

RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignation; Kettle Creek *et al.*

The Environmental Quality Board (Board) by this order adopts amendments to §§ 93.91—93.9n and 93.9p to read as set forth in Annex A.

This order was adopted by the Board at its meeting of August 20, 1996.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Assessment and Standards, Bureau of Water Quality Management, 10th Floor, Rachel Carson State Office Building, P. O. Box 8465, 400 Market Street, Harrisburg, PA 17105-8465, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) and request that the call be relayed. This proposal is available electronically through the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. *Statutory Authority*

These amendments are made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (act) (35 P. S. §§ 691.5(b)(1) and 691.402); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of the act.

D. *Background of the Amendment*

The Commonwealth's Water Quality Standards, which are set forth in part at Chapter 93 (relating to water quality standards), implement the provisions of sections 5 and 402 of the act and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals which are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for special protection status and redesignation in its ongoing review of water quality standards. In general, special protection waters shall be maintained at their existing quality, and wastewater treatment requirements shall comply with § 95.1 (relating to general requirements). Candidates may be identified by the Department based on routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (Commission), and the general public through a rulemaking petition to the Board.

The Department evaluated the following streams in response to requests from the Commission or the Wiconisco Watershed Association (WWA):

Kettle Creek, Cross Fork, Wallace Run, Lick Run, Laurel Run, Big Fill Run, and East Branch Tunungwant Creek: Commission

Rattling Creek: WWA (This request by the WWA was received and placed on the Department's stream list prior to adoption of the Board policy for processing petitions)

The physical, chemical and biological characteristics and other information on these waterbodies were evaluated in order to determine the appropriateness of the current designations. Aquatic surveys of these streams were conducted by the Department's Bureau of Water Quality Management and others. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board has made the designations described in Section F of this Preamble.

Copies of the Department's aquatic survey evaluation reports referred to in this Preamble are available from Edward Brezina whose address and telephone number are listed in Section B of this Preamble.

In reviewing whether waterbodies are subject to the Special Protection Waters Program, and meet the definitions of "High Quality Waters" or "Exceptional Value Waters" in § 93.3 (relating to protected water uses), the Department utilized guidance titled "Special Protection Waters Selection Criteria." This guidance appears in the Department's "Special Protection Waters Implementation Handbook."

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The amendments were approved by the Board at its December 20, 1994, meeting, and notice of the proposed rulemaking was published at 25 Pa.B. 3724 (September 9, 1995), which included provisions for a 45-day public comment period. The public comment period concluded on October 24, 1995.

The Board received comments from four commentators during the public comment period. One commentator supported the redesignation of the Kettle Creek basin (Clinton County) from HQ-TSF to EV Waters, while three other commentators opposed the proposed redesignations for the East Branch Tunungwant Creek basin in McKean County.

The Pennsylvania Independent Petroleum Producers, Inc. (PIPP) objected to the proposed changes to water quality standards of five streams in McKean County and the process of upgrading hundreds of Commonwealth streams. The commentator believes that streams in oil and gas producing regions generally have remained high quality and do not need to be redesignated. The commentator believes that special protection designation of these streams penalizes those who have been responsible stewards of the environment by imposing additional requirements on industry. Two State representatives from the McKean and Warren Counties districts submitted comments which included a copy of the comments from PIPP and indicated that they concur with their constituent's objections.

The Department believes that the special protection redesignations are necessary to maintain the existing

high quality of the streams. The Department does not propose any new regulatory restrictions on the existing oil and gas production operations within the basin because of the HQ or EV Waters designations. The existing operations are currently required to obtain and maintain applicable Department permits, use best management practices and shall comply with applicable laws and regulations such as the act, the Oil and Gas Act (58 P.S. §§ 601.101—601.605), the Oil and Gas Conservation Law (58 P.S. §§ 401—419), and Chapter 78 (relating to oil and gas wells) and Chapter 93. However, new or expanding oil and gas operations will be required to demonstrate that the proposed expansion or new operation will not have an adverse impact on the basins' water quality.

The Department is unable to predict all the future costs or impacts that will be incurred by an oil and gas operator as the result of an HQ and EV Waters redesignation. However, the Department encourages creative planning and discharge alternatives, and will work with the operators in order to develop options that will help them comply with the regulatory requirements.

F. *Summary of Changes to the Proposed Rulemaking*

There are no changes made to the stream recommendations that were in the proposed rulemaking which was originally approved by the Board and published in the *Pennsylvania Bulletin*. However, Annex A has been changed to clarify that the unnamed tributary at Gum Stump is also included in the EV Waters designation for the upper reach of the Wallace Run basin.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended designations because they will provide, in some cases, an added degree of protection for important public natural resources and, in all cases, the most appropriate degree of protection for each stream in question.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth or its political subdivisions. Except as noted in this Preamble, no costs will be imposed directly upon local government by this recommendation. However, indirect costs may result from revisions to Act 537 Sewage Facilities Plans due to consultant and other administrative fees. Political subdivisions which add a new sewage treatment plant or expand an existing plant in the basin may experience changes in cost as noted in this Preamble in the discussion of impacts on the private sector.

Persons proposing activities or projects which result in discharges to streams must comply with the regulatory requirements relating to current stream designations. These persons could be adversely affected by the recommended changes that increase the level of protection provided to a stream, if they expand their discharge, or add a new discharge point, since they may need to provide a higher level of treatment for their new or expanded discharge. These increased costs take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and may depend upon the site of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. In addition, nonpoint source controls necessary to protect High Quality and Exceptional Value Waters generally add to the cost of planning and develop-

ment for new or expanded nonpoint source discharges. Economic impacts would primarily involve the potential for higher treatment costs for new or expanding dischargers to streams which are upgraded, and potentially lower treatment costs for dischargers to streams which are downgraded.

3. *Compliance Assistance Plan*—The rulemaking has been developed as part of an established program that has been implemented by the Department since the early 1980's. Additional central office or regional staff are not expected to be needed in order to implement the proposal. The redesignations are consistent with current policies and, therefore, no policy changes are anticipated. The final rulemaking extends additional protection to selected waterbodies that exhibit exceptional water quality and environmental features, and is consistent with antidegradation requirements established by the Federal Clean Water Act and the act.

Surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards which prevents pollution and protects existing water uses.

The final regulations will be implemented through the National Pollution Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining the allowable stream discharge effluent limitations. These permit conditions are established to assure the water quality criteria are achieved and the designated uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with the proposed revised designated water uses.

The Department has developed technical guidance to assist the potentially affected and regulated community in understanding the impacts and requirements of the Special Protection Stream Designation Process. The *Special Protection Waters Implementation Handbook*, (1992), provides guidance on the regulatory designation process, protection of candidate streams, and most importantly, general considerations for proposed new or expanded discharges to Special Protection Waters. This handbook also contains appendices which present management practices and technologies relevant for point and nonpoint source dischargers to Special Protection Waters. The Department has conducted various workshops, seminars and public meetings on the Special Protection Waters program. Public meetings have been held for specific stream redesignation concerns. Permitted point source discharges are regularly evaluated through discharger self-monitoring reports and Department inspections, to assure they are complying with permit conditions. The *Handbook* sets forth recommended best management practices for nonpoint sources.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department programs and policies. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to special protection (HQ or EV). For example, NPDES general permits are not available for new or expanded discharges to special protection streams. Thus, an individual permit, and its associated additional paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification, and the

nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain special protection waters.

H. *Sunset Review*

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking on August 29, 1995, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. The notice of proposed rulemaking was published at 25 Pa.B. 3724. In compliance with section 5(b.1) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments, as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from the public. IRRC and the Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the Committees on September 23, 1996, and were deemed approved by the IRRC on October 3, 1996, in accordance with section 5(c) of the Regulatory Review Act.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) These amendments do not enlarge the purpose of the proposal published at 25 Pa.B. 3724.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of the Preamble.

K. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9l—93.9n and 93.9p to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to the legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the House and Senate Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(Editor's Note: A proposal to amend §§ 93.9l and 93.9n, amended in this document, remains outstanding at 26 Pa.B. 3637 (August 3, 1996).)

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: Fiscal Note 7-288 remains valid for the final adoption of the subject regulations.

Annex A

**TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE II. WATER RESOURCES
CHAPTER 93. WATER QUALITY STANDARDS**

§ 93.91. Drainage List L.

**Susquehanna River Basin in Pennsylvania
*West Branch Susquehanna River***

Stream	Zone	County					Water Uses Protected	Exceptions To Specific Criteria
		*	*	*	*	*		
3—Kettle Creek	Basin, Source to Inlet of Kettle Creek Reservoir	Clinton					EV	None
3—Kettle Creek	Basin, Inlet of Kettle Creek Reservoir to Alvin Bush Dam	Clinton					HQ-TSF	None
		*	*	*	*	*		
4—Laurel Run	Basin	Centre					EV	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
4—Dicks Run	Basin	Centre	CWF	None
4—Dewitt Run	Basin	Centre	CWF	None
4—Wallace Run	Basin, Source to Unnamed Tributary at Gum Stump	Centre	EV	None
5—Unnamed Tributary at Gum Stump	Basin	Centre	EV	None
4—Wallace Run	Basin, Unnamed Tributary at Gum Stump to Mouth	Centre	CWF	None
		* * * * *		
4—Greens Run	Basin	Centre	CWF	None
4—Lick Run	Basin	Centre	HQ-CWF	None
		* * * * *		

§ 93.9m. Drainage List M.

Susquehanna River Basin in Pennsylvania

Susquehanna River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
2—Wiconisco	Main Stem	Dauphin	WWF	None
3—Unnamed Tributaries to Wiconisco Creek	Basins, Source to US 209 Bridge at Loyalton	Schuylkill-Dauphin	CWF	None
		* * * * *		
3—Rattling Creek	Basin, Source to Confluence of East and West Branches	Dauphin	EV	None
3—Rattling Creek	Basin, Confluence of East and West Branches to Mouth	Dauphin	HQ-CWF	None
		* * * * *		

§ 93.9n. Drainage List N.

Susquehanna River Basin in Pennsylvania

Juniata River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		
5—Big Fill Run	Basin, Source to T-606 Bridge	Blair	EV	None
5—Big Fill Run	Basin, T-606 Bridge to Mouth	Blair	HQ-CWF	None
		* * * * *		

§ 93.9p. Drainage List P.

Ohio River Basin in Pennsylvania

Allegheny River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
		* * * * *		

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
3—Tunungwant Creek				
4—East Branch Tunungwant Creek	Basin, Source to Railroad Run	McKean	HQ-CWF	None
5—Railroad Run	Basin	McKean	EV	None
4—East Branch Tunungwant Creek	Basin, Railroad Run to T-331 Bridge	McKean	HQ-CWF	None
4—East Branch Tunungwant Creek	Basin, T-331 Bridge to Minard Run	McKean	CWF	None
5—Minard Run	Basin	McKean	EV	None
4—East Branch Tunungwant Creek	Basin, Minard Run to Confluence with West Branch	McKean	CWF	None

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[Pa.B. Doc. No. 96-1871. Filed for public inspection November 8, 1996, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 127]

General Conformity

The Environmental Quality Board (Board) by this order amends Chapter 127 (relating to construction, modification, reactivation and operation of sources) by adding Subchapter J (relating to general conformity) to read as set forth at 26 Pa.B. 1139 (March 16, 1996). The final rulemaking adopts and incorporates by reference the General Conformity Rule (rule) promulgated by the United States Environmental Protection Agency (EPA) under section 176(c) of the Federal Clean Air Act Amendments of 1990 (CAA) in its entirety. The regulations are contained in 40 CFR Part 93, Subpart B (relating to determining conformity of general Federal actions to state or Federal implementation plans) with respect to the conformity of general Federal actions to the Commonwealth's State Implementation Plan (SIP).

The Board adopted this order at its meeting of August 20, 1996.

A. Effective Date

These amendments will be effective immediately upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact J. Wick Havens, Chief, Division of Air Resource Management, Bureau of Air Quality, Rachel Carson State Office Building, 12th Floor, P. O. Box 8468, Harrisburg, PA 17105-8468, telephone (717) 787-4310, or Joyce Epps, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 9th Floor, P. O. Box 8464, Harrisburg, PA 17105-8464, telephone (717) 787-7060.

Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This proposal is available through

the Department of Environmental Protection (Department) Web site (<http://www.dep.state.pa.us>).

C. Statutory Authority

The final rulemaking is being made under the authority of section 5 of the Air Pollution Control Act (act) (35 P. S. § 4005), which grants to the Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in this Commonwealth.

D. Background and Summary

The purpose of this final rulemaking is to ensure that Federal actions do not adversely affect the timely attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) or emission reduction plans leading to attainment. The intent of integrating Federal actions with air quality planning is to protect the Commonwealth's air quality by helping to ensure that SIP growth projections are not exceeded, emission reduction targets are achieved, and air quality attainment and maintenance efforts are not undermined.

Under section 176(c) of the CAA, departments, agencies or instrumentalities of the Federal government are not permitted to engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to the Commonwealth's SIP. Prior to taking any action, a determination that the proposed Federal action conforms to SIP must be made by the Federal agency in accordance with the policy, criteria and procedures contained in 40 CFR Part 93, Subpart B. Adoption of this final rulemaking will not impact any existing Commonwealth air quality regulations. The conformity determination, which examines direct and indirect emissions of regulated air pollutants resulting from the Federal actions, is the responsibility of the Federal agency taking the actions. Conformity with the applicable SIP must be determined prior to initiating any Federal action and the results of the conformity determination must be made available for review by the general public.

Examples of Federal actions requiring conformity determinations include:

- leasing of Federal land
- airport construction/modification grants
- private construction on Federal land
- construction of Federal office buildings
- prescribed burning
- reuse of military bases
- water treatment plants

The CAA required the EPA to promulgate rules to implement the general conformity requirements. On November 30, 1993, the EPA published the general conformity final rule at 58 FR 63214. The Federal general conformity criteria and procedures contained in 40 CFR Parts 51 and 93 were effective on January 31, 1994.

The Commonwealth is required under 40 CFR 51.851 to submit to the EPA a revision to the SIP, which establishes conformity criteria and procedures that are consistent with the Federal rule. This final rulemaking adopts and incorporates the Federal conformity requirements in 40 CFR Part 93, Subpart B by reference in their entirety.

The general conformity rule covers direct and indirect emissions of criteria pollutants or their precursors that are caused by a Federal action, are reasonably foreseeable, and can practically be controlled by the Federal agency through its continuing program responsibility. Criteria pollutants are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO₂), ozone, particulate matter (PM-10) and sulfur dioxide (SO₂). The criteria and procedures established in these regulations apply only in areas that are nonattainment or maintenance with respect to any of these criteria pollutants. Because the Commonwealth is included in the Ozone Transport Region established under section 184 of the CAA, by operation of law, the entire Commonwealth (except for the severe ozone nonattainment area in southeastern Pennsylvania) is considered a moderate ozone nonattainment area regardless of the designation and classification of certain areas. Therefore, the general conformity requirements apply to Federal actions Statewide.

E. Summary of Comments and Changes to the Proposal

During the month of April 1996, the Board held three public hearings so that interested persons could provide testimony on the proposed rulemaking published at 26 Pa.B. 1139. The hearings were held on the following dates: April 15, 1996 (Pittsburgh), April 17, 1996 (Harrisburg) and April 22, 1996 (Conshohocken). The Board received no testimony on the general conformity proposal. Persons interested in providing written comments on the proposal had the opportunity to submit written comments to the Board during the 67-day public comment period. However, the Board did not receive any comments on the proposal. Therefore, no changes have been made to the general conformity proposal.

On June 13, 1996, the Department consulted with the Air and Water Quality Technical Advisory Committee concerning these amendments and received a unanimous recommendation that the general conformity requirements be submitted to the Board for consideration as a final rulemaking.

F. Benefits and Costs

Executive Order 1996-1 requires a cost/benefit analysis of the final regulations.

These regulations require affected Federal actions to include SIP planning methods and goals in evaluation of the environmental impact. These regulations should not affect present paperwork requirements. Presently, envi-

ronmental assessments are required of major activities that may adversely affect the Commonwealth's air quality. These regulations will directly affect Federal activities by requiring Federal agencies to include Pennsylvania SIP planning and goals in the assessment of the proposed Federal action in affected areas of the Commonwealth.

Emission Impact and Environmental Impact

The current regulations are intended to achieve or maintain the Federal NAAQS for the general conformity criteria pollutants CO, Pb, NO₂, ozone, PM-10 and SO₂. These general conformity amendments will not change the emission impact of the current regulations.

These regulations will require agencies of the Federal government to ensure that an affected Federal action is consistent with the requirements and milestones of the Commonwealth's SIP. The final rulemaking will prevent direct and indirect emissions of criteria pollutants from the Federal action from causing or contributing to new violations of the NAAQS or increasing the frequency or severity of the violations. Therefore, the general conformity requirements will ensure that the Federal action does not cause any environmental degradation and that there is no adverse impact on air quality from the Federal action.

Impact on Regulated Industry

The general conformity regulations will not have an impact on regulated industry. The conformity determination, which is similar to the environmental impact analysis of Federal agencies under the National Environmental Policy Act (NEPA), must be conducted by agencies of the Federal government prior to commencing a Federal action.

Cost to the Commonwealth, Local Government and the General Public

These regulations will not affect costs to the Commonwealth, local governments or regulated community. The Department's regional offices presently review the types of environmental impact statements that these final-form regulations will require.

G. Sunset Date

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1139 to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In compliance with section 5(b.1) of the Regulatory Review Act, the Department provided IRRC and the Committees with a copy of the comments received, as well as other documentation.

These final-form regulations were deemed approved by the Senate Environmental Resources and Energy Committee and the House Environmental Resources and Energy Committee on September 23, 1996. IRRC met on October 3, 1996, and the regulations were deemed approved under section 5(b.3) of the Regulatory Review Act.

I. Findings

The Board finds that:

- (1) Public notice of the proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period and public hearings were provided as required by law. However, no comments or testimony were received by the Board.

(3) These regulations do not enlarge the purpose of the proposed rulemaking published at 26 Pa.B. 1139.

(4) These regulations are necessary and appropriate for the administration, enforcement and implementation of the act identified in Section C of the Preamble.

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

(6) These regulations are also necessary and appropriate to satisfy obligations imposed by the Federal Clean Air Act and must be promulgated to ensure that sanctions are not imposed for the Commonwealth's failure to comply with requirements of the Clean Air Act.

J. Order

(a) The regulations of the Department, 25 Pa. Code Chapter 127, are amended by adding §§ 127.801 and 127.802, to read as set forth at 26 Pa.B. 1139.

(b) The Chairperson of the Board shall submit this order and 26 Pa.B. 1139 to the Office of Attorney General and Office of General Counsel for review as to legality and form as required by law.

(c) The Chairperson of the Board shall submit this order and 26 Pa.B. 1139 to the House and Senate Environmental Resources and Energy Committees and IRRS as required by law.

(d) The Chairperson of the Board shall certify this order and 26 Pa.B. 1139 and deposit them with the Legislative Reference Bureau as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JAMES M. SEIF,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5181 (October 26, 1996).)

Fiscal Note: Fiscal Note 7-295 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 96-1872. Filed for public inspection November 8, 1996, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CHIROPRACTIC
[49 PA. CODE CH. 5]

Child Abuse Reporting Requirements

The State Board of Chiropractic (Board), by this order amends § 5.1 (relating to definitions) and adopts Subchapter I (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL (relating to education and training) and section 302(3) of the Chiropractic Practice Act (act) (63 P. S. § 625.302(3)).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include chiropractors.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1001 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 5.1. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 5.1. For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 5.91(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise chiropractors that a chiropractor who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the

DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific crite-

ria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 5.91. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 5.91 provide chiropractors with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested chiropractors be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to the DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 5.92. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 5.92 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 5.91(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 5.91(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 5.93. Suspected Death.

As proposed, § 5.93 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify chiropractors.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, a chiropractor would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

§ 5.95. Confidentiality

IRRC suggested that § 5.95 (relating to confidentiality—waived) contain a specific cross reference to any existing Board regulation which protects confidentiality or contains ethical principles or other professional standards. This suggestion has been incorporated in final rulemaking.

Additional Comment

The Pennsylvania Chiropractic Society (Society) suggested that the Board consider requiring that continuing education in child abuse be required. Section 507 of the act (63 P. S. § 625.507) states the requirement for continuing chiropractic education and the permissible areas of education qualifying for course credit. The suggestion of the Society will be considered when the Board reviews its regulations under Executive Order 1996-1.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. Commonwealth—The amendments which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. Political subdivisions—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. Private sector—The amendments may heighten awareness of chiropractors as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1001, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Deborah Orwan, Administrative Assistant, State Board of Chiropractic, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7156.

J. Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1001.
- (4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending §§ 5.1 and adding §§ 5.91—5.96 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

RANDY W. MCCALL, D.C.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-436 remains valid for the final adoption of the subject regulations.

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 PROVISIONS

§ 5.1. Definitions.

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

* * * * *

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct, or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to

another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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. This section takes precedence over the provisions in § 5.81 (relating to unprofessional and immoral conduct) and any other ethical principle or professional standard that might otherwise apply.

§ 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. 96-1873. Filed for public inspection November 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), by this order adopts §§ 13.301—13.307 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL (relating to education and training) and section 16 of the Funeral Director Law (63 P. S. § 479.16).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency where they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include funeral directors.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1011 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 13.301. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's

definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 13.301 (relating to definitions relating to child abuse reporting requirements). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 13.302(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise funeral directors that a funeral director who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

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In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a

protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 13.302. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 13.302 provide funeral directors with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) requires written reports on forms prescribed by the DPW by regulation. IRRC suggested funeral directors be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 13.303. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 13.303 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 13.302(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 13.302(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 13.304. Suspected Death.

As proposed, § 13.304 (relating to suspected death as a result of child-abuse—mandated reporting requirements) mirrored section 6317 of the CPSL which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify funeral directors.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees at Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employee mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employee because as a school employee, a funeral director would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employees in future proposed rulemaking. In reviewing this recommendation, the Board does not believe that funeral directors would be employed by schools in a professional capacity. Nonetheless, the Board will continue to consult with the DPW concerning this question and whether a need for future rulemaking exists. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

§ 13.306. Confidentiality.

IRRC suggested that § 13.306 (relating to confidentiality—waived) contain a specific cross reference to any existing Board regulation which protects confidentiality or contains ethical principles or other professional standards. This suggestion has been incorporated in final rulemaking.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of funeral directors as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1011, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the Senate Committee on October 1, 1996, and approved by the House Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Kathleen Davis, Administrative Assistant, State Board of Funeral Directors, at P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1011.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 13, are amended by adding §§ 13.301—13.307 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

LEANDRO N. ANGELONE,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-484 remains valid for the final adoption of the subject regulations.

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:

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on form prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 the provisions in § 13.201 (relating to professional responsibilities) and any other client confidentiality, ethical principles or professional standards 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. 96-1874. Filed for public inspection November 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), by this order adopts Chapter 16, Subchapter G (relating to minimum standards of practice—child abuse reporting) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL (relating to education and training) and section 8 of the Medical Practice Act of 1985 (63 P. S. § 422.8).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL enumerates persons required to report as to "include, but . . . not limited to, any . . . medical doctors." In its proposed rulemaking, the Board

has included 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 (Board regulated practitioner) as persons required to report.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1014 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 16.101. Definitions.

The commentators, including the Pennsylvania Medical Society, objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to

place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 16.101 (relating to definitions). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in final rulemaking. IRRC also suggested a new § 16.102(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise Board regulated practitioners that a Board regulated practitioner who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective

child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these amendments.

§ 16.102. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the

time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 16.102 provides Board regulated practitioners with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested Board regulated practitioners be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 16.103. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 16.103 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 16.102(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 16.102(b) to more fully describe the entities covered by the section. IRRC's suggestion has been adopted in the final version.

§ 16.104. Suspected Death.

As proposed, § 16.104 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner where a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify Board regulated practitioners.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, a Board regulated practitioner would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of Board regulated practitioners as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1014, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Cindy Warner, Administrative Assistant, State Board of

Medicine, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-1400.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1014.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by adding §§ 16.101—16.107 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

CHARLES J. BANNON, M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-492 remains valid for the final adoption of the subject regulations.

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:

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual inter-

course, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 requirement) 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 requirement) 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. 96-1875. Filed for public inspection November 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), by this order adopts Chapter 21, Subchapter E (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL (relating to education and training), 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).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include registered nurses (RNs), licensed practical nurses (LPNs) and certified registered nurse practitioners (CRNPs).

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of

mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1017 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 21.501. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent, or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 21.501 (relating to

definitions). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 21.502(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise RNs, LPNs or CRNPs that an RN, LPN or CRNP who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capac-

ity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of the amendments.

§ 21.502. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 21.502 provide RNs, LPNs or CRNPs with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested RNs, LPNs or CRNPs be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks

specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 21.503. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 21.503 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 21.502(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 21.502(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 21.504. Suspected Death.

As proposed, § 21.504 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner where a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify RNs, LPNs or CRNPs.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, an RN, LPN or CRNP would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing all schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of RNs, LPNs or CRNPs as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1017, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Ann Steffanic, Administrative Assistant, State Board of Nursing, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7142.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1017.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.501—21.507 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

SISTER RITA MORIARTY, S.C.C., R.N.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-515 remains valid for the final adoption of the subject regulations.

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:

Acts—The Professional Nursing Law (63 P. S. §§ 211—225); and the Practical 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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* RNs, LPNs and CRNPs who are staff members of a medical or other public or private institu-

tion, 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 or 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 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 or CRNP who has reasonable cause to suspect that a child died as a result of child abuse shall

report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 21.505. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an RN, LPN or 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 RN, LPN or CRNP's actions. For the purpose of any civil or criminal proceeding, the good faith of the RN, LPN or 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 provisions of any other ethical principle or professional standard that might otherwise apply to RNs, LPNs or CRNPs.

§ 21.507. Noncompliance.

(a) *Disciplinary action.* An RN, LPN or 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. § 244) 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 or 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. 96-1876. Filed for public inspection November 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), by this order amends § 23.1 (relating to definitions) and adopts §§ 23.111—23.116 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 3(b)(14) of the Optometric Practice and Licensure Act (63 P. S. § 244.3(b)(14)).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include optometrists.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1023 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 23.1. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 23.1. For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in final rulemaking. IRRC also suggested a new § 23.111(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise optometrists that an optometrist who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly,

DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific crite-

ria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these amendments.

§ 23.111. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 23.111 provide optometrists with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested optometrists be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 23.112. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 23.112 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 23.111(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 23.111(b) to more fully describe the entities covered by the section. IRRC's suggestion has been adopted in the final version.

§ 23.113. Suspected Death.

As proposed, § 23.113 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify optometrists.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, an optometrist would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The amendments may heighten awareness of optometrists as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1023, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Deborah Orwan, Administrative Assistant, State Board of Optometry, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7134.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1023.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by amending § 23.1 and by adding §§ 23.111—23.116 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

ROBERT A. GINSBURG, O.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-523 remains valid for the final adoption of the subject regulations.

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:

* * * * *

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

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

of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 as 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. 96-1877. Filed for public inspection November 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), by this order adopts Chapter 25, Subchapter J (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 16 of the Osteopathic Medical Practice Act (63 P. S. § 271.16).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigative reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency where they

have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include osteopathic physicians, physician assistants or certified respiratory care therapists.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1027 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families, on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 25.401. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the

ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 25.401 (relating to definitions). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 25.411(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise osteopathic physicians, physician assistants or certified respiratory care therapists that an osteopathic physician, physician assistant or certified respiratory care therapist who does not believe that environmental factors were the sole cause of the injury is subject to the disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances

under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYs agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on bal-

ance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 25.411. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 25.411 provide osteopathic physicians, physician assistants or certified respiratory care therapists with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested osteopathic physicians, physician assistants or certified respiratory care therapists be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)–(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 25.412. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 25.412 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 25.411(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 25.411(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 25.413. Suspected Death.

As proposed, § 25.413 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify osteopathic physicians, physician assistants or certified respiratory care therapists.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe

mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, an osteopathic physician, physician assistant or certified respiratory care therapist would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulation population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of osteopathic physicians, physician assistants or certified respiratory care therapists as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1027, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Gina Bittner, Administrative Assistant, State Board of Osteopathic Medicine, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-4858.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1027.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by adding §§ 25.401 and 25.411—25.416 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

SILVIA M. FERRETTI, D.O.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-535 remains valid for the final adoption of the subject regulations.

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

Sec.	
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:

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 or 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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, 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 or certified respiratory care therapists.

§ 25.416. Noncompliance.

(a) *Disciplinary action.* An osteopathic physician, physician assistant or certified respiratory care therapist 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. 96-1878. Filed for public inspection November 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), by this order adopts §§ 29.91—29.97 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 15 of the Podiatry Practice Act (63 P. S. § 42.15).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official

capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency where they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include podiatrists.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1047 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 29.91. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in

response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on county agencies, not mandated reporters.

Nonetheless, IRRC disagreed with Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 29.91 (relating to definitions relating to child abuse reporting requirements). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of child abuse in the final rulemaking. IRRC also suggested a new § 29.92(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise podiatrists that a podiatrist who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained,

and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J.R.W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYs agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting ap-

pears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 29.92. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 29.92 provide podiatrists with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested podiatrists be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)–(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 29.93. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 29.93 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 29.92(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 29.92(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 29.94. Suspected Death.

As proposed, § 29.94 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify podiatrists.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees at Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employee mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, a podiatrist would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of podiatrists as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1047, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the Senate Committee on September 25, 1996, and were approved by the House Committee on October 1, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Gina Bittner, Administrative Assistant, State Board of Podiatry, at P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4858.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1047.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by adding §§ 29.91—29.97 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

STANLEY E. BOC, D.P.M.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-442 remains valid for the final adoption of the subject regulations.

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:

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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. 96-1879. Filed for public inspection November 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), by this order amends § 33.1 (relating to definitions) and adopts Subchapter C (relating to minimum standards of conduct and practice) to read as set forth in Annex A.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)92) of the CPSL and section 3(o) of the Dental Law (63 P. S. § 122(o)).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL enumerates persons required to report as to "include, but . . . not limited to, any . . . dentists." In its proposed rulemaking, the Board has included dental hygienists, expanded function dental assistants or auxiliary personnel (Board regulated practitioners) as persons required to report.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to all boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1004. The Board received comments from several

public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Response to these comments is organized by subject as follows.

§ 33.1. *Definitions.*

Several commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 1) (Spec. Sess. No. 1).

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"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

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Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 33.1. For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 33.250(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise Board regulated practitioners that a Board regulated practitioner who does not believe that environmen-

tal factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

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In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandatory reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these amendments.

The Pennsylvania Dental Hygienists' Association (PDHA) suggested that the Board delete the statutory definitions of section 6303 of the CPSL from the regulations and simply reference their location in the CPSL. The Board declines to adopt this suggestion inasmuch as one of the purposes of the rulemaking is to provide Board regulated practitioners with ready source of the statutory law as it pertains to mandatory reporters.

The PDHA suggested that the Board modify the definition of "Board regulated practitioner" by excluding auxiliary personnel and expanded function dental assistants. It is the position of the PDHA that only dentists and dental hygienists possess the requisite education to assess a patient consistent with the mandated reporting requirements. The PDHA also noted that auxiliary personnel and assistants work only under supervision. A review of the CPSL convinces the Board that the term mandated reporters should be broadly construed to include all Board regulated practitioners who come into contact with children in the course of their profession or employment. See section 6311(a) of the CPSL. The Board notes that one of the purposes of the 1994 amendments was to encourage more complete reporting of suspected child abuse. The Board believes all providers of dental services should be considered mandatory reporters while acknowledging PDHA's comment that dental services are provided in a dental office by multiskilled teams. Therefore, the suggested change has not been adopted.

The PDHA also requested that the Board consider providing guidance to the professionals regarding when a

mandated reporter may not report owing to the environmental factors or the religious exception of the definition of child abuse. As discussed previously, Board regulated practitioners should report and exceptions should be determined by the CYS agency.

§ 33.250. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 33.250 provide Board regulated practitioners with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested Board regulated practitioners be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 33.251. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 33.251 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 33.250(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 33.250(b) to more fully describe the entities covered by the section. IRRC's suggestion has been adopted in the final version.

§ 33.252. Suspected Death.

As proposed, § 33.252 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify Board regulated practitioners.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, a Board regulated practitioner would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The amendments may heighten awareness of Board regulated practitioners as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1004, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting June Barner, Administrative Assistant, State Board of Dentistry, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7162.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1004.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 33, are amended by amending § 33.1 and adding §§ 33.250—33.255 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

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

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-462 remains valid for the final adoption of the subject regulations.

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:

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 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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual inter-

course, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

Subchapter C. MINIMUM STANDARDS OF CONDUCT AND PRACTICE

Sec.	
33.250.	Suspected child abuse—mandated reporting requirements.
33.251.	Photographs, medical tests and X-rays of child subject to report.
33.252.	Suspected death as a result of child abuse—mandated reporting requirement.
33.253.	Immunity from liability.
33.254.	Confidentiality—waived.
33.255.	Noncompliance.

§ 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

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

An 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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. 96-1880. Filed for public inspection November 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), by this order adopts Chapter 40, Subchapter D (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 3(a) of the Physical Therapy Practice Act (63 P. S. § 1303(a)).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency where they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include physical therapists, physical therapist assistants or certified athletic trainers.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was

amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1043 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 40.201. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require

mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 40.201 (relating to definitions). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in final rulemaking. IRRC also suggested a new § 40.202(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise physical therapists, physical therapist assistants or certified athletic trainers that a physical therapist, physical therapist assistant or certified athletic trainer who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while

providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 40.202. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 40.202 provide physical therapists, physical therapist assistants or certified athletic trainers with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested physical therapists, physi-

cal therapist assistants or certified athletic trainers be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 40.203. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 40.203 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 40.202(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 40.202(b) to more fully describe the entities covered by this section. The IRRC suggestion has been adopted in the final version.

§ 40.204. Suspected Death.

As proposed, § 40.204 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify physical therapists, physical therapist assistants or certified athletic trainers.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employee mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when he or she is a school employee because as a school employee, a physical therapist, physical therapist assistant or certified athletic trainer would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employees in future proposed rulemaking. In reviewing this recommen-

dation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

§ 40.206. Confidentiality.

IRRC suggested that § 40.206 (relating to confidentiality—waived) contain a specific cross reference to any existing Board regulation which protects confidentiality or contains ethical principles or other professional standards. This suggestion has been incorporated in final rulemaking.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of physical therapists, physical therapist assistants or certified athletic trainers as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1043, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met

on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Robert Kline, Administrative Assistant, State Board of Physical Therapy, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7134.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1043.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by adding §§ 40.201—40.207 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

BARBARA A. AFFLERBACH, P.T.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-653 remains valid for the final adoption of the subject regulations.

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 chapter, have the following meanings, unless the context clearly indicates otherwise:

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, including photographing, videotaping, computer depicting or filming of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 their profession, come into contact 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 the provisions in § 40.52(2) (relating to unprofessional conduct; physical therapists) and any other client confidentiality, 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. 96-1881. Filed for public inspection November 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), by this order amends § 41.1 (relating to definitions) and adopts §§ 41.71—41.76 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These amendments are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 3.2(2) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(2)).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include psychologists.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage

more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1050 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 41.1. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that

including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 41.1. For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 41.71(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise psychologists that a psychologist who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while

providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these amendments.

§ 41.71. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 41.71 provide psychologists with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested psychologists be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form

recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 41.72. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 41.72 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 41.71(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 41.71(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 41.73. Suspected Death.

As proposed, § 41.73 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify psychologists.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employee mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employee because as a school employee, a psychologist would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employees in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employees. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employees of their

reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The amendments may heighten awareness of psychologists as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1050, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were deemed approved by the House Committee on October 1, 1996, and deemed approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the final regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Cheryl Lyne, Administrative Assistant, State Board of Psychology, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7155.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1050.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.1 and by adding §§ 41.71—41.76 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

PATRICIA M. BRICKLIN, Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-630 remains valid for the final adoption of the subject regulations.

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:

* * * * *

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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.

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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 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. 96-1882. Filed for public inspection November 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), by this order adopts §§ 42.41—42.47 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The amendments are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 5 of the Occupational Therapists Practice Act (63 P. S. § 1505).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency where they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include occupational therapists or occupational therapist assistants.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1020 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 42.41. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to the Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 101) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 42.41 (relating to definitions relating to child abuse reporting requirements). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 42.42(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise occupational therapists or occupational therapist assistants that an occupational therapist or occupational therapist assistant who does not believe that environmental factors were the sole cause of the injury is subject to the disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for

the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to "bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents." See *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh*

Valley Memorial Hospital, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of the regulation.

§ 42.42. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 42.42 provide occupational therapists or occupational therapist assistants with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested occupational therapists or occupational therapist assistants be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)–(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 42.43. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 42.43 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 42.42(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 42.42(b) to more fully describe the entities covered by this section. IRRC's suggestion has been adopted in the final version.

§ 42.44. Suspected Death.

As proposed, § 42.44 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify occupational therapists or occupational therapist assistants.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, an occupational therapist or occupational therapist assistant would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

§ 42.46. Confidentiality.

IRRC suggested that § 42.46 (relating to confidentiality—waived) contain a specific cross reference to any existing Board regulation which protects confidentiality or contains ethical principles or other professional standards. This suggestion has been incorporated in final rulemaking.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The amendments which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The amendments may heighten awareness of occupational therapists or occupational therapist assistants as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. Sunset Date

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1020, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Gina Flinchum, Administrative Assistant, State Board of Occupational Therapy Education and Licensure, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-1389.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1020.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by adding §§ 42.41—42.47 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

GLEND A J. DOUGHERTY,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-671 remains valid for the final adoption of the subject regulations.

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:

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, including photographing, videotaping, computer depicting or filming of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 occupation 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 42.45. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an occupational therapist or occupational thera-

pist 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 in § 42.24(1)(vi) (relating to code of ethics) and any other 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. 96-1883. Filed for public inspection November 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), by this order adopts Chapter 45, Subchapter F (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

These regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law)

(CPSL) specifically section 6383(b)(2) of the CPSL and section 5 of the Speech-Language and Hearing Act (63 P. S. § 1705).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include licensees.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1008 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows.

§ 45.401. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent

with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. The IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's welfare, such as inadequate housing, furnishings, income, clothing and medical care."

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O'Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators' view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on the CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with the Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child's family or living conditions. IRRC also expressed the view that the commentators' concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than § 45.401 (relating to definitions). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of "child abuse" in the final rulemaking. IRRC also suggested a new § 45.402(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise licensees that a licensee who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC's recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC's suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board's view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* (relating to Statutory Construction Act) instructs that, in construing a statute, the primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL's stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. *In Interest of J. R. W.*, 631 A.2d. 1019 (Pa. Super. 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question

whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme and the purpose of these regulations.

§ 45.402. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 45.402 provide licensees with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested licensees be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)–(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 45.403. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 45.403 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 45.402(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 45.402(b) to more fully describe the entities covered by the section. IRRC's suggestion has been adopted in the final version.

§ 45.404. Suspected Death.

As proposed, § 45.404 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which

confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify licensees.

Reporting by School Employees

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employees in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employee mandated reporters under section 6352 of the CPSL (relating to school employees).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when licensee is a school employee because as a school employee, a licensee would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employees in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employees. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employees of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

§ 45.406. Confidentiality.

IRRC suggested that § 45.406 (relating to confidentiality—waived) contain a specific cross reference to any existing Board regulation which protects confidentiality or contains ethical principles or other professional standards. This suggestion has been incorporated in final rulemaking.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of licensees as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. *Sunset Date*

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1008, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were deemed approved by the House Committee on October 1, 1996, and deemed approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Contact Person*

Further information may be obtained by contacting Clara Flinchum, Administrative Assistant, State Board of Examiners in Speech-Language and Hearing, at P. O. Box 2649, Harrisburg, PA 17105-2649; telephone (717) 783-7156.

J. *Findings*

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1008.
- (4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. *Order*

The Board, acting under its authorizing statutes, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 45, are amended by adding §§ 45.401—45.407 to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

RICHARD M. ANGELO,
Acting Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-682 remains valid for the final adoption of the subject regulations.

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 subchapter, have the following meanings, unless the context clearly indicates otherwise:

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, 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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 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 professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 the provisions in § 45.103(11) (relating to unprofessional conduct) and 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. 96-1884. Filed for public inspection November 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), by this order adopts §§ 47.51—47.57 (relating to child abuse reporting requirements) to read as set forth in Annex A.

A. Effective Date

These regulations are effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The regulations are adopted under the authority of 23 Pa.C.S. (relating to Child Protective Services Law) (CPSL) specifically section 6383(b)(2) of the CPSL and section 6 of the Social Workers' Practice Act (63 P. S. § 1906).

C. Background

The CPSL was enacted in 1975 to establish a comprehensive statutory scheme to identify and investigate reports of suspected child abuse and to provide child protective services by and through the Department of Public Welfare (DPW) and county children and youth social service (CYS) agencies.

A key element of the CPSL is section 6311 of the CPSL (relating to persons required to report suspected child abuse). This section requires persons who come in contact

with children as a part of their profession or occupation to report cases of suspected child abuse. These persons are commonly referred to as mandated reporters. Mandated reporters are identified as persons who, in their employment or occupation or practice of their profession, come into contact with children in a professional or official capacity. Mandated reporters shall, under section 6313 of the CPSL (relating to reporting procedures), file reports orally and in writing with the CYS agency when they have reasonable cause to suspect, based on medical, professional or other training and experience that a child coming before them in their professional or official capacity is an abused child. Mandated reporters are given immunity from civil or criminal liability for reports made in good faith under section 6318 of the CPSL (relating to immunity from liability). Section 6311(b) of the CPSL defines mandated reporters to include licensed social workers.

In 1994, amendments were made to the CPSL. The purpose of the amendments was to, inter alia, encourage more complete reporting of suspected child abuse. See section 6302(a) and (b) of the CPSL (relating to findings and purpose of chapter). Section 6383(b) of the CPSL was amended requiring the Department of State (Department) to make training and educational materials available to the licensing boards whose licensees are mandated reporters and requiring the licensing boards to promulgate regulations within 1 year of the effective date of the amendments, July 1, 1996, on the responsibilities of mandated reporters specifying that mandatory reporting requirements take precedence over a professional standard which might otherwise apply.

D. Summary of Comments and Responses on Proposed Rulemaking

Notice of proposed rulemaking was published at 26 Pa.B. 1053 (March 9, 1996). The Board received comments from several public commentators, Hon. Jo Ann R. Lawer, Deputy Secretary for Children, Youth and Families, on behalf of DPW, individual Legislators, the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC). Responses to these comments are organized by subject as follows:

§ 47.51. Definitions.

The commentators objected to the inclusion of a definition of "abused child," commenting that the definition itself was confusing and contrary to Legislative intent. The Board has agreed to delete the definition in final rulemaking and replace the term with "victim of child abuse" where "abused child" was used in the text of the proposed amendments.

The DPW and IRRC recommended, and the Board concurs, that the definition of "sexual abuse or exploitation" be amended in final rulemaking to be consistent with the statutory definition as amended by the act of March 31, 1995 (P. L. 985, No. 10) (Spec. Sess. No. 1).

The definition of "child abuse" was the subject of a comment of IRRC. IRRC questioned whether the Board's definition of "child abuse" is sufficiently complete and within the parameters of the CPSL. IRRC's concern is addressed to the proposal's omission in its definition of "child abuse" as stated in section 6303(b)(2) of the CPSL. This paragraph of the CPSL provides:

"(2) No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors that are beyond the control of the parent or person responsible for the child's

welfare, such as inadequate housing, furnishings, income, clothing and medical care.”

IRRC noted, in its comments, that it had suggested to the Legislative staffs of the House and Senate and the Department and DPW that section 6303(b)(2) of the CPSL be included in the regulatory definition. Both Senator Michael A. O’Pake and Representative Kevin Blaum, in response, wrote IRRC opposing the inclusion on the ground that to do so would be contrary to the purpose of the amendments to encourage more complete reporting of suspected child abuse and to the overall statutory scheme, which in the Legislators’ view, was intended to place the responsibility for deciding whether environmental factors were the causative agents of the injury on CYS agencies, not mandated reporters.

Nonetheless, IRRC disagreed with Legislative commentary. IRRC expressed the view that excluding the exception of section 6303(b)(2) of the CPSL is inconsistent with the CPSL and enlarges the scope of what constitutes child abuse. IRRC disagreed with the conclusion that including the exception would conflict with the purpose of encouraging more complete reporting of suspected child abuse or that to so include the exceptions would require mandated reporters to make a determination without adequate information of a child’s family or living conditions. IRRC also expressed the view that the commentators’ concern that inclusion may encourage noncompliance is more properly addressed in enforcement through disciplinary actions rather than in § 47.51 (relating to definitions relating to child abuse reporting requirements). For these reasons, IRRC recommended that the language of section 6303(b)(2) of the CPSL be added to the definition of “child abuse” in the final rulemaking. IRRC also suggested a new § 47.52(e) (relating to suspected child abuse—mandated reporting requirements) which would reiterate the statutory exception as a basis for not reporting, but advise licensed social workers that a licensed social worker who does not believe that environmental factors were the sole cause of the injury is subject to disciplinary action and criminal sanctions.

The DPW disagreed with IRRC’s recommendation. The DPW commented that the decision of whether or not the child is an abused child is the responsibility of the CYS agency which is responsible for taking into consideration environmental factors in determining whether or not the child is physically or mentally abused. The DPW expressed concern that IRRC’s suggestion would place the mandated reporter in the position of having to question the child and parents rather extensively to determine whether or not environmental factors were the cause for the abuse. The DPW views that result as contrary to one of the purposes of the CPSL which is to encourage more complete reporting of suspected child abuse. Secondly, the DPW noted although some situations may not be abuse, there is often a need for other services which the CYS agency may be able to provide or arrange.

After a review of the comments, the Board has determined that no change to the definition should be made in final rulemaking.

In the Board’s view, a clear ambiguity exists as to whether or not the General Assembly intended the CYS agency to determine in either instance whether the exception would apply or whether the General Assembly intended mandated reporters to make the environmental factor determination.

Part V of Title 1 of the *Pennsylvania Consolidated Statutes* instructs that, in construing a statute, the

primary purpose is to give effect to the intent of the General Assembly. See 1 Pa.C.S. § 1921(a) (relating to legislative intent controls). In so doing, the practical results of a particular interpretation may be considered. See 1 Pa.C.S. § 1921(c)(6). Legislative intent may also be found in considering the occasion and necessity of the statute, the circumstances under which it was enacted, the objective to be attained, and Legislative and administrative interpretations of the statute. See 1 Pa.C.S. § 1921(c)(1), (2), (4) and (8).

The intention of the General Assembly is specifically spelled out in section 6302 of the CPSL. This section finds that abused children are in urgent need of an effective child protective service to prevent them from suffering further injury and impairment. One of the CPSL’s stated purposes is to encourage more complete reporting of suspected child abuse. A further purpose of the CPSL is to investigate reports swiftly and competently.

The purpose of the CPSL is to bring about quick and effective reporting of suspected child abuse and to serve as a means for providing protective services competently and to prevent further abuse of the children while providing rehabilitative services for them and the parents. See *In Interest of J. R. W.*, 631 A.2d 1019 (Pa. Super 1993). To accomplish this objective, the CPSL requires under the threat of criminal penalty, that health care professionals and others report suspected child abuse when they have reasonable cause to suspect, on the basis of their professional training or experience, that a child coming before them in their professional or official capacity is an abused child. The privileged communication between a professional person required to report and the patient or client of that person does not apply to situations involving child abuse and does not constitute grounds for failure to report as required. In turn, section 6318 of the CPSL, provides for immunity from liability for mandated reporters who participate in good faith in the making of a report and in cooperating with an investigation.

In construing this language, the appellate courts have held that the CPSL requires mandated reporters to immediately report suspected abuse. Courts have found that the urgency of prompt reporting is stressed throughout the provisions of the CPSL. Based on these findings, the courts have ruled that the CPSL may not envision any prereporting investigation conducted by mandated reporters, such as licensees of the Board, in order to give full effect to both a mandatory reporting provision and the immunity from liability. See *Heinrich v. Conemaugh Valley Memorial Hospital*, 648 A.2d 53 (Pa. Super. 1994); *Brozovich v. Circle C Group Homes, Inc.*, 548 A.2d 698 (Pa. Cmwlth. 1988).

To encourage reporting and give effect to the immunity provisions, mandated reporters should have specific criteria regarding the standards by which reporting should be made. To do so, a reporter should not have to question whether a reporting procedure should be followed. The practical consequences of a regulatory provision which would allow a mandated reporter to make an independent determination of the environmental factors are both a protracted time in filing reports and fewer reports made. It is also likely that there will be uncertainty as to the good faith immunity from liability for those persons who do report and uncertainty as to the nature and degree of inquiry or investigation prior to the determination to file a report.

The Board believes that the Legislative purpose of the amendments to encourage prompt reporting by protecting

reporters from meritless lawsuits is furthered by a rule which allows the reporter to exercise his best professional judgment as to the condition of the child and to allow the CYS agencies to determine whether environmental factors are the sole cause of the child's condition. To adopt IRRC's position that a professional may determine whether environmental factors justify not reporting appears, on balance, to be contrary to the intent and stated purpose of the CPSL, the statutory scheme, and the purpose of the regulations.

Both IRRC and the DPW recommended that the Board use the definition of "serious mental injury" of the CPSL as "a psychological condition as diagnosed by a physician or licensed psychologist." As proposed, the Board would have defined "serious mental injury" as "a psychological condition, as diagnosed by a physician, licensed psychologist or licensed social worker." Based on a review of the CPSL and the Social Workers' Practice Act (63 P. S. §§ 1901—1922), the Board accepts the recommendation. It appears that under the CPSL, reporters, regardless of their statutory authority to render a diagnosis, have a duty to report when they have reasonable cause to suspect on the basis of their professional or other training and experience that a child coming before them in their professional capacity is an abused child. Therefore, a social worker who has reasonable cause to suspect, based on his training or experience that a psychological condition exists due to an act or the failure to act by a perpetrator, would have a reporting responsibility under both the CPSL and the Board's regulations.

§ 47.52. Mandated Reporting Requirements.

IRRC commented that proposed subsection (c) could be improved by restructuring the section to segregate the time frames for filing oral and written reports. The Board has adopted IRRC's suggested revised language.

Reporting requirements under § 47.52 provide licensed social workers with ready access to the statutory provisions of section 6313 of the CPSL. Proposed subsection (d) required written reports on forms prescribed by the DPW by regulation. IRRC suggested licensed social workers be informed as to how they could obtain forms. The Board has consulted with the DPW and inserted information in the textual form recommended by it. IRRC also suggested that the Board delete reference to DPW regulations which have not yet been promulgated. The Board concurs with the suggestion and has deleted this reference. IRRC also commented that subsection (d)(10), which mandates the reporting of information which the DPW may by regulation require, is vague and lacks specificity. This language is a statutory requirement and its inclusion parallels subsection (d)(1)—(9). Inclusion of the provisions of the CPSL pertaining to mandated reporters in the Board's regulations allows licensees ready access to statutory language. Therefore, no change in final rulemaking has been made.

§ 47.53. Photographs, Medical Tests and X-rays.

IRRC suggested an editorial change to § 47.53 (relating to photographs, medical tests and X-rays of child subject to report). The Board has made the change.

§ 47.52(b). Institutional Reporting Requirement.

IRRC also suggested an editorial change to the title of § 47.52(b) to more fully describe the entities covered by the section. IRRC's suggestion has been adopted in the final version.

§ 47.54. Suspected Death.

As proposed, § 47.54 (relating to suspected death as a result of child abuse—mandated reporting requirements) mirrored section 6317 of the CPSL (relating to mandatory reporting and post mortem investigation of deaths), which mandates reporting to the appropriate coroner when a mandated reporter has reasonable cause to suspect that a child has died as a result of child abuse.

IRRC suggested that the Board provide notice in the section to various provisions of the county codes which confer jurisdiction over coroner investigations to the situs of the death or the situs of the injury in the event death occurs in another county owing to a transfer for medical treatment.

The Board concurs with this suggestion and has added language to so notify licensed social workers.

Reporting by School Employes

A commentator suggested that licensing boards review the reporting requirements in the CPSL for public and private school employes in Subchapter C.1 of the CPSL (relating to students in public and private schools). The substance and procedure of filing mandatory reports is different for professional mandated reporters under section 6311 of the CPSL compared with school employe mandated reporters under section 6352 of the CPSL (relating to school employes).

IRRC commented that a serious gap exists in the proposal because it fails to address the licensee's duties when the licensee is a school employe because as a school employe, a licensed social worker would have: (a) a different standard to apply as to what must be reported; (b) a different standard as to who must be reported as to the suspected actor; and (c) different officials to whom reports must be made.

Owing to the substantial differences in the CPSL, IRRC recommended that the Board implement reporting requirements for licensees who are school employes in future proposed rulemaking. In reviewing this recommendation, the Board will continue to consult with the DPW concerning future proposed rulemaking covering school employes. Moreover, the Board has been informed that the Department of Education has issued an advisory bulletin informing schools that they are required to notify professional contractors or professional employes of their reporting obligations. Accordingly, the Board has agreed to defer further action on this issue in accordance with IRRC's suggestion.

E. Compliance with Executive Order 1996-1, Regulatory Review and Promulgation

The Board reviewed this rulemaking and considered its purpose and likely impact upon the public and the regulated population under the directives of Executive Order 1996-1, Regulatory Review and Promulgation. The final regulations address a compelling public interest as described in this Preamble and otherwise comply with Executive Order 1996-1.

F. Fiscal Impact and Paperwork Requirements

1. *Commonwealth*—The regulations which provide for disciplinary action against a licensee who fails to make mandatory reports may cause an increase in disciplinary actions and hence may have a fiscal impact on the overall cost of Board operations. The net effect, however, is expected to be minimal because the 1994 amendments as they pertain to mandated reporters are intended to encourage compliance.

2. *Political subdivisions*—There should be no adverse fiscal impact or additional paperwork requirements on political subdivisions.

3. *Private sector*—The regulations may heighten awareness of licensed social workers as to the mandated reports required under the CPSL and may increase the number and completeness of filed reports, but should have no adverse fiscal impact.

G. *Sunset Date*

The Board continually monitors the effectiveness of its regulations through communications with the regulated population; accordingly, no sunset date has been set.

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of the notice of proposed rulemaking, published at 26 Pa.B. 1053, to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations the Board has considered the comments received from IRRC, the Committees, individual Legislators and the public.

These final-form regulations were approved by the House Committee on October 1, 1996, and approved by the Senate Committee on September 25, 1996. IRRC met on October 3, 1996, and approved the regulations in accordance with section 5(c) of the Regulatory Review Act.

I. *Contact Person*

Further information may be obtained by contacting Clara Flinchum, Administrative Assistant, State Board of Social Work Examiners, at P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-1389.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 26 Pa.B. 1053.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this Preamble.

K. *Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 47, are amended by adding §§ 47.51—47.57 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

MANUEL J. MANOLIOS,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 26 Pa.B. 5270 (November 2, 1996).)

Fiscal Note: Fiscal Note 16A-691 remains valid for the final adoption of the subject regulations.

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:

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 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, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault 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 a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* 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 a victim of child abuse. 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 by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

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

of Public Welfare. 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 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 coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 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 reasons 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 of any client confidentiality, ethical principle or professional standard that might otherwise apply.

§ 47.57. 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. 96-1885. Filed for public inspection November 8, 1996, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CHS. 135, 141 and 143]

Lands and Buildings, Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 8, 1996, under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code), adopted the following changes:

Amending § 135.48 (relative to State Game Lands) to provide additional recreational time to use specified roads on certain State Game Lands by individuals issued a Disabled Persons Permit under section 2923(a) of the code (relating to disabled person permits) and give those permitted individuals the opportunity to be accompanied by their properly licensed children.

Amending § 141.25 (relating to early and late goose hunting seasons) by removing the existing language in subsection (d) concerning the required permit since it no longer applies due to the issuance of the new migratory game bird license.

Amending Chapter 143 (relating to hunting and furtaking licenses) by the adding Subchapter J (relating to migratory game bird license). This new subchapter provides for the implementation of the new license authorized by the act.

Amendment to § 135.48

1. *Introduction*

During meetings held between representatives of the Commission and representatives of organizations of sportsmen with disabilities (Sportsmen), the Sportsmen requested changes to Commission regulations relating to disabled access to State Game Lands. After careful staff

consideration of these requests, the Commission, at its June 25, 1996, meeting, proposed and at its October 8, 1996, meeting finally adopted an amendment changing § 135.48 relating to State Game Lands roads open to vehicular traffic for disabled persons, to permit additional access for sportsmen holding disabled permits. These changes are adopted under section 721(a) of the code (relating to control of property) and are consistent with the spirit of Title II of the Federal Americans with Disabilities Act.

2. *Purpose and Authority*

As was indicated in the Introduction, representatives of the Commission are regularly meeting with representatives of groups of sportsmen with disabilities to discuss matters of mutual concern. During one of these meetings, a request was made to open the designated roads on game lands prior to the hunting season to allow individuals holding disabled permits to scout for deer. At another meeting, a request was made to allow children, who cannot legally hunt alone, to accompany a disabled permit holder in addition to the one person currently authorized. After careful consideration, it was decided that both of these requests could be granted in the form of the proposed changes.

Section 721(a) of the code authorizes the Commission to promulgate regulations necessary to properly manage lands under its control. Section 2923 of the code provides for disabled person permits and allows individuals holding these permits to hunt from a vehicle.

3. *Regulatory Requirements*

Both of these changes relax current restrictions. Children accompanying a disabled permit holder would be required to hold a valid junior hunting or furtakers license.

4. *Persons Affected*

Individuals holding disabled person permits and their families will be affected by the changes.

5. *Comment and Response*

No written comments were received.

6. *Cost and Paperwork Requirements*

The changes will not involve an additional cost or paperwork.

Amendment to § 141.25

1. *Introduction*

By the act of April 4, 1996 (P. L. , No. 19) (Act 19), the General Assembly adopted changes to sections 102, 2705 and 2709 of the code (relating to definitions; classes of licenses; and license costs and fees) to provide for migratory game bird licenses. With the passage of Act 19, there is no longer a need for the special permit created for the early and late Canada goose seasons. As a result, the Commission at its meeting held on June 25, 1996, proposed and at its meeting held on October 8, 1996, finally adopted an amendment eliminating § 141.25(d). This action is being taken under section 2901(b) of the code (relating to regulations).

2. *Purpose and Authority*

The early and late Canada goose permit was created originally to obtain information with regard to goose harvests in the seasons involved. This information will now be obtained through return of survey cards completed as part of the migratory game bird license issuing process. The permit is therefore unnecessary and the Commission is proposing changes to the regulations to

eliminate it. The permit was created under section 2901(b) of the code and is being eliminated under that same authority.

3. *Regulatory Requirements*

The change eliminates a requirement.

4. *Persons Affected*

Individuals hunting Canada geese in the early or late seasons will be affected.

5. *Comments and Response*

No written comments were received.

6. *Cost and Paperwork Requirements*

Current cost and paperwork requirements will be eliminated as a result of the change.

Amendment to Chapter 143

1. *Introduction*

By Act 19, the General Assembly adopted changes to sections 102, 2705 and 2709 of the code to provide for migratory game bird licenses. Section 2705(14) of the code specifically provides for such licenses to be “. . . subject to the regulations, requirements and conditions which the Commission shall establish.” At its meeting held on June 25, 1996, the Commission proposed and at its meeting held on October 8, 1996, finally adopted amendments adding Subchapter J relating to hunting and furtaker licenses, to provide for the implementing regulations.

2. *Purpose and Authority*

By final rule adopted by the United States Fish and Wildlife Service published in the *Federal Register* on August 18, 1995 (Vol. 60, No. 160), 50 CFR Part 20 was amended to provide for a Migratory Bird Harvest Information Program (Program). That regulation contemplated that the Commonwealth would start participating in the Program in 1996.

In order to implement the Commonwealth's participation in the Program, the General Assembly enacted Act 19, which changed the aforementioned sections of the code to provide for a migratory game bird license. Those revisions specifically contemplated the adoption by the Commission of implementing regulations. In addition, section 2721 of the code requires that license issuance be in accordance with regulations of the Commission. The amendments fulfill these purposes. In addition to providing procedures for the issuance of migratory game bird licenses, the amendments provide for submission of the survey cards required by the Federal program.

3. *Regulatory Requirements*

Act 19 requires the purchasing of a migratory game bird license in order to hunt migratory game birds. The amendments will provide detailed procedures and require return of the survey card under the Federal program.

4. *Persons Affected*

Individuals who wish to hunt migratory game birds in this Commonwealth and authorized hunting license issuing agents will be affected by the amendments.

5. *Comments and Response*

No written comments were received.

6. *Cost and Paperwork Requirements*

The only cost to the public for the migratory game bird license is 75¢ which is the hunting license issuing agent's fee. A simple application for the license and survey card would need to be completed prior to issuance. Hunting license issuing agents will be required to return completed survey cards directly to the United States Fish and Wildlife Service once per month. It is anticipated that costs of the program to the Commission will be approximately \$59,000. The United States Fish and Wildlife Service should reimburse the Commission for all costs.

Effective Dates

These amendments are effective on final adoption and publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the amendments, contact James R. Fagan, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

Order

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 135, 141 and 143, are amended by amending §§ 135.48, 141.25 and adding §§ 143.181—143.188 to read as set forth at 26 Pa.B. 3645 (August 3, 1996).

(b) The Executive Director of the Commission shall certify this order and 26 Pa.B. 3645 and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall become effective upon final publication in the *Pennsylvania Bulletin*.

DONALD C. MADL,
Executive Director

Fiscal Note: Fiscal Note 48-94 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 96-1886. Filed for public inspection November 8, 1996, 9:00 a.m.]