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**ACT 13**  
**PA SUPREME COURT DECISION**  
**SUMMARY RE PHYSICIAN GAG RULE AND**  
**SECTIONS 3305-3309**

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Jordan B. Yeager, Curtin & Heefner LLP  
[jby@curtinheefner.com](mailto:jby@curtinheefner.com) [www.curtinheefner.com](http://www.curtinheefner.com)

# Sections 3305-3309 of Act 13

- Allowed the PUC to declare:
  - declare local ordinances to be unlawful
  - municipalities ineligible for impact fees
  
- Allowed industry to take ordinances challenges directly to Commonwealth Court rather than through local zoning hearing boards
  
- Allowed for sanctions against municipalities

# Court Enjoined Sections 3305-3309

- Not severable from other provisions already determined by the court to be unconstitutional
- Could not be carried out consistent with legislative intent

# Physician Gag Rule – Section 3222.1(b)(10) and (b)(11) of Act 13

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- Limited health professionals' access to, and use of, information regarding chemicals used in fracking, which a vendor, service provider, or well operator has designated confidential and proprietary information or trade secrets

# Constitutional Prohibition on “Special Laws”

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PA Constitution, Article III, Section 32

“The General Assembly shall pass no local or special law in any case which has been or can be provided for by general law and specifically the General assembly shall not pass any local or special law.....7. regulating labor, trade, mining or manufacturing.”

# Physician Gag Rule – Unconstitutional Special Law

- No basis for giving the gas industry special treatment
- No basis for imposing special obligations on doctors
  - treating patients exposed to gas industry contamination vs.
  - contamination from other industries

# Act 13's Illusory Disclosure Requirements

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- Never became operable
- PA never prepared any confidentiality agreements
- Those who have sought info have been denied access
- Limited information disclosed to the state:
  - proprietary names
  - not the actual chemical constituents

# Catch 22 For Doctors

- No doctor could avail herself of the disclosure provisions
- Would cause them to violate their medical ethics
- Duty to inform patients
- Duty to confer with other medical professionals
- Duty to share public health information



# Other Paths to Disclosure

- Federal and state Community Right to Know Acts
- Provide for disclosure of confidential info, without the gag provisions
- Federal law: <https://www.epa.gov/epcra/epcra-section-304>
- PA law:  
<http://www.dli.pa.gov/Businesses/Compensation/WC/safety/rtk/Pages/default.aspx>