a physician assistant; or making a false or deceptive biennial registration with the board.

(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.

(4) Having his license to serve as a physician assistant revoked or suspended or having other disciplinary action taken, or his application for licensure refused, revoked or suspended by the proper certifying authority of another state, territory or country.

(5) Being unable to serve as a physician assistant with reasonable skill and safety to the physician's patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(6) In enforcing paragraph (5), the board shall, upon probable cause, have authority to compel a physician assistant to submit to a mental or physical examination by physicians designated by it. Failure of a physician assistant to submit to such examination shall constitute an admission of the allegations against him unless the failure is due to circumstances beyond his control, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A physician assistant affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he can resume the competent assistance of a physician in the physician's practice of medicine, with reasonable skill and safety to the physician's patients.

(7) Violating a lawful regulation promulgated by the board or violating a lawful order of the board, previously entered by the board in a disciplinary proceeding.

(8) Knowingly rendering medical care and services except under the supervision and direction of the supervising physician.

(9) Being guilty of immoral or unprofessional conduct shall include any departure from, or the failure to conform to, the standards of acceptable and prevailing practice for physician assistants, in which proceeding actual injury to a patient need not be established.

((b) amended July 2, 2004, P.L.486, No.56)

(c) Whenever the board finds that the license or a certificate of a person may be refused, revoked or suspended under the terms of this act, the board may:

(1) Deny the application for a license or certificate.

(2) Administer a public or private reprimand.

(3) Revoke, suspend, limit, or otherwise restrict a license or certificate.

(4) Require a licensee to submit to the care, counseling, or treatment of a physician or physicians designated by the board.

(5) Suspend enforcement of its finding thereof and place a licensee on probation with the right to vacate the probationary order for noncompliance.

(6) Restore or reissue a license to practice osteopathic medicine and surgery or licensure as a physician assistant, and impose any disciplinary or corrective measure which it might originally have imposed.

((c) amended July 2, 2004, P.L.486, No.56)

(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 Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). ((d) amended Dec. 20, 1985, P.L.398, No.108)

#### Section 16. Regulatory powers of the board.

The board shall have the power to adopt and revise such regulations as are reasonably necessary to carry out the purposes of this act in conformity with the provisions of the act of July 31, 1968 (P.L.769, No.240), known as the "Commonwealth Documents Law."

##### 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.

(16.1 added Dec. 20, 1985, P.L.398, No.108)

##### 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.

(16.2 added Dec. 20, 1985, P.L.398, No.108)

##### 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 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).

(16.3 added Dec. 20, 1985, P.L.398, No.108)

#### Section 16.4. Radiologic procedures.

(a) On and after January 1, 1988, 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 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," provided that no such auxiliary personnel shall perform radiologic procedures for therapeutic purposes unless the osteopathic physician under whose direct supervision such auxiliary personnel is acting is on the premises at the time the radiologic procedures are performed.

(b) The board shall have the authority, after notice and hearing, to prohibit an 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 or a comparable board of another state, or who has obtained certification or licensure as the result of satisfactory completion of a test and an educational course accredited by an accrediting body recognized by the board, 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, registration or certification.

((d) amended July 2, 2004, P.L.486, No.56)

(e) Definition.--As used in this section, the term "radiologic procedures" means the use of ionizing radiation for diagnostic or therapeutic purposes.

(16.4 amended May 6, 1987, P.L.10, No.3)

#### Section 17. Applicability of act.

(a) The provisions of this act shall not apply either directly or indirectly, by intent or purpose, to affect the practice of:

(1) Pharmacy, as authorized by the acts approved April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," and September 27, 1961 (P.L.1700, No.699), known as the "Pharmacy Act."

(2) Dentistry, as authorized by the act approved May 1, 1933 (P.L.216, No.76), known as "The Dental Law."

(3) Optometry, as authorized by the act approved March 30, 1917 (P.L.21, No.10), referred to as the Optometry Practice Law.

(4) Chiropractic, as authorized by the act of August 10, 1951 (P.L.1182, No.264), known as the "Chiropractic Registration Act of 1951."

(5) "Podiatry, as authorized by the act of March 2, 1956 (P.L.1206, No.375), reenacted and amended by the act of August 24, 1963 (P.L.1199, No.505), known as the "Podiatry Act of 1956."

(6) Professional nursing, as authorized by the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

(7) Psychologists, as authorized by the act of March 23, 1972 (P.L.136, No.52), referred to as the Psychologists License Act.

(8) Medicine, as authorized by the act of July 20, 1974 (P.L.551, No.190), known as the "Medical Practice Act of 1974."

(b) This act shall not be construed to give the Board of Osteopathic Examiners any jurisdiction over any of the schools or colleges of the methods exempted in this act.

(c) The provisions of this act shall not apply to the practice of hypnosis.

#### Section 18. Repeals.

(a) The act of March 19, 1909 (P.L.46, No.29), referred to as the Osteopathic Practice Law, is repealed.

(b) Section 215, act of July 1, 1978 (No.124), known as the "Bureau of Professional and Occupational Affairs Fee Act," is repealed.

(c) All other acts or parts of acts inconsistent with this act are repealed.

#### Section 19. Effective date.

This act shall take effect immediately.

### APPENDIX

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#### Supplementary Provisions of Amendatory Statutes

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### 1985, DECEMBER 20, P.L.398, NO.108

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.

Compiler's Note: Act 108 added or amended sections 2.1, 6, 6.1, 8, 10 and 11, repealed section 13 and added or amended sections 13.1, 14, 14.1, 14.2, 15, 16.1, 16.2, 16.3 and 16.4 of Act 261.

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.