

PROPOSED RULEMAKING

INSURANCE DEPARTMENT

[31 PA. CODE CH. 163]

Requirements for Funds Held as Security for the Payment of Obligations of Unlicensed, Unqualified Reinsurers

The Insurance Department (Department) proposes to adopt Chapter 163 (relating to requirements for funds held as security for the payment of obligations of unlicensed, unqualified reinsurers) to read as set forth in Annex A. These regulations are proposed under the authority of sections 319—319.2 of The Insurance Company Law of 1921 (act) (40 P. S. §§ 442—442.2).

Purpose

Reinsurance is an agreement whereby all or part of the risk of loss assumed by one of the parties (the ceding insurer) in issuing policies is transferred to the other party (the assuming insurer or reinsurer). By allowing insurers to transfer or share the risk of loss, reinsurance protects ceding insurers against operating losses and increases their underwriting capacity.

Under statutory insurance accounting principles, a ceding insurer is permitted to establish an asset for losses that it is entitled to recover from a reinsurer or to reduce its liability or reserves for losses that are reinsured. In particular, section 319.1 of the act sets forth conditions for the allowance of credit for reinsurance in financial statements filed with the Department and provides that the Department may promulgate regulations to limit, prohibit or authorize reinsurance credit taken by domestic insurers.

When a reinsurer is neither licensed by the Department to transact insurance business in this Commonwealth nor included on the Department's list of qualified reinsurers, the obligations of the reinsurer must be secured in order for the ceding insurer to be permitted to take credit for the reinsurance in its financial statements. The form of collateral held for purposes of credit for reinsurance, such as securities, letters of credit and funds held in trust, must be acceptable to the Department.

These proposed regulations establish minimum requirements for trust agreements, letters of credit and other forms of security acceptable to the Department for credit for reinsurance ceded to unlicensed, unqualified reinsurers. These regulatory requirements are needed to assure that collateral held for purposes of credit for reinsurance meets minimum standards for quality and collectibility of reinsurance recoverables. The proposed regulations will also provide both ceding insurers and reinsurers with formal guidelines for what constitutes forms of security acceptable to the Department.

Explanation of Regulatory Requirements

Section 163.1 (relating to definitions) contains definitions of "domestic," "insurer" and "unlicensed, unqualified reinsurer" as key terms used in identifying the types of entities to which the proposed regulations apply. Section 163.3 (relating to scope) further specifies that the proposed regulations apply to licensed domestic insurers subject to section 319.1(b) of the act for purposes of credit for collateralized reinsurance.

Section 163.4 (relating to funds held in trust) identifies underlying statutory requirements for trust agreements and defines "beneficiary," "grantor" and "trustee" as terms used to identify the parties of a trust agreement. Section 163.5 (relating to general requirements for trust agreements) lists requirements primarily intended to establish clearly and preserve the rights of the domestic ceding insurer as the beneficiary of the agreement. Section 163.6 (relating to requirements for assets held in trust accounts) builds on existing statutory requirements by protecting the assets from substitution or withdrawal except on written instructions from the beneficiary. Section 163.6 also clearly establishes the beneficiary's right to withdraw assets from the trust account at any time.

Section 163.7 (relating to duties and responsibilities of trustees) imposes requirements on the trustee relating to the form, safekeeping and withdrawal of the assets. Reporting requirements in this section establish the trustee's duty to provide the beneficiary and the grantor with timely notice of deposits or withdrawals from the account and at least quarterly statements of trust account assets. Section 163.8 (relating to resignation or removal of trustee) provides for prior written notice to all parties in the event of the resignation or removal of the trustee. This section also establishes requirements intended to prevent the resignation or removal of the trustee unless all necessary steps have been taken to secure a successor. Section 163.9 (relating to termination of trust agreements) establishes requirements intended to assure that the beneficiary is provided with advance written notice and the right to withdraw any remaining assets when a trust agreement is terminated.

Section 163.10 (relating to permitted provision in trust agreements) clarifies that, notwithstanding other requirements in the chapter, the grantor may be permitted to have voting rights on shares of stock in the trust account and may be permitted to receive dividends or interest upon stock or other obligations in the trust account.

Section 163.11 (relating to requirements for provisions in reinsurance agreements entered into in conjunction with trust agreements) provides for an essential degree of specificity in the language of reinsurance agreements entered into in conjunction with trust agreements. The reinsurance agreement is required to contain provisions that obligate the reinsurer to establish a trust account; provide for the clear transfer of the right to negotiate the assets in the trust account to the ceding insurer; and require all settlements of account between the ceding insurer and the reinsurer to be made in cash or its equivalent. These provisions are needed to establish clearly the legal position of the ceding insurer and eliminate any impediments to the ceding insurer's ability to take possession of the assets.

Section 163.12 (relating to accounting in statutory financial statements for credit for reinsurance secured by trust agreements) prohibits a ceding insurer from taking credit for reinsurance in a financial statement filed with the Department unless the trust agreement has been executed and the trust account has been established and funded on or before the date on which the financial statement is filed. This section also limits the amount of permissible credit for reinsurance to the lesser of the current fair market value of assets available to be

withdrawn from the trust account or the specific obligations under the reinsurance agreement that the trust account was established to secure. These requirements are intended to assure that the ceding insurer does not take credit for reinsurance until the agreements and trust account have been properly executed and funded and that financial statements filed by ceding insurers are an accurate reflection of the impact of reinsurance agreements on their financial condition.

Section 163.13 (relating to existing trust agreements and underlying reinsurance agreements) gives ceding insurers 1 year from the effective date of the adoption of these regulations to bring existing reinsurance agreements and underlying trust agreements into compliance with the regulations.

Section 163.14 (relating to letters of credit) identifies underlying statutory requirements for letters of credit and defines "beneficiary" as that term is used in the proposed regulations with respect to letters of credit.

Section 163.15 (relating to requirements for letters of credit) includes requirements relating to the form of letters of credit, the rights of beneficiaries to draw on letters of credit, and the qualifications of financial institutions that issue or confirm letters of credit. Section 163.16 (relating to provisions in reinsurance agreements entered into in conjunction with letters of credit) provides for an essential degree of specificity in the language of reinsurance agreements entered into in conjunction with letters of credit, most importantly with respect to the rights of the ceding insurer in the event of nonrenewal of the letter of credit.

Section 163.17 (relating to accounting in statutory financial statements for credit for reinsurance secured by letters of credit) and § 163.18 (relating to existing letters of credit) contain provisions comparable to §§ 163.12 and 163.13 with respect to trust agreements. The amount of permissible credit is limited to the lesser of the amount of the letter of credit or the specific obligations under the reinsurance agreement that the letter of credit was issued to secure. Ceding insurers are given 1 year from the effective date of the adoption of these regulations to bring existing reinsurance agreements and letters of credit into compliance with the regulations.

Section 163.19 (relating to actions or rights of the Commissioner) provides that the failure of a trust agreement or letter of credit to identify the beneficiary as defined in the proposed regulations may not affect the rights of the Commissioner under the laws of the Commonwealth, particularly as the successor of the beneficiary in a court appointed receivership.

Section 163.20 (relating to other security acceptable to the Commissioner) describes other forms of security for which credit is permitted, consistent with existing statutes. In general, these other forms of acceptable security consist of funds or letters of credit provided by a noninsurer parent corporation and unencumbered funds withheld by and under the exclusive control of the ceding insurer.

Fiscal Impact

State Government

The proposed regulations will not have a measurable impact on Department costs associated with the analyses of financial statements filed by domestic insurers.

General Public

The proposed regulations will have no immediate fiscal impact on the general public. However, the general public will benefit to the extent that adoption of the regulations enhances the financial solvency of domestic insurers.

Political Subdivisions

The proposed regulations will have no impact on costs to political subdivisions.

Private Sector

The requirements in these proposed regulations will impose no significant costs on domestic insurers or reinsurers. Costs required to bring existing reinsurance agreements, trust agreements and letters of credit into compliance with the regulations will be mitigated by the 1 year grace period provided in the regulations for existing agreements and letters of credit. In addition, the proposed regulations will not have a measurable impact on Department costs associated with the conduct of onsite financial examinations of domestic insurers, which costs are borne by the examinees.

Paperwork

The proposed regulations impose no additional paperwork requirements on the Department or domestic insurers.

Effectiveness/Sunshine Date

The proposed regulations will become effective upon publication as a final rulemaking in the *Pennsylvania Bulletin*. The regulations will be monitored annually. No sunset date has been assigned.

Contact Person

Questions or comments regarding the proposed rulemaking may be addressed in writing to Elaine M. Leitzel, Administrative Officer, Office of Regulation of Companies, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-8840, within 30 days following publication of this notice in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of these proposed regulations on February 27, 1996, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Insurance and the Senate Committee on Banking and Insurance. In addition to submitting these proposed regulations, the Department has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Department within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Department, the General Assembly and the Governor of objections raised.

LINDA S. KAISER,
Insurance Commissioner

Fiscal Note: 11-135. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 31. INSURANCE

PART VIII. MISCELLANEOUS PROVISIONS

CHAPTER 163. REQUIREMENTS FOR FUNDS HELD AS SECURITY FOR THE PAYMENT OF OBLIGATIONS OF UNLICENSED, UNQUALIFIED REINSURERS

Sec.	
163.1.	Definitions.
163.2.	Purpose.
163.3.	Scope.
163.4.	Funds held in trust; definitions.
163.5.	General requirements for trust agreements.
163.6.	Requirements for assets held in trust accounts.
163.7.	Duties and responsibilities of trustees.
163.8.	Resignation or removal of trustee.
163.9.	Termination of trust agreements.
163.10.	Permitted provision in trust agreements.
163.11.	Requirements for provisions in reinsurance agreements entered into in conjunction with trust agreements.
163.12.	Accounting in statutory financial statements for credit for reinsurance secured by trust agreements.
163.13.	Existing trust agreements and underlying reinsurance agreements.
163.14.	Letters of credit.
163.15.	Requirements for letters of credit.
163.16.	Provisions in reinsurance agreements entered into in conjunction with letters of credit.
163.17.	Accounting in statutory financial statements for credit for reinsurance secured by letters of credit.
163.18.	Existing letters of credit.
163.19.	Actions or rights of the Commissioner.
163.20.	Other security acceptable to the Commissioner.

§ 163.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act—The Insurance Company Law of 1921 (40 P. S. §§ 341—991.1718).

Commissioner—The Insurance Commissioner of the Commonwealth.

Credit for reinsurance or reinsurance credit—An increase in assets or reduction in liabilities for reinsurance in financial statements filed with the Department by domestic insurers in accordance with statutory insurance accounting principles.

Department—The Insurance Department of the Commonwealth.

Domestic—Incorporated or organized under the laws of the Commonwealth.

Insurer—A company, association or exchange as defined in section 101 of the act (40 P. S. § 361).

Unlicensed, unqualified reinsurer—An assuming insurer which is neither:

(i) Licensed by the Department to transact insurance business in this Commonwealth.

(ii) Included on a list of qualified reinsurers published and periodically reviewed by the Commissioner under section 319.1(a) of the act (40 P. S. § 442.1(a)).

§ 163.2. Purpose.

Section 319.1(b) of the act (40 P. S. § 442.1(b)) establishes conditions whereby a domestic ceding insurer may be allowed to take credit for reinsurance when the assuming reinsurer is an unlicensed, unqualified reinsurer. The reinsurance credit may be taken in the amount of funds held as security for the payment of the unlicensed, unqualified reinsurer's obligations but may not exceed the amount of liability carried on the domestic

ceding insurer's books. The form of security held for purposes of credit for reinsurance, such as securities, letters of credit and funds held in trust, must be acceptable to the Commissioner. This chapter establishes minimum requirements for trust agreements, letters of credit and other forms of acceptable security for which credit will be allowed for reinsurance ceded to unlicensed, unqualified reinsurers.

§ 163.3. Scope.

This chapter applies to licensed domestic insurers subject to section 319.1(b) of the act (40 P. S. § 442.1(b)) relating to credit for collateralized reinsurance with unlicensed, unqualified reinsurers.

§ 163.4. Funds held in trust; definitions.

(a) Trust agreements established for funds held on behalf of a domestic ceding insurer as security for the payment of the obligations of an unlicensed, unqualified reinsurer shall comply with section 319.1(b)—(e) of the act (40 P. S. § 442.1(b)—(e)) and this chapter.

(b) The following words and terms, when used in this chapter with respect to trust agreements, have the following meanings, unless the context clearly indicates otherwise:

Beneficiary—The domestic ceding insurer for whose benefit a trust has been established and any successor of the beneficiary by operation of law. If a successor in interest to the named beneficiary is effectuated by the issuance of an order by a court of law, the successor beneficiary shall include and be limited to the court appointed domiciliary receiver, including a liquidator, rehabilitator or conservator.

Grantor—An unlicensed, unqualified reinsurer that has established a trust for the sole benefit of the beneficiary.

Trustee—A qualified United States financial institution as defined in section 319.1(g) of the act (40 P. S. § 442.1(g)).

§ 163.5. General requirements for trust agreements.

(a) A trust agreement shall be entered into between the beneficiary, the grantor and a trustee.

(b) A trust agreement shall be established for the sole benefit of the beneficiary.

(c) A trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(d) A trust agreement may not be subject to any conditions or qualifications outside of the trust agreement.

(e) A trust agreement may not be conditioned upon any other agreements or documents, except for the reinsurance agreement for which the trust agreement is established.

(f) A trust agreement may not transfer liability from the trustee for the trustee's own negligence, willful misconduct or lack of good faith.

(g) A trust agreement shall create a trust account into which the assets shall be deposited.

(h) A trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to or reimbursing the expenses of the trustee.

(i) A trust agreement shall prohibit the grantor from terminating the trust agreement on the basis of the insolvency of the beneficiary.

§ 163.6. Requirements for assets held in trust accounts.

(a) Assets in the trust account shall be in the form of security permitted by section 319.1(b) of the act (40 P. S. § 442.1(b)) and shall be valued at current fair market value.

(b) A trust agreement shall permit substitution or withdrawal of assets from the trust account only as provided by the following:

(1) Within 6 months of the date the trust account is funded, no substitution or withdrawal of assets may occur except on written instructions from the beneficiary for each individual substitution or withdrawal at the time the substitution or withdrawal is executed.

(2) After 6 months from the date the trust account is funded, no substitution or withdrawal of assets may occur that, together with other substitutions or withdrawals made within the preceding 12 months, exceeds 50% of the total fair market value of the assets except on written instructions from the beneficiary for each individual substitution or withdrawal at the time the substitution or withdrawal is executed.

(3) Other than a substitution or withdrawal under paragraph (2), after 6 months from the date the trust account is funded, no substitution or withdrawal of assets may occur except in accordance with prior written instructions from the beneficiary listing specific types of permitted substitutions or withdrawals of assets that the trustee determines are at least equal in market value to the assets withdrawn and that are in the form permitted by section 319.1(b) of the act (40 P. S. § 442.1(b)) and subsection (a).

(c) Notwithstanding subsection (b), upon call or maturity of a trust asset, the trustee may withdraw the asset without the consent of the beneficiary, if the trustee provides notice to the beneficiary, liquidates or redeems the assets, and the proceeds are paid into the trust account no later than 5 days after the liquidation or redemption of the assets.

(d) A trust agreement shall permit the beneficiary to have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice of the withdrawal from the beneficiary to the trustee.

(e) No statement or document other than the written notice by the beneficiary to the trustee under subsection (c) shall be required to be presented by the beneficiary to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets.

§ 163.7. Duties and responsibilities of trustees.

A trust agreement shall require the trustee to:

(1) Receive and hold the assets in a safe place at an office of the trustee in the United States.

(2) Determine that the assets are in a form that the beneficiary, or the trustee upon direction by the beneficiary, may negotiate the assets without consent or signature from the grantor or any other person.

(3) Furnish to the grantor and the beneficiary a statement of the assets in the trust account upon the inception of the account and at subsequent intervals no less frequent than the end of each calendar quarter.

(4) Notify the grantor and the beneficiary within 10 days of deposits to or withdrawals from the trust account,

except as provided in § 163.3(b) (relating to requirements for assets held in trust accounts).

(5) Upon written demand of the beneficiary, immediately take the steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary.

§ 163.8. Resignation or removal of trustee.

This section applies if the resignation or removal of a trustee does not result in the termination of the trust agreement under § 163.9 (relating to termination of trust agreements).

(1) The trustee may resign upon delivery of a written notice of resignation, effective no later than 90 days after notice to the beneficiary and grantor.

(2) The trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective no later than 90 days after notice to the trustee and the beneficiary.

(3) Notwithstanding the provisions of paragraphs (1) and (2), the resignation or removal of the trustee may not be effective until the following requirements have been met:

(i) A successor trustee has been appointed and approved by the beneficiary and the grantor.

(ii) A trust agreement has been executed by the successor trustee which complies with section 319.1(b)—(e) of the act (40 P. S. § 442.1(b)—(e)) and this chapter.

(iii) The possession of, and title to, all assets in the trust have been transferred to the new trustee.

§ 163.9. Termination of trust agreements.

(a) The trustee shall deliver written notification of termination to the beneficiary at least 30 days, but not more than 45 days, prior to termination of the trust account.

(b) Upon termination of the trust account, assets not previously withdrawn by the beneficiary may not be delivered to the grantor except with the written approval of the beneficiary.

§ 163.10. Permitted provision in trust agreements.

The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account.

§ 163.11. Requirements for provisions in reinsurance agreements entered into in conjunction with trust agreements.

A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, shall contain provisions that:

(1) Require the reinsurer to enter into a trust agreement and to establish a trust account for the benefit of the reinsured.

(2) Specify what recoverables and reserves, or both, the agreement is to cover.

(3) Require the reinsurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or transfer legal title to the trustee of all shares, obligations or other assets requiring assignments so that the ceding insurer, or the trustee upon the direction of

the ceding insurer, may negotiate these assets without consent or signature from the reinsurer or any other entity.

(4) Require that all settlements of account between the ceding insurer and the reinsurer be made in cash or its equivalent.

§ 163.12. Accounting in statutory financial statements for credit for reinsurance secured by trust agreements.

(a) A trust agreement established in compliance with this chapter may be used by a domestic ceding insurer to take credit for reinsurance ceded to an unlicensed, unqualified reinsurer in a financial statement required to be filed with the Department if the trust agreement is executed and the trust account is established and funded on or before the date on which the domestic ceding insurer files the financial statement.

(b) Reinsurance credit shall be allowed for reinsurance ceded to an unlicensed, unqualified reinsurer only if the trust account is established in compliance with this chapter. The credit may not exceed the lesser of the current fair market value of assets available to be withdrawn from the trust account or the specific obligations under the reinsurance agreement that the trust account was established to secure.

§ 163.13. Existing trust agreements and underlying reinsurance agreements.

Domestic ceding insurers may continue to take credit for reinsurance ceded to unlicensed, unqualified reinsurers under reinsurance agreements with underlying trust agreements when both the reinsurance agreements and the underlying trust agreements were executed prior to ____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal), if the reinsurance agreements and trust agreements were executed in compliance with applicable State laws and regulations in existence immediately preceding ____ (*Editor's Note:* The blank refers to the effective date of adoption of this proposal), until ____ (*Editor's Note:* The blank refers to a date 1 year after the effective date of adoption of this proposal) after which no credit may be allowed until the reinsurance agreements and underlying trust agreements are brought into compliance with this chapter.

§ 163.14. Letters of credit.

(a) Letters of credit held by or on behalf of a domestic ceding insurer as security for the payment of the obligations of an unlicensed, unqualified reinsurer under a reinsurance agreement shall meet the requirements of section 319.1(b)—(e) of the act (40 P. S. § 442.1(b)—(e)) and this chapter.

(b) As used in this chapter with respect to letters of credit, the term "beneficiary" means the domestic ceding insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a successor in interest to the named beneficiary is effectuated by the issuance of an order by a court of law, the successor beneficiary shall include and be limited to the court appointed domiciliary receiver, including a liquidator, rehabilitator or conservator.

§ 163.15. Requirements for letters of credit.

(a) A letter of credit shall:

(1) Be clean, irrevocable, unconditional and evergreen as provided under section 319.1(b)(3)(i) of the act (40 P. S. § 442.1(b)(3)(i)).

(2) Contain an issue date and date of expiration with a term of at least 1 year.

(3) Contain an evergreen clause which prevents the expiration of the letter of credit without due notice from the issuer and provides for at least 30 days notice prior to expiration date or nonrenewal.

(4) Stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.

(5) Indicate that it is not subject to any condition or qualifications outside of the letter of credit.

(6) Be conditioned upon no other agreement, document or entity, except for the reinsurance agreement for which the letter of credit is issued.

(7) Include a clearly marked section which indicates that it contains information for internal identification purposes only and which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit.

(8) Contain a statement to the effect that the obligation of the qualified United States financial institution, as defined in section 319.1(g) of the act, under the letter of credit is in no way contingent upon reimbursement of the issuer by the applicant with respect thereto.

(9) Contain a statement that the letter of credit is subject to and governed by the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500 or subsequent updates) and the laws of the Commonwealth, and drafts drawn thereunder shall be presentable at an office of a qualified United States financial institution.

(10) Contain a provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication 500 (or subsequent updates) occur.

(b) A letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit under section 319.1(g)(1) of the act.

(c) Notwithstanding subsection (b), a letter of credit may be issued by a qualified United States financial institution authorized to issue letters of credit under section 319.1(g)(2) of the act if the following conditions are met:

(1) The letter of credit is confirmed by a qualified United States financial institution authorized to issue letters of credit under section 319.1(g)(1) of the act.

(2) The issuing qualified United States financial institution formally designates the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts.

(3) The letter of credit meets other requirements of this chapter relating to letters of credit.

§ 163.16. Provisions in reinsurance agreements entered into in conjunction with letters of credit.

A reinsurance agreement, which is entered into in conjunction with a letter of credit, shall contain provisions that:

(1) Require the reinsurer to be identified as the provider of letters of credit to the ceding insurer.

(2) Specify what recoverables and reserves are covered by the letter of credit.

(3) Specify that nonrenewal of the letter of credit is an event of default that allows the ceding insurer to draw down the full amount of the letter of credit.

§ 163.17. Accounting in statutory financial statements for credit for reinsurance secured by letters of credit.

(a) A letter of credit may not be used by a domestic ceding insurer to take credit for reinsurance ceded to an unlicensed, unqualified reinsurer unless the letter of credit has been issued with the domestic ceding insurer as beneficiary and is in compliance with section 319.1 of the act (40 P. S. § 442.1) and this chapter.

(b) Credit for reinsurance secured by a letter of credit shall be allowed in an amount not exceeding the lesser of the amount of the letter of credit or the specific obligations under the reinsurance agreement which the letter of credit was issued to secure.

§ 163.18. Existing letters of credit.

Domestic ceding insurers may continue to take credit for reinsurance secured by letters of credit when both the reinsurance agreements and underlying letters of credit were executed prior to ____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal*), if the reinsurance agreements and letters of credit were in compliance with applicable State laws and regulations in existence immediately preceding ____ (*Editor's Note: The blank refers to the effective date of adoption of this proposal*), until ____ (*Editor's Note: The blank refers to a date 1 year from the effective date of adoption of this rulemaking*) or the renewal date of the letter of credit, whichever time is less, after which no credit will be allowed until the reinsurance agreements and letters of credit are brought into compliance with this chapter.

§ 163.19. Actions or rights of the Commissioner.

The failure of a trust agreement or letter of credit to specifically identify the beneficiary as defined in § 163.4(b) or § 163.14(b) (relating to funds held in trust; definitions; and letters of credit) to include a court appointed domiciliary receiver may not be construed to prevent the Commissioner from becoming the successor of the beneficiary as a court appointed domiciliary receiver or to otherwise affect any rights which the Commissioner may possess under the laws and regulations of the Commonwealth.

§ 163.20. Other security acceptable to the Commissioner.

(a) A domestic ceding insurer may take reinsurance credit for funds or letters of credit provided by a noninsurer parent corporation of the ceding insurer if the requirements of section 319.1(b)(4) of the act (40 P. S. § 442.1(b)(4)) are met.

(b) A domestic ceding insurer may take credit for unencumbered funds deposited with or withheld by the ceding insurer in the United States if the funds are subject to withdrawal, transfer or substitution solely by the domestic ceding insurer, are under the exclusive control of the domestic ceding insurer, and are in the forms as permitted under section 319.1(b)(1) and (2) of the act.

[Pa.B. Doc. No. 96-340. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Child Abuse Reporting Requirements

The State Board of Chiropractic (Board) proposes to amend § 5.1 (relating to definitions) and add Subchapter I (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed amendments are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), chiropractors are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these amendments are, with few exceptions, recaptulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed amendments:

§ 5.1 (relating to definitions)

Definitions are proposed to be added to § 5.1 for the following words and phrases used throughout the amendments: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL (relating to persons required to report suspected child abuse) refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom a chiropractor has reasonable cause to suspect, on the basis of the chiropractor's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to waivers).

§ 5.91 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 5.91 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which chiropractors in private practice settings shall make a report

of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for chiropractors who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 5.92 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 5.92 advises chiropractors of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 5.93 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 5.93 advises chiropractors of this statutory mandate.

§ 5.94 (relating to immunity from liability)

Proposed § 5.94 advises chiropractors that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the chiropractor's actions. The proposed section also informs chiropractors that under section 6318 of the CPSL, the good faith of the chiropractor will be presumed for the purpose of a civil or criminal proceeding. The Board proposes under § 5.94 to extend the good faith presumption to disciplinary proceedings against a chiropractor that result by reason of the chiropractor's actions in participating in good faith in the making of a report of suspected child abuse.

§ 5.95 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 5.95 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over the

Chiropractic Practice Act (act) (63 P. S. §§ 625.101—625.1106) and any other ethical principle or professional standard that might otherwise apply.

§ 5.96 (relating to noncompliance)

Proposed § 5.96 advises chiropractors of the consequences of noncompliance with the child abuse reporting requirements of §§ 5.91—5.95. The proposed section is divided into two subsections, (a) and (b). As proposed, chiropractors are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 506(a)(9) and (13) of the act (63 P. S. § 625.506(a)(9) and (13)). Subsection (b) advises chiropractors of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Statutory Authority

These amendments are proposed under the authority of section 6383 of the CPSL and section 302(3) of the act (63 P. S. § 625.302(3)).

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, chiropractors may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Deborah Eskin, State Board of Chiropractic, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

RANDY W. McCALL, D.C.,
Chairperson

Fiscal Note: 16A-436. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter A. GENERAL

§ 5.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a chiropractor has reasonable cause to suspect, on the basis of the chiropractor's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

* * * * *

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

* * * * *

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment,

training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Subchapter I. CHILD ABUSE REPORTING REQUIREMENTS

- Sec. 5.91. Suspected child abuse—mandated reporting requirements.
- 5.92. Photographs, medical tests and X-rays of child subject to report.
- 5.93. Suspected death as a result of child abuse—mandated reporting requirement.
- 5.94. Immunity from liability.
- 5.95. Confidentiality—waived.
- 5.96. Noncompliance.

§ 5.91. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), chiropractors who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Chiropractors who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

Upon notification by the chiropractor, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 5.92. Photographs, medical tests and X-rays of child subject to report.

A chiropractor may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 5.93. Suspected death as a result of child abuse—mandated reporting requirement.

A chiropractor who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 5.94. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a chiropractor who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the chiropractor's actions. For

the purpose of any civil or criminal proceeding, the good faith of the chiropractor shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a chiropractor's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 5.95. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 5.91—5.94 take precedence over the act and any other ethical principle or professional standard that might otherwise apply to chiropractors.

§ 5.96. Noncompliance.

(a) *Disciplinary action.* A chiropractor who willfully fails to comply with the reporting requirements in §§ 5.91—5.93 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 506(a)(9) and (13) of the act (63 P. S. § 625.506(a)(9) and (13)).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a chiropractor who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-341. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

Child Abuse Reporting Requirements

The State Board of Dentistry (Board) proposes to amend § 33.1 (relating to definitions) and adopt §§ 33.250—33.255 to read as set forth in Annex A. The proposed amendments are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), Board regulated practitioners are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these amendments are, with few exceptions, recaptulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed amendments:

§ 33.1 (relating to definitions)

Definitions are proposed to be added to § 33.1 for the following words and phrases used throughout the amendments: "abused child," "Board regulated practitioner," "child abuse," "ChildLine," "individual residing in the

same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom a Board regulated practitioner has reasonable cause to suspect, on the basis of the Board regulated practitioner's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The term "Board regulated practitioner" when used throughout the proposed amendments would be defined to mean "a dentist, dental hygienist, expanded function dental assistant or auxiliary personnel." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 33.250 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 33.250 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which Board regulated practitioners in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for Board regulated practitioners who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§33.251 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 33.251 advises Board regulated practitioners of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 33.252 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting of postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 33.252 advises Board regulated practitioners of this statutory mandate.

§ 33.253 (relating to immunity from liability)

Proposed § 33.253 advises Board regulated practitioners that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the Board regulated practitioner's actions. The proposed section also informs Board regulated practitioners that under section 6318 of the CPSL, the good faith of the Board regulated practitioner will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 33.253 to extend the good faith presumption to disciplinary proceedings against a Board regulated practitioner that result by reason of the Board regulated practitioner's actions in participating in good faith in the making of a report of suspected child abuse.

§ 33.254 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 33.254 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any ethical principle or professional standard that might otherwise apply.

§ 33.255 (relating to noncompliance)

Proposed § 33.255 advises Board regulated practitioners of the consequences of noncompliance with the child abuse reporting requirements of §§ 33.250—33.252. The section is divided into two subsections, (a) and (b). As proposed, Board regulated practitioners are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 4.1 of the Dental Law (act) (63 P. S. § 123.1). Subsection (b) advises Board regulated practitioners of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These amendments are proposed under the authority of section 6383 of the CPSL and section 3(o) of the act (63 P. S. § 122(o)).

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, Board regulated practitioners may incur additional paperwork in complying with the child abuse reporting requirements announced by these amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the

Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to June L. Barner, Board Administrator, State Board of Dentistry, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

EDWIN F. WEAVER, III, D.D.S.,
Chairperson

Fiscal Note: 16A-462. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 33. STATE BOARD OF DENTISTRY

Subchapter A. GENERAL PROVISIONS

§ 33.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

* * * * *

Abused child—A child under 18 years of age whom a Board regulated practitioner has reasonable cause to suspect, on the basis of the Board regulated practitioner's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to the child protective services—child abuse).

* * * * *

Board regulated practitioner—A dentist, dental hygienist, expanded function dental assistant or auxiliary personnel.

* * * * *

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit

conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

(*Editor's Note:* The following sections are new. They have been printed in regular text to enhance readability.)

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

§ 33.250. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), Board regulated practitioners who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Board regulated practitioners who are staff members of a dental or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.
- (5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- (8) The person making the report and where that person can be reached.
- (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 33.251. Photographs, medical tests and X-rays of child subject to report.

A Board regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 33.252. Suspected death as a result of child abuse—mandated reporting requirement.

A Board regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 33.253. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a Board regulated practitioner who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the Board regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board regulated practitioner's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 33.254. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 33.250—33.252 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over any other ethical principle or professional standard that might otherwise apply to a Board regulated practitioner.

§ 33.255. Noncompliance.

(a) *Disciplinary action.* A Board regulated practitioner who willfully fails to comply with the reporting requirements in § 33.250 (relating to suspected child abuse—mandated reporting requirements) will be subject to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a Board regulated practitioner who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-342. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

[49 PA. CODE CH. 45]

Child Abuse Reporting Requirements

The State Board of Examiners in Speech-Language and Hearing (Board) proposes to adopt Chapter 45, Subchapter F (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), speech pathologists, audiologists and teachers of the hearing impaired (licensees) are persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 45.401 (relating to definitions)

Definitions are proposed to be added to § 45.401 for the following words and phrases used throughout the regulations: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom a licensee has reasonable cause to suspect, on the basis of the licensee's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 45.402 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 45.402 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which licensees in private practice settings shall make a report of

suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for licensees who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 45.403 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 45.403 advises licensees of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 45.404 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting of postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 45.404 advises licensees of this statutory mandate.

§ 45.405 (relating to immunity from liability)

Proposed § 45.405 advises licensees that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the licensee's actions. The proposed section also informs licensees that under section 6318 of the CPSL, the good faith of the licensee will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 45.405 to extend the good faith presumption to disciplinary proceedings against a licensee that result by reason of the licensee's actions in participating in good faith in the making of a report of suspected child abuse.

§ 45.406 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 45.406 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 45.407 (relating to noncompliance)

Proposed § 45.407 advises licensees of the consequences of noncompliance with the child abuse reporting requirements of §§ 45.402—45.404. The section is divided into two subsections, (a) and (b). As proposed, licensees are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 10 of the Speech-Language and Hearing Licensure Act (act) (63 P.S. § 1710). Subsection (b) advises licensees of the criminal penalties available under section 6319 of the CPSL (relating to failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 5 of the act (63 P.S. § 1705).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, licensees may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Kathleen McLinn, State Board of Examiners in Speech-Language and Hearing, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

GERALD W. POWERS, Ed.D.,
Chairperson

Fiscal Note: 16A-682. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 45. STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE AND HEARING

Subchapter F. CHILD ABUSE REPORTING REQUIREMENTS

Sec.	
45.401.	Definitions.
45.402.	Suspected child abuse—mandated reporting requirements.
45.403.	Photographs, medical tests and X-rays of child subject to report.
45.404.	Suspected death as a result of child abuse—mandated reporting requirement.
45.405.	Immunity from liability.
45.406.	Confidentiality—waived.
45.407.	Noncompliance.

§ 45.401. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a licensee has reasonable cause to suspect, on the basis of the licensee's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to the child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Licensee—An audiologist, speech pathologist or teacher of the hearing impaired licensed by the Board.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, men-

tal health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 45.402. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensees who, in the course of their employment, occupation or practice of the profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the licensee, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department

of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 45.403. Photographs, medical tests and X-rays of child subject to report.

A licensee may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 45.404. Suspected death as a result of child abuse—mandated reporting requirement.

A licensee who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 45.405. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensee who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensee shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensee's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 45.406. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 45.402—45.404 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and

suspected death as a result of child abuse—mandated reporting requirement) take precedence over any client confidentiality, ethical principles or professional standard that might otherwise apply.

§ 45.407. Noncompliance.

(a) *Disciplinary action.* A licensee who willfully fails to comply with the reporting requirements in §§ 45.402—45.404 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 10 of the act (63 P. S. § 1710).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensee who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-343. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Child Abuse Reporting Requirements

The State Board of Funeral Directors (Board) proposes to adopt §§ 13.301—13.307 (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), funeral directors are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 13.301 (relating to definitions relating to child abuse reporting requirements)

Definitions are proposed to be added to § 13.301 for the following words and phrases used throughout the regulations: “abused child,” “child abuse,” “ChildLine,” “individual residing in the same home as the child,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury” and “sexual abuse or exploitation.” With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of “abused child” is derived from the definition of “child abuse” as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an “abused child” in the general rule regarding persons required to report suspected child

abuse. The term, however, is not defined in the CPSL. As proposed, the phrase “abused child” would be defined to mean “a child under 18 years of age whom a funeral director has reasonable cause to suspect, on the basis of the funeral director’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).” The proposed definition of “ChildLine” is tailored after the Department of Public Welfare’s definition of “ChildLine” found in 55 Pa. Code § 3490.4 (relating to definitions).

§ 13.302 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 13.302 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which a funeral director in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for licensees who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 13.303 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 13.303 advises licensees of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 13.304 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 13.304 advises licensees of this statutory mandate.

§ 13.305 (relating to immunity from liability)

Proposed § 13.305 advises licensees that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the licensee’s

actions. The proposed section also informs licensees that under section 6318 of the CPSL, the good faith of the licensee will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 13.305 to extend the good faith presumption to disciplinary proceedings against a licensee that result by reason of the licensee's actions in participating in good faith in the making of a report of suspected child abuse.

§ 13.306 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 13.306 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any client confidentiality related to ethical principle or professional standard that might otherwise apply.

§ 13.307 (relating to noncompliance)

Proposed § 13.307 advises licensees of the consequences of noncompliance with the child abuse reporting requirements of §§ 13.302—13.304. The section is divided into two subsections, (a) and (b). As proposed, licensees are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 11 of the Funeral Director Law (act) (63 P. S. § 479.11). Subsection (b) advises licensees of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 16 of the act (63 P. S. § 479.16).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, licensees may incur additional paperwork in complying with the child abuse reporting requirements announced by these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Dorna Thorpe, Board Administrator, State Board of Funeral Directors, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

LEANDRO N. ANGELONE,
Chairperson

Fiscal Note: 16A-484. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following sections are new. They have been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

CHILD ABUSE REPORTING REQUIREMENTS

§ 13.301. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 13.302—13.307 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a funeral director has reasonable cause to suspect, on the basis of the funeral director's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 13.302. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), funeral directors who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Funeral directors who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the funeral director, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to

ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 13.303. Photographs, medical tests and X-rays of child subject to report.

A funeral director may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 13.304. Suspected death as a result of child abuse—mandated reporting requirement.

A funeral director who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 13.305. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a funeral director who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the funeral director's actions. For the purpose of any civil or criminal proceeding, the good faith of the funeral director shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a funeral director's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 13.306. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 13.302—13.304 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over any client confidentiality, ethical principles or professional standard that might otherwise apply.

§ 13.307. Noncompliance.

(a) *Disciplinary action.* A funeral director who willfully fails to comply with the reporting requirements in §§ 13.302—13.304 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P. S. § 479.11).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a funeral director who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-344. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Child Abuse Reporting Requirements

The State Board of Medicine (Board) proposes to adopt Chapter 16, Subchapter G (relating to minimum standards of practice—child abuse reporting) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(a) and (b) of the CPSL (relating to persons required to report suspected child abuse), medical doctors, physician assistants, nurse widwives, certified registered nurse practitioners, respiratory care practitioners, drugless therapists, acupuncturists and auxiliary personnel performing radiologic procedures (Board regulated practitioners) are included among the persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 16.101 (relating to definitions)

Definitions are proposed to be added to § 16.101 for the following words and phrases used throughout the regulations: “abused child,” “Board regulated practitioner,” “child abuse,” “ChildLine,” “individual residing in the same home as the child,” “perpetrator,” “person respon-

sible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury” and “sexual abuse or exploitation.” With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of “abused child” is derived from the definition “child abuse” as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an “abused child” in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase “abused child” would be defined to mean “a child under 18 years of age who a Board regulated practitioner has reasonable cause to suspect, on the basis of the Board regulated practitioner’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).” The proposed definition of “ChildLine” is tailored after the Department of Public Welfare’s definition of “ChildLine” found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 16.102 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 16.102 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which Board regulated practitioners in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for Board regulated practitioners who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social services agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 16.103 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 16.103 advises Board regulated practitioners of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 16.104 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the

appropriate coroner. Proposed § 16.104 advises Board regulated practitioners of this statutory mandate.

§ 16.105 (relating to immunity from liability)

Proposed § 16.105 advises Board regulated practitioners that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the Board regulated practitioner's actions. The proposed section also informs Board regulated practitioners that under section 6318 of the CPSL, the good faith of the Board regulated practitioners will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 16.105 to extend the good faith presumption to disciplinary proceedings against a Board regulated practitioner that result by reason of the Board regulated practitioner's actions in participating in good faith in the making of a report of suspected child abuse.

§ 16.106 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 16.106 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any ethical principle or professional standard that might otherwise apply.

§ 16.107 (relating to noncompliance)

Proposed § 16.107 advises Board regulated practitioners of the consequences of noncompliance with the child abuse reporting requirements of §§ 16.102—16.104. The section is divided into two subsections, (a) and (b). As proposed, Board regulated practitioners are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 41 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.41). Subsection (b) advises Board regulated practitioners of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 8 the act (63 P. S. § 422.8).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, Board regulated practitioners may incur additional paperwork in complying with the child abuse reporting requirements announced by these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided

IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days from the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Cindy L. Warner, Administrative Assistant, State Board of Medicine, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

CHARLES J. BANNON, M.D.,
Chairperson

Fiscal Note: 16A-492. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter G. MINIMUM STANDARDS OF PRACTICE—CHILD ABUSE REPORTING

- | | |
|---------|--|
| Sec. | |
| 16.101. | Definitions. |
| 16.102. | Suspected child abuse—mandated reporting requirements. |
| 16.103. | Photographs, medical tests and X-rays of child subject to report. |
| 16.104. | Suspected death as a result of child abuse—mandated reporting requirement. |
| 16.105. | Immunity from liability. |
| 16.106. | Confidentiality—waived. |
| 16.107. | Noncompliance. |

§ 16.101. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age who a Board regulated practitioner has reasonable cause to suspect, on the basis of the Board regulated practitioner's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Board regulated practitioner—A medical doctor, physician assistant, nurse midwife, certified registered nurse practitioner, respiratory care practitioner, drugless therapist, acupuncturist or auxiliary personnel performing radiologic procedures on the premises of a medical doctor.

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 16.102. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), Board

regulated practitioners who, in the course of their employment, occupation or practice of their profession, come into contact with children, shall report or cause a report to be made to the Department of Public Welfare when the Board regulated practitioners have reasonable cause to suspect on the basis of professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Board regulated practitioners who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing, within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 16.103. Photographs, medical tests and X-rays of child subject to report.

A Board regulated practitioner may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as

possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 16.104. Suspected death as a result of child abuse—mandated reporting requirement.

A Board regulated practitioner who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 16.105. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a Board regulated practitioner who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the Board regulated practitioner's actions. For the purpose of any civil or criminal proceeding, the good faith of the Board regulated practitioner shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a Board regulated practitioner's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 16.106. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 16.102—16.104 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirements) take precedence over any ethical principles or professional standard that might otherwise apply.

§ 16.107. Noncompliance.

(a) *Disciplinary action.* A Board regulated practitioner who willfully fails to comply with the reporting requirements in §§ 16.102—16.104 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirements) will be subject to disciplinary action under section 41 of the act (63 P. S. § 422.41).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a Board regulated practitioner who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-345. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Child Abuse Reporting Requirements

The State Board of Nursing (Board) proposes to adopt Chapter 21, Subchapter E (relating to child abuse report-

ing requirements) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), professional nurses (RNs), licensed practical nurses (LPNs) and certified registered nurse practitioners (CRNPs) are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 21.501 (relating to definitions)

Definitions are proposed to be added to § 21.501 for the following words and phrases used throughout the regulations: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom a registered nurse (RN), licensed practical nurse (LPN) or certified registered nurse practitioner (CRNP) has reasonable cause to suspect, on the basis of the RN, LPN or CRNP's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse). The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found in 55 Pa. Code § 3490.4 (relating to definitions).

§ 21.502 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 21.8 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which RNs, LPNs and CRNPs in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for RNs, LPNs and CRNPs who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the

appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 21.503 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 21.9 advises RNs, LPNs and CRNPs of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 21.504 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting of postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 21.10 advises RNs, LPNs and CRNPs of this statutory mandate.

§ 21.505 (relating to immunity from liability)

Proposed § 21.11 advises RNs, LPNs and CRNPs that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the nurse's actions. The amendment also informs RNs, LPNs and CRNPs that under section 6318 of the CPSL, the good faith of the nurse will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 21.11 to extend the good faith presumption to disciplinary proceedings against a nurse that result by reason of the nurse's actions in participating in good faith in the making of a report of suspected child abuse.

§ 21.506 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 21.506 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any other ethical principle or professional standard that might otherwise apply.

§ 23.507 (relating to noncompliance)

Proposed § 23.507 advises RNs, LPNs and CRNPs of the consequences of noncompliance with the child abuse reporting requirements of §§ 21.501—21.504. The section is divided into two subsections, (a) and (b). As proposed, nurses are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 14 of the Professional Nursing Law (63 P. S. § 224) and section 16 of the Practical Nurse Law (63 P. S. § 666). Subsection (b) advises nurses of the criminal penalties available under

section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL, section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, RNs, LPNs and CRNPs may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Beth Sender Michlovitz, State Board of Nursing, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

SISTER RITA MORIARTY, SCC, RN,
Chairperson

Fiscal Note: 16A-515. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter E. CHILD ABUSE REPORTING REQUIREMENTS

Sec.	
21.501.	Definitions.
21.502.	Suspected child abuse—mandated reporting requirements.
21.503.	Photographs, medical tests and X-rays of child subject to report.

- 21.504. Suspected death as a result of child abuse—mandated reporting requirement.
 21.505. Immunity from liability.
 21.506. Confidentiality—waived.
 21.507. Noncompliance.

§ 21.501. Definitions.

The following words and terms, when used in this subchapter have the following meanings, unless the context clearly indicates otherwise.

Abused child—A child under 18 years of age whom a registered nurse (RN), licensed practical nurse (LPN) or certified registered nurse practitioner (CRNP) has reasonable cause to suspect, on the basis of the RN, LPN or CRNP's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to the child protective services—child abuse).

Acts—The Professional Nursing Law (63 P. S. §§ 211—225); and the Practice Nurse Law (63 P. S. §§ 651—667).

Child abuse—A term meaning any of the following:

- (i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.
- (ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.
- (iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 21.502. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), RNs, LPNs or CRNPs who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* RNs, LPNs and CRNPs who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the RN, LPN or CRNP, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 21.503. Photographs, medical tests and X-rays of child subject to report.

An RN, LPN and CRNP may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 21.504. Suspected death as a result of child abuse—mandated reporting requirement.

An RN, LPN and CRNP who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 21.505. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an RN, LPN and CRNP who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the nurse's actions. For the purpose of any civil or criminal proceeding, the good faith of the RN, LPN and CRNP shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an RN, LPN or CRNP's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 21.506. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 25.502—25.504 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any other ethical principle or professional standard that might otherwise apply to RNs, LPNs and CRNPs.

§ 21.507. Noncompliance.

(a) *Disciplinary action.* An RN, LPN and CRNP who willfully fails to comply with the reporting requirements in § 25.502—25.504 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected

death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 14 of the Professional Nursing Law (63 P. S. § 224) and section 16 of the Practical Nurse Law (63 P. S. § 666).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), an RN, LPN and CRNP who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-346. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Child Abuse Reporting Requirements

The State Board of Occupational Therapy Education and Licensure (Board) proposes to adopt §§ 42.41—42.47 to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), occupational therapists or occupational therapist assistants are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 42.41 (relating to definitions relating to child abuse reporting requirements)

Definitions are proposed to be added to § 42.41 for the following words and phrases used throughout the amendments: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL, refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom an occupational therapist or occupational therapist assis-

tant has reasonable cause to suspect, on the basis of the occupational therapist's or occupational therapist assistant's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 42.42 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 42.42 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which occupational therapists or occupational therapist assistants in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for occupational therapists or occupational therapist assistants who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 42.43 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report) persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 42.43 advises occupational therapists or occupational therapist assistants of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 42.44 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 42.44 advises occupational therapists or occupational therapist assistants of this statutory mandate.

§ 42.45 (relating to immunity from liability)

Proposed § 42.45 advises occupational therapists or occupational therapist assistants that under section 6318 of the CPSL (relating to immunity from liability) those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the occupational therapist's or

occupational therapist assistant's actions. The proposed section also informs occupational therapists or occupational therapist assistants that under section 6318 of the CPSL, the good faith of the occupational therapist or occupational therapist assistant will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 42.45 to extend the good faith presumption to disciplinary proceedings against an occupational therapist or occupational therapist assistant that result by reason of the occupational therapist's or occupational therapist assistant's actions in participating in good faith in the making of a report of suspected child abuse.

§ 42.46 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 42.46 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any client confidentiality and any other ethical principle or professional standard that might otherwise apply.

§ 42.47 (relating to noncompliance)

Proposed § 42.47 advises occupational therapists or occupational therapist assistants of the consequences of noncompliance with the child abuse reporting requirements of §§ 42.42—42.44. The section is divided into two subsections, (a) and (b). As proposed, occupational therapists or occupational therapist assistants are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 16 of the Occupational Therapy Practice Act (act) (63 P. S. § 1516). Subsection (b) advises occupational therapists or occupational therapist assistants of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 5 of the act (63 P. S. § 1505).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, occupational therapists or occupational therapist assistants may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Deborah Orwan, Board Administrator, State Board of Occupational Therapy Education and Licensure, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

GLEND A J. DOUGHERTY,
Chairperson

Fiscal Note: 16A-671. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

CHILD ABUSE REPORTING REQUIREMENTS

§ 42.41. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 42.42—42.47 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom an occupational therapist or occupational therapist assistant has reasonable cause to suspect, on the basis of the occupational therapist's or occupational therapist assistant's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate

medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 42.42. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), occupational therapists or occupational therapist assistants who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Occupational therapists or occupational therapist assistants who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution,

school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the occupational therapist or occupational therapist assistant, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing, within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 42.43. Photographs, medical tests and X-rays of child subject to report.

An occupational therapist or occupational therapist assistant may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 42.44. Suspected death as a result of child abuse—mandated reporting requirement.

An occupational therapist or occupational therapist assistant who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 42.45. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an occupational therapist or occupational therapist assistant who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the occupational therapist's or occupational therapist assistant's actions. For the purpose of any civil or criminal proceeding, the good faith of the occupational therapist or occupational therapist assistant shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an occupational therapist's or occupational therapist assistant's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 42.46. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 42.47. Noncompliance.

(a) *Disciplinary action.* An occupational therapist or occupational therapist assistant who willfully fails to comply with the reporting requirements in §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P. S. § 1516).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), an occupational therapist or occupational therapist assistant who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-347. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Child Abuse Reporting Requirements

The State Board of Optometry (Board) proposes to amend § 23.1 (relating to definitions) and adopt §§ 23.111—23.116 (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed amendments are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over

professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), optometrists are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 23.1 (relating to definitions)

Definitions are proposed to be added to § 23.1 for the following words and phrases used throughout the amendments: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom an optometrist has reasonable cause to suspect, on the basis of the optometrist's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 23.111 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 23.111 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which an optometrist in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for optometrists who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social services agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 23.112 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected

child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 23.112 advises optometrists of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 23.113 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 23.113 advises optometrists of this statutory mandate.

§ 23.114 (relating to immunity from liability)

Proposed § 23.114 advises optometrists that under section 6318 of the CPSL (relating to immunity from liability) those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the optometrist's actions. The proposed section also informs optometrists that under section 6318 of the CPSL, the good faith of the optometrist will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 23.114 to extend the good faith presumption to disciplinary proceedings against an optometrist that result by reason of the optometrist's actions in participating in good faith in the making of a report of suspected child abuse.

§ 23.115 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 23.115 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over the Optometric Practice and Licensure Act (act) (63 P. S. §§ 244.1—244.12) and any other ethical principle or professional standard that might otherwise apply.

§ 23.116 (relating to noncompliance)

Proposed § 23.116 advises optometrists of the consequences of noncompliance with the child abuse reporting requirements of §§ 23.111—23.113. The section is divided into two subsections, (a) and (b). As proposed, optometrists are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 7(8), (10) and (11) of the act (63 P. S. § 244.7(8), (10) and (11)). Subsection (b) advises optometrists of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These amendments are proposed under the authority of section 6383 of the CPSL and section 3(b)(14) of the act (63 P. S. § 244.3(b)(14)).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, optometrists may incur additional paperwork in complying with the child abuse reporting requirements announced by these amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Deborah B. Eskin, Board Counsel, State Board of Optometry, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

ROBERT A. GINSBURG, O.D.,
Chairperson

Fiscal Note: 16A-523. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 23. STATE BOARD OF OPTOMETRY
GENERAL PROVISIONS**

§ 23.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom an optometrist has reasonable cause to suspect, on the basis of the optometrist's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

* * * * *

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

* * * * *

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

* * * * *

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

CHILD ABUSE REPORTING REQUIREMENTS

§ 23.111. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), optometrists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Optometrists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the optometrist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.
- (5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- (8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 23.112. Photographs, medical tests and X-rays of child subject to report.

An optometrist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 23.113. Suspected death as a result of child abuse—mandated reporting requirement.

An optometrist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 23.114. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an optometrist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the optometrist's actions. For the purpose of any civil or criminal proceeding, the good faith of the optometrist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an optometrist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 23.115. Confidentiality—waived.

To protect children from abuse, the reporting requirements of this chapter take precedence over provisions of the act defined in § 23.1 (relating to definitions) and other ethical principles or professional standards that might otherwise apply to optometrists.

§ 23.116. Noncompliance.

(a) *Disciplinary action.* An optometrist who willfully fails to comply with the reporting requirements in §§ 23.111—23.113 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 7(8), (10) and (11) of the act (63 P. S. § 244.7(8), (10) and (11)).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), an optometrist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-348. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Child Abuse Reporting Requirements

The State Board of Osteopathic Medicine (Board) proposes to amend Chapter 25, Subchapter J (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), osteopathic physicians, physician assistants and certified respiratory care therapists are included among the persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 25.401 (relating to definitions)

Definitions are proposed to be added at § 25.401 for the following words and phrases used throughout the regulations: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definitions of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL (relating to persons required to report suspected child abuse) refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age whom an osteopathic physician, physician assistant or certified respiratory care therapist has reasonable cause to suspect, on the basis of the osteopathic physician, physician assistant or certified respiratory care therapist's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse)." The proposed definition of "ChildLine" is tailored after the Department of Public Welfare's definition of "ChildLine" found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 25.411 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 25.411 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which an osteopathic physician, physician assistant or certified

respiratory care therapist in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for osteopathic physicians, physician assistants or certified respiratory care therapists who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 25.412 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 25.412 advises osteopathic physicians of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 25.413 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 25.413 advises osteopathic physicians, physician assistants and certified respiratory care therapists of this statutory mandate.

§ 25.414 (relating to immunity from liability)

Proposed § 25.414 advises osteopathic physicians, physician assistants and certified respiratory care therapists that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the making of a report. The proposed section also informs osteopathic physicians, physician assistants and certified respiratory care therapists that under section 6318 of the CPSL, the good faith of the osteopathic physician, physician assistant or certified respiratory care therapist will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 25.414 to extend the good faith presumption to disciplinary proceedings against an osteopathic physician or physician assistant that result by reason of the osteopathic physician's or physician assistant's actions in participating in good faith in the making of a report of suspected child abuse.

§ 25.415 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take

precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 25.415 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over § 25.213(c) (pertaining to medical records) and any other ethical principle or professional standard that might otherwise apply.

§ 25.416 (relating to noncompliance)

Proposed § 25.416 advises osteopathic physicians, physician assistants and certified respiratory care therapists of the consequences of noncompliance with the child abuse reporting requirements of §§ 25.411—25.413. The section is divided into two subsections, (a) and (b). As proposed, osteopathic physicians and physician assistants are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 15(a)(6) or (b)(7) of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.15(a)(6) or (b)(7)). Subsection (b) advises osteopathic physicians, physician assistants and certified respiratory care therapists of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 16 of the act (63 P. S. § 271.16).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, osteopathic physicians, physician assistants and certified respiratory care therapists may incur additional paperwork in complying with the child abuse reporting requirements announced by these regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Gina Bittner, Administrative Assistant, State Board of Osteopathic Medicine, 116 Pine Street,

P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

MORRIS A. FISHMAN, D.O.,
Chairperson

Fiscal Note: 16A-535. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter J. CHILD ABUSE REPORTING REQUIREMENTS

GENERAL

Sec.

25.401. Definitions.

CHILD ABUSE REPORTING REQUIREMENTS

25.411. Suspected child abuse—mandated reporting requirements.

25.412. Photographs, medical tests and X-rays of child subject to report.

25.413. Suspected death as a result of child abuse—mandated reporting requirement.

25.414. Immunity from liability.

25.415. Confidentiality—waived.

25.416. Noncompliance.

GENERAL

§ 25.401. Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom an osteopathic physician, physician assistant or certified respiratory care therapist has reasonable cause to suspect, on the basis of the osteopathic physician, physician assistant or certified respiratory care therapist's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.
- (ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or simulation of sexually explicit conduct, for the purpose of producing visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

CHILD ABUSE REPORTING REQUIREMENTS

§ 25.411. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), osteopathic physicians, physician assistants and certified respiratory care therapists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Osteopathic physicians, physician assistants and certified respiratory care therapists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person

in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the osteopathic physician, physician assistant or certified respiratory care therapist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.
- (5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- (8) The person making the report and where that person can be reached.
- (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
- (10) Other information which the Department of Public Welfare may require by regulation.

§ 25.412. Photographs, medical tests and X-rays of child subject to report.

An osteopathic physician, physician assistant or certified respiratory care therapist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 25.413. Suspected death as a result of child abuse—mandated reporting requirement.

An osteopathic physician, physician assistant or certified respiratory care therapist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 25.414. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an osteopathic physician, physician assistant or certified respiratory care therapist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the osteopathic physician's, physician assistant's or certified respiratory care therapist's actions. For the purpose of any civil or criminal proceeding, the good faith of the osteopathic physician, physician assistant or certified respiratory care therapist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an osteopathic physician's, physician assistant's or certified respiratory care therapist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 25.415. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 25.411—25.413 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the confidentiality provisions in § 25.213(c) (relating to medical records) and any other ethical principle or professional standard that might otherwise apply to osteopathic physicians, physician assistants and certified respiratory care therapists.

§ 25.416. Noncompliance.

(a) *Disciplinary action.* An osteopathic physician or physician assistant who willfully fails to comply with the reporting requirements in §§ 25.411—25.413 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 15(a)(6) or (b)(7) of the act (63 P. S. § 271.15(a)(6) or (b)(7)).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), an osteopathic physician, physician assistant or certified respiratory care therapist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-349. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]
Facsimile Machines

The State Board of Pharmacy (Board) proposes to amend § 27.1 (relating to definitions) by adding a definition of "long-term care facility" and proposes to adopt

§ 27.20 (pertaining to facsimile machines). The Board proposes these amendments under the authority of sections 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j) and 390-6(k)(1) and (9)).

The Board proposes these changes for two principal reasons. First, the Federal Drug Enforcement Administration (DEA) amended its regulations, effective May 19, 1994, to allow for the transmission of controlled substance prescriptions between the prescriber and the dispenser by facsimile machine. See 59 FR 26109 (May 19, 1994). The Board believes that it should adopt the standards promulgated by the DEA. Second, the Board has received numerous questions from its licensees regarding the legality of filling a prescription or drug order which was received in a pharmacy by means of facsimile machine.

Section 27.18(o) (relating to standards of practice) already authorizes a pharmacist to dispense a drug on the basis of a prescription or order as long as the prescription or order is an original prescription or order or direct copy issued by a prescriber who may be using electronic or computerized equipment. Even before the promulgation of the DEA regulations on May 19, 1994, the Board had interpreted this section to mean that it was lawful for a pharmacist to fill a prescription or order received on a facsimile machine for a drug other than a controlled substance. The Board proposes to clarify this lawful practice and add rules pertaining to filling a prescription or order for a controlled substance received on a facsimile machine.

The Board believes that the use of a facsimile machine to transmit an order or prescription from prescriber to pharmacist does not increase the risk to public health and safety. The Board believes that facsimile transmission may result in fewer errors than telephone transmission of a prescription or order. When a prescription or order is transmitted by means of telephone, it is possible for the pharmacist or for the person who makes the call to make an error. There may well be less possibility for error in both the transmission and reception of a prescription or order transmitted by facsimile machine, for the pharmacist will read an exact copy of the prescription.

§ 27.1 (relating to definitions)

The proposal would add a definition of "long-term care facility" based on the DEA definition found at 21 CFR 1306.01(e) (relating to definitions).

The standards adopted by the DEA generally forbid a pharmacist from dispensing a prescription for a Schedule II controlled substance received on a facsimile machine prior to also receiving and reviewing the original signed prescription. The DEA regulations created two exceptions to the requirement that the pharmacist first review the original of a prescription for a Schedule II controlled substance. Under one of these exceptions, a pharmacist would be permitted to dispense a prescription for a Schedule II controlled substance received on a facsimile machine for a patient in a long-term care facility and use the facsimile as the original written prescription. The proposal would adopt the DEA definition of "long-term care facility" so that a pharmacist will know for what kind of institution the pharmacist may dispense a prescription for a Schedule II controlled substance received on a facsimile machine without first reviewing the original.

§ 27.20 (relating to facsimile machines)

The Board proposes to establish standards for filling a prescription or drug order received on a facsimile ma-

chine in § 27.20. Subsection (a) deals with a pharmacist in a noninstitutional practice.

Subsection (a)(1) deals with Schedule II controlled substances. In paragraph (1)(i) of this subsection the Board proposes to authorize a pharmacist to fill a prescription for a Schedule II controlled substance which was received on a facsimile machine if the pharmacist reviews the original prescription signed by the medical practitioner before the pharmacist actually dispenses the medication. The original signed prescription will serve as the pharmacy record. In paragraph (1)(ii) of this subsection, the Board identifies two circumstances in which the pharmacist may dispense a prescription for a Schedule II controlled substance received on a facsimile machine while using the facsimile as the original pharmacy record: (A) a prescription for a narcotic which will be administered to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion in the patient's home or hospice; and (B) a prescription for any Schedule II controlled substance for a resident of a long-term care facility.

Subsection (a)(2) deals with Schedule III—V controlled substances and other nonproprietary drugs. In this subsection, the Board proposes to allow a pharmacist to dispense a prescription for a Schedule III—V controlled substance or other nonproprietary drug received on a facsimile machine and use the facsimile as the original pharmacy record. This proposal is consistent with the recent change to DEA regulations. See 21 CFR 1306.21(a) (relating to requirement of prescription).

Subsection (b) deals with a pharmacist in an institutional practice. The Board proposes to authorize a pharmacist to dispense a drug order received on a facsimile machine as long as the medical practitioner who issued the order wrote and signed the original.

In subsection (c)(1), the Board proposes to require a pharmacist to exercise professional judgment regarding the accuracy and authenticity of the facsimile. Current State and Federal regulations already make the pharmacist responsible for making professional determinations and ensuring that a prescription for a controlled substance has been issued for a legitimate medical purpose. See §§ 27.12(a)(1), 27.18(b) and (c) and 21 CFR 1306.04(a) (relating to purpose of issue of prescription).

In subsection (c)(2), the Board proposes to require that a facsimile copy of a prescription or drug order used as a record be printed on paper that can survive for at least 2 years. The act requires that prescriptions be kept on file for at least 2 years. See 63 P. S. § 390-4(a)(3) and 21 CFR 1304.04(a) (relating to maintenance, reports and inventory).

In subsection (c)(3), the Board proposes to forbid a pharmacy or pharmacist from contributing to the installation of a facsimile machine in the office of a medical practitioner or institution.

Fiscal Impact

This proposed rulemaking will not have a negative fiscal impact on the Commonwealth, local government, licensees or consumers.

Paperwork Requirements

The proposed rulemaking will not have an impact on the paperwork of the Commonwealth, local government, the general public or licensees.

Statutory Authority

Section 4(j) of the act authorizes the Board to promulgate regulations governing standards of practice and operation of pharmacies, including regulations governing the standards for dispensing prescriptions to insure methods of operation and conduct which protect the public health, safety and welfare. Section 6(k)(1) of the act authorizes and requires the Board to regulate the practice of pharmacy. Section 6(k)(9) of the act authorizes and requires the Board to regulate the practice of pharmacy for the protection and promotion of the public health safety and welfare.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Professional Licensure and Consumer Protection. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of the material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections prior to final publication of the regulations by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Richard Marshman, Executive Secretary, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JOHN P. MARIANI, R.Ph.,
Chairperson

Fiscal Note: 16A-543. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY

GENERAL PROVISIONS

§ 27.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Long-term care facility—A nursing home, retirement care, mental care or other institution that provides extended health care to resident patients.

* * * * *

STANDARDS

§ 27.20. Facsimile machines.

(a) *Noninstitutional pharmacies.*(1) *Schedule II controlled substances.*

(i) A pharmacist in a noninstitutional pharmacy may fill a prescription for a Schedule II controlled substance which was received on a facsimile machine if the original prescription signed by the medical practitioner is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be maintained as the pharmacy record.

(ii) There are two exceptions to the requirement that the pharmacist review the original of the prescription received on a facsimile machine before dispensing a Schedule II controlled substance. A pharmacist in a noninstitutional pharmacy may fill and dispense a prescription for a Schedule II controlled substance which was received on a facsimile machine and may use the facsimile as the original pharmacy record of the following:

(A) A prescription for a Schedule II controlled narcotic substance which will be administered to a patient by parenteral, intravenous, intramuscular, subcutaneous or intraspinal infusion in the patient's home or hospice.

(B) A prescription for a Schedule II controlled substance for a resident of a long-term care facility.

(2) *Schedule III, IV and V controlled substances and other nonproprietary drugs.* A pharmacist may fill and dispense a prescription for a Schedule III, IV or V controlled substance or other nonproprietary drug which was received on a facsimile machine. The pharmacist may use the facsimile as the original pharmacy record.

(b) *Institutional pharmacies.* A pharmacist in an institutional pharmacy may fill and dispense a drug order which was received on a facsimile machine, for a nonproprietary drug, including a Schedule II, III, IV or V controlled substance, if the original of the drug order was written and signed by the medical practitioner as defined in section 2(9) of the act (63 P. S. § 390-2(9)).

(c) *General.*

(1) A pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the facsimile copy of a prescription or drug order.

(2) The quality of paper on which a facsimile copy of a prescription or drug order is printed shall be of a type that the facsimile copy can be maintained as a record for at least 2 years, as required under section 4(a)(3) of the act (63 P. S. § 390-4(a)(3)).

(3) It is unlawful for a pharmacist or pharmacy to contribute in any way to the installation of a facsimile machine in the office of a medical practitioner or in an institution.

[Pa.B. Doc. No. 96-350. Filed for public inspection March 8, 1996, 9:00 a.m.]

[49 PA. CODE CH. 27]

General Revisions

The State Board of Pharmacy (Board) proposes to amend §§ 27.1, 27.11, 27.12, 27.14—27.16, 27.18, 27.21 and 27.23—27.26. The amendments include both substantive changes and clarifications of dated or redundant language. The Board proposes these amendments under the authority of sections 3(f), 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-3(f), 390-4(j) and 390-6(k)(1) and (9)).

§ 27.1 (relating to definitions)

The Board proposes to delete the definitions of "BNDD" and "caution legend drug or device" and replaces them with the statutory definitions of "DEA" and "nonproprietary drug." The Drug Enforcement Administration (DEA) has replaced the Bureau of Narcotics and Dangerous Drugs (BNDD). The term "caution legend drug or device" has also been replaced elsewhere in this proposed rulemaking. These proposed changes make the Board's regulations consistent with the statutory language and eliminate some confusion caused by the phrase "caution legend drug or device."

The Board proposes to add to its regulations the statutory definitions of "medical practitioner," "prescription" and "proprietary drug." See, 63 P. S. § 390-2(9), (8), and (7.2). The Board proposes to add new definitions of "drug order," "pharmacy intern," "pharmacy technician" and "satellite pharmacy." The phrase "drug order" is the standard phrase in an institution for an order issued by a medical practitioner for a drug which will be administered to a patient. The definition of "pharmacy intern" derives from the internship requirement of section 3(b)—(f) of the act. The phrase "pharmacy technician," a phrase which enjoys industrywide currency, is used for an unlicensed person who assists a pharmacist in the practice of pharmacy, as anticipated by sections 5(a)(7) and 8(2) of the act (63 P. S. §§ 390-5(a)(7) and 390-8(2)). The Board proposes to add the definition of "satellite pharmacy" to describe a pharmacy unit in an institution which is dependent on the main pharmacy. The Board also proposes to add the definitions of "FDLE" and "NABPLEX," the two examinations required for licensure as a pharmacist.

The Board proposes to add to the regulatory definition of "pharmacist manager" the requirement of section 4(e) of the act that the permit to operate a pharmacy bear the name of the pharmacist in charge of the pharmacy, that is, the pharmacist manager.

§ 27.11. (relating to pharmacy permit and pharmacist manager)

The Board proposes to revise this section to clarify the language and to add several substantive changes. First, the statutory requirement of section 4(a)(4) of the act that a pharmacist shall be in charge of the pharmacy at all times that it is open, has been added at § 27.11(c).

Second, subsection (d) will require an application for change in ownership to be filed when there is a change in the controlling interest in a pharmacy, as well as a change in ownership. This addition will cover the situation of the small, closed corporation which holds a permit to operate a pharmacy and experiences a change in controlling interest. By requiring a new application, the Board will be able to keep track of the identity of the individual who controls the corporation.

Third, the Board proposes to delete the provision which requires an applicant to attach photographs of the phar-

macy to applications for a new permit or change in location. This provision will no longer be needed because Board inspectors will go to new pharmacies and new locations of existing pharmacies to inspect the premises.

Fourth, subsection (g) creates a means by which a pharmacy can gain 30 additional days to obtain a new pharmacist manager, if it has lost the services of a pharmacist manager and cannot replace the manager within the required 15 days. Under the current regulation, a pharmacy which cannot find a new manager within 15 days would be in violation of subsection (g). The proposed revision to subsection (g) will also make clear that both a pharmacist permit holder and a nonpharmacist permit holder have a duty to inform the Board of a change in pharmacist manager.

Fifth, subsection (h) proposes to restate the statutory requirement of section 4(c) of the act that a pharmacist may not manage more than one pharmacy at a time. However, the proposed amendment takes into account the situation of a permit holder who loses the services of a pharmacist manager and cannot immediately replace the person. The proposed amendment will allow the permit holder to request permission from the Board to allow the pharmacist manager of another pharmacy to serve as manager of the otherwise unmanaged pharmacy for up to 60 days beyond the expiration of the initial 15 days.

Sixth, subsection (i) specifies the conditions when an institution will be required to obtain a separate permit for a satellite pharmacy.

§ 27.12 (relating to practice of pharmacy and delegation of duties)

The Board has redrafted § 27.12. Subsection (a) restates the statutory principle that only a licensed person may engage in the practice of pharmacy. See 63 P. S. § 390-8(2).

Subsection (b) explains how a pharmacist may delegate aspects of the practice of pharmacy to a pharmacy intern or technician. Paragraphs (1) and (2) restate the current requirements that a pharmacist must review every prescription before it is filled and review the final product after it is filled. Section 8(2) of the act requires that interns or other authorized personnel work under the direct and immediate personal supervision of a pharmacist. Paragraph (3) defines direct, immediate and personal supervision. Paragraph (4) requires the pharmacist to take responsibility for the proper labeling of containers of nonproprietary drugs.

Subsection (c) outlines the role of the pharmacy intern. Subsection (d) outlines the role of the pharmacy technician. Under the proposed rulemaking, a pharmacy technician would be authorized to assist the pharmacist in compounding medications. Under the current subsection (b), only a pharmacist or intern may compound medications. Subsection (d)(4) requires the pharmacist manager to establish a written protocol for each pharmacy technician in the pharmacy. Finally, subsection (d)(5) requires that no more than two pharmacy technicians assist a pharmacist in the practice of pharmacy at any time. The Board, after holding public hearings and much discussion, concluded that a pharmacist could not supervise more than two technicians at a time and still assure that prescriptions or drug orders were being accurately and safely filled.

§ 27.14 (relating to supplies)

The proposed rulemaking clarifies this section. Subsection (b) has been redrafted for clarity and to bring the

disposal of controlled substances into conformity with current Federal regulations at 21 CFR 1307.21 (relating to procedures for disposal of controlled substances).

The proposal revises subsection (c)(3) to require that the refrigerator for drugs be kept within the prescription area. The prohibition against the use of the refrigerator for anything other than drugs, vaccines, biologicals or medicaments has been dropped.

The proposal revises subsection (c)(15) to correct the titles of reference works from which a pharmacy must choose two and to add one new title, *Physicians' Generix*.

§ 27.15 (relating to sanitary standards)

The proposal revises this section for clarity and to eliminate redundant language. Subsection (d) removes the requirement that waste receptacles have covers and replaces it with the requirement that the waste removal system be adequate to maintain clean and sanitary conditions.

§ 27.16 (relating to construction and equipment requirements)

The heading of this section has been revised to include equipment requirements because the section deals with both construction and equipment.

Subsection (a)(1) has been revised for clarity. The revision also adds the requirement that when an applicant for a new pharmacy permit or change in location submits plans to the Board for review, the plans must include dimensions. Subsection (b)(2) eliminates the voluntary guidelines that related the size of a store to the size of the prescription area. The Board no longer believes that there is a significant relationship between the size of a store and the level of activity in the pharmacy.

Subsection (b)(3) has been rewritten and given a new heading: "Self-contained pharmacy." The phrase is used to describe a pharmacy which is in or adjacent to a store but which can be securely sealed off from the store and, consequently, may keep different hours from the store. The remaining subparagraphs attempt to establish the security and integrity of the pharmacy when the pharmacy is closed but the larger or adjoining store is open.

Subsection (b)(4) is proposed to be amended to authorize a pharmacy to disperse controlled substances throughout the stock of noncontrolled substances in such a manner as to obstruct the theft of controlled substances, as an alternative to storing them in a locked cabinet. This proposed amendment would make the Board's regulations consistent with those of the DEA at 21 CFR 1301.75 (relating to physical security controls for practitioners). The presence of a locked cabinet has sometimes led burglars right to the stock of controlled substances.

§ 27.18 (relating to standards of practice)

Section 27.18(a) is proposed to be amended to allow a pharmacist to reuse the original container for issuing a refill of a prescription, if the container is clean and capable of reuse. Numerous pharmacists have maintained that it is wasteful for a pharmacist to have to automatically discard the original container when a patient brings it in for a refill.

Subsection (b) deals with the requirements for prescriptions kept on file in the pharmacy. Subsection (b)(1) adds the requirements that a prescription on file show the address of the patient; the date the prescription was issued if it is for a controlled substance or if it was written with an "as needed" designation; and the cautions communicated to the ultimate consumer.

Under the current regulation a prescription on file has to show "when required by statute, the address of the patient . . . and the BNDD number of the prescriber." This language caused some confusion among pharmacists. Some thought that all prescriptions must show the BNDD number. The proposed rulemaking clarifies this language by requiring an address for all prescriptions (supra) and the DEA number of the prescriber for prescriptions for controlled substances. Subsection (b)(3) revises but does not alter the substance of the current regulation. Subsection (b)(4) adds to the Board's regulations the requirement that original prescriptions be kept for 2 years. See, 63 P. S. § 390-4(a)(3). Subsection (b)(5) requires institutional pharmacies to keep records of Schedule II controlled substances which were dispensed by the pharmacy and received by the patient.

Subsection (c) identifies various circumstances under which a pharmacist may exercise professional judgment not to fill a prescription. In addition to the circumstances outlined in the current regulations the proposed rulemaking adds that a pharmacist may decline to fill a prescription if the pharmacist has reasonable cause to believe that it is false, that it will not be paid for, or that it will be diverted, abused or misused.

Subsection (d) is proposed to be revised at paragraph (4) to conform to a recent revision to section 11(f)(iii) of The Controlled Substance, Drug, Device and Cosmetic Act (Controlled Substance Act) (35 P. S. § 780-111(f)(iii)), which deleted the requirement that the Federal registration number (DEA number) of the prescriber appear on the label of the container of a prescription for a controlled substance. The prescriber's DEA number did not serve a useful purpose on a prescription container. The proposed revisions to paragraph (6) add clarity and allow a pharmacist to abbreviate the name of the manufacturer of a generic drug.

Subsection (d)(7) is proposed to be revised to add the requirement that when a person requests a copy of a prescription from a pharmacy, the person must identify his authority to request the copy and show identification. The Board adds this provision out of concern for the confidentiality of the patient.

Subsection (v) has been added to clarify labeling requirements for drug orders in institutions.

§ 27.21 (relating to application for examination and registration)

The Board proposes to revise this section pertaining to the application for examination to bring it up to date with current procedure. Under current procedures, an applicant obtains an application for licensure from the Board, files it together with supporting documentation with the Board, but also submits an examination scheduling form with the testing service which administers the examination.

§ 27.23 (relating to time and place for holding examination)

This section is proposed to be revised to recognize that the time and place for examination are determined by contract.

§ 27.24 (relating to examinations administered and passing grade)

This section is proposed to be revised to add the September administration of the licensure examinations and to eliminate dated language pertaining to the composition of the licensure examinations.

§ 27.25 (relating to licensure by reciprocity)

This section replaces the current § 27.25 (pertaining to failure to appear for examination). The current § 27.25 is unnecessary because this matter is covered by the examination contract and the examination fee is paid directly to the testing service. The proposed § 27.25 pertains to licensure by reciprocity. This section informs an applicant for licensure by reciprocity that he must have passed or pass the FDLE if the applicant gained licensure in another state after January 26, 1983. On that date, the FDLE became a requirement for licensure in this Commonwealth.

§ 27.26 (relating to pharmacy internship)

This section is proposed to be redrafted largely to clarify the language of the current section. Subsection (b) adds the requirement that the applicant for registration as an intern be of good moral character. This is implicit in section 3(a)(2) of the act which requires an applicant for licensure as a pharmacist to satisfy the Board that he is of good moral character. Subsection (d)(5) authorizes the Board to grant internship credit for hours that an individual served in a pharmacy before the individual registered as an intern upon a showing of good cause. The current regulation at subsection (e)(1) does not allow the Board to grant credit for hours worked before registration. This has caused a hardship in certain cases.

Subsection (d)(4) clarifies and replaces subsection (f)(1) of the current regulation in order to deal with internship hours that may be obtained through a pharmacy school program.

The Board proposes to revise subsection (h)(1) to authorize it to hear appeals and waive the requirement that a pharmacist may not have been convicted of an offense relating to the practice of pharmacy. The Board now believes that a conviction for even a relatively minor offense related to practice of pharmacy should not automatically bar a pharmacist from ever serving as a preceptor.

Fiscal Impact

This proposed rulemaking will not have a negative fiscal impact on either the Commonwealth or local government. An applicant for a new pharmacy permit or for a change in location may have slightly reduced costs because the applicant, under the change proposed to § 27.11(e), will no longer have to supply photographs of the pharmacy to the Board. The proposed requirement at § 27.11(d) that an application for change in ownership be filed when there is a change in controlling interest will increase costs for the pharmacy by the amount of the application. The Board believes that this increase is counterbalanced by the value to the Board of knowing the identity of the person who exercises a controlling interest in a pharmacy. The proposed requirement at § 27.11(i) that a satellite pharmacy in an institution obtain a separate permit if the pharmacy had previously been in a separate institution or if its routine activity is dispensing drugs to outpatients will increase costs by the amount of the separate permit and any costs associated with that. The Board feels that these costs are counterbalanced by the fact that the satellite pharmacy under these circumstances constitutes a pharmacy which is distinct and separate from the primary pharmacy of the institution and cannot be adequately supervised by the pharmacist manager of the primary pharmacy of the institution. The proposed § 27.12(d) may lower costs to pharmacies by allowing a technician to assist a pharmacist in compounding drugs, including IV units, and performing tasks such

as entering data in a computer. The proposed § 27.12(d)(3), which requires the pharmacist manager to create a written protocol for each technician employed in the pharmacy will increase costs. The Board believes that this cost will be counterbalanced by assuring that the technician has been trained and can safely perform each task that is assigned to the technician. The proposed § 27.18(a), which allows a pharmacist to reuse the patient's own vial for a refill of the same drug, will slightly reduce costs and waste.

Paperwork Requirements

The proposed rulemaking would not have an impact on the paperwork of the Commonwealth, local government or the general public. A pharmacy which makes use of technicians would have to prepare a written protocol for each technician. This will result in a slight increase in paperwork for the pharmacy.

Statutory Authority

Section 3(f) of the act authorizes the Board to promulgate regulations which prescribe the instructional content of the pharmacy internship. Section 4(j) of the act authorizes the Board to promulgate regulations governing standards of practice and operation of pharmacies, including regulations governing the standards for dispensing prescriptions to insure methods of operation and conduct which protect the public health, safety and welfare and prevent practices or operations which may tend to lower professional standards of conduct. Section 6(k)(1) of the act authorizes and requires the Board to regulate the practice of pharmacy. Section 6(k)(9) of the act authorizes and requires the Board to regulate the practice of pharmacy for the protection and promotion of the public health, safety and welfare.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Professional Licensure and Consumer Protection. In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of the material is available to the public upon request.

If IRRC has any objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of objections prior to final publication of the regulations by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Richard Marshman, Executive Secretary, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JOHN P. MARIANI, R.Ph.,
Chairperson

(Editor's Note: For a proposal amending § 27.1, also proposed to be amended in this document, see 26 Pa.B. 1030 (March 9, 1996).)

Fiscal Note: 16A-542. No fiscal impact; (8) recommends adoption.

Annex

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY

GENERAL REVISIONS

§ 27.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

[**BNDD—The Federal Bureau of Narcotics and Dangerous Drugs.**]

* * * * *

[**Caution legend drug or device—Controlled substances and other drugs or devices which by statute or regulation may be dispensed to a patient by a pharmacist only upon the prescription of a medical practitioner.**]

* * * * *

DEA—The Federal Drug Enforcement Administration.

* * * * *

Drug order—An oral or written order issued by a medical practitioner which is either written on or entered by computer into the medical record of a patient in an institution for the dispensing of a drug or device for administration to the patient. The term does not include an order for a drug for a patient in an institution which the patient will self-administer which will be considered a prescription.

FDLE—The Federal Drug Law Examination.

* * * * *

Medical practitioner—A physician, dentist, veterinarian or other individual authorized and licensed by law to prescribe drugs.

NABPLEX—The National Association of Board of Pharmacy Licensure Examination.

Nonproprietary drug—A drug containing any quantity of any controlled substance or a drug which is required by an applicable Federal or State law to be dispensed only by prescription.

Pharmacist manager—The pharmacist named in the permit to operate a pharmacy who is in charge of a pharmacy [who is] and responsible for operations involving the practice of pharmacy under section 4 of the act (63 P. S. § 390-4).

Pharmacy—The [store or other] place licensed by the Board where the practice of pharmacy is conducted.

Pharmacy intern—A person registered by the Board as a pharmacy intern under section 3(e) of the act (63 P. S. § 390-3(e)) and § 27.26 (relating to pharmacy internship).

Pharmacy technician—An unlicensed person working in a pharmacy to assist a pharmacist in the practice of pharmacy in § 27.12 (relating to practice of pharmacy and delegation of duties). The term does not include a pharmacy intern or clerical or housekeeping personnel.

* * * * *

Prescription—A written or oral order issued by a licensed medical practitioner in the course of his professional practice for a controlled substance, other drug or device or medication which is dispensed for use by a consumer.

* * * * *

Proprietary drug—A nonprescription, nonnarcotic medicine or drug which may be sold without a prescription and which is prepackaged for use by the consumer and labeled in accordance with the requirements of Federal and State statutes and regulations.

Satellite pharmacy—A pharmacy in an institution which provides services for the inpatient population and is dependent upon the centrally located pharmacy for administrative control, staffing and drug procurement.

STANDARDS

§ 27.11. Pharmacy permit and pharmacist manager.

* * * * *

(b) [No] A pharmacy may not display, advertise or use [another] any name [except] other than the name in which it is registered.

(c) [A change in name or ownership shall require a new application.] A pharmacy may not operate without a licensed pharmacist on duty at all times.

(d) [No person holding a certificate, license, permit or registration as a licensed pharmacy or pharmacist may post or display in public view a current certificate, license, permit or registration or a renewal pertaining thereto of a person not lawfully employed by the licensee.] A change in name or ownership or controlling interest of the pharmacy shall require a new application.

(e) [Applications for a new permit or for a change in location shall be accompanied by at least five photographs, 8 inches by 10 inches, one showing the exterior, one from the inside entrance facing the rear, one from the rear of the pharmacy facing the front and two photos of the prescription area showing its contents, including equipment, sink and refrigerator.] A person or entity holding a certificate, license, permit or registration as a licensed pharmacist or pharmacy may not post or display in public view a current certificate, license, permit, registration or renewal of a person not lawfully employed by the licensee.

(f) A pharmacy which closes or otherwise ceases operation shall immediately return to the Board its current permit and shall immediately inform the Board of the disposition of the prescription files and [caution legend] nonproprietary drugs. After 30 days, [no] neither prescription files [or caution legend] nor nonproprietary drugs may be sold, transferred or disposed of without prior permission from the Board.

[Signs] When a pharmacy closes or ceases operation, signs, symbols or other indications of a pharmacy [being present] shall immediately [upon closing] be removed from both the interior and exterior of the premises [both inside and outside].

(g) [In the case of a pharmacy permit issued to a person who is not a registered pharmacist, the person shall notify the Board if the pharmacist manager whose name appears on the permit ceases to be the pharmacist manager for that pharmacy, within 15 days from date thereof, together with the name of the new pharmacist manager. If the Board raises no objections within 30 days of notification, the new pharmacist manager may be deemed to be approved. A pharmacy may not operate without a pharmacist manager.] If the pharmacist manager ceases to be the pharmacist manager, the holder of the permit to operate the pharmacy shall inform the Board in writing of this fact and of the new pharmacist manager not more than 15 days after the former pharmacist manager ceased being pharmacist manager. If the Board does not object within 30 days of notification, the new pharmacist manager may be deemed approved. If the holder of the permit is unable to replace the pharmacist manager within those 15 days, the permit holder may request in writing an extension of up to 30 additional days to obtain a new pharmacist manager. A pharmacy may not operate without a pharmacist manager for more than 15 days unless the pharmacy first obtains from the Board an extension of time for obtaining a new pharmacist manager.

(h) A pharmacist may not be the pharmacist manager of more than one pharmacy at any given time. The holder of a permit to operate a pharmacy which has lost the services of a pharmacist manager and cannot obtain a suitable replacement may apply in writing to the Board for a temporary waiver of this subsection. The Board may grant a waiver which would authorize the pharmacist manager to serve as pharmacist manager of more than one pharmacy for up to 60 days after the initial 15 days permitted under subsection (g).

(i) A satellite pharmacy will require a separate permit under any of the following conditions:

(1) The satellite had a permit to operate as a pharmacy in another institution before that institution was incorporated into the present institution.

(2) The routine activity of the satellite is dispensing drugs to outpatients.

§ 27.12. Practice of pharmacy and delegation of duties.

(a) [It shall be unlawful for a person not licensed as a pharmacist, under the act, to engage or allow another to engage in the practice of pharmacy, including the preparing, compounding, dispensing, selling or distributing at retail to a person a drug, except a pharmacy intern or other authorized personnel under the immediate personal supervision of a pharmacist, who may assist the pharmacist with the preparation of other than Schedule II controlled substances and except personnel engaged in clerical functions, provided that:

(1) Prior to preparing the prescription, a licensed pharmacist shall review the prescription and make

necessary professional determinations, which shall include the interpretation of the prescriber's order with respect to the drug name, strength, dosage, quantity and allowable refills.

(2) After the prescription has been prepared, a licensed pharmacist shall thoroughly inspect the prepared prescription to verify the accuracy of the preparation, dosage and number of allowable refills.

(b) In the actual preparation of a prescription, the procedures which require professional skill and training, such as the verification of proper ingredients, the weighing of ingredients and the compounding of other similar processing of ingredients into the final prescription drug shall be performed by a licensed pharmacist or a licensed pharmacist intern under the direct personal supervision of a licensed pharmacist.

(c) Personnel authorized by the pharmacist to assist him may:

- (1) Accept written prescriptions.
- (2) Convey written prescriptions to the pharmacist.
- (3) Carry containers of drugs in and around the pharmacy.
- (4) Count pills, tablets or capsules.
- (5) After review by the pharmacist, package for delivery and deliver the drugs.
- (6) Perform clerical tasks relating to the practice of pharmacy.]

General. It is unlawful for a person not licensed as a pharmacist by the Board to engage or allow another person to engage in the practice of pharmacy as defined in § 27.1 (relating to definitions) and section 2 of the act (63 P. S. § 390-2) except in accordance with the provisions in this section.

(b) *Delegation.* A pharmacist may delegate aspects of the practice of pharmacy to a pharmacy intern or pharmacy technician, as defined in § 27.1 subject to the following conditions:

(1) The pharmacist shall review every prescription or drug order prior to its preparation to determine the name of the drug, strength, dosage, quantity, permissible refills and the other information required under § 27.18(b) (relating to standards of practice).

(2) The pharmacist shall inspect a prescription or drug order after it has been prepared to verify the accuracy of the preparation.

(3) The pharmacist shall provide direct, immediate and personal supervision to pharmacy interns and pharmacy technicians working under him. Direct, immediate and personal supervision means that the supervising pharmacist has reviewed the prescription or drug order prior to its preparation, has verified the final product and is on duty to direct the work of interns and technicians and respond to questions or problems.

(4) The pharmacist shall ensure that the label of the container in which a nonproprietary drug is dispensed or sold pursuant to a prescription complies with the labeling requirements of § 27.18(d).

(c) *Pharmacy interns.*

(1) A pharmacy intern may work only under the direct, immediate, personal supervision of a pharmacist in accordance with subsection (b)(3).

(2) A pharmacy intern may neither accept nor transcribe an oral order or telephone prescription.

(3) A pharmacy intern may neither enter nor be in a pharmacy if a pharmacist is not on duty.

(4) A pharmacy intern working under the direct, immediate, personal supervision of a pharmacist may perform procedures which require professional skill and training. Examples of the procedures include: verifying ingredients, weighing ingredients, compounding ingredients and other similar processing of ingredients.

(d) *Pharmacy technicians.*

(1) A pharmacy technician may work only under the direct, immediate, personal supervision of a pharmacist in accordance with subsection (b)(3).

(2) The following are examples of the types of activities which a pharmacy technician may perform:

(i) Carry containers of drugs in and around the pharmacy.

(ii) Count pills, tablets and capsules and put them in a container.

(iii) Type or print, or both, labels.

(iv) Maintain records which are related to the practice of pharmacy.

(v) Assist the pharmacist in preparing and reconstituting parenteral products and other medications. After the parenteral product or other medication has been prepared, the supervising pharmacist shall initial the label of the product or medication to document his final inspection and to accept total responsibility for its preparation.

(vi) Enter prescription, drug order or patient information in a patient profile.

(3) A pharmacy technician may not:

(i) Accept or transcribe an oral order or telephone prescription.

(ii) Assist in preparing Schedule II controlled substances.

(iii) Enter or be in a pharmacy if a pharmacist is not on duty.

(iv) Perform any act within the practice of pharmacy that involves discretion or independent professional judgment.

(v) Perform a duty until the technician has been trained and the duty has been specified in a written protocol.

(4) The pharmacist manager shall create and maintain a written protocol for each pharmacy technician employed in the pharmacy. The protocol shall specify each duty which the pharmacy technician may perform. The pharmacist manager and the pharmacy technician shall date and sign the protocol and each amendment to the protocol. The pharmacist manager shall make the protocol available to agents of the Board upon demand.

(5) No more than two pharmacy technicians may assist a pharmacist in the practice of pharmacy at any time. The number of pharmacy technicians

permitted to assist a pharmacist under this paragraph is in addition to pharmacy interns and clerical and housekeeping personnel.

§ 27.14. Supplies.

(a) A pharmacy shall maintain a supply of drugs and devices adequate to meet the needs of the health professions and the patients it is intended to serve [, and the Board will determine by published regulation and according to reasonable standards what is adequate]. The applicant for a pharmacy permit shall show proof by affidavit that he has ordered or possesses and shall continue to maintain an [adequate] inventory of **nonproprietary** drugs, devices and equipment **appropriate to the practice of that pharmacy. [Until further regulations are promulgated, the applicant shall show proof by affidavit that he has ordered not less than]** The inventory shall include at least \$5,000 worth of **nonproprietary** drugs and devices, at cost, from a [registered] licensed wholesaler or manufacturer [in order to supply the prescription needs of his customers. At no time may the prescription] The inventory may not go below this figure at any time.

(b) [A drug which does not meet established legal standards of strength and purity, or which has been improperly stored, or has expired dates for its use, or varies from the purity and strength specified on the label, or is unfit, misbranded or adulterated as defined in the Commonwealth and the Federal statutes for use due to deterioration or other causes may not be sold or given away but shall, within 30 days after the pharmacist knows or upon reasonable effort should know of the drug, be properly disposed of by the pharmacist, except that a caution legend drug be surrendered to a BNDD regional office, or to the Division of Drug Control of the Department of Health or to the Board or returned to the wholesaler or manufacturer to be disposed of in compliance with applicable regulations or, where otherwise permitted by law, destroyed in the presence of an agent of one of the above agencies. The Board will arrange for appropriate storage of a drug at the request and expense of the pharmacist, if the surrendered drug is the subject of litigation or is otherwise required to be preserved. The pharmacist manager shall be responsible for keeping proper records of items surrendered or returned.] Drugs which must be removed from active stock shall be removed in accordance with the following provisions:

(1) The pharmacist manager is responsible for removing from the active stock of the pharmacy and disposing of the following:

- (i) A drug whose expiration date has passed.
- (ii) A drug which does not meet legal standards of strength and purity.
- (iii) A drug which varies from the strength and purity on the label of the commercial container.
- (iv) A drug which has been improperly stored.
- (v) A drug which has deteriorated.
- (vi) A drug which is unfit, misbranded or adulterated under Federal or State statutes.

(2) Drugs which have been removed from active stock in accordance with this subsection may not

be sold or given away. The drugs shall be returned to the wholesaler or manufacturer for disposal or disposed of by the pharmacy according to Federal or State statutes or regulations.

(3) A pharmacy desiring to or required to dispose of a controlled substance shall contact the nearest DEA office for authority and instructions to dispose of the substance.

(4) The pharmacist manager shall be responsible for keeping proper records of controlled substances which have been disposed of. These records shall include the name of the substance, the number of units or the volume of the substance or the number of commercial containers and the date and manner of disposal.

(c) A pharmacy shall maintain at least the following equipment and [miscellaneous] supplies:

(1) [One] A Class A prescription balance [, that is, scale, with weights or automatic balance] or other scale with sensitivity [requirement] of 6 milligrams [with no load] or less.

* * * * *

(3) A mechanical refrigerator having the [proper and suitable] appropriate temperature control for the [exclusive] storage of the drugs, vaccines, biologicals or medicaments which require [certain designated] specific temperatures for their stability. [The refrigerator shall either be within the prescription area or reasonably close, in which case it shall be kept locked except when being used.] The refrigerator shall be kept within the prescription area.

(4) [An appropriate source and appliance to generate heat.]

[(5)] At least four graduates assorted to measure 1 [cc] ml to 500 [cc (or five minums to one pint)] ml.

[6] (5) ***

[7] (6)***

[(8)] (7) At least two funnels, one [four ounces] 120 ml and the other [16 ounces] 480 ml.

[(9)] (8) One ointment slab of glass or tile or [special ointment] specially treated paper.

[(10)] (9) [One] A book to record sales and transfers of [exempt narcotics and one book to record sales and transfers of] Schedule V controlled substances and poisons. This paragraph does not apply to an institutional pharmacy servicing inpatients.

[(11)] (10) ***

[(12)] (11) [Suitable prescription filing devices] Prescription files for keeping [proper records of regular prescription narcotic and controlled substances prescription] prescriptions of nonproprietary drugs in accordance with the act and, for controlled substance prescriptions, the regulations of the DEA at 21 CFR 1304.04(h) (relating to maintenance of records and inventories). The original prescription must be retained for 2 years. A pharmacy may make use of a computerized recordkeeping system for keeping track of telephone prescrip-

tions, refills, counselling, and the like if the system has safeguards to prevent accidental erasure and the information can be transferred to hardcopy within 72 hours.

[(13)] (12) ***

[(14)] (13) ***

[(15)] (14) An adequate reference library including two or more of the latest editions of the following, including current supplements:

(i) *The [National Formulary and the] United States Pharmacopeia, the National Formulary.*

* * * * *

(iii) *Drug Facts and Comparisons.*

(iv) *[Remington Practice of Pharmacy] Remington's Pharmaceutical Sciences.*

(v) *[U. S.] The United States Dispensatory.*

(vi) *[Pharmaceutical Sciences] Physicians' Generix.*

(vii) *USPDI [United States Pharmacopeia Dispensing Information].*

* * * * *

(ix) *Goodman and Gilman's Pharmacological Basis of Therapeutics.*

(x) *AHFS Drug Information: American Hospital Formulary Service.*

(xi) *[United States Public Health Services] Radiological Health Handbook.*

(xii) *The Merck Index: An Encyclopedia of Chemicals, Drugs, and Biologicals.*

(xiii) *[Martindale's] Martindale: The Extra Pharmacopeia.*

§ 27.15. Sanitary standards.

(a) The pharmacy and equipment shall be maintained in a clean and orderly condition and in good repair.

* * * * *

(c) [The walls, ceilings, windows and floors of the pharmacy shall be clean and maintained in good repair and order.

(d) [Waste material may not be permitted [or allowed] to collect upon the [floors, counters] floor, counter or other [portions] area of the pharmacy [, and covered waste receptacles shall be placed in convenient places for the waste material]. The pharmacy shall have a waste removal system adequate to maintain clean and sanitary conditions.

[(e)] (d) ***

[(f)] (e) ***

[(g)] (f) ***

[(h)] (g) ***

§ 27.16. Construction and equipment requirements.

(a) *Approval of plans.* The following [requirements] requirements [shall be] are applicable to approval of plans:

(1) *New pharmacy or change-of-location.* Plans for construction of a new pharmacy [or a new building] or new location for an existing pharmacy may be submitted to the Board for approval prior to proceeding with construction. Within 90 days [, or less, if possible, of receipt] of receiving the plans, the Board will notify the applicant of its approval of the planned pharmacy [,] or of its disapproval and the reasons [therefor] for disapproval. The plans, including dimensions, shall demonstrate compliance with applicable regulations and shall show the layout and fixtures for the prescription area and the [area] immediately adjacent [thereto] area.

* * * * *

(b) *Building standards.* The following apply to building standards:

* * * * *

(2) [*Voluntary guidelines.* The experience of the Board indicates a relationship between the size of a store in which a prescription area is located and the level of activity in the practice of pharmacy. Therefore, the voluntary guidelines set forth in the following table are suggested:

Store Area (in square feet)	Prescription Area (in square feet)
up to 4,000	250
4,001—6,000	350
6,001—8,000	480
8,001—10,000	600
10,001—12,000	750
12,001—14,000	900
14,001—16,000	1,000
16,001—18,000	1,080
over 18,000	1,200]

[(3) *Adjoining store.* A permit may be issued for a self-contained pharmacy having an entrance into an adjoining store which owns the pharmacy or is otherwise affiliated with it. The pharmacy shall have an area of at least 350 square feet. Its separating walls and doors shall afford a degree of security against illegal entry equal to that normally afforded by walls and doors fronting on a public way, and the doors shall be securely locked whenever a licensed pharmacist is not present and on duty. The terms "pharmacy," and "drugs," or words of comparable meaning may only be used in reference to the self-contained pharmacy.]

Self-contained pharmacy.

(i) A self-contained pharmacy is a pharmacy which either is in a larger store or has an entrance into an adjoining store affiliated with the pharmacy and can be securely sealed off from the larger or adjoining store.

(ii) The barrier devices which seal off the self-contained pharmacy shall be capable of providing security for the self-contained pharmacy. The barrier devices shall reach from floor to ceiling, shall be impenetrable by hand or the use of a reach extender, and shall be securely locked whenever a licensed pharmacist is not present and on duty.

(iii) The pharmacy shall be closed whenever a licensed pharmacist is not present and on duty.

(iv) Safes, electrical equipment or other facilities of the larger or adjoining store may not be located in or approached through the self-contained pharmacy unless a pharmacist is on duty whenever staff in the larger or adjoining store need access to these facilities.

(v) If the business hours of the self-contained pharmacy differ from the hours of the larger or adjoining store, the hours of the pharmacy shall be posted at all points of public access.

(vi) Employees of a larger store may enter the larger store only if either the pharmacist is present or if the pharmacy is self-contained and secure. Protocols for access by nonpharmacist staff for bona fide emergencies, such as fires, natural disasters or police matters, may be developed for review and approved by the Board on a case-by-case basis.

(vii) Employees of an adjoining store or of a larger store may not enter an affiliated pharmacy when the pharmacy is closed.

[(4)] (3) *Locked compartment.* Space shall be provided in the prescription area for a substantially constructed cabinet or safe to contain controlled substances [required to be kept locked in accordance with Federal BNDD regulations] unless the pharmacy dispenses controlled substances throughout the stock of noncontrolled substances in a manner as to obstruct the theft of controlled substances. If the pharmacy stocks Schedule I controlled substances, these substances shall be stored in a securely locked, substantially constructed cabinet or safe.

[(5)] (4) *Telephone.* At least one telephone [—or more if necessary—] shall be [immediately] accessible in the prescription area, and the telephone number shall [coincide with] be the [mandatory] telephone number required to be printed on the label of a prescription.

[(6)] (5) *Sanitary facilities.* Pharmacies shall be equipped with a sink within the prescription area to be used solely for pharmaceutical purposes. The sink shall measure at least 200 square inches exclusive of drainboard area. The sink shall be connected properly to supply hot and cold water. [The sink shall be wholly located within the area designated as the prescription area. Adequate restroom] Restroom facilities for employees of the pharmacy shall be provided reasonably close to, but outside of the prescription area [, or with an entrance for the public located outside of the prescription area].

[(7)] (6) ***

[(8)] (7) ***

[(9)] (8) ***

[(10)] (9) ***

§ 27.18. Standards of practice.

(a) [No drug may be dispensed whether it be on a new prescription or a refill—renewal—except in a new and clean suitable container or in the manufacturer's original container.] A pharmacist shall dispense a new prescription in a new and clean container or in the manufacturer's original container. In refilling a prescription, the pharmacist

may reuse the original container of that prescription if the container is clean and capable of reuse. The refill requires a new label containing the information specified in subsection (d). Pharmacies and pharmacists shall comply with the [Federal] Poison Prevention Packaging Act of 1970 (15 U.S.C.A. §§ 1471 [et seq.]—1476.) which includes the use of child resistant containers. [Bottles received originally from manufacturers, wholesalers, distributors or suppliers, shall be destroyed when the container becomes emptied.]

(b) Prescriptions kept on file in the pharmacy shall meet the following requirements:

(1) A prescription on file shall show the name and address of the patient[,]; the name and address or other identifier of the prescriber[,]; the date the prescription was issued, if the prescription is for a controlled substance or if it was written with a PRN or ad lib refill designation; the name and quantity of the drug prescribed[,]; directions for its use[,]; cautions communicated to the ultimate consumer by means of auxiliary labels or other means when dispensed to the ultimate consumer; the date the prescription was compounded and dispensed[,]; and the name or initials of the dispensing pharmacist[, and in addition, when required by statute, the address of the patient, the date the prescription was issued, and the BNDD number of the prescriber].

(2) Prescriptions for controlled substances shall show the DEA number of the prescriber. Prescriptions for Schedule II controlled substances shall be written with ink [or], indelible pencil [or], typewriter, word processor or computer printer and shall be manually signed by the prescriber. The pharmacist is responsible for [seeing that a caution legend drug prescription he fills meets the requirements of] compounding and dispensing nonproprietary drugs consistent with the [Federal] Controlled Substances Act (21 U.S.C.A. § 321 et seq.), The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) and the regulations promulgated under these acts.

(3) If a prescription for a [caution legend] nonproprietary drug is refilled, a record of the refill [showing] shall show the date of the refill [and], the name or initials of the dispensing pharmacist and the quantity dispensed[, if]. If the pharmacist dispenses a quantity different from that [shown originally on the face] of the original prescription, the pharmacist shall [be indicated] indicate the changes on the back of the original prescription [or stored in a functionally equivalent information retrieval system] or shall enter the changes in the computerized files of the pharmacy.

(4) Original prescriptions shall be kept for 2 years.

(5) In an institution Schedule II controlled substances which the pharmacy dispensed and which were ultimately received by the patient shall be recorded and the record kept for 2 years. [If a copy is given, the person requesting the copy shall show the pharmacist acceptable identification, such as a

driver's license, and it shall be noted in writing as to the date and to whom and by whom the copy was given.]

(c) [No] A pharmacist may decline to fill or refill a prescription if the pharmacist knows or has reason to know that it is false, fraudulent or unlawful, or that it is tendered by a patient served by a public or private third-party payor who will not reimburse the pharmacist for that prescription. A pharmacist may not knowingly fill or refill a prescription for a [legend, caution legend drug] controlled substance or nonproprietary drug or device if [he] the pharmacist knows or has reason to know it is for use by a person other than the one for whom the prescription was written, or will be otherwise diverted, abused or misused. In addition, a pharmacist may [not be required] decline to fill or refill a prescription if, in [his] the pharmacist's professional judgment exercised in the interest of the safety of the patient, [he] the pharmacist believes [it] the prescription should not be filled or refilled. The pharmacist shall explain the decision to the patient. If necessary the pharmacist shall attempt to discuss the decision with the prescriber.

(d) The container in which a prescription drug or device is sold or dispensed to the ultimate consumer shall bear a label [with the following] which shall be written in ink, typed or computer generated and shall contain the following information:

(1) [Name] The name, address, telephone number and DEA number of the pharmacy [and the BNDD number assigned to it by that Bureau].

* * * * *

(4) The name of the prescriber [and a registration number of the prescriber required to be obtained under applicable Federal statute].

* * * * *

(6) The trade or brand name of the drug [and proportion or amount of drug dispensed, unless omission is specifically requested by the prescribing doctor in writing], strength, dosage form and quantity dispensed. If [the name is generic, then] a generic drug is dispensed, the manufacturer's name or suitable abbreviation of manufacturer's name shall also be shown.

* * * * *

(r) The following provisions [are applicable] apply to the advertisement and sale of drugs:

* * * * *

(7) The patient has the right to request a copy of [his] an original prescription[, and the]. The copy shall clearly indicate on its face that it is a copy and may not be used to obtain a new prescription [order] or refill. Before a pharmacist provides a copy of a written prescription to a patient or an authorized agent of the patient, the person requesting the copy shall show the pharmacist acceptable authorization and identification, such as a driver's license. The pharmacist shall record in writing the date, to whom and by whom the copy was given.

* * * * *

(v) A drug order in an institution is not required to conform to the labeling requirements of subsection (d) as long as it is in unit dose. A drug in unit dose shall be labeled to indicate the patient name, drug name, drug strength, dosing instructions and lot number. The label of a parenteral, enteral or total parenteral nutrition product shall contain the name of the patient; the ingredients, including the name, strength, quantity of each, and the diluent and expiration date; and the initials of the pharmacist.

PHARMACISTS

§ 27.21. Application for examination and registration.

(a) [An application for an examination and registration as a licensed pharmacist shall be submitted on an application form prescribed and provided by the Commissioner, accompanied by the evidence, statements or documents as required, and filed with the Board at its office in Harrisburg at least 30 days before the date fixed for examination.] A person applying to take the National Association of Boards of Pharmacy Licensure Examination (NABPLEX) and the Federal Drug Law Examination (FDLE) shall obtain an application for licensure from the Board, complete the application, and file the application with the Board at least 45 days before the examination.

(b) [An applicant shall use his full legal name in filling out an application.] The applicant shall include with the application proof of graduation with a B.S. or advanced degree in pharmacy granted by an accredited school or college; affidavits of all internship experience gained prior to submitting the application; and the application fee.

(c) [A separate application shall be filed and an examination fee paid for each examination taken.] The applicant shall also complete an examination scheduling form which the applicant shall submit, together with the examination fee, directly to the testing service.

(d) [Internship experience affidavits shall be filed prior to the date set for the practical examination.] Affidavits of internship experience gained after the filing of the application shall be filed before the examination date.

§ 27.23. Time and place for holding examination.

Examinations shall be held at a time and place determined by the [Commissioner] Bureau's examination contract with the testing service which administers the examination.

§ 27.24. Examinations administered and passing grade.

(a) Candidates for licensure by examination are required to pass both the [National Association of Boards of Pharmacy Licensure Examination (NABPLEX)] NABPLEX and the [Federal Drug Law Examination (FDLE)] FDLE, which shall be administered in January [and], June and September of each year.

(b) [Through January 1986, the NABPLEX shall consist of the following five substantive areas:

Chemistry, Mathematics, Pharmacy, Pharmacology and the Practice of Pharmacy. Each substantive area shall be graded separately. The minimum passing rate is an average of 75% of the separately graded substantive areas, with at least 60% in Chemistry, Mathematics, Pharmacy and Pharmacology, and at least 75% in the Practice of Pharmacy.

(c) Beginning in June 1986, the NABPLEX shall be an integrated exam, covering the subjects itemized in subsection (b), but with only one grade, rather than separately graded subsections.] The minimum passing [rate] grade for [this integrated exam may be no less than] NABPLEX is 75.

[(d)] (c) The minimum passing grade for the FDLE [may be no less than] is 75.

§ 27.25. [Failure to appear for examination] Licensure by reciprocity.

[The fee paid for investigation and examination of an application for registration as a pharmacist may not be refunded if the applicant fails to qualify for examination, or, if, without good cause as determined by the Board, the applicant fails to appear for examination after notification of the time and place of two consecutive examinations has been mailed by the Board to him at his address as shown on the records of the Board. In this event, a new application shall be filed and a new application fee paid before the applicant shall be eligible for examination.]

(a) An applicant for licensure by reciprocity shall comply with section 3(g) of the act (63 P.S. § 390-3(g)).

(b) An applicant for licensure by reciprocity who received a license to practice pharmacy in any other state, territory or possession of the United States after January 26, 1983, shall be required to demonstrate that he passed the FDLE.

§ 27.26. [Internship] Pharmacy internship.

(a) [Pharmacy internship means the supervised practical experience required for licensure as a registered pharmacist. The purpose of the Pharmacy Internship Program is to provide those individuals with the knowledge and practical experience necessary for functioning competently and effectively upon licensure.

(b) A certificate of registration as a pharmacy intern will only be issued for the purpose of allowing individuals who intend to become registered pharmacists the opportunity to obtain the practical experience required for examination and registration as a pharmacist. If a person desires to work as a pharmacy intern in this Commonwealth, he shall do the following:

(1) Apply for an intern application after having successfully completed his second year in an accredited college which leads to a 5-year course in pharmacy.

(2) Apply to the Board for registration as a pharmacy intern.

(c) A person desiring to register as a pharmacy intern shall complete an application as provided by the Commissioner and in addition shall forward to the Board the following:

(1) A head and shoulders photograph which shall be 3 inches by 4 inches.

(2) The fee.

(3) A letter or transcript certifying that the applicant has in fact successfully completed a minimum of 2 years in an accredited college.

(d) The Board will register an applicant as a pharmacy intern as soon as the Board receives a completed application and the items set forth in subsection (c). Pharmacy internships shall be valid for a period not exceeding 6 years from the date of issue exclusive of time spent in the military service.

(e) The following applies to internship credit: The internship experience may not be less than 1,500 hours, with a maximum of 50 hours in any one week. Credit for internship will not be granted by the Board for periods before registration as an intern.

(f) The following apply to pharmacy intern experience:

(1) Pharmacy school instruction is necessary. After January 1, 1973, a person may not be eligible to become a candidate for registration to practice pharmacy in this Commonwealth unless he receives his instructions in practical pharmacy and pharmaceutical technique from an instructor, professor or faculty member who is a registered pharmacist or from a faculty member who is a registered pharmacist at a Board-approved college.

(2) Internship credit for a maximum of 750 hours may be gained from practical experience obtained in a structured internship program. The credit will be limited to the number of hours of credit for which the structured internship program has been approved by the Board. Internship credit will only be granted when the practical experience is obtained on a full-time basis with no other concurrent required academic load and if the intern obtains a passing grade from the course involved. An accredited school or college of pharmacy which desires to conduct structured internship programs eligible for approval shall make a written request to the Board. Board-approved structured internship programs at the pharmacy schools will be monitored and guided by the Board.]

Pharmacy internship means the supervised practical experience required for licensure as a registered pharmacist. The purpose of the pharmacy internship program is to provide a registered intern with the knowledge and practical experience necessary for functioning competently under the act and this chapter.

(b) A certificate of registration as a pharmacy intern will be available to an individual who has completed at least 2 years of pharmacy college or an accredited program leading to transfer into the third year of pharmacy college and is of good moral character. A person desiring to register as a pharmacy intern shall do the following:

(1) Apply to the Board for registration including the fee specified in § 27.91 (relating to schedule of fees) for registering as a pharmacy intern.

(2) Forward to the Board a letter or transcript certifying that the applicant has successfully com-

pleted 2 years of pharmacy college or an accredited program leading to transfer into the third year of pharmacy college.

(c) The Board will register an applicant after it receives a completed application and other items in subsection (b). A pharmacy intern certificate shall be valid for 6 years from the date of issue exclusive of time spent in the military.

(d) The following applies to internship credit:

- (1) An intern shall serve at least 1,500 hours.
- (2) A maximum of 50 hours may be credited in 1 week.
- (3) An intern shall serve at least 750 of the 1,500 hours in a pharmacy.
- (4) An intern may earn up to 750 of the 1,500 hours in an internship program sponsored or approved by the pharmacy college subject to the following conditions:

(i) The Board will determine the maximum number of hours available for each internship program sponsored or approved by a pharmacy college.

(ii) The Board will grant internship credit to an individual in an internship program sponsored or approved by a pharmacy college only if the following applies:

- (A) The internship program is full-time.
- (B) There is no concurrent academic courseload.
- (C) The individual achieves a passing grade in the program.

(iii) A pharmacy college which desires to sponsor or approve an internship program shall request approval from the Board.

(iv) The Board will monitor internship programs which are sponsored or approved by a pharmacy college.

(5) The Board may grant internship credit for hours that an individual served in a pharmacy before the individual registered as an intern only if the individual shows good cause for failing to register in timely fashion.

(6) The Board will not grant internship credit for hours which an individual served in a pharmacy if the supervising pharmacist was not registered as a preceptor. An exception to the requirement that the supervising pharmacist register as a preceptor will be made for internship hours acquired in an internship program sponsored or approved by a pharmacy college.

(e) The Board will grant internship credit only for activities related to the practice of pharmacy. The following are examples of these activities: scrutinizing prescriptions or drug orders, compounding medications and filling prescriptions. The Board will not grant internship credit for activities which are not related to the practice of pharmacy. The following are examples of these activities: retail sales unrelated to pharmacy items, shelving or clerical functions unrelated to pharmacy.

(f) A person may not be eligible to become a candidate for registration to practice pharmacy unless the person receives instruction in practical pharmacy and pharmaceutical technique from an instructor, professor, or faculty member who is a

registered pharmacist or from a faculty member who is a registered pharmacist at a pharmacy college.

* * * * *

(h) The requirements for registration as a pharmacist preceptor is as follows:

(1) A pharmacist preceptor may not have been convicted of an offense with respect to observance of Federal, State and municipal statutes and ordinances relating to the practice of pharmacy. **A pharmacist may appeal to the Board for a waiver of this provision.**

* * * * *

[Pa.B. Doc. No. 96-351. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Child Abuse Reporting Requirements

The State Board of Physical Therapy (Board) proposes to adopt Chapter 40, Subchapter D (relating to child abuse reporting) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(a) and (b) of the CPSL (relating to persons required to report suspected child abuse), physical therapists, physical therapist assistants and certified athletic trainers are included among the persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 40.201 (relating to definitions)

Definitions are proposed for the following words and phrases used throughout the regulations: "abused child," "child abuse," "ChildLine," "individual residing in the same home as the child," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions," "serious mental injury," "serious physical injury" and "sexual abuse or exploitation." With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of "abused child" is derived from the definition of "child abuse" as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an "abused child" in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase "abused child" would be defined to mean "a child under 18 years of age who a physical therapist, physical therapist assistant or certified athletic trainer has reasonable cause to suspect, on the basis of the physical therapist, physical therapist assistant or certified athletic trainer's professional or other training or

experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).” The proposed definition of “ChildLine” is tailored after the Department of Public Welfare’s definition of “Childline” found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 40.202 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 40.202 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which physical therapists, physical therapist assistants or certified athletic trainers in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for physical therapists, physical therapist assistants or certified athletic trainers who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 40.203 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 40.203 advises physical therapists, physical therapist assistants or certified athletic trainers of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 40.204 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting of postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 40.204 advises physical therapists, physical therapist assistants and certified athletic trainers of this statutory mandate.

§ 40.205 (relating to immunity from liability)

Proposed § 40.205 advises physical therapists, physical therapist assistants and certified athletic trainers that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the physical

therapist’s, physical therapist assistant’s or certified athletic trainer’s actions. The proposed section also informs physical therapists, physical therapist assistants and certified athletic trainers that under section 6318 of the CPSL, the good faith of the physical therapist, physical therapist assistant or certified athletic trainer will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 40.205 to extend the good faith presumption to disciplinary proceedings against a physical therapist, physical therapist assistant or certified athletic trainer that result by reason of the physical therapist’s, physical therapist assistant’s or certified athletic trainer’s actions in participating in good faith in the making of a report of suspected child abuse.

§ 40.206 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters “shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse.” Section 40.206 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any ethical principle or professional standard that might otherwise apply.

§ 40.207 (relating to noncompliance)

Proposed § 40.207 advises physical therapists, physical therapist assistants and certified athletic trainers of the consequences of noncompliance with the child abuse reporting requirements of §§ 41.71—41.73. The section is divided into two subsections, (a) and (b). As proposed, physical therapists, physical therapist assistants and certified athletic trainers are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 11 of the Physical Therapy Practice Act (act) (63 P. S. § 1311). Subsection (b) advises physical therapists, physical therapist assistants and certified athletic trainers of the criminal penalties available under section 6319 of the CPSL (relating to failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 3(a) of the act (63 P. S. § 1303(a)).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, physical therapists, physical therapist assistants and certified athletic trainers may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compli-

ance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Shirley Klinger, Administrative Assistant, State Board of Physical Therapy, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

BARBARA A. AFFLERBACH, P.T.,
Chairperson

Fiscal Note: 16A-653. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following subchapter is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter D. CHILD ABUSE REPORTING

- Sec. 40.201. Definitions.
- 40.202. Suspected child abuse—mandated reporting requirements.
- 40.203. Photographs, medical tests and X-rays of child subject to report.
- 40.204. Suspected death as a result of child abuse—mandated reporting requirement.
- 40.205. Immunity from liability.
- 40.206. Confidentiality—waived.
- 40.207. Noncompliance.

§ 40.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a physical therapist, physical therapist assistant or certified athletic trainer has reasonable cause to suspect, on the basis of the physical therapist, physical therapist assistant or certified athletic trainer's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to the child protective services—child abuse).

Act—The Physical Therapy Practice Act (63 P. S. §§ 1301—1312).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 40.202. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), physical therapists, physical therapist assistants or certified athletic trainers who, in the course of their employment, occupation or practice of the profession, comes into con-

tact with children shall report or cause a report to be made to the Department of Public Welfare when the physical therapist, physical therapist assistant or certified athletic trainer has reasonable cause to suspect on the basis of professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Physical therapists, physical therapist assistants and certified athletic trainers who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the physical therapist, physical therapist assistant or certified athletic trainer, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 40.203. Photographs, medical tests and X-rays of child subject to report.

A physical therapist, physical therapist assistant or certified athletic trainer may take or cause to be taken photographs of the child who is subject to a report and, if

clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 40.204. Suspected death as a result of child abuse—mandated reporting requirement.

A physical therapist, physical therapist assistant or certified athletic trainer who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 40.205. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a physical therapist, physical therapist assistant or certified athletic trainer who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the physical therapist's, physical therapist assistant's or certified athletic trainer's actions. For the purpose of any civil or criminal proceeding, the good faith of the physical therapist, physical therapist assistant or certified athletic trainer shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a physical therapist's, physical therapist assistant's or certified athletic trainer's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 40.206. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 40.202—40.204 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over any ethical principle or professional standard that might otherwise apply.

§ 40.207. Noncompliance.

(a) *Disciplinary action.* A physical therapist, physical therapist assistant or certified athletic trainer who willfully fails to comply with the reporting requirements in § 40.202 (relating to suspected child abuse—mandated reporting requirements) will be subject to disciplinary action under section 11 of the act (63 P. S. § 1311).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a physical therapist, physical therapist assistant or certified athletic trainer who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-352. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

Child Abuse Reporting Requirements

The State Board of Podiatry (Board) proposes to adopt §§ 29.91—29.97 (relating to child abuse reporting requirements) to read as set forth in Annex A. The amendments are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training), of the Child Protective Services Law (CPSL) which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), podiatrists are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 29.91 (relating to definitions relating to child abuse reporting requirements)

Definitions are proposed to be added to § 29.91 for the following words and phrases used throughout the proposed regulations: “abused child,” “child abuse,” “ChildLine,” “individual residing in the same home as the child,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury” and “sexual abuse or exploitation.” With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of “abused child” is derived from the definition of “child abuse” as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an “abused child” in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase “abused child” would be defined to mean “a child under 18 years of age whom a podiatrist has reasonable cause to suspect, on the basis of the podiatrist’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).” The proposed definition of “ChildLine” is tailored after the Department of Public Welfare’s definition of “ChildLine” found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 29.92 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 29.92 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which podiatrists in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the

reporting requirements under section 6311(c) of the CPSL, for podiatrists who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedure). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 29.93 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 29.93 advises podiatrists of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 29.94 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 29.94 advises podiatrists of this statutory mandate.

§ 29.95 (relating to immunity from liability)

Proposed § 29.95 advises podiatrists that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the podiatrist’s actions. The proposed section also informs podiatrists that under section 6318 of the CPSL, the good faith of the podiatrist will be presumed for the purpose of a civil or criminal proceeding. The Board proposes under § 29.95 to extend the good faith presumption to disciplinary proceedings against a podiatrist that result by reason of the podiatrist’s actions in participating in good faith in the making of a report of suspected child abuse.

§ 29.96 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters “shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse.” Section 29.96 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over the provisions of confidentiality and any other ethical principle or professional standard that might otherwise apply.

§ 29.97 (relating to noncompliance)

Proposed § 29.97 advises podiatrists of the consequences of noncompliance with the child abuse reporting requirements of §§ 29.92—29.94. The proposed section is divided into two subsections, (a) and (b). As proposed, podiatrists are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 16 of the Podiatry Practice Act (act) (63 P. S. § 42.16). Subsection (b) advises podiatrists of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under the authority of section 6383 of the CPSL and section 15 of the act (63 P. S. § 42.15).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, podiatrists may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Wade A. Fluck, Counsel, State Board of Podiatry, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

STANLEY E. BOC, D.P.M.,
Chairperson

Fiscal Note: 16A-442. No fiscal impact; (8) recommends adoption.

(*Editor's Note:* The following text is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

**CHAPTER 29. STATE BOARD OF PODIATRY
CHILD ABUSE REPORTING REQUIREMENTS**

§ 29.91. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 29.92—29.97, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a podiatrist has reasonable cause to suspect, on the basis of the podiatrist's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 29.92. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), podiatrists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Podiatrists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the podiatrist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing, within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 29.93. Photographs, medical tests and X-rays of child subject to report.

A podiatrist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 29.94. Suspected death as a result of child abuse—mandated reporting requirement.

A podiatrist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 29.95. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a podiatrist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the podiatrist's actions. For the purpose of a civil or criminal proceeding, the good faith of the podiatrist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a podiatrist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 29.96. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 29.92—29.94 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of confidentiality in § 29.23 (relating to confidentiality) and any other ethical principle or professional standard that might otherwise apply to podiatrists.

§ 29.97. Noncompliance.

(a) *Disciplinary action.* A podiatrist who willfully fails to comply with the reporting requirements in §§ 29.92—29.94 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a

result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P. S. § 42.16).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a podiatrist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-353. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Child Abuse Reporting Requirements

The State Board of Psychology (Board) proposes to amend § 41.1 (relating to definitions) and adopt §§ 41.71—41.76 (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed amendments are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), mental health professionals are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these amendments are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed amendments:

§ 41.1 (relating to definitions)

Definitions are proposed to be added to § 41.1 for the following words and phrases used throughout the amendments: “abused child,” “child abuse,” “ChildLine,” “individual residing in the same home as the child,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury” and “sexual abuse or exploitation.” With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of “abused child” is derived from the definition of “child abuse” as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an “abused child” in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase “abused child” would be defined to mean “a child under 18 years of age whom a psychologist has reasonable cause to suspect, on the basis of the psychologist’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).” Finally, the proposed definition for “ChildLine” is tailored

after the Department of Public Welfare’s definition for “ChildLine” found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 41.71 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 41.71 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which psychologists in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL for psychologists who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 41.72 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 41.72 advises psychologists of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 41.73 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting of postmortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 41.73 advises psychologists of this statutory mandate.

§ 41.74 (relating to immunity from liability)

Proposed § 41.74 advises psychologists that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the psychologist’s actions. The proposed section also informs psychologists that under section 6318 of the CPSL, the good faith of the psychologist will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 41.74 to extend the good faith presumption to disciplinary proceedings against a psychologist that result by reason of the psychologist’s actions in participating in good faith in the making of a report of suspected child abuse.

§ 41.75 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters “shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse.” Section 41.75 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over § 41.61, Ethical Principle 5 (confidentiality) and any other ethical principle or professional standard that might otherwise apply.

§ 41.76 (relating to noncompliance)

Proposed § 41.76 advises psychologists of the consequences of noncompliance with the child abuse reporting requirements of §§ 41.71—41.73. The section is divided into two subsections, (a) and (b). As proposed, psychologists are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 8(a) of the Professional Psychologists Practice Act (act) (63 P. S. § 1208(a)). Subsection (b) advises psychologists of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report) for the same willful noncompliance with the reporting requirements.

Statutory Authority

These amendments are proposed under the authority of section 6383 of the CPSL and section 3.2(2) of the act (63 P. S. § 1203.2(2)).

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, psychologists may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed amendments.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed amendments on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed amendments, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, “Improving Government Regulations.” A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the proposed amendments.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Jackie Wiest Lutz, Counsel, State Board of Psychology, 116 Pine Street, P. O. Box 2649, Harris-

burg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

PATRICIA M. BRICKLIN, Ph.D.,
Chairperson

Fiscal Note: 16A-630. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY
GENERAL

§ 41.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a psychologist has reasonable cause to suspect, on the basis of the psychologist’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

* * * * *

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child’s life or development or impairs the child’s functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day Statewide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

* * * * *

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person respon-

sible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

* * * * *

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

(Editor's Note: The following sections are new. They have been printed in regular type to enhance readability.)

CHILD ABUSE REPORTING REQUIREMENTS

§ 41.71. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), psychologists who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Psychologists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

Upon notification by the psychologist, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 41.72. Photographs, medical tests and X-rays of child subject to report.

A psychologist may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 41.73. Suspected death as a result of child abuse—mandated reporting requirement.

A psychologist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 41.74. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a psychologist who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the psychologist's actions. For

the purpose of any civil or criminal proceeding, the good faith of the psychologist shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a psychologist's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 41.75. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 41.71—41.73 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions of Ethical Principle 5 (relating to confidentiality) in § 41.61 (relating to Code of Ethics) and any other ethical principle or professional standard that might otherwise apply to psychologists.

§ 41.76. Noncompliance.

(a) *Disciplinary action.* A psychologist who willfully fails to comply with the reporting requirements in §§ 41.71—41.73 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 8(a) of the act (63 P. S. § 1208(a)).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a psychologist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-354. Filed for public inspection March 8, 1996, 9:00 a.m.]

STATE BOARD OF SOCIAL WORK EXAMINERS

[49 PA CODE CH. 47]

Child Abuse Reporting Requirements

The State Board of Social Work Examiners (Board) proposes to adopt §§ 47.51—47.57 (relating to child abuse reporting requirements) to read as set forth in Annex A. The proposed regulations are responsive to the statutory mandate of 23 Pa.C.S. § 6383(b)(2) (relating to education and training) of the Child Protective Services Law (CPSL), which requires that each licensing board with jurisdiction over professional licensees identified as mandated reporters of child abuse promulgate regulations by July 1, 1996, on the responsibilities of the mandated reporters. Under section 6311(b) of the CPSL (relating to persons required to report suspected child abuse), licensed social workers are included among the enumeration of persons required to report suspected child abuse.

The child abuse reporting requirements proposed by these regulations are, with few exceptions, recapitulations of the statutory requirements imposed upon persons required to report suspected child abuse under the CPSL. Following is a description of the proposed regulations:

§ 47.51 (relating to definitions relating to child abuse reporting requirements)

Definitions are proposed to be added to § 47.51 for the following words and phrases used throughout the regulations: “abused child,” “child abuse,” “ChildLine,” “individual residing in the same home as the child,” “perpetrator,” “person responsible for the child’s welfare,” “recent acts or omissions,” “serious mental injury,” “serious physical injury” and “sexual abuse or exploitation.” With three exceptions, the proposed definitions provided for these terms are those contained in section 6303 of the CPSL (relating to definitions). The definition of “abused child” is derived from the definition of “child abuse” as defined under section 6303(b) of the CPSL. Section 6311(a) of the CPSL refers to an “abused child” in the general rule regarding persons required to report suspected child abuse. The term, however, is not defined in the CPSL. As proposed, the phrase “abused child” would be defined to mean “a child under 18 years of age whom a licensed social worker has reasonable cause to suspect, on the basis of the licensed social worker’s professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse). The proposed definition of “ChildLine” is tailored after the Department of Public Welfare’s definition of “ChildLine” found at 55 Pa. Code § 3490.4 (relating to definitions).

§ 47.52 (relating to suspected child abuse—mandated reporting requirements)

Proposed § 47.52 announces mandatory reporting requirements for persons required to report suspected child abuse under section 6311 of the CPSL. As proposed, the section is divided into four subsections, (a)—(d). Subsection (a) announces the circumstances under which licensed social workers in private practice settings shall make a report of suspected child abuse. Subsection (b) announces the reporting requirements under section 6311(c) of the CPSL, for licensed social workers who are staff members of a medical or other public or private institution, school, facility or agency. Subsections (c) and (d), respectively, announce the procedures for reporting child abuse as required under section 6313 of the CPSL (relating to reporting procedures). Proposed subsection (c) instructs that reports of suspected child abuse shall be made immediately by telephone to ChildLine, and in writing within 48 hours after the oral report, to the appropriate county children and youth social service agency. Proposed subsection (d) enumerates information which, if available, shall be included in a written report.

§ 47.53 (relating to photographs, medical tests and X-rays of child subject to report)

Under section 6314 of the CPSL (relating to photographs and X-rays of child subject to report), persons or officials who are required to report cases of suspected child abuse are permitted to take photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Proposed § 47.53 advises licensed social workers of this information and of other relevant information which shall be forwarded to the appropriate county children and youth social service agency concurrently with the written report or as soon thereafter as possible.

§ 47.54 (relating to suspected death as a result of child abuse—mandated reporting requirement)

Section 6317 of the CPSL (relating to reporting post-mortem investigation of deaths) provides that a person or official required to report cases of suspected child abuse who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner. Proposed § 47.54 advises licensed social workers of this statutory mandate.

§ 47.55 (relating to immunity from liability)

Proposed § 47.55 advises licensed social workers that under section 6318 of the CPSL (relating to immunity from liability), those who participate in good faith in the making of a report of suspected child abuse, cooperating with an investigation, testifying in a proceeding or taking photographs, shall have immunity from civil and criminal liability that might result by reason of the licensed social worker's actions. The proposed section also informs licensed social workers that under section 6318 of the CPSL, the good faith of the licensed social worker will be presumed for the purpose of any civil or criminal proceeding. The Board proposes as well under § 47.55 to extend the good faith presumption to disciplinary proceedings against a licensed social worker that result by reason of the licensed social worker's actions in participating in good faith in the making of a report of suspected child abuse.

§ 47.56 (relating to confidentiality—waived)

Section 6383(b)(2) of the CPSL requires that the regulations promulgated by licensing boards having jurisdiction over professional licensees identified as mandated reporters "shall clarify that the provisions of this chapter take precedence over any professional standard that might otherwise apply in order to protect children from abuse." Section 47.56 proposes to address this statutory mandate by clarifying that the child abuse reporting requirements announced in this chapter take precedence over any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 47.57 (relating to noncompliance)

Proposed § 47.57 advises licensed social workers of the consequences of noncompliance with the child abuse reporting requirements of §§ 47.52—47.54. The section is divided into two subsections, (a) and (b). As proposed, licensed social workers are advised under subsection (a) that a willful failure to comply with the reporting requirements will result in disciplinary action under section 11 of the Social Workers' Practice Act (act) (63 P. S. § 1911). Subsection (b) advises licensed social workers of the criminal penalties available under section 6319 of the CPSL (relating to penalties for failure to report), for the same willful noncompliance with the reporting requirements.

Statutory Authority

These regulations are proposed under section 6383 of the CPSL and section 6 of the act (63 P. S. § 1906).

Fiscal Impact and Paperwork Requirements

The proposed regulations will have no fiscal impact on the Commonwealth or its political subdivisions. As mandated reporters, licensed social workers may incur additional paperwork in complying with the child abuse reporting requirements announced by these proposed regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on February 28, 1996, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Committee on Professional Licensure and the Senate Committee on Consumer Protection and Professional Licensure. In addition to submitting the proposed regulations, the Board has provided IRRC and will provide the Committees with a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1982-2, "Improving Government Regulations." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed regulations, it will notify the Board within 30 days of the close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for the Board, the Governor and the General Assembly to review these objections before final publication of the regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Deborah Orwan, Board Administrator, State Board of Social Work Examiners, 116 Pine Street, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking.

REGINALD BETHEL,
Chairperson

Fiscal Note: 16A-691. No fiscal impact; (8) recommends adoption.

(Editor's Note: The following text is new. It has been printed in regular type to enhance readability.)

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 47. STATE BOARD OF SOCIAL WORK EXAMINERS

CHILD ABUSE REPORTING REQUIREMENTS

§ 47.51. Definitions relating to child abuse reporting requirements.

The following words and terms, when used in this section and §§ 47.52—47.57 (relating to child abuse reporting requirements), have the following meanings, unless the context clearly indicates otherwise:

Abused child—A child under 18 years of age whom a licensed social worker has reasonable cause to suspect, on the basis of the licensed social worker's professional or other training or experience, is a victim of child abuse and who is subsequently the subject child in an indicated or founded report of child abuse under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) and 55 Pa. Code Chapter 3490 (relating to child protective services—child abuse).

Child abuse—A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.

ChildLine—An organizational unit of the Department of Public Welfare which operates a 24-hour a day State-wide toll free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Individual residing in the same home as the child—An individual who is 14 years of age or older and who resides in the same home as the child.

Perpetrator—A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.

Recent acts or omissions—Acts or omissions committed within 2 years of the date of the report to the Department of Public Welfare or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician, licensed psychologist or licensed social worker, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.

Sexual abuse or exploitation—The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct, or a simulation of sexually explicit conduct, for the purpose of producing a visual depiction of sexually explicit conduct, or the rape, molestation, incest, prostitution or other form of sexual exploitation of children.

§ 47.52. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensed social workers who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be

made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child.

(b) *Staff members of institutions, and the like.* Licensed social workers who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is an abused child. Upon notification by the licensed social worker, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313, and in writing within 48 hours after the oral report to the county children and youth social service agency in the county where the suspected child abuse occurred.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare by regulation. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 47.53. Photographs, medical tests and X-rays of child subject to report.

A licensed social worker may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall

be entitled to have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 47.54. Suspected death as a result of child abuse—mandated reporting requirement.

A licensed social worker who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the appropriate coroner.

§ 47.55. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensed social worker who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensed social worker's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensed social worker shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensed social worker's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 47.56. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions over any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 42.57. Noncompliance.

(a) *Disciplinary action.* A licensed social worker who willfully fails to comply with the reporting requirements in §§ 47.52—47.54 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 11 of the act (63 P. S. § 1911).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensed social worker who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 96-355. Filed for public inspection March 8, 1996, 9:00 a.m.]