

STATEMENTS OF POLICY

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Subordinate Supervision

The State Board of Examiners of Nursing Home Administrators (Board) adopts the following statement of policy relating to the supervision of an applicant for a license as a nursing home administrator.

Section 39.5(b) (relating to requirements for admission to licensing examination, examination procedures) requires applicants to acquire experience in the practice of nursing home administration under the supervision of a full-time nursing home administrator. Frequently, applicants question whether experience obtained under the supervision by a subordinate of the applicant constitutes experience which satisfies this requirement.

The purpose of this statement of policy is to clarify the regulations and advise applicants that supervision by a subordinate does not constitute acceptable experience unless the subordinate is a full-time nursing home administrator licensed in this Commonwealth and has the authority to direct the applicant during the period of qualified work experience, including transferring, suspending, assigning or discharging the applicant.

This statement of policy is effective upon publication in the *Pennsylvania Bulletin*.

ROBERT MORROW,
Chairperson

(Editor's Note: The regulations of the Board, 49 Pa. Code Chapter 39, are amended by adding a statement of policy in § 39.181 (relating to subordinate supervision—statement of policy.)

Fiscal Note: 16A-624. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

GENERAL

§ 39.18. Subordinate supervision—statement of policy

(a) *Background and purpose.* Section 39.5 (relating to requirements for admission to licensing examination; examination procedures) requires applicants to acquire experience in the practice of nursing home administration under the supervision of a full-time nursing home administrator. Frequently, the Board is asked to recognize an

applicant's experience acquired under the supervision of a nursing home administrator who is a subordinate of the applicant.

(b) *Guidelines.*

(1) The Board does not view supervision by an applicant's subordinate as acceptable supervisory experience. The Board believes that supervisors need to have the ability to oversee and direct the applicant during the period of qualified work experience, including the ability to transfer, suspend, assign or discharge individuals under their supervision. The Board believes that in most circumstances subordinates, because of the supervisor-subordinate relationship, do not possess the requisite degree of oversight over their supervisor to comply with § 39.5.

(2) The Board recognizes that there may be rare circumstances in which an apparent supervisor-subordinate relationship exists, but the subordinate in fact has the ability to exercise the requisite oversight and direction of the applicant's work experience. In those instances, the applicant would have the burden of proving the supervisory relationship, and the applicant will be given the opportunity to prove to the Board's satisfaction that the subordinate in fact possessed the requisite degree of oversight to comply with the regulation.

[Pa.B. Doc. No. 99-503. Filed for public inspection March 26, 1999, 9:00 a.m.]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CHS. 41 AND 69]

[M-00991221]

Expanding Alternative Dispute Resolution Process to All Contested Proceedings

The Pennsylvania Public Utility Commission (Commission) on February 11, 1999, adopted a proposed policy statement to expand the availability of mediation to all contested proceedings or proceedings which could be contested. The proposal accords all industry groups, including transportation, the same opportunity to seek negotiated settlements in contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. The contact person is Rhonda Daviston, Law Bureau, (717) 787-6166.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; David W. Rolka; Nora Mead Brownell; Aaron Wilson, Jr.

Public Meeting held
February 11, 1999

Policy Statement Expanding Alternative Dispute Resolution (ADR) Process to Contested Proceedings Including 52 Pa. Code Ch. 41; Doc. No. M-00991221

Proposed Policy Statement

By the Commission:

Under section 501 of the Public Utility Code, 66 Pa.C.S. § 501, the Commission proposes a policy statement which

expands the availability and use of the Alternative Dispute Resolution (ADR) Process (mediation) to all contested proceedings, or proceedings which could be contested. The proposed expansion of the ADR policy statement will include transportation proceedings.

The proposed changes are based on 4 years of experience in handling mediations by the Commission's Office of Administrative Law Judge (ALJ) as well as the ALJ's favorable experience with the mediation process. This proposal allows more flexibility and is drafted to conform with general mediation principles which were not as well defined in the past. Accordingly, to make mediation a more flexible process and available to more parties, we will modify the existing policy statement.

The present ADR process has been in effect since March 15, 1994. The ALJ reports that the ADR process is working well and is highly successful.¹ The ALJ also reports that ADR is worthwhile in resolving disputes and agrees that it should be expanded to include all utility types.

The proposed policy statement recognizes the positive affect that mediation has had in streamlining contested proceedings in both rate and nonrate cases. The Commission wishes to accord all industries, including the transportation industry, the same opportunity to seek negotiated settlements in contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. Expanding the availability of mediation to all contested proceedings or proceedings which could be protested, will further promote the goal of obtaining negotiated settlements in the public interest.

Previously, mediation was available to the transportation industry as a result of being included in the non-rate case category. However, by including the availability of mediation in Chapter 41 of the Commission's regulations the Commission intends to notify those in the transportation industry, who may have been previously unaware of the Commission's mediation process, that mediation is available in contested proceedings as a fair and efficient alternative to protracted litigation.

Accordingly, under section 501 of the Public Utility Code, 66 Pa.C.S. §§ 501, and sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) known as the Commonwealth Documents Law (45 P. S. §§ 1201 and 1202) the regulations promulgated thereunder, 1 Pa. Code §§ 7.1—7.5, we propose the adoption of the policy statement in the manner set forth in Annex A; *Therefore,*

It Is Ordered That:

1. A proceeding shall be initiated to consider the proposed policy statement set forth in Annex A hereto.

2. This order and Annex A shall be published in the *Pennsylvania Bulletin*; interested persons may submit written comments, an original and 15 copies, to: Secretary, Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265, and shall have 20 days from the date the order is published in the *Pennsylvania Bulletin* to submit the comments. Commentators are strongly encouraged, if suggesting changes or additions to the proposed policy statement, to supply alternative interpretive language. A diskette containing the comments in electronic format should also be provided to the Commission.

¹In the Commission's 1997/1998 Fiscal Year Annual Report, the ALJ reported that a total of 55 cases were concluded under mediation procedures. Of those cases, 50 cases were resolved in full, two were resolved for the most part and three mediations were terminated, resulting in a success rate in excess of 90%.

3. A copy of this order and Annex A shall be served upon the Pennsylvania Motor Truck Association, the Pennsylvania Bus Association and the International Taxicab and Livery Association, the National Association of Water Companies-Pennsylvania Chapter, the Pennsylvania Gas Association, the PTA, the Pennsylvania Electric Association, the Office of Consumer Advocate, the Office of Small Business Advocate and the Office of Trial Staff.

4. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

5. Alternate formats of this document are available to persons with disabilities and may be obtained by contacting Stephen Gorka, Acting Regulatory Coordinator, at (717) 787-8840.

JAMES J. MCNULTY,
Secretary

Fiscal Note: 57-205. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart B. CARRIERS OF PASSENGERS OR PROPERTY

CHAPTER 41. GENERAL ORDERS, POLICY STATEMENT AND GUIDELINES ON TRANSPORTATION UTILITIES

MEDIATION PROCESS GUIDELINES

§ 41.31. General.

The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. To further promote the goal of obtaining negotiated settlements in the public interest, the Commission has adopted guidelines that offer the parties, in certain contested proceedings, the option of mediation.

§ 41.32. Availability of mediation process.

The mediation process is intended to be a flexible program designed to facilitate the amicable resolution of disputes between parties. The Office of Administrative Law Judge manages the mediation program. The mediation process administered by the Commission follows the procedures in Chapter 69 (relating to general orders, policy statements and guidelines on fixed utilities) regarding mediation process for fixed service utilities.

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

[ALTERNATIVE DISPUTE RESOLUTION (ADR) PROCESS MEDIATION PROCESS GUIDELINES]

§ 69.391. General.

(a) The [Commission's policy and regulations encourage] Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation. To further promote the goal of obtaining negotiated settlements in the public interest, the Commission has adopted guidelines that will offer the parties in certain

contested proceedings the option of [an ADR process before an experienced mediator] mediation.

(b) Mediation is intended to be a flexible program designed to facilitate the amicable resolution of disputes between parties. The Office of Administrative Law Judge manages the mediation program.

§ 69.392. Availability of [ADR] mediation process.

(a) [The ADR process will be available to the parties in contested proceedings involving the following:

(1) Nonrate cases.

(2) Rate cases in which the amount of the requested increase in annual revenues is less than \$500,000.

(3) Single-issue rate cases.

(b) Parties that desire to use the ADR process should notify the Commission in writing within 20 days of the date a formal complaint is filed or, in the case of a Commission instituted proceeding, within 10 days of the entry date of the Commission order which institutes the proceeding. The party with the burden of proof shall agree to use the ADR process; and, for cases subject to a statutory deadline for adjudication, that party shall also agree to extend voluntarily the statutory deadline by at least 60 days] Mediation is available to parties in all contested proceedings, or proceedings which could be contested, when the proceeding qualifies for mediation. A proceeding qualifies for mediation when the following apply:

(1) Mediation is deemed to be appropriate by the OALJ.

(2) Necessary parties consent to mediate.

(b) The following applies to parties requesting mediation:

(1) Parties may request mediation, prior to the commencement of a proceeding, by sending a letter request to the Mediation Coordinator of the Office of Administrative Law Judge (OALJ), and a copy of the request to the Secretary of the Commission.

(2) Parties may request mediation in their pleadings.

(3) Parties may request mediation during the course of a proceeding.

(c) The OALJ may notify the parties in a proceeding that mediation may be appropriate and ask whether the parties consent to use the mediation process.

(d) The following applies to the party with the burden of proof:

(1) Except as otherwise directed by the Commission, there can be no mediation unless the party with the burden of proof, and the other necessary parties, consent to mediate.

(2) When the party with the burden of proof consents to mediation in proceedings subject to a statutory deadline for adjudication, that party shall also agree, in writing, to extend the statutory deadline by at least 60 days.

(e) The Commission may assign a case to the OALJ for mediation.

§ 69.393. Assignment and role of mediator.

[The ADR process will be managed by the Office of Administrative Law Judge (OALJ) which will determine initially whether the proceeding qualifies for mediation and, if so, will assign an experienced ALJ or other qualified bureau employe to mediate the contested proceeding. The OALJ mediator's role will be to facilitate resolution of the contested issues among the parties, not to render a decision on the merits. As such, the OALJ mediator will not have access to nonpublic Commission reports that evaluate the merits of the parties' positions or claims, or both.] If the Commission assigns a case for mediation, or the Office of Administrative Law Judge (OALJ) determines that a proceeding qualifies for mediation, the OALJ will assign a mediator to the proceeding. The mediator's role will be to facilitate resolution of the contested issues between or among the parties, as opposed to rendering a decision.

§ 69.394 [Timetables and procedures] Notice.

[If no full settlement is reached or only a partial settlement is produced within 30 days of the date the matter is assigned to the mediator, the matter will be automatically referred to an administrative law judge for hearing and decision, except that the initial 30-day mediation period can be extended for up to another 30 days by mutual consent in writing of all parties who are participating in the mediation. For cases subject to a statutory deadline for adjudication, the party with the burden of proof must agree to extend the deadline commensurately with the length of the mediation extension. For cases in which hearings must be commenced within 90 days, a party's request for mediation shall be construed as a waiver of that requirement.] (a) If the Commission assigns a case for mediation, or the Office of Administrative Law Judge (OALJ) determines that a proceeding qualifies for mediation, the parties will be notified of the time, date and place of the mediation session, as well as the name, address and telephone number of the mediator.

(b) If the OALJ determines that the proceeding does not qualify for mediation, the parties will be notified of this as well as the procedure to be used in lieu of mediation.

§ 69.395. [Mediator's report] Rules.

[Regardless of the result of the mediation, the Office of Administrative Law Judge mediator will issue a public report for the record that describes the efforts expended in attempting to reach a settlement and the results achieved.] (a) Acceptance into the mediation program is construed as a waiver of the requirement that hearings shall be commenced within 90 days after the proceeding is initiated.

(b) The participants in a mediation proceeding shall agree to abide by mediation rules and procedures established by the Office of Administrative Law Judge. There will be no mediation when the necessary parties do not agree to abide by these rules and procedures. Failure to abide by these rules and procedures, following commencement of mediation, could lead to the termination of the mediation.

§ 69.396. Conclusion of mediation.

(a) When an agreement is reached in a formal complaint proceeding, the complaint may be withdrawn, unless otherwise provided for by law or regulation.

(b) When appropriate, the mediator may submit a report to an administrative law judge, or the Commission. The report will describe only the procedural background and the result of the mediation.

§ 69.397. Flexibility.

To ensure maximum flexibility, the rules and procedures used in mediation are subject to modification as deemed appropriate to facilitate a resolution of a dispute.

[Pa.B. Doc. No. 99-504. Filed for public inspection March 26, 1999, 9:00 a.m.]
