

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING  
[49 PA. CODE CH. 21]

### Sexual Misconduct

The State Board of Nursing (Board) adopts amendments to Chapter 21 (relating to State Board of Nursing) to read as set forth in Annex A.

#### A. Effective Date

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

#### B. Statutory Authority

These amendments are adopted by the Board under the authority of section 2.1(k) of the Professional Nursing Law (63 P. S. § 212.1(k)) and section 17.6 of the Practical Nurse Law (63 P. S. § 667.6).

#### C. Background and Purpose

These amendments were proposed against a background of increasing complaints of sexual misconduct against health care professionals who are licensed by the Bureau of Professional and Occupational Affairs (Bureau). The sexual exploitation of patients by health care practitioners presents a threat to public health and safety.

The amendments are intended to protect patients from sexual exploitation and to inform nurses that sexual misconduct is subject to disciplinary action. The amendments establish that conduct defined as a sexual violation or sexual impropriety with a patient during the course of a professional relationship violates standards of nursing conduct. Further, the amendments establish additional standards for registered nurses involved in mental health services by deeming their professional relationship with a patient to extend for 2 years after services are discontinued. The amendments establish that the consent of a patient to a sexual impropriety or sexual violation cannot be a defense in a disciplinary proceeding before the Board and that a nurse who engages in conduct prohibited by the amendments is not eligible for placement into an impaired professional program under either the Professional Nursing Law or the Practical Nurse Law.

#### D. Summary of Comments and Responses on Proposed Rulemaking

Notice of the proposed rulemaking was published at 28 Pa.B. 2693 (June 13, 1998). The Board received comments from the Independent Regulatory Review Commission (IRRC) and one public commentator, The Hospital and Healthsystem Association of Pennsylvania (HAP). Responses to these comments are organized by subject as follows.

#### §§ 21.1 and 21.141. Definitions.

The commentators objected to the term "behavioral/mental health nurse therapist" in § 21.1 (relating to registered nurses). HAP commented that the term "therapist" in the definition could be interpreted to mean that the nurse is also an independent practitioner providing

therapy services. HAP suggested that the definition should be clarified to reflect what categories of nurses are included in the definition. IRRC commented that the definition was beyond the Board's authority and conflicted with the Professional Nursing Law in that it could be interpreted to allow a nurse to unilaterally prescribe medical treatment or regimens. IRRC recommended deletion of the term "behavioral/mental health nurse therapist," but did not object to a different standard for nurses providing services in the mental health field. IRRC suggested, and the Board concurs, that this distinction should be made in the definition of "professional relationship." In final rulemaking, the Board has deleted the term "behavioral/mental health nurse therapist" and placed the distinction pertaining to the duration of the professional relationship for nurses practicing in the mental health field in the definition of "professional relationship."

As proposed, § 21.1 provided that for a nurse not involved in mental health services, the professional relationship ends with the patient's discharge from or discontinuance of services by the nurse or by the nurse's employer. IRRC questioned how this provision applies when an individual returns to a nurse's employer for treatment which is not related to the treatment provided by the original nurse. The Board's intent is that the professional relationship terminates for the original nurse when she last treats the patient. The Board believes the proposal adequately reflects the Board's intent, and therefore, no change in final rulemaking has been made.

IRRC suggested editorial changes to § 21.1(i) concerning the professional relationship for professional nurses. The Board has made the changes. The Board also has made similar editorial changes to § 21.141(i) concerning the professional relationship for practical nurses for clarity and uniformity.

#### §§ 21.18 and 21.148. Standards of nursing conduct.

IRRC suggested that the specific citations to the relevant statutes authorizing civil penalties in these sections should be provided. IRRC's suggestion has been adopted in the final version.

#### §§ 21.18a and 21.148a. Postadjudication reporting.

As proposed, §§ 21.18a and 21.148a provide that as a condition for reinstatement, the Board may require the nurse to obtain prior, written, informed consent of the patient to be treated by the nurse. Prior to treatment, the patient would sign a form that indicates that the patient consents to being treated by a nurse who had committed a sexual misconduct violation.

IRRC questioned the need for this provision because the condition for reinstatement would apply after the Board had already made a determination that a nurse with a sexual misconduct violation was fit to resume practice. IRRC also questioned the practicality and reasonableness of requiring the form to be signed by a patient. Both IRRC and HAP noted that a hospital or doctor's office would be unlikely to hire a nurse if patients would have to sign a consent form before that nurse could treat them. IRRC and HAP also expressed concern about the circumstances under which the Board might require the consent form. HAP expressed concern that this could lead to staffing problems at hospitals that hired nurses with a sexual misconduct violation if patients refused treatment by the nurse. HAP noted that additional

problems could arise if a patient refused treatment by a nurse with a sexual misconduct violation, but the nurse with a violation was the only one on duty. HAP suggested that signing the consent form may produce undue anxiety in patients. HAP further noted that this kind of reporting is not required for any other standard of conduct violation. Both commentators suggested that these sections be reconsidered.

The Board concurs with these concerns and suggestions. The Board has determined that the proposed rulemaking would be impractical and unduly burdensome for the reasons raised by IRRC and HAP. Therefore, the Board has deleted these provisions from final-form rulemaking.

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

In accordance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments, the Board solicited input and suggestions from the regulated community by providing drafts to interested associations and organizations, which represent the professions, educational institutions and interested individuals. The Board reviewed and considered all comments and suggestions by interested parties received during the regulatory development process. The final-form regulations address a compelling public interest as described in this preamble and otherwise comply with Executive Order 1996-1.

*F. Fiscal Impact and Paperwork Requirements.*

There should be no adverse fiscal impact or additional paperwork requirements incurred by the Board, political subdivisions or the private sector.

*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 on June 13, 1998, published at 28 Pa.B. 2693—2697, 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 documents. In preparing these final-form regulations, the Board has considered the comments received from IRRC and the public. No comments were received from the Committees.

These final-form regulations were deemed approved by the House and Senate Committee on June 6, 2000. IRRC met on June 22, 2000, and approved the regulations in accordance with section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)).

*I. Contact Person*

Interested persons may obtain information regarding the amendments by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, 124 Pine Street, Harrisburg, PA 17105-2649.

*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 amendment does not enlarge the purpose of proposed rulemaking published at 28 Pa.B. 2693.

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

*K. Order*

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

(1) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by amending §§ 21.1, 21.18, 21.141 and 21.148 and by adding §§ 21.4a, 21.18a, 21.146a and 21.148a to read as set forth in Annex A.

*(Editor's Note:* The proposal to add §§ 21.18b and 21.148b, included in the proposal at 28 Pa.B. 2693, has been withdrawn by the Board.)

(2) 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.

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

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

M. CHRISTINE ALICHNIE, PhD, RN  
*Chairperson*

*(Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 3534 (July 8, 2000).)

**Fiscal Note:** Fiscal Note 16A-5110 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 21. STATE BOARD OF NURSING**

**Subchapter A. REGISTERED NURSES**

**GENERAL PROVISIONS**

**§ 21.1. Definitions.**

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

*Act*—The Professional Nursing Law (63 P. S. §§ 211—225), which establishes standards for nursing schools and the conduct of nursing programs.

*Approved*—Approved by the Board.

*Board*—The State Board of Nursing of the Commonwealth.

*Diagnosing*—Identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen.

*Human responses*—Those signs, symptoms and processes which denote the interaction of the individual with an actual or potential health problem.

*Patient (includes residents and clients)*—A person, other than a spouse or immediate family member, who receives professional services from a registered nurse, regardless of whether the nurse receives remuneration for the services.

*Practice of professional nursing*—Diagnosing and treating human responses to actual or potential health problems through such services as casefindings, health teaching, health counseling, provision of care supportive to or restorative of life and well-being, and executing medical regimens as prescribed by a licensed physician or dentist. The term does not include acts of medical diagnosis or prescription of medical therapeutic or corrective measures, except as may be authorized by rules and regulations jointly promulgated by the State Board of Medicine and the Board, which rules and regulations will be implemented by the Board.

*Professional relationship*—

(i) For a registered nurse not involved in providing mental health services, the relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a registered nurse and a patient and ending with the patient's discharge from or discontinuance of services by the nurse or by the nurse's employer. The administration of emergency medical treatment or transitory trauma care will not be deemed to establish a professional relationship.

(ii) For a registered nurse involved in providing mental health services, the relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between the nurse and patient and ending 2 years after discharge from or discontinuance of services. For a patient who is a minor, a professional relationship shall be deemed to exist for 2 years or until 1 year after the age of majority, whichever is longer, after discharge from or discontinuance of services.

*Registered nurse*—A nurse licensed under this subchapter to practice in this Commonwealth.

*Sexual impropriety*—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance.

(iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.

(iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

*Sexual violation*—The term includes the following offenses:

(i) Sexual intercourse between a registered nurse and a patient during the professional relationship.

(ii) Genital to genital contact between a nurse and a patient during the professional relationship.

(iii) Oral to genital contact between a nurse and a patient during the professional relationship.

(iv) Touching breasts, genitals, or any other body part for any purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.

(v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while a patient is present.

(vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

*Treating*—Selection and performance of those therapeutic measures essential to the effective execution and management of the nursing regimen and execution of the prescribed medical regimen.

#### § 21.4a. Procedural matters.

(a) The consent of the patient to any sexual impropriety or violation is not a defense to any disciplinary charge for violation of the act or this subchapter.

(b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.18(b)(9) (relating to standards of nursing conduct). The Board may consider sexual relationships between the nurse and the patient occurring prior to the professional relationship.

(c) A nurse who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of any patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a nurse and a patient shall be fully documented in patient records.

#### § 21.18. Standards of nursing conduct.

(a) A registered nurse shall:

(1) Undertake a specific practice only if the registered nurse has the necessary knowledge, preparation, experience and competency to properly execute the practice.

(2) Respect and consider, while providing nursing care, the individual's right to freedom from psychological and physical abuse.

(3) Act to safeguard the patient from the incompetent, abusive or illegal practice of any individual.

(4) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information. This stan-

dard does not prohibit or affect reporting responsibilities under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law), the Older Adults Protective Services Act (35 P. S. §§ 10211—10224) and other statutes which may mandate reporting of this information.

- (5) Document and maintain accurate records.
- (b) A registered nurse may not:
  - (1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.
  - (2) Discriminate, while providing nursing services, on the basis of age, marital status, sex, sexual preference, race, religion, diagnosis, socioeconomic status or disability.
  - (3) Knowingly permit another individual to use his license or temporary permit for any purpose or knowingly permit the unlicensed person under the registered nurse's jurisdiction or supervision to misrepresent that the individual is a licensed nurse.
  - (4) Misappropriate equipment, materials, property, drugs or money from an employer or patient.
  - (5) Solicit, borrow or misappropriate money, materials or property from a patient or the patient's family.
  - (6) Leave a nursing assignment prior to the proper reporting and notification to the appropriate department head or personnel of such an action.
  - (7) Knowingly abandon a patient in need of nursing care. Abandonment is defined as the intentional deserting of a patient for whom the nurse is responsible.
  - (8) Falsify or knowingly make incorrect entries into the patient's record or other related documents.
  - (9) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.
- (c) A registered nurse who fails to comply with an obligation or prohibition under this section is subject to disciplinary and corrective measures under section 14 of the act (63 P. S. § 224).
- (d) The Board may, in addition to any other disciplinary or corrective measure set forth in this section, levy appropriate civil penalties as authorized by section 13(b) of the act (63 P. S. § 223(b)) upon a nurse found to have engaged in conduct constituting a sexual impropriety or sexual violation.

**§ 21.18a. Impaired professional program.**

When the Board is empowered to take disciplinary or corrective action against a nurse for conduct defined as a sexual violation or sexual impropriety, the nurse will not be eligible for placement into an impaired professional program under section 14.1 of the act (63 P. S. § 224.1).

**Subchapter B. PRACTICAL NURSES  
GENERAL PROVISIONS**

**§ 21.141. Definitions.**

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

*Act*—The Practical Nurse Law (63 P. S. §§ 651—667) which establishes standards for the education of practical nurses and the practice of practical nursing.

*Approved*—Approved by the Board.

*Board*—The State Board of Nursing of this Commonwealth.

*LPN*—Licensed practical nurse. A nurse licensed under this subchapter to practice in this Commonwealth.

*Patient (includes residents and clients)*—A person, other than a spouse or immediate family member, who receives professional services from a licensed practical nurse, regardless of whether or not the nurse receives remuneration for the services.

*Practice of practical nursing*—The performance of selected nursing acts in the care of the ill, injured or infirm under the direction of a licensed professional nurse, a licensed physician or a licensed dentist which do not require the specialized skill, judgment and knowledge required in professional nursing.

*Professional relationship*—The relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a licensed practical nurse and a patient and ending with the final professional contact between them. The administration of emergency medical treatment or transitory trauma care will not be deemed to establish a professional relationship.

*Sexual impropriety*—The term includes the following offenses:

- (i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.
- (ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance.
- (iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.
- (iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.
- (v) Soliciting a date from a patient.
- (vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

*Sexual violation*—The term includes the following offenses:

- (i) Sexual intercourse between a licensed practical nurse and a patient during the professional relationship.
- (ii) Genital to genital contact between a nurse and a patient during the professional relationship.
- (iii) Oral to genital contact between a nurse and a patient during the professional relationship.
- (iv) Touching breasts, genitals or any other body part for any purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.
- (v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while the patient is present.
- (vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in any conduct that would constitute a sexual impropriety or sexual violation.

**§ 21.146a. Procedural matters.**

(a) The consent of the patient to any sexual impropriety or violation is not a defense to any disciplinary charge for violation of the act or this subchapter.

(b) Evidence of specific instances, opinion evidence, or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.148(b)(9) (relating to standards of nursing conduct). The Board may consider sexual relationships between the nurse and the patient occurring prior to the professional relationship.

(c) A nurse who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of a patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a nurse and a patient shall be fully documented in patient records.

**§ 21.148. Standards of nursing conduct.**

(a) A licensed practical nurse shall:

(1) Undertake a specific practice only if the licensed practical nurse has the necessary knowledge, preparation, experience and competency to properly execute the practice.

(2) Respect and consider, while providing nursing care, the individual's right to freedom from psychological and physical abuse.

(3) Act to safeguard the patient from the incompetent, abusive or illegal practice of any individual.

(4) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information. This standard does not prohibit or affect reporting responsibilities under 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law), the Older Adults Protective Services Act (35 P. S. §§ 10211—10224) and other statutes which may mandate reporting of this information.

(5) Document and maintain accurate records.

(b) A licensed practical nurse may not:

(1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.

(2) Discriminate, while providing nursing services, on the basis of age, marital status, sex, sexual preference, race, religion, diagnosis, socioeconomic status or disability.

(3) Knowingly permit another individual to use his license or temporary permit for any purpose or knowingly permit the unlicensed person under the licensed practical nurse's jurisdiction or supervision to misrepresent that the individual is a licensed nurse.

(4) Misappropriate equipment, materials, property, drugs or money from an employer or patient.

(5) Solicit, borrow or misappropriate money, materials or property from a patient or the patient's family.

(6) Leave a nursing assignment prior to the proper reporting and notification to the appropriate department head or personnel of such an action.

(7) Knowingly abandon a patient in need of nursing care. Abandonment is defined as the intentional deserting of a patient for whom the nurse is responsible.

(8) Falsify or knowingly make incorrect entries into the patient's record or other related documents.

(9) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(c) Failure to comply with an obligation or prohibition imposed by this section is subject to disciplinary and corrective measures under section 16 of the act (63 P. S. § 666).

(d) The Board may, in addition to any other disciplinary or corrective measure set forth in this section, levy appropriate civil penalties as authorized by section 15 of the act (63 P. S. § 665) upon a nurse found to have engaged in conduct constituting a sexual impropriety or sexual violation.

**§ 21.148a. Impaired professional program.**

When the Board is empowered to take disciplinary or corrective action against a practical nurse for conduct defined as a sexual violation or sexual impropriety, the nurse will not be eligible for placement into an impaired professional program under section 16.2 of the act (63 P. S. § 666.2).

[Pa.B. Doc. No. 00-1558. Filed for public inspection September 8, 2000, 9:00 a.m.]

**STATE BOARD OF PHARMACY**

**[49 PA. CODE CH. 27]**

**Fees**

The State Board of Pharmacy (Board) amends § 27.91 (relating to schedule of fees) by revising certain application fees to read as set forth in Annex A.

*A. Effective Date*

The amendment takes effect upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

*B. Statutory Authority*

The amendment is authorized under section 8.2 of the Pharmacy Act (63 P. S. § 390-8.2).

*C. Background and Purpose*

Expenses of the Board which are related to processing individual applications or providing certain services directly to individual licensees or applicants are funded through fees which are based on the cost of providing the service. The fee is charged to the person requesting the service.

A recent systems audit within the Bureau of Professional and Occupational Affairs determined that the application and service fees did not accurately reflect the actual cost of processing the applications and performing the services. A detailed explanation of the background of these fees as well as a description of the fees was published at 29 Pa.B. 1613 (March 27, 1999).

*D. Summary of Comments and Responses on Proposed Rulemaking*

Following publication of proposed rulemaking at 29 Pa.B. 1613, the Board did not receive any comments from the general public. 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.

#### *Administrative Overhead Costs*

IRRC requested that the Board and the Bureau of Professional and Occupational Affairs (Bureau) thoroughly examine their cost allocation methodology for administrative overhead and itemize the overhead costs to be recouped by these fees. IRRC commented that although the methodology was reasonable, there was no indication that the fees would recover the actual overhead costs because there was no relationship to the service covered by the fees and because the costs were based upon past expenditures rather than projected expenditures. IRRC expressed the view that there was no certainty that the projected revenues of the new fee would meet or exceed projected revenues, as required under the Board's enabling statute.

As IRRC noted, the adoption of a Bureau-wide averaged overhead for similar services was made when fees were established in 1989 rulemaking. This methodology was approved by the House and Senate oversight committees as well as IRRC. Legislative reviewers expressed a preference to "cost out" both user fees and operating revenue fees based upon actual, documented and verifiable factors as opposed to projected expenses or budgets that might never materialize. Thus, the Bureau has recommended and State Boards have adopted fee schedules which are based upon actual expenditures. Legislative reviewers at that time felt that a procedure for "rounding up" actual fees would be a sufficient cushion to provide any necessary surplus in nonbiennial revenue years and prior to the biennial reconciliation required under board statutes. The Bureau and the boards have used this methodology over 5 biennial reconciliation periods and have discovered this methodology results in relatively stable and reasonable fees.

The Bureau did consider a suggestion that the Bureau look into other methods of distributing administrative overhead expenses. Results obtained by applying a time factor were compared with the current methodology. The current method recouped 22% of the administrative overhead expenses versus 25% using a ratio based on a time factor. Board staff time varies between 23% and 28% to process a request for services for which user fees are charged. When this time factor calculation is combined with the licensee population, the result is wildly varying costs for different licensees who are receiving the same services. For example, using that method to produce a verification letter would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Based upon this analysis the administrative overhead charge of \$9.76 applied to verifications and certifications represented a fair allocation because the work product is essentially the same and because documented experience supports the charge.

#### *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 accounted for the difference in fees.

The certification of a score is made at the request of a licensee when the licensee is seeking to obtain a license in another state based upon a license in this Commonwealth which had been issued as a result of passing a uniform National or regional examination in this Com-

monwealth. Generally, the state of the original license is the only source of the score of the licensee. Testing agencies do not maintain this information. The licensing laws of many states include provisions that a license will be granted by reciprocity or endorsement based on licensure in another state only if the board or agency determines that the qualifications are the same or substantially similar in both states. Many state agencies have interpreted these provisions 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 Pennsylvania Board and other boards certify the examination score the applicant achieved on the license examination.

The difference between the verification and certification fees is based on the amount of time required to produce the document requested by the licensee. States request different information when making a determination as whether to grant a license based on reciprocity or endorsement from another state. The Bureau has been able to create two documents from its records that 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 Board 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 applications for reciprocity or endorsement to other states or for employment or 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 examination 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 period of time is required because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information. The Board staff then seals and issues this document.

#### *E. 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 Board. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *F. Sunset Date*

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

#### *G. 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. 1088, 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, the Committees and the public.

The final-form regulation was approved by the House Committee on May 16, 2000, and deemed approved by the Senate Committee. IRRC met on May 25, 2000, and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act (71 P. S. § 745.5a(e)).

*H. Contact Person*

Further information may be obtained by contacting Melanie Zimmerman, Executive Secretary, State Board of Pharmacy, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4863.

*I. Findings*

The Board finds that:

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

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

(3) These amendments do not enlarge the purpose of proposed rulemaking published at 29 Pa.B. 1088.

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

*J. Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 27, are amended by amending § 27.91 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*.

MICHAEL A. PODGURSKI,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 2965 (June 10, 2000).)*

**Fiscal Note:** Fiscal Note 16A-548 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 27. STATE BOARD OF PHARMACY**

**FEES**

**§ 27.91. Schedule of fees.**

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

Application for pharmacy intern certificate . . . . .	\$30
Application for pharmacist license . . . . .	\$40
North American Pharmacist Licensure Examination (NAPLEX) . . . . .	\$250
Multistate Pharmacy Jurisprudence Examination (MPJE) . . . . .	\$85
Certification of examination scores or internship hours . . . . .	\$25
Verification of licensure . . . . .	\$15
Assistant pharmacist biennial renewal . . . . .	\$120
Registered pharmacist biennial renewal . . . . .	\$120
Registered pharmacist late renewal penalty . . . . .	\$25
New pharmacy permit application . . . . .	\$100
Reinspection of new pharmacy after failure at first inspection . . . . .	\$90
Pharmacy permit change without inspection . . . . .	\$30
Pharmacy permit change when inspection required . . . . .	\$95
Change in pharmacy ownership or Board of Directors . . . . .	\$30
Verification of permit . . . . .	\$15
Biennial renewal of pharmacy permit . . . . .	\$75
Pharmacy permit late renewal penalty . . . . .	\$25

[Pa.B. Doc. No. 00-1559. Filed for public inspection September 8, 2000, 9:00 a.m.]