

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF VETERINARY MEDICINE

[49 PA. CODE CH. 31]

Examinations, Licensure, Fees

The State Board of Veterinary Medicine (Board) amends §§ 31.3, 31.11, 31.12 and 31.41 to replace the current uniform National examination for licensure, the National Board Examination (NBE) and the Clinical Competency Test (CCT), which will be administered for the final time on April 11–12, 2000, with the new uniform National examination; and to delete the requirement that applicants for licensure take the Pennsylvania Veterinary Legal Practice Examination (PVLPE). The NBE and CCT will be replaced with the North American Veterinary Licensing Examination (NAVLE), the uniform examination which will be required of applicants for licensure in the United States and Canada. The first administration of the NAVLE will be in late November–mid December, 2000.

Section 9 of the Veterinary Medicine Practice Act (63 P. S. § 485.9) (act) authorizes the Board to determine the license examinations to be required of applicants for licensure. Section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 9(b)(3) of the act provide that a National uniform examination may be used as the licensing examination. Section 5(6) of the act (63 P. S. § 485.5(6)), authorizes the Board to approve the qualifications of applicants for licensure.

Replacement of NBE and CCT with NAVLE

Public notice of intention to amend the regulations under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because the NAVLE is replacing the NBE and CCT as the uniform National licensing examination for veterinarians effective after the last administration of the NBE and CCT in April 2000. The NBE, CCT and NAVLE are administered by the National Board Examination Committee for Veterinary Medicine.

The change in the examination will also effect a change in the fee for candidates taking the examination in § 31.41 (relating to schedule of fees). Section 812.1(b) of The Administrative Code of 1929 requires that the fee charged cover the entire cost of the examination. The current fees of \$210 for the NBE and \$185 for the CCT, or \$350 if the tests are taken at one sitting, will be replaced with a single fee for the NAVLE of \$325. Applicants will continue to register for the test directly with the National Board Examination Committee and pay the fee for the examination directly to that Committee.

Discontinuance of the PVLPE

Public comment regarding the deletion of the PVLPE is likewise unnecessary under section 204(3) of the CDL. Sometime before August 1988, the PVLPE requirement

replaced a requirement that an applicant pass a practical or oral examination, or both. The requirement was proposed in a rulemaking published in the *Pennsylvania Bulletin*, which noted that "The Board has eliminated the oral examination and proposes to have reciprocal license applicants sit for its replacement, the Pennsylvania Legal Practice Exam." See 18 Pa.B. 3458, 3459 (August 6, 1988). The rule was made final upon publication at 19 Pa. B. 237 (January 21, 1989).

The PVLPE is a 1-hour examination consisting of 20 multiple choice questions based on the act. The purpose of the PVLPE is to assure that the applicant for licensure is somewhat familiar with the act which governs the practice of veterinary medicine in this Commonwealth. The exam is given in April and December of each year at the Commonwealth's Fort Washington, Pennsylvania exam site. Under current regulations, an applicant cannot be issued a permanent license until the applicant has taken and passed the exam.

Several problems regarding the PVLPE have become evident. First, as there is only one exam site, applicants for licensure may have the inconvenience and expense of driving in excess of 6 hours, plus overnight lodging in the Philadelphia area, or a 1 day round-trip flight. Second, depending on when they apply, applicants for licensure may have to wait up to 10 months between the date of their application and the date of the exam. The deadline to apply for the April examination is February 1. A candidate applying after February 1 would have to take the December examination.

The requirement is particularly onerous for licensees of other states who are seeking reciprocity in this Commonwealth. Under the current regulations, a licensee from another state is only entitled to reciprocal licensure if the licensee has practiced for 5 years immediately preceding application for licensure in this Commonwealth. These veterinarians may have to wait up to 10 months to obtain reciprocal licensure in this Commonwealth because of the delay in being able to schedule the PVLPE.

If a veterinarian licensed in a sister state wishes to practice in this Commonwealth pending passage of the PVLPE, the veterinarian must apply for a temporary permit. A temporary permit allows the veterinarian to practice only under the supervision of a current Pennsylvania licensee, even though the veterinarian may have been practicing independently for years in a sister state. In addition, if the veterinarian applies for the temporary permit but fails to submit the application to take the exam at the same time, per Board regulation, the temporary permit would automatically expire. The veterinarian would then have to begin the entire application process over and wait to take the PVLPE at its next scheduled administration. The Board has determined that requiring licensees of Pennsylvania's sister states to take the PVLPE does not promote the goals of the act.

The difficulties faced by applicants for licensure by the PVLPE requirement also burden the citizens of this Commonwealth, who are deprived the services of otherwise qualified veterinarians who must wait lengthy periods before they may practice in this Commonwealth, or who may be deterred from settling in this Commonwealth because of the onerous requirement. In contrast, the detriments which may result from eliminating the exam requirement are minimal, and may be further minimized by requiring applicants to verify that they have read the

act and the Board's regulations as part of the process of applying for a Pennsylvania license. The proposed verification would ensure that applicants for original and reciprocal licensure are familiar with law governing the practice of veterinary medicine in this Commonwealth.

Finally, elimination of the PVLPE will effect a reduction in the fees paid for Pennsylvania licensure by eliminating the \$87 charge for the examination in § 31.41. This section will be amended to reflect the deleted reference to the PVLPE.

Compliance with Executive Order 1996-1

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

Statutory Authority

These amendments are adopted under section 812.1 of The Administrative Code of 1929 and section 9 of the act.

Fiscal Impact and Paperwork Requirements

The amendments will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to take the current uniform National examination and will be required to pay the actual costs of the examination.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on April 7, 2000, the Board submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. On the same date, the final-omitted rulemaking was submitted to Office of the Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the final-omitted rulemaking was deemed approved by the House and Senate Committees on April 27, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on May 11, 2000, and approved the final-omitted rulemaking.

Additional Information

Individuals who desire information are invited to submit inquiries to the Board Administrator, State Board of Veterinary Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7134.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulations adopted by this order under the procedures specified in sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL. The Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL, is in this circumstance, unnecessary, because section 812.1 of The Administrative Code of 1929 permits the use of National uniform examinations and the National uniform examination for veterinary medicine will change after April 2000. In addition, the Board is authorized to determine licensure examinations and qualifications for licensure.

(2) Persons affected by the final-omitted rulemaking as adopted by this order have been given actual notice of the change in the uniform National examination for veterinary medicine and elimination of the PVLPE by the National Board Examination Committee, state boards or colleges of veterinary medicine in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulations of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

The Board acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending §§ 31.3, 31.11 31.12 and 31.41 to read as set forth in Annex A.

(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 as to legality as required by law.

(c) The Chairperson of 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 become effective immediately upon publication in the *Pennsylvania Bulletin*, and shall apply to examinations administered after April 12, 2000.

BRIAN V. HARPSTER, V.M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2688 (May 27, 2000).)

Fiscal Note: 16A-5710. 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 31. STATE BOARD OF VETERINARY MEDICINE

GENERAL PROVISIONS

§ 31.3. Examinations.

(a) The examination required as a prerequisite to original licensure as a veterinarian is the North American Veterinary Licensing Examination (NAVLE). The examination will be given at least annually and at other times deemed appropriate by the Board, in consultation with the National Board Examination Committee.

(b) Applications to take the licensing examinations, together with instructions for applicants, including deadlines for filing and paying fees, may be obtained from the Administrative Office of the Board by writing or telephoning the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389.

(c) Examination applications and the fee required by § 31.41 (relating to schedule of fees) shall be submitted directly to the professional testing organization designated by the Board at least 60 days prior to the examination date.

LICENSURE

§ 31.11. Application for licensure.

(a) *Application forms.* Application forms for original or reciprocal licensure may be obtained from the Administrative Office of the Board by writing or telephoning the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389.

(b) *Original licensure.* As a prerequisite to original licensure as a veterinarian, an applicant shall submit the following documentation to the Board:

(1) Evidence of graduation from an approved school or college of veterinary medicine. The applicant's official transcript provided by the degree-granting institution or a verification of graduation from the degree-granting institution shall be evidence of graduation from an approved college of veterinary medicine. A graduate of a school or college of veterinary medicine outside of the United States and Canada shall submit certification by the American Veterinary Medical Association, Educational Commission for Foreign Veterinary Graduates or another program which may subsequently be approved by the American Veterinary Medical Association as proof of graduation from an approved school or college of veterinary medicine.

(2) North American Veterinary Licensing Examination (NAVLE) results as furnished through a national examination grade reporting service. The Board will accept an applicant's grades from the National Board Examination (NBE) and Clinical Competency Test (CCT) examinations if taken within the last 5 years as furnished through a National examination grade reporting service in lieu of the NAVLE, if the applicant passed these examinations with a score equivalent to or higher than the passing score then prevailing in this Commonwealth.

(3) A letter of good standing from the licensure board of each state where the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

(4) A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country unless the following apply:

(i) At least 10 years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the Board that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.

(iii) The applicant otherwise satisfies the qualifications contained in the act.

(c) *Reciprocal licensure.* An applicant for licensure by reciprocity who has held a valid license from another state and has been actively engaged in clinical practice in that state for 5 years immediately preceding application for licensure in this Commonwealth, may be granted a license to practice veterinary medicine in this Commonwealth after having paid the fee required by § 31.41 (relating to schedule of fees), and submitted the following documentation to the Board:

(1) An application form under subsection (a).

(2) A verification of clinical practice, completed by the applicant, describing in detail the applicant's clinical practice during the immediately preceding 5 years.

(3) A letter from the licensure board of the state wherein the applicant has been actively engaged in clinical practice during the immediately preceding 5 years, certifying 5 years of continued licensure in that state.

(4) Two certificates of recommendation from licensed veterinarians regarding the applicant's character and competence and attesting to the fact that the applicant has been in active clinical practice during the immediately preceding 5 years.

(5) A letter of good standing from each board office in which the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

§ 31.12. Temporary permits.

(a) *Original licensure.* An applicant for original licensure who desires a temporary permit under section 10 of the act (63 P. S. § 485.10) may be granted a temporary permit to practice veterinary medicine upon graduation from an approved school or college of veterinary medicine, completion of an application form prescribed by the Board and payment of the fee required by § 31.41 (relating to schedule of fees). The applicant's official transcript provided by the degree-granting institution or a verification of graduation from the degree-granting institution shall be evidence of graduation from an approved school or college of veterinary medicine. A graduate of a school or college of veterinary medicine outside of the United States and Canada shall submit certification by the American Veterinary Medical Association, Educational Commission for Foreign Veterinary Graduates or another program which may subsequently be approved by the American Veterinary Medical Association, as proof of graduation from an approved school or college of veterinary medicine.

(b) *Reciprocal licensure.* An applicant for reciprocal licensure who desires a temporary permit under section 10 of the act may be granted a temporary permit to practice veterinary medicine in this Commonwealth if the applicant completes an application form prescribed by the Board, pays the fee required by § 31.41, and otherwise meets the requirements of subsections (a) and (c) and section 10 of the act.

(c) *Temporary permit holder limitations.* A temporary permit holder shall be associated with a licensed doctor of veterinary medicine, shall limit his work to the practice of the licensed doctor of veterinary medicine and may not participate in any practice or operation of a branch office, clinic or allied establishment. The associating veterinarian shall be responsible for all veterinary activities of the temporary permit holder and shall be accessible to the temporary permit holder either by telephone or personal contact. When contact by telephone or personal contact is not possible as, for example, in the case of vacations or other travel, the associating veterinarian shall delegate the supervisory responsibilities to another licensed veterinarian. The associating veterinarian will continue to assume responsibility for the veterinary activities of the temporary permit holder in his absence. A temporary permit holder shall report to the next scheduled examination of the Board following the issuance of the temporary permit. The temporary permit shall expire on the day

following the announcement of the grades of the first examination given after the temporary permit is issued.

FEES

§ 31.41. Schedule of fees.

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

Veterinarians:

Application for original, reactivated, reissued or reciprocal license	\$35
North American Veterinary Licensing Examination	\$325
Application for continuing education program approval	\$35
Verification of licensure	\$10
Temporary permit	\$55
Biennial renewal	\$105
Late renewal fee per month or part of month ..	\$5

Animal health technicians:

Application for certification	\$35
Veterinary Technical National Examination (VTNE) (Effective January 1996)	\$125
Application for continuing education program approval	\$35
Verification of certification	\$10
Biennial renewal	\$30
Late renewal fee per month or part of month ..	\$5

[Pa.B. Doc. No. 00-882. Filed for public inspection May 26, 2000, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Application Fees

The State Real Estate Commission (Commission) amends § 35.203 (relating to fees) by revising certain application fees to read as set forth in Annex A.

This rulemaking amends fees for application, reapplication, verification and certification fees and creates reinspection fees to reflect the Board's actual cost of providing the services.

Notice of proposed rulemaking was published at 29 Pa.B. 4171 (August 7, 1999). Publication was followed by a 30-day public comment period during which the Board received public comment from the Pennsylvania Association of Realtors. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

The following is a response to the comments:

Certification and Verification Fee

The HPLC questioned under what circumstances the Commission certifies an examination score. The HPLC and IRRC also requested an explanation of the difference

between a verification and certification and an explanation of what accounts for the differential in fees.

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally the state of original licensure is the only source of the score of the licensee as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction at the time of original licensure. For this reason, these states require that the Commission and other boards certify the examination score the applicant achieved on the licensure examination.

As noted in proposed rulemaking, the difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. States request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau of Professional and Occupational Affairs (Bureau) has been able to create two documents from its records that will meet all of the needs of the requesting state. When the licensee applies to the other state, the licensee receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee. In the case of a verification, the staff produces the requested documentation by a letter, usually computer generated, which contains the license number, date of original issuance and current expiration date and status of the license. The letters are printed from the Bureau's central computer records and sent to the Commission staff responsible for handling the licensee's application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes. The Bureau uses the term "certification fee" to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries, or for employment of training in another state. A certification document contains information specific to the individual requestor. It may include dates or location where examinations were taken, or scores achieved or hours and location of training. The information is entered on to a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The Commission staff then seals and issues this document.

Administrative Overhead

IRRC requested that the Bureau and the Commission: (1) itemize the overhead cost to be recouped by the fees; and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau's method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the

charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the Commission's enabling statutes.

In computing overhead charges, the Commission and the Bureau include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific commission/board. Once determined the Bureau's total administrative charge is apportioned to each commission/board based upon that board's share of the total active licensee population. In turn, the commission's/board's administrative charge is divided by the number of active licensees to calculate a per application charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the SCP/PLC, HPLC and IRRC as reasonable and consistent with the Legislative intent of statutory provisions which require the commission/board to establish fees which meet or exceed expenses.

IRRC suggested that within each commission/board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay one-half as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology the Bureau and the commissions/boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead of charge obtained by applying IRRC suggested time factor versus the current method. This review of a commissions'/boards' operation showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each commission/board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the commissions/boards noted that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these 5 biennial cycles, the experience of both the commissions/boards and the Bureau has been that established and

verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors. This method has provided a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the commissions/boards over an extended period. Similarly accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for "rounding up" the actual costs to establish a fee. This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

For these reasons, the Commission has not made changes in the method by which it allocates administrative expenditures and the resulting fees will remain as proposed.

IRRC also questioned why the administrative overhead costs for certification of history of licensure, registration or approval is \$3.80 less than the administrative overhead charged for the remaining application fees. The overhead cost for certification of licensure, registration or approval is divided among the licensing population for the entire Bureau, while the overhead cost for remaining application fees are divided among the licensing population for the Commission.

Addition of satellite location or instructor for real estate school

IRRC commented that, as published in the *Pennsylvania Bulletin*, the fee for the addition of satellite location or instructor for real estate school contained an unnecessary comma. The Commission made the correction accordingly.

Private real estate schools

IRRC requested a description of the application process and sought an explanation for the reduction in the fee for initial license application for private real estate school from \$325 to \$120.

After an application for licensure is received, the Commission staff reviews the application for completeness and contacts the applicant to obtain any missing information or documents, or both. The application is then sent to the Bureau of Enforcement and Investigation (BEI) for an inspection to determine compliance with regulations. Following an inspection, the BEI sends a report to the Commission administrator. Once the information is obtained, the Commission's Education Committee reviews the application and makes a recommendation to the full Commission at its meeting. The Commission discusses the recommendation and votes to approve or deny the request. If the Commission approves the application, an approval letter is sent to the applicant. If the Commission denies the application, a denial letter is sent.

The \$325 application fee was based upon a full Commission review of the application. The Commission found that a more efficient review could be accomplished by the Education Committee. Since less members of the Commission are reviewing the application, the fee is being reduced by \$205.

Fee report forms

IRRC identified three errors in the fee report forms: (1) the form for certification of history of licensure should include registration or approval; (2) the form for ownership change-private real estate school contains a typographical error in that it inaccurately reflects the administrative overhead fee as \$3.56, rather than \$13.56; (3) the form for name change-private real estate school and

initial license application-private real estate school contains a typographical error in that two different Commission review fees are used. The Commission has amended the fee report forms accordingly.

The Commission has also provided a survey of costs of other states in a revised Regulatory Analysis Form at the request of the HPLC which is available to the public on request.

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-form regulation addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from the Commission. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Statutory Authority

The amendment is authorized under section 407(a) of the Real Estate Licensing and Registration Act (act) (63 P. S. § 455.407(a)).

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Commission submitted a copy of the notice of proposed rulemaking, published at 29 Pa.B. 4171, to the IRRC and the Chairpersons of the HPLC and the SCP/PLC (Committees) for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Commission also provided IRRC and the Committees with copies of all comments received, as well as other documentation. In preparing this final-form regulation, the Commission has considered the comments received from the Committees, IRRC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), this final-form regulation was approved by the HPLC on April 18, 2000, and deemed approved by the SCP/PLC on April 26, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 27, 2000, and approved the final-form regulation.

Contact Person

Further information may be obtained by contacting Deborah A. Sopko, Administrative Assistant, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3658.

Findings

The Commission 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 the comments were considered.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 29 Pa.B. 4171.

(4) This amendment is necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 35, are amended by amending § 35.203 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 upon publication in the *Pennsylvania Bulletin*.

RITA HALVERSON,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2430 (May 13, 2000)

Fiscal Note: Fiscal Note 16A-566 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

APPLICATION FEES

§ 35.203. Fees.

The following fees are charged by the Commission:

Licensing examination for broker, cemetery broker, salesperson, builder-owner salesperson or rental listing referral agent	\$45
Review of qualifications of candidate for broker or cemetery broker licensing examination	\$40

Application for licensure of:

- (i) Broker, cemetery broker or rental listing referral agent \$75
- (ii) Branch office \$65
- (iii) Associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation \$25
- (iv) Cemetery salesperson \$20

Application for registration of cemetery company \$25

Initial licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation:

- (i) If issued in first half of biennial period..... 100% of biennial renewal fee
- (ii) If issued in second half of biennial period..... 50% of biennial renewal fee

Initial registration for cemetery company or initial licensure for associate broker, salesperson, cemetery associate broker, cemetery salesperson, builder-owner salesperson, time-share salesperson or campground membership salesperson:

- (i) If issued in first half of biennial period..... 100% of biennial renewal fee
- (ii) If issued in second half of biennial period..... 50% of biennial renewal fee

Biennial renewal of license of broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation \$84

Biennial renewal of cemetery company registration or license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson..... \$64

Registration of promotional real estate \$120

Annual renewal of registration of promotional real estate \$75

Approval of real estate school..... \$120

Reinspection of real estate school after first failure..... \$65

Annual renewal of approval of real estate school for each satellite location, course and instructor... \$250 plus \$10 for each satellite location, course and instructor

Change of name or office location of broker, cemetery broker or rental listing referral agent..... \$75

Change of name or address for cemetery company or change of employer, change of employer's name or change of employer's address for associate broker, cemetery associate broker, salesperson, cemetery salesperson, build-owner salesperson, time-space salesperson, campground membership salesperson, or broker of record, partner or officer for a partnership, association or corporation \$20

Reinspection after failure for change of name or office location of broker, cemetery broker or rental listing referral agent \$55

Change of ownership or directorship of real estate school \$75

Change of name of real estate school..... \$45

Change of location of real estate school.... \$70

Addition of satellite location or instructor for real estate school..... \$20

Addition of course for real estate school \$25

Certification of current status of licensure, registration or approval \$15

Certification of history of licensure, registration or approval \$40

Duplicate license..... \$5

Late renewal of license..... In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

[Pa.B. Doc. No. 00-883. Filed for public inspection May 26, 2000, 9:00 a.m.]

**STATE REGISTRATION BOARD
FOR PROFESSIONAL ENGINEERS, LAND
SURVEYORS AND GEOLOGISTS
[49 PA. CODE CH. 37]
Verification/Certification Fees**

The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) proposes to amend § 37.17 (relating to schedule of fees), pertaining to fees for verification and certification of licensure records to read as set forth in Annex A.

A. Effective Date

The amendment will be effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The Board is authorized to set fees by regulation under section 9 of the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. § 156).

C. Purpose

The statutory provision requires that the Board increase fees to meet or exceed projected expenditures. Biennial renewal fees support general administrative and enforcement costs. Fees for various services provided directly to applicants or licensees are based upon the actual charge of providing the service requested.

The fees in this rulemaking represent the cost of providing an official sealed document of Board records. By this amendment, the cost of providing the service will be apportioned to users.

This rulemaking results from a recent systems audit of the existing fees for services of the State boards within the Bureau of Professional and Occupational Affairs (Bureau). The audit determined that the current service fees for the State boards were adequate to cover their cost, with the exception of fees charged for verification and certification of license records.

D. Summary of Comments and Responses to Proposed Rulemaking

The proposed amendment was published at 29 Pa.B. 1897 (April 10, 1999). No public comments were received. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The following is the Board's response to those comments:

Certification and Verification Fee

The HPLC questioned under what circumstances the Board "certifies" an examination score. The HPLC and IRRC also requested an explanation of the difference between a verification and certification and an explanation of what accounts for the differential in fees.

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally the state of original licensure is the only source of the score of the licensee as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction at the time of original licensure. For this reason, these states require that the State boards of the Commonwealth certify the examination score the applicant achieved on the licensure examination.

As noted in proposed rulemaking, the difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. States request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau has been able to create two documents from its records that will meet all of the needs of the requesting state. The licensee, when applying to the other state, receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee. In the case of a verification, the staff produces the requested documentation by a letter, usually computer generated, which contains the license number, date of original issuance and current expiration date and status of the license. The letters are printed from the Bureau's central computer records and sent to the State boards' staff responsible for handling the licensees application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes. The Bureau uses the term

"certification fee" to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries, or for employment of training in another state. A certification document contains information specific to the individual requestor. It may include dates or location where examinations were taken, or scores achieved or hours and location of training. The information is entered onto a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The State boards' staff then seals and issues this document.

Administrative Overhead

IRRC requested that the Bureau and the State boards: (1) itemize the overhead cost to be recouped by the fees; and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau's method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the State boards' enabling statutes.

In computing overhead charges, the State boards and the Bureau, include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific State board. Once determined the Bureau's total administrative charge is apportioned to each State board based upon that board's share of the total active licensee population. In turn, the State boards' administrative charge is divided by the number of active licensees to calculate a per application charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the HPLC, the Senate Consumer Protection and Professional Licensure Committee (SCPPLC) and IRRC as reasonable and consistent with the Legislative intent of statutory provisions which require the State boards to establish fees which meet or exceed expenses.

IRRC suggested that within each State board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay one-half as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology, the Bureau and the State boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead of charge obtained by applying IRRC suggested time factor versus the current method. This review of the State boards'

operation showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each State board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the State boards noted that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these five biennial cycles, the experience of both the State boards and the Bureau has been that established and verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors. This method has provided a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the State boards over an extended period. Similarly accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for rounding up the actual costs to establish a fee. This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

For these reasons, the State boards have not made changes in the method by which it allocates administrative expenditures and the resulting fees will remain as proposed. Additionally, the HPLC requested further information on fees of other states which are comparable in response to Regulatory Analysis Item 25. This has been added to the analysis and is available to the public on request.

The HPLC also requested with respect to Bureau fees generally that additional information be provided to the Regulatory Analysis Form filed with the HPLC, SCPPLC and IRRC. This information concerned comparable fees of other states (Item 25). Additional information has been provided and a copy of the Regulatory Analysis Form is available to the public upon request.

E. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 1999, the Board submitted a copy of this proposed rulemaking to the Chairpersons of the HPLC and SCPPLC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provide additional documentation. In preparing the final-form regulation, the Board considered the comments from the HPLC, SCPPLC and IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form regulation was deemed approved by the HPLC and SCPPLC on April 11, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 27, 2000, and approved the final-form regulation.

F. Compliance with Executive Order 1996-1

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board considered the least restrictive alternative to regulate costs for services for certification or verification of licensure.

G. Fiscal Impact and Paperwork Requirements

The final-form regulation will have no fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who request certification or verification services from the Board. The amendment will impose no additional paperwork requirement upon the Commonwealth, political subdivisions or the private sector.

H. Sunset Date

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

I. Contact Persons

The contact person is Shirley Klinger, Administrator, State Registration Board for Professional Engineers, Land Surveyors and Geologists, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given as required by sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202).

(2) A public comment period was provided as required by law.

(3) The amendment does not enlarge the scope of proposed rulemaking at 29 Pa.B. 1897.

(4) The amendment is necessary and appropriate to administer and enforce the Board's enabling statute.

Order

The Board, acting under the authority of its enabling statute order that:

(a) The regulations of the Board, 49 Pa. Code Chapter 37, are amended by amending § 37.17 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 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*.

LOUIS A. GUZZI, P.E.,
President

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2430 (May 13, 2000).)

Fiscal Note: Fiscal Note 16A-477 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 37. STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

QUALIFICATIONS FOR LICENSURE

§ 37.17. Schedule of fees.

(a) *Professional engineers and professional land surveyors.* The Board will charge the following fees:

Examination for licensure as a professional engineer	\$105
October 1998 examination and thereafter.....	\$120
Professional Engineer Exam Review (Optional) ..	\$75
Examination for licensure as a professional land surveyor	\$187
October 1998—April 1999 examination.....	\$227
October 1999 examination and thereafter.....	\$252
Pennsylvania Fundamentals of Land Surveying Portion.....	\$42
N.C.E.E.S. Fundamentals of Land Surveying Portion.....	\$40
October 1998 examination and thereafter.....	\$65
N.C.E.E.S. Principles and Practice of Land Surveying	\$60
October 1998-April 1999 examination	\$75
October 1999 examination and thereafter.....	\$100
Administration (to be added to total parts taken at one sitting)	\$45
Examination for certification as engineer-in-training	75

(b) *Professional geologists.* The Board will charge the following fees:

Application for registration.....	\$50
Biennial renewal fee	\$25
Temporary permit fee	\$25
Fundamentals of Geology Examination.....	\$150
Principles/Practice of Geology Examination	\$150
Examination Access Fee (to be added to each examination taken)	\$25
Administration (to be added to total parts taken at one sitting)	\$45

(c) *Other fees.* The Board will charge the following fees:

Certification of license, registration, permit or scores.....	\$25
Verification of license, registration or permit.....	\$15

[Pa.B. Doc. No. 00-884. Filed for public inspection May 26, 2000, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Fees

The State Board of Physical Therapy (Board) amends § 40.5 (relating to fees) pertaining to increased fees for July 1, 2000, and subsequent examinations for licensure of physical therapists and registration of physical therapy assistants to read as set forth in Annex A. The fee for the physical therapist examination will increase from \$245 to \$345 for physical therapists and from \$230 to \$330 for assistants.

Under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 8 of the Physical Therapy Practice Act (63 P. S. § 1308), examinations for licensure must be prepared and administered by a professional testing organization under contract to the appropriate board. The Board contracts with the Federation of State Boards of Physical Therapy which subcontracts with Sylvan Technology Centers which administer the examination at eight locations in this Commonwealth and nearly 200 locations Nationwide. The computer-based examination is available throughout the year. The Federation of State Boards of Physical Therapy has increased contract costs for examination services on and after July 1, 2000.

Public notice of intention to amend the regulation under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) (CDL), has been omitted as authorized under section 204(3) of the CDL (45 P. S. § 1204(3)), because the Board finds that these procedures are, under the circumstances, unnecessary. Public comment is unnecessary because section 812.1 of The Administrative Code of 1929 requires that candidate fees cover the cost of the examination. Persons affected by the amendment have been given actual notice of the Board's intention to amend § 40.5 in advance of final rulemaking under section 204(2) of the CDL.

Compliance with Executive Order 1996-1

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

Statutory Authority

This amendment is adopted under section 812.1 of The Administrative Code of 1929 and section 8 of the Physical Therapy Practice Act.

Fiscal Impact and Paperwork Requirements

The final-omitted rulemaking will have no fiscal impact on the Commonwealth or its political subdivisions. Candidates for licensure by examination will be required to pay an increased fee to cover contract costs for the examination.

Regulatory Review

Under section 5.1(f) of the Regulatory Review Act (71 P. S. § 745.5a(f)), on April 13, 2000, a copy of the final-omitted rulemaking was submitted to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Committee on Consumer Protection and Professional Licensure and the House Committee on Professional Licensure. In addition, at the same time, the final-omitted rulemaking was submitted

to the Office of the Attorney General for review and comment under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(d) of the Regulatory Review Act, the final-omitted regulation was deemed approved by the House and Senate Committees on May 3, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC approved the final-omitted rulemaking on May 11, 2000.

Additional Information

Individuals who desire information are invited to submit inquiries to Robert Kline, Board Administrator, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7134.

Findings

The Board finds that:

(1) Public notice of intention to amend the regulation as adopted by this order under sections 201 and 202 of the CDL has been omitted under the authority contained in section 204(3) of the CDL. The Board has, for good cause, found that the procedure specified in sections 201 and 202 of the CDL, is in this circumstance, unnecessary. In addition, section 812.1 of The Administrative Code of 1929 requires candidate fees cover the cost of the examination.

(2) Persons affected by the amendment as adopted by this order have been given actual notice of the Board's intention to amend the regulation in advance of final rulemaking under section 204(2) of the CDL.

(3) The amendment of the regulation of the Board in the manner provided in this order is necessary and appropriate for the administration of its authorizing statute.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by amending § 40.5 to read as set forth in Annex A.

(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 as to legality as required by law.

(c) The Chairperson of 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 become effective immediately upon publication in the *Pennsylvania Bulletin*, and shall apply to examinations administered after the effective date of this amendment.

JAMES J. IRRGANG,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, See 30 Pa.B. 2688 (May 27, 2000).)

Fiscal Note: 16A-657. 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 40. STATE BOARD OF PHYSICAL THERAPY

**Subchapter A. PHYSICAL THERAPISTS
GENERAL PROVISIONS**

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

Application for licensure by examination	\$20
Application for licensure by endorsement	\$20
Application for licensure by foreign training	\$160

Physical therapy examination:

Physical therapist examination (effective 7-00)	\$345
Physical therapy assistant examination (effective 7-00)	\$330
Temporary license	\$15
Biennial renewal	\$37

Athletic trainer:

Application for certification	\$20
Athletic trainer examination	\$83.75
Biennial renewal	\$37
Physical therapist assistant listing	\$15
Certification of examination scores or certification of licensure	\$15
Verification of licensure or certification	\$10

[Pa.B. Doc. No. 00-885. Filed for public inspection May 26, 2000, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Sexual Intimacies

The State Board of Psychology (Board) amends § 41.1 (relating to definitions) and adopts §§ 41.81—41.85 (relating to sexual intimacies) to read as set forth in Annex A.

The amendments are intended to better protect consumers of psychological services and provide guidance to the profession on issues relating to: (1) sexual intimacies between a psychologist and a current or former client/patient, and an immediate family member of a current or former client/patient; (2) former sexual partners as client/patients; and (3) sexual intimacies between a psychologist and a psychological trainee, student or research participant. The amendments will also put psychologists on notice that the consent of an individual to engage in sexual intimacies with the psychologist may not be a defense in any disciplinary proceedings brought under §§ 41.81—41.83, and that a psychologist who engages in conduct prohibited by the amendments will not be eligible

for placement into an impaired professional program in lieu of disciplinary or corrective action.

Notice of proposed rulemaking was published at 28 Pa.B. 1421 (March 21, 1998). Publication was followed by a 30-day public comment period during which the Board received comments from the Pennsylvania Psychological Association (PPA). Following the close of the public comment period, the Board also received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) offered no comments, suggestions or objections regarding the amendments.

The amendments reflected in Annex A are responsive to the comments and suggestions received by all commentators. In addition, the Board considered this rulemaking and its purpose under the directives of Executive Order 1996-1, Regulatory Review and Promulgation.

For ease of reference, the Board will address the comments in the order in which the amendments appear.

§ 41.1. Definitions.

IRRC commented that § 41.81(a) provides examples of who will be considered immediate family, but, that no actual definition of the term is provided. IRRC suggested that rather than provide examples, the Board should define "immediate family" under § 41.1. The Board has followed this suggestion. For purposes of these amendments, the term "immediate family member" will include a parent/guardian, child, sibling or spouse or family member with whom the child lives.

Commentators objected to the proposed definition of "sexual intimacies" on the ground that the wording does not sufficiently clarify that verbal and nonverbal communications, kissing, hugging, touching, physical contact and self-disclosure refers to romantic, sexually suggestive, sexually demeaning or erotic behavior. The PPA pointed out that a psychologist should not be prohibited from or disciplined for engaging in an occasional hug or touching a patient as part of a normal social interaction. For example, some patients (especially children) may feel offended if a psychologist avoids a hug or withdraws quickly from a handshake or an accidental physical touch. The PPA opined that the proposed definition could lead to consistent misinterpretations by psychologists and patients. The PPA suggested that the definition be reworded to clarify that sexualized or eroticized hugging, touching, physical contact or self-disclosure constitute prohibited conduct. Both the HPLC and IRRC expressed similar opinions. In response to these comments, the Board has revised the definition of "sexual intimacies" accordingly.

§ 41.81. Prohibited conduct.

Consistent with the amendments to § 41.1, subsection (a) has been amended by deleting the examples of who will be considered "immediate family."

Subsection (b) has also been amended at the suggestion of IRRC to prohibit sexual intimacies between a psychologist and a psychology trainee, student or research participant. IRRC expressed concern that the phrase "supervisory, . . . or other authority" and the term "supervisee" in the proposed wording of this subsection could be interpreted to prohibit a psychologist from having a relationship with an office administrator or receptionist. The intent of the original wording was to prohibit a relationship between a psychologist and a student, a research participant, an individual who is fulfilling the supervised experience requirements for licensure, or an applicant for

licensure who is continuing in training under § 41.31(c)(5) (relating to qualifications for taking licensing examination). Since the term "psychology trainee" is already defined under § 41.1 to cover this group of individuals, the amendments more clearly describe the intended prohibition.

§ 41.83. Sexual intimacies with a former client/patient, or an immediate family member of a former client/patient.

IRRC expressed three concerns about proposed § 41.83. First, IRRC commented that § 41.84 needs to clarify that the factors contained in § 41.83(b) must be demonstrated only after an order to show cause has been issued, and prior to or at the time of initiation of the relationship. IRRC commented that a psychologist would not be required to present proof there has been no exploitation until after an order to show cause has been issued. A psychologist who desires to commence a relationship with a former client/patient 2 years following the termination of the professional relationship must satisfy himself, prior to engaging in the relationship, that there will be no exploitation of the client/patient.

Sexual relationships with former clients are generally deemed to be inappropriate because of the many ongoing responsibilities that a psychologist has to his client after termination. For example, psychologists have an ongoing responsibility to maintain a client's privacy, confidentiality and privilege after termination. Psychologists are responsible for maintaining professional records beyond termination. Psychologists may be subpoenaed to offer expert witness testimony beyond termination. Additionally, psychologists must be cognizant of the fact that initiating or agreeing to a posttherapy sexual relationship with a client interferes with the client's option to return to therapy and may interfere with the integration and consolidation of the transference phenomena and therapeutic work.

In light of these ongoing ethical responsibilities, a psychologist who desires to commence a sexual relationship with a client/patient after 2 years must satisfy himself prior to engaging in the relationship that there has been no exploitation of the client/patient. The seven factors listed in subsection (b) assist the licensee, prior to entering the relationship, and Board when evaluating the relationship, in determining whether exploitation occurs.

Second, IRRC requested the Board to explain why each factor contained in subsection (b)(1)—(7) is necessary in each type of relationship.

The first factor requires a psychologist to consider the amount of time that has passed since the professional relationship terminated. The longer the period following the termination of the professional relationship, the less likely an exploitation occurs.

The second factor recognizes that there are differences between the intensity and depth of different therapies, such as intensive psychodynamic therapy versus biofeedback for headaches. Therapy which consists of one or two sessions differs substantially from therapy which spans several years. Thus, psychologists must consider the nature and the duration of the therapy to fully determine whether a past therapeutic relationship would exploit the client's trust and dependency. The more intensive the therapeutic relationship, the more likely an exploitation occurs.

The third factor recognizes that circumstances surrounding termination may have a large bearing on the likelihood of a posttherapy sexual relationship ever occur-

ring without exploitation or harm, or both, to the client/patient. Examples of circumstances when exploitation may occur include abrupt or explosive terminations of therapy or therapeutic relationships in which transference or counter transference issues are not manageable.

The fourth factor requires the psychologist to consider the client/patient's personal history. This factor recognizes that unique vulnerabilities of a client/patient may increase the risk of vulnerability and harm to the client/patient if a sexual relationship with a former therapist were to develop. The more vulnerable the client, the more likely an exploitation occurs.

The fifth factor requires a psychologist to consider the client/patient's current mental status, that is, state of mind. For example, an individual who is struggling with mental conflicts may be more easily exploited or harmed than a person whose mental status is stable.

The sixth factor requires consideration into whether or not the psychologist had suggested to the client/patient during therapy that a romantic relationship between them would be possible at the end of 2 years.

Finally, the seventh factor requires consideration of whether or not a posttherapy sexual relationship would likely adversely affect the client/patient or immediate family members of the client/patient. IRRC requested an example of an adverse impact under § 41.83(b)(7). The following hypothetical is illustrative of how a post-therapy sexual relationship with a family member of a former client can adversely affect the client.

The mother of a 7 year old child client/patient takes the child to a psychologist for help in dealing with multiple losses experienced by the child. (Two of the child's older siblings with whom the child was especially close died instantly in a tragic accident; the child's parents could not cope with the loss and divorced. In addition, the child's pet dog and "best friend" was struck by a car and died). Through therapy, the psychologist was successful in helping the child deal with his losses. Two years after therapy terminated, the psychologist and the child's mother run into each other at a social event hosted by a mutual friend. The psychologist and mother start dating. The child, now 10 years old, forms a close bond with the psychologist. One year later, the relationship between mother and psychologist ends. The child falls apart because of another loss. In this hypothetical, consideration by the psychologist of the child client/patient's personal history would have ruled out the possibility of the psychologist commencing a relationship with the child's mother.

§ 41.84. Disciplinary proceedings.

IRRC again commented that the Board should clarify that the psychologist's burden of proof occurs only after an order to show cause has been issued. As previously explained, the psychologist is not required to provide the Board with proof until a disciplinary action commences. Nonetheless, the psychologist must consider the seven factors contained in § 41.83(b) prior to entering into the relationship. The Board believes that no revision is necessary to subsection (c) as disciplinary proceedings require the filing of an order to show cause unless settled in advance through a consent agreement between the parties.

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-form regulations address a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the amendments should not necessitate any legal, accounting, reporting or other paperwork requirements.

Statutory Authority

The amendments are adopted under the authority of section 3.2(2) of the Professional Psychologist's Practice Act (63 P. S. § 1203.2(2)).

Sunset Date

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

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 28 Pa.B. 1421, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) 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 all comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were approved by the HPLC on April 18, 2000, and deemed approved by the SCP/PLC on April 26, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 27, 2000, and approved the final-form regulations.

Contact Person

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

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, 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 28 Pa.B. 1421.
- (4) These amendments are necessary and appropriate for administration and enforcement of the Board's authorizing statute.

Order

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

- (a) The regulations of the Board, 49 Pa. Code Chapter 41, are amended by amending § 41.1 and adding

§§ 41.81—41.85 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 upon publication in the *Pennsylvania Bulletin*.

YVONNE E. KEAIRNS, Ph.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2430 (May 13, 2000)).

Fiscal Note: Fiscal Note 16A-633 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:

* * * * *

Client/patient—A person, system, organization, group or family for whom a psychologist provides psychological services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decisionmaking purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

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Immediate family member—Parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

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Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a psychologist and a client/patient and continuing thereafter until the last date of a professional service. If a psychologist sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the psychologist provides a professional service to the client/patient.

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Psychologist—A person who holds a license issued under the act to engage in the practice of psychology.

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Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include, but are not limited to, sexual intercourse, nontherapeutic verbal communication or inappropriate nonverbal communications of a sexual or romantic nature, sexual invitations, soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the psychologist), exposure, kissing or hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

SEXUAL INTIMACIES

§ 41.81. Prohibited conduct.

(a) Sexual intimacies between a psychologist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

(b) Sexual intimacies between a psychologist and a psychology trainee, student or research participant are prohibited.

§ 41.82. Former sexual partners as client/patients.

Psychologists may not accept as client/patients persons with whom they have engaged in sexual intimacies.

§ 41.83. Sexual intimacies with a former client/patient, or an immediate family member of a former client/patient.

(a) Sexual intimacies between a psychologist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 2 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 2-year period, psychologists who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.
- (7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 41.84. Disciplinary proceedings.

(a) The consent of an individual to engage in sexual intimacies with the psychologist may not be a defense in any disciplinary action brought under §§ 41.81—41.83 (relating to prohibited conduct; former sexual partners as client patients; and sexual intimacies with a former client/patient or, an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct

of an individual may be admissible in a disciplinary action brought under §§ 41.81—41.83.

(c) In a disciplinary proceeding brought under §§ 41.81—41.83, the psychologist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 41.83(b)(1)—(7).

§ 41.85. Impaired professional program.

When the Board takes disciplinary or corrective action against a psychologist under section 8(a) of the act (63 P. S. § 1208(a)), for conduct prohibited by §§ 41.81—41.83 (relating to sexual intimacies with a former client/patient, or an immediate family member of a former client/patient) the psychologist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.

[Pa.B. Doc. No. 00-886. Filed for public inspection May 26, 2000, 9:00 a.m.]

STATE BOARD OF OCCUPATIONAL
THERAPY EDUCATION AND LICENSURE
[49 PA. CODE CH. 42]
Fees

The State Board of Occupational Therapy Education and Licensure (Board) amends § 42.17 (relating to licensure fees), pertaining to fees for verification and certification of licensure records to read as set forth in Annex A.

A. Effective Date

The amendment will be effective upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The Board is authorized to set fees by regulation under section 17 of the Occupational Therapy Practice Act (63 P. S. § 1517).

C. Purpose

The statutory authority requires that the Board increase fees to meet or exceed projected expenditures. Biennial renewal fees support general administrative and enforcement costs. Fees for various services provided directly to applicants or licensees are based upon the actual charge of providing the service requested.

The fees in this rulemaking represent the cost of providing an official sealed document of Board records. By this amendment, the cost of providing the service will be apportioned to users.

This rulemaking results from a recent systems audit of the existing fees for services of the State boards within the Bureau of Professional and Occupational Affairs (Bureau). The audit determined that the current service fees for the State boards were adequate to cover their cost, with the exception of fees charged for verification and certification of license records.

D. Summary of Comments and Responses to Proposed Rulemaking

The proposed amendment was published at 29 Pa.B. 1896 (April 10, 1999). No public comments were received. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent

Regulatory Review Commission (IRRC). The following is the Board's response to those comments.

Certification and Verification Fee

The HPLC questioned under what circumstances the Board "certifies" an examination score. The HPLC and IRRC also requested an explanation of the difference between a verification and certification and an explanation of what accounts for the differential in fees.

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally the state of original licensure is the only source of the score of the licensee as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction at the time of original licensure. For this reason, these states require that the State boards of the Commonwealth certify the examination score the applicant achieved on the licensure examination.

As noted in proposed rulemaking, the difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. States request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau has been able to create two documents from its records that will meet all of the needs of the requesting state. The licensee, when applying to the other state, receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee. In the case of a verification, the staff produces the requested documentation by a letter, usually computer generated, which contains the license number, date of original issuance and current expiration date and status of the license. The letters are printed from the Bureau's central computer records and sent to the State boards' staff responsible for handling the licensees application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes. The Bureau uses the term "certification fee" to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries, or for employment of training in another state. A certification document contains information specific to the individual requestor. It may include dates or location where examinations were taken, or scores achieved or hours and location of training. The information is entered onto a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The State Boards' staff then seals and issues this document.

Administrative Overhead

IRRC requested that the Bureau and the State boards: (1) itemize the overhead cost to be recouped by the fees;

and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau's method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the State boards' enabling statutes.

In computing overhead charges, the State boards and the Bureau include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific State board. Once determined, the Bureau's total administrative charge is apportioned to each State board based upon that board's share of the total active licensee population. In turn, the State boards' administrative charge is divided by the number of active licensees to calculate a per application charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the HPLC, the Senate Consumer Protection and Professional Licensure Committee (SCPPLC) and IRRC as reasonable and consistent with the Legislative intent of statutory provisions which require the State boards to establish fees which meet or exceed expenses.

IRRC suggested that within each State board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay one-half as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology, the Bureau and the State boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead of charge obtained by applying IRRC suggested time factor versus the current method. This review of the State boards' operation showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the State boards noted that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these 5 biennial cycles, the experience of both the State boards and the Bureau has been that established and verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors. This method has provided a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the State boards over an extended period. Similarly accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for rounding up the actual costs to establish a fee. This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

For these reasons, the State boards have not made changes in the method by which they allocate administrative expenditures and the resulting fees will remain as proposed. Additionally, the HPLC requested further information on fees of other states which are comparable in response to Regulatory Analysis Item 25. This has been added to the analysis and is available to the public on request.

The HPLC also requested with respect to Bureau fees generally that additional information be provided to the Regulatory Analysis Form filed with the HPLC, SCPPLC and IRRC. This information concerned comparable fees of other states (Item 25). Additional information has been provided and a copy of the Regulatory Analysis Form is available to the public upon request.

E. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 1999, the Board submitted a copy of the proposed rulemaking to the Chairpersons of the HPLC, SCPPLC and IRRC for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Board also provide additional documentation. In preparing the final-form regulation the Board considered the comments from the HPLC, SCPPLC and IRRC.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form regulation was deemed approved by the HPLC and SCPPLC on April 11, 2000. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 27, 2000, and approved the final-form regulation.

F. *Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the final-form regulation the Board considered the least restrictive alternative to regulate costs for services for certification or verification of licensure.

G. *Fiscal Impact and Paperwork Requirements*

The final-form regulation will have no fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who request certification or verification services from the Board. The amendment will impose no additional paperwork requirement upon the Commonwealth, political subdivisions or the private sector.

H. *Sunset Date*

The Board continuously monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

I. *Contact Persons*

The contact person is Clara Flinchum, Administrator, State Board of Occupational Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given as required by sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202).
- (2) A public comment period was provided as required by law.
- (3) The amendment does not enlarge the scope of proposed rulemaking at 29 Pa.B. 1896.
- (4) The amendment is necessary and appropriate to administer and enforce the Board's enabling statute.

Order

The Board, acting under the authority of its enabling statute, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending § 42.17 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 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*.

HANNA GRUEN,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2430 (May 13, 2000).)

Fiscal Note: Fiscal Note 16A-672 remains valid for the final adoption of the subject regulation.

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
LICENSURE

§ 42.17. Licensure fees.

(a) The fee schedule for licensure as an occupational therapist shall be as follows:

Application for license	\$30
Biennial renewal of license	\$55
Temporary license	\$20
Verification of licensure	\$15
Certification of license, scores or hours	\$25

(b) The fee schedule for licensure as an occupational therapy assistant shall be as follows:

Application for license	\$30
Biennial renewal of license	\$45
Temporary license	\$20
Verification of licensure	\$15
Certification of license, scores or hours	\$25

[Pa.B. Doc. No. 00-887. Filed for public inspection May 26, 2000, 9:00 a.m.]

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE
[49 PA. CODE CH. 42]
Oral Orders

The State Board of Occupational Therapy Education and Licensure (Board) adopts § 42.25 (relating to oral orders) to read as set forth in Annex A.

A. Effective Date

The amendment takes effect upon publication in the *Pennsylvania Bulletin*.

B. Statutory Authority

The Board has authority to adopt regulations not inconsistent with the Occupational Therapy Practice Act (act) (63 P.S. §§ 1501—1519) as it deems necessary for the performance of its duties and the proper administration of the law under section 5(b) of the act (63 P.S. § 1505(b)).

C. Purpose

Section 14 of the act (63 P.S. § 1514) specifies that implementation of direct occupational therapy to an individual for a specific medical condition must be based on a referral from a licensed physician or a licensed podiatrist. The Board has long construed this to include services ordered orally by a licensed physician or licensed podiatrist. The purpose of this rulemaking is to codify the Board's interpretation of the act and outline the conditions under which an occupational therapist may implement therapy based on an oral order.

Under the regulation an occupational therapist receives written orders to implement therapy under ordinary circumstances but may accept an oral order if the urgency of the medical circumstances requires treatment to begin immediately. The occupational therapist will be required to immediately transcribe an oral order and obtain the countersignature of the prescriber within a specified period of time, either 5 days in a private setting, or in accordance with regulations of the Department of Health (Department) in a facility licensed by the Department. A detailed explanation of the purpose and background of the rulemaking may be found in the proposed rulemaking at 29 Pa.B. 3070 (June 18, 1999).

D. Compliance with Executive Order 1996-1

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendment, the Board solicited input and suggestions from the regulated community by providing drafts to organizations and entities which represent the profession, educational institutions and interested individuals.

E. Summary of Comments and Responses to Proposed Rulemaking

The proposal was published at 29 Pa.B. 3070. The Board received two public comments and comments from the Independent Regulatory Review Commission (IRRC). The following is the Board's response to those comments:

The Pennsylvania Occupational Therapy Association (POTA) expressed unequivocal support for the proposed rulemaking. The POTA pointed out that under current law and regulations an occupational therapist was not prohibited from receiving an oral order in any setting except a hospital. The POTA expressed the opinion that many occupational therapists wrongly believed that they were unable to implement therapy based on an oral order in any setting. The POTA stated that when an occupational therapist is unable to receive an oral order, another professional, untrained in occupational therapy, must serve as an intermediary between the prescriber and the occupational therapist, causing delay in treatment.

The Pennsylvania Medical Society (PMS) and IRRC addressed the requirement in § 42.25(b) that the prescriber countersign the orally delivered order within 5 days. The PMS pointed out that in private settings the site of occupational therapy might be independent of the prescriber's office and the prescriber would not typically visit the facility of the occupational therapist to countersign the order. The PMS and IRRC suggested that the regulation permit the use of a faxed or mailed copy of the order to be sent after the order is given orally. The Board has adopted this suggestion and has revised § 42.25(b) accordingly.

IRRC noted that the proposed amendment did not state what the occupational therapist should do if a timely countersignature from the physician or podiatrist was not obtained and expressed the view that the regulation should state what the occupational therapist should then do. The Board declined to adopt this suggestion. The Board notes that the regulations of the Department pertaining to oral and telephone orders in long-term nursing care facilities require the physician to countersign orders which were delivered orally, but do not specify what the health care professional is to do if the physician does not timely countersign. See 28 Pa. Code § 211.3(b) (relating to oral and telephone orders). Similarly, the licensed health care professional in a home health care agency who receives an oral order for medication and treatment is required to obtain the physician's countersignature on the order which was delivered orally, but is not required to follow a procedure specified by regulation if the physician does not timely countersign. See 28 Pa. Code § 601.31(d) (relating to acceptance of patients, plan of treatment and medical supervision). The Board does not believe that obtaining the signature of the physician or podiatrist is likely to be a problem and, if the signature is not timely obtained, the course of action should be left to the professional judgment of the therapist based on the facts of the situation, as well as the policies of the institution or setting in which the service is rendered.

IRRC also requested that the rulemaking refer to the specific regulations of the Department for time limits for obtaining a prescriber's countersignature in a long-term nursing care facility and in a home health care agency. The Board has added these references in § 42.25(c).

Additionally, the Board has made minor revisions to the final-form rulemaking to eliminate redundant phrases.

F. Fiscal Impact and Paperwork Requirements

Commonwealth—There will be no adverse fiscal impact or paperwork requirements imposed.

Political subdivisions—There will be no adverse fiscal impact or paperwork requirements imposed.

Private sector—There is no adverse fiscal impact associated with this amendment. The regulation's requirement that an oral order must be immediately transcribed in the patient's medical record and countersigned by the ordering physician or podiatrist places a minimal burden, in terms of paperwork requirements, on the licensee and the ordering physician or podiatrist. Because careful and detailed recordkeeping is an essential aspect of all health care practice and because the Department regulations already require oral orders to be countersigned within a specific period of time, licensees and ordering physicians or podiatrists would keep the records even in the absence of the specific regulation imposing the requirement.

G. Sunset Date

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

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 29 Pa.B. 3070, to IRRC and to 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(c) 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 this final-form regulation, the Board has considered the comments received from IRRC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form regulation was deemed approved by the House and Senate Committee on April 18, 2000. IRRC met on May 11, 2000, and approved the amendment in accordance with section 5.1(e) of the Regulatory Review Act.

I. Contact Person

Further information may be obtained by contacting Clara Flinchum, Administrative Assistant, State Board of Occupational Therapy Education and Licensure, 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) This final-form rulemaking does not enlarge the purpose of the proposed rulemaking published at 29 Pa.B. 3070.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this Preamble.

K. Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by adding § 42.25 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*.

HANNA GRUEN,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 30 Pa.B. 2688 (May 27, 2000).)

Fiscal Note: Fiscal Note 16A-673 remains valid for the final adoption of the subject regulation.

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

MINIMUM STANDARDS OF PRACTICE

§ 42.25. Oral orders.

(a) An occupational therapist shall accept a referral in the form of a written order from a licensed physician or licensed podiatrist in accordance with section 14 of the act (63 P. S. § 1514) unless the urgency of the medical circumstances requires immediate treatment. In these circumstances, an occupational therapist may accept an oral order for occupational therapy from a licensed physician or licensed podiatrist, if the oral order is immediately transcribed, including the date and time, in the patient's medical record and signed by the occupational therapist taking the order.

(b) The countersignature of the licensed physician or licensed podiatrist shall be obtained within 5 days of receipt of the oral order in the case of an occupational therapist providing ordered services in a private office setting. In the case of an occupational therapist providing services in a setting that is independent of the prescribing physician's or podiatrist's office, the countersignature on a written copy of the order may be mailed or faxed to the occupational therapist.

(c) In the case of an occupational therapist providing services in a facility licensed by the Department of Health, the countersignature of the licensed physician or licensed podiatrist shall be obtained in accordance with applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and

601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).

[Pa.B. Doc. No. 00-888. Filed for public inspection May 26, 2000, 9:00 a.m.]

Title 58—RECREATION

GAME COMMISSION

[58 PA. CODE CH. 141]

Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 4, 2000, meeting adopted the following change: Amend Chapter 141 (relating to hunting and trapping):

Subchapter A (relating to general):

§ 141.1 (relating to special regulations areas), to allow the .410 shotgun with single projectile ammunition for deer hunting in the special regulations areas, and clarify that the 20 gauge shotgun or larger would continue to be lawful for buckshot in the Southeast special regulations areas.

§ 141.4 (relating to hunting hours), to allow the hunting of bobcat any hour, day or night.

§ 141.5 (relating to furbearer tagging requirements), to require the tagging of bobcat taken under a special permit.

§ 141.6 (relating to illegal devices), to allow the hunting of bobcat by the use of electronic calls, and permitting snares to be completely or partially submerged in water to be used to take beaver.

Subchapter B (relating to small game):

§ 141.21 (relating to hen ringneck pheasant), to expand the male and female pheasant area to include additional counties with low wild pheasant populations and low capability (due to natural succession and land use practices) to support a long-term wild pheasant population.

Subchapter C (relating to big game):

§ 141.43 (relating to deer), to address hunting safety concerns by requiring fluorescent orange during the overlap with the flintlock muzzleloading season that precedes the regular firearms season for deer, and to allow the use of muzzleloading pistols and expand types of lawful ammunition.

§ 141.45 (relating to turkey), by limiting lawful hunting devices to shotguns and archery in certain turkey management areas.

Subchapter D (relating to trapping):

§ 141.63 (relating to definitions), by changing the stop location to allow the snare loop to close to a minimum circumference of 7 inches.

These amendments are adopted under the authority of 34 Pa.C.S. §§ 101—2965 (relating to Game and Wildlife Code) (code).

Amendment to § 141.1

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held

on January 11, 2000, proposed, and at its April 4, 2000, meeting finally adopted changing § 141.1 to allow the use of the .410 shotgun with single projectile ammunition for deer hunting in special regulations areas. This will allow more flexibility for muzzleloaders in special regulations areas and create more consistency with what exists in the rest of this Commonwealth. These changes are adopted under authority contained in section 2102 of the code (relating to regulations).

2. *Purpose and Authority*

The .410 shotgun with single projectile ammunition can currently be lawfully used to hunt deer through most of this Commonwealth. Section 141.1 has a limitation that at least a 20 gauge long gun or shotgun propelling a single projectile shall be used. This has led to confusion for deer hunters who hunt both inside and outside of special regulations areas. The adopted changes will eliminate this limitation with regard to single projectile ammunition in special regulations areas but retain the requirement when using buckshot.

Section 2102(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning ... the ways, manner, methods, and means of hunting or furtaking..." Section 2102(d) also directs the Commission to promulgate regulations stipulating "... the type of firearms and ammunition and other devices which may be used..." The changes were adopted under this authority.

3. *Regulatory Requirements*

The amendment will relax current requirements.

4. *Persons Affected*

Individuals wishing to hunt deer in special regulations areas with muzzleloading long guns or shotguns using single projectile ammunition will be affected by the amendment.

Amendments to §§ 141.1, 141.5 and 141.6

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on January 11, 2000, proposed, and at its April 4, 2000, meeting finally adopted having a bobcat hunting and trapping season and also proposed changing §§ 141.4—141.6 to regulate the taking and tagging of bobcats. The Commission also adopted changing § 141.6 to permit partially submerged snares to be used to take beaver. These changes were adopted under sections 322 and 2102(a) of the code (relating to powers and duties of the Commission and regulations).

2. *Purpose and Authority*

After some years of studying bobcats and bobcat populations in this Commonwealth, the Commission biologists have concluded that limited numbers of bobcats can be safely harvested by hunting and trapping. The Commission has therefore proposed a bobcat season as part of its seasons and bag limit proposals for 2000—2001. To regulate the taking of bobcats, other changes to 58 Pa. Code will be required.

Under the amendments, § 141.4 will be changed to specify hunting hours for bobcats. Also, under the changes, § 141.5 is changed to require tagging of bobcats. Finally, § 141.6 is changed to allow use of electronic devices to take bobcats.

In addition, the Commission has changed § 141.6 to allow partially submerged snares to be used to take

beaver. This change should increase snare capture efficiency and eliminate problems caused by fluctuating water levels.

Section 322(c) of the code empowers the Commission to fix daily shooting or taking hours and devices that can be used. Section 2102(a) of the code authorizes the Commission to promulgate regulations relating to the hunting of game or wildlife in this Commonwealth. The changes were adopted under this authority.

3. *Regulatory Requirements*

The changes set hours for hunting bobcats, require tagging of harvested bobcats and allow the use of electronic devices to take bobcats.

4. *Persons Affected*

Individuals wishing to hunt or trap bobcats or trap beavers will be affected.

Amendment to § 141.21

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its January 11, 2000, meeting proposed, and at its April 4, 2000, meeting finally adopted changing § 141.21 to allow the taking of female pheasants in a larger area of this Commonwealth. This change was adopted under sections 322(c)(1) and 2102(b)(1) of the code.

2. *Purpose and Authority*

The Commission is required to set hunting and furtaking season and bag limits on an annual basis. Section 322 of the code specifically empowers the Commission to fix seasons for any species of game or wildlife. Section 2102(b) of the code mandates that the Commission promulgate regulations relating to seasons and bag limits.

It has become apparent that a larger area of this Commonwealth, for various reasons, is incapable of supporting a long-term wild pheasant population. Pheasants that are harvested in that area are essentially birds that were stocked by the Commission. To maximize the benefit of those stocked pheasants, the Commission has adopted allowing pheasants of either sex to be taken in the shaded areas of the map, a larger area than the prior regulation.

3. *Regulatory Requirements*

The change will relax current regulatory requirements.

4. *Persons Affected*

Hunters wishing to hunt pheasants in this Commonwealth will be affected by the change.

Amendment to § 141.43

1. *Introduction*

To provide for the safety of hunters in the field and to provide more options to hunters wishing to take advantage of the muzzleloader deer season, the Commission at its January 11, 2000, meeting proposed, and at its April 4, 2000, meeting finally adopted changes to § 141.43 to require archers to wear daylight fluorescent orange-colored material during the proposed early flintlock muzzleloader season and to allow the use of muzzleloading pistols and maxi and mini ball ammunition during muzzleloading season. These changes were adopted under the authority contained in section 2102 of the code.

2. *Purpose and Authority*

As part of the 2000—2001 seasons and bag limits, the Commission decided to include a 3-day early flintlock

muzzleloader antlerless deer season. Since this season would overlap the archery deer season and at some time in the future may overlap turkey season, it was decided to require archers to wear or display daylight fluorescent orange-colored material. This necessitated changing § 141.43. In addition, to expand the variety of firearms and ammunition available during the muzzleloader deer season, the Commission has changed § 141.43 to allow the use of pistols and mini and maxi balls.

Section 2101(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning ... the ways, manner, methods, and means of hunting or furtaking and the health and safety of persons who hunt or take wildlife ..." This provision provides the authority for the changes.

3. *Regulatory Requirements*

The adopted changes require archery deer hunters to wear or display daylight fluorescent orange-colored material during the early flintlock muzzleloader antlerless deer season. The other changes relax current restrictions.

4. *Persons Affected*

Those desiring to hunt that part of the archery deer season that overlaps with the early flintlock muzzleloader antlerless deer season will be affected by the changes.

Amendment to § 141.45

1. *Introduction*

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its January 11, 2000, meeting proposed, and at its April 4, 2000, meeting finally adopted changing § 141.45 to allow for the fact that Turkey Management Areas 1 and 9 have been split into Turkey Management Areas 1-A and 1-B and 9-A and 9-B. This change was adopted under authority contained in sections 322(c)(4) and 2102(a) of the code.

2. *Purpose and Authority*

To better manage turkey populations in this Commonwealth, the Commission has split the turkey management areas, Nos. 1 and 9 in the more populous parts of the State, each into areas A and B, as is shown on the map in Chapter 141, Appendix C. The provision of § 141.45 prohibiting single projectile ammunition in those areas was not changed accordingly. The adopted change will make this adjustment.

Section 322(c)(4) of the code authorizes the Commission to define geographic limitations or restrictions. Section 2102(a) of the code directs the Commission to promulgate these regulations as it deems necessary and appropriate concerning hunting or furtaking. The change was adopted under this authority.

3. *Regulatory Requirements*

The amendment will not change any regulatory requirements.

4. *Persons Affected*

Since the change is essentially editorial, it will have no real impact.

Amendment to § 141.63

1. *Introduction*

To more effectively manage the wildlife resources of the Commonwealth, the Commission at its meeting held on January 11, 2000, proposed, and at its April 4, 2000, meeting finally adopted changing § 141.63 to reduce the minimum circumference of snare loops used in trapping

beaver from 20 inches to 7 inches. This change was adopted under authority contained in sections 322(c)(5) and 2102(a) of the code.

2. *Purpose and Authority*

In 1998, the Commission changed its trapping regulations to allow snaring of beaver but required that the snare be crimped so it closed to a minimum circumference of 20 inches. This minimum circumference has been very inefficient in snaring beaver. As a result, the Commission has reduced the circumference to 7 inches.

Section 322(c)(5) of the code directs the Commission to: "Fix the type and number of devices which may be used to take game or wildlife." Section 2102(a) of the code directs the Commission to promulgate regulations concerning the "... ways, manner, methods and means of hunting or furtaking." The change was adopted under this authority.

3. *Regulatory Requirements*

The adopted change relaxes a restriction and should enable beaver trappers to be more successful.

4. *Persons Affected*

Individuals wishing to trap beaver with snares are affected by the change.

Comment and Response Summary

No written comments were received with regard to the proposed changes.

Cost and Paperwork Requirements

The adopted changes should not result in any additional cost or paperwork.

Effective Date

The changes will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

Contact Person

For further information on the changes, contact William L. Hutson, Director, Bureau of Law Information, 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 Chapter 141, are amended by amending §§ 141.1, 141.4—141.6, 141.21, 141.43, 141.45 and 141.63, to read as set forth at 30 Pa.B. 1262 (March 4, 2000).

(b) The Executive Director of the Commission shall submit this order and 30 Pa.B. 1262 (March 4, 2000) and deposit them with the Legislative Reference Bureau as required by law.

(c) This order amending §§ 141.1, 141.4—141.6, 141.21, 141.43, 141.45 and 141.63 shall become effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,
Executive Director

Fiscal Note: Fiscal Note 48-119 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 00-889. Filed for public inspection May 26, 2000, 9:00 a.m.]
