

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[58 PA. CODE CH. 53]

### Permits for Unpowered Boats Using Commission Lakes and Access Areas

The Fish and Boat Commission (Commission) proposes to amend Chapter 53 (relating to Commission property). The Commission is publishing these amendments as a notice of proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to permits for unpowered boats using Commission lakes and access areas.

#### A. *Effective Date*

The proposed amendment to § 53.8 (relating to boats), if approved on final rulemaking, will go into effect upon publication of an order adopting the amendments in the *Pennsylvania Bulletin*. The proposed regulation set forth in § 53.27 (relating to use permits for unpowered boats), if approved on final rulemaking, will go into effect on December 1, 2001.

#### B. *Contact Person*

For further information on the proposed amendments, contact Laurie E. Shepler, Assistant Counsel, (717) 705-7815, P. O. Box 67000, Harrisburg, PA 17106-7000. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

#### C. *Statutory Authority*

The proposed amendments are published under the statutory authority of section 742(e) of the code (relating to use of property, use of Commission lakes and access areas by unpowered boats).

#### D. *Purpose and Background*

The proposed amendments are designed to update, modify and improve the Commission's regulations pertaining to unpowered boats using Commission lakes and access areas. The specific purpose of the proposed amendments is described in more detail under the summary of proposal.

#### E. *Summary of Proposal*

On December 20, 2000, Governor Ridge signed Senate Bill 1117 into law as Act 115 of 2000, effective immediately. Act 115 of 2000 amends the code by adding section 742(e). The amendment provides that the Commission shall, by regulations adopted within 1 year after the effective date of the section, provide for issuance of use permits, valid for 1 or 2 years, for unpowered boats that are not registered in accordance with law, to use Commission property. The amendment also provides that on and after the effective date of the regulations promulgated by the Commission, the owner of an unpowered boat that uses Commission property shall have the option of registering the boat or purchasing a use permit. The amendment further provides that the Commission shall establish fees for use permits and that these fees may not exceed the fees charged by the Department of Conservation and Natural Resources (DCNR) for boat launch permits for State parks lakes. Last, the amendment provides that the Commission shall, in cooperation with the DCNR, provide for reciprocal or joint use/launch

permits for unpowered boats to use both Commission and State parks lakes and access areas.

This amendment addresses an issue that has been of some concern to unpowered boat owners for several years. It allows the Commission to issue use permits for boats that use Commission property in lieu of registration. To move forward with timely implementation of this new law, the Commission proposes regulatory amendments that address the following:

(1) *Extending reciprocity with the DCNR launch permits.* The DCNR already extends reciprocity to unpowered boats registered by the Commission. It is expected that the DCNR will amend its regulations to extend this reciprocity to Commission use permits. Since the DCNR already recognizes the Commission's registrations, it should be unnecessary to condition the effective date of this reciprocity on changes to the DCNR regulations.

(2) *Eliminating the exception for out-of-state boats.* The Commission changed its regulations, effective February 19, 2000, to provide that out-of-State unpowered boats are in compliance with the Commission's requirements if they comply with the registration requirements of their state of principal use. This change had the effect of exempting most out-of-State unpowered boats from having to register their boats to use Commission property. It was designed to deal with the anomaly whereby out-of-State boats could not use our access areas unless they were registered. It would not have been appropriate to require a boat to register in this Commonwealth since the Commonwealth was not the state of principal use. With the new Commission use permit and reciprocity with DCNR launch permits, owners of out-of-State boats that want to use Commission lakes and access areas have several options and do not have to register their boats. Accordingly, the exception for out-of-State boats is no longer required.

(3) *New use permits.* The fees for the use permit are set at the same level as that for the DCNR resident launch permits: currently, \$10 per year; \$18 for 2 years. As proposed, a 1-year permit expires at the end of the calendar year for which it was issued, and a 2-year permit expires at the end of the calendar year following the year for which it was issued. Although it is conceivable that the Commission could issue permits valid for 12 or 24 months from the date of issuance, such a process involves somewhat more administrative complications. As proposed, the regulation permits the Executive Director to adjust the fees whenever the DCNR does so. The new permits are designed to be easy to issue. The information required for issuance of a use permit is considerably less than required for registration of a boat.

The Commission proposes to amend § 53.8 and add § 53.27 to read as set forth in Annex A.

#### F. *Paperwork*

The proposed amendments will increase paperwork and create new paperwork requirements because individuals who wish to purchase a use permit for their unpowered boats will have to complete a brief application form. However, the information that they will be required to provide is less than that which is required to register a boat.

G. Fiscal Impact

The proposed amendments will not have an adverse fiscal impact on the Commonwealth or its political subdivisions. It is anticipated that the Commission and its agents will issue approximately 5,000 use permits during the first year of implementation and that these revenues will offset any program costs. The proposed amendments will impose new costs on those members of the general public who wish to use their unpowered boats on Commission lakes and access areas and who wish to purchase a use permit as opposed to registering their unpowered boats. Although the proposed amendments impose a fee for this new permit (\$10 for 1 year and \$18 for 2 years), this charge should be viewed in light of the current biennial registration fee of \$10 for unpowered boats. The proposed amendments will impose no new costs on the private sector.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed amendments to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the Pennsylvania Bulletin. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at "ra-pfbcregs@state.pa.us." A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-116. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart A. GENERAL PROVISIONS

CHAPTER 53. COMMISSION PROPERTY

§ 53.8. Boats.

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(h) [ A boat ] The following apply to boats using a Commission lake or access area [ shall be registered and display the official registration number and current validation stickers described under Subpart C and Part II of the code: ]

(1) An unpowered boat using a Commission lake or access area shall comply with one of the following conditions:

(i) Be registered and display the official registration number and current validation stickers described under Subpart C (relating to boating) and Part III of the code (relating to boats and boating).

(ii) Display an official and valid use permit issued by the Commission under § 53.27 (relating to use permits for unpowered boats).

(iii) Display an official and valid watercraft launch or mooring permit issued by the Department of Conservation and Natural Resources for use of launch or mooring facilities at the Commonwealth's State parks and forests.

(2) This subsection does not apply to [ noncommercial ]:

(i) Noncommercial users of access areas on the Delaware River and West Branch of the Delaware River bounded by the State of New York.

[ (2) Exempt from this subsection are public ]

(ii) Public service boats as defined under section 5302(a)(3) of the code (relating to exemptions from registration). [ and unpowered ]

(iii) Unpowered boats participating in events authorized under § 109.6 (relating to special marine events). [ Unpowered ]

(3) Registered unpowered kayaks, sculls, sailboards and other low volume boats of similar design are exempt from displaying registration numbers, but shall display a current validation sticker.

[ (3) Unpowered boats with a state of principal operation other than this Commonwealth shall meet the requirements of this subsection if they are in compliance with the registration and display requirements of their state of principal operation. There is a rebuttable presumption that the state of principal operation of any boat using a Commission lake or access area is this Commonwealth. The owner or operator of a boat may overcome this presumption by providing documentary evidence to show the state of principal operation is elsewhere. ]

§ 53.27. Use permits for unpowered boats.

(a) The Commission and issuing agents designated by the Commission will issue use permits for unpowered boats when their owners choose not to register them to use Commission lakes and access areas.

(b) Use permits will be issued in the form of decals, showing the expiration date. Decals shall be displayed above the waterline on both sides of the bow of the boat for which the permit is issued.

(c) An applicant for a use permit shall provide the following information:

(1) The name, address and telephone number of the applicant.

(2) The name and address of the owner of the boat (if different from the name and address of applicant).

(3) A description of the boat (make, model, year).

(4) The Hull Identification Number (HIN) of the boat (if readily available).

(d) A use permit is issued for a specific boat. It is unlawful to transfer a use permit issued for a specific boat to another boat. A use permit remains effective for the boat for which it is issued even if ownership of the boat is changed during the term of the permit.

(e) Use permits shall be valid for 1 or 2 years. The expiration date of a 1-year use permit shall be December 31 of the year for which it is issued. The expiration date of a 2-year use permit shall be December 31 of the second year for which it was issued.

(f) The initial fees for the use permits shall be \$10 for a 1-year permit and \$18 for a 2-year permit. The Executive Director may, by notice published in the *Pennsylvania Bulletin*, adjust these fees so that they remain the same as the resident price for 1-year and 2-year boat launching permits as established in the schedule of fees published, and from time-to-time revised, by the Department of Conservation and Natural Resources for State parks and forests. Whenever a use permit authorized by this section is issued by an issuing agent other than the Commission or the Department of Conservation and Natural Resources, the issuing agent may charge an issuing agent fee not to exceed \$1 per transaction for issuing the permit.

[Pa.B. Doc. No. 01-444. Filed for public inspection March 16, 2001, 9:00 a.m.]

## GAME COMMISSION

[58 PA. CODE CH. 139]

### Seasons and Bag Limits

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its January 23, 2001, meeting, proposed the following amendment to:

Amend § 139.4 (relating to seasons and bag limits for the license year) to provide dates for the 2001-2002 hunting license year.

This proposed amendment will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal is 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

This proposal was made public at the January 23, 2001, meeting of the Commission, and comments on this proposal can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until April 6, 2001.

#### 1. Introduction

These seasons and bag limits were proposed under sections 322(c)(1) and 2102(b)(1) of the code (relating to powers and duties of Commission; and regulations). Notable changes for the 2001-2002 year include earlier antlerless deer seasons and increased opportunities to take antlerless deer, a proposed elk hunting season for the first time in 70 years, and increased small game hunting opportunities.

#### 2. Purpose and Authority

The Commission is required to set hunting and furtaking seasons and bag limits on an annual basis. Section

322 of the code specifically empowers the Commission to "... fix seasons ... and daily, season and possession limits 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.

Changes that have been proposed for the 2001-2002 season are primarily intended to increase the harvest of antlerless deer, allow the limited taking of elk and to maximize recreational opportunities where game and wildlife populations allow. Major changes are as follows:

1. The thrust of the proposed deer seasons for 2001-2002 is to emphasize the taking of antlerless deer, the main mechanism by which deer populations are controlled, and to limit the harvesting of antlered deer. As a result, the rifle antlerless season will begin on the Saturday before the rifle antlered deer season and run concurrently with that season. There will also again be an early (October) antlerless muzzleloader season and a similar rifle season for junior and senior license holders, disabled person permit holders and those serving on active duty in the armed forces.

2. In Act 111 of 2000, signed into law by Governor Ridge on December 20, 2000, the Commission was authorized to issue elk hunting licenses. The elk population in this Commonwealth has reached the point where a limited hunt will not jeopardize the population and there are more and more elk-human conflicts. The Commission has therefore proposed a 6-day elk season for those issued an elk hunting license.

3. The Commission has generally expanded the late small game hunting season.

4. Turkey Management Area #9-A has been closed to fall turkey hunting.

#### 3. Regulatory Requirements

These proposed seasons and bag limits would establish when and where it is lawful to hunt and trap various game species and place limits on the numbers that can be legally taken.

#### 4. Persons Affected

Persons wishing to hunt and trap in this Commonwealth would be affected by these seasons and bag limits.

#### 5. Cost and Paperwork Requirements

The proposed new seasons and bag limits would not result in any additional cost either to the Commission or to hunters and furtakers.

#### 6. Effective Dates

The effective dates are July 1, 2001, to June 30, 2002.

#### 7. Contact Person

For further information on the proposed changes the contact person is David E. Overcash, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

DAVID E. OVERCASH,  
*Acting Director*

## PROPOSED RULEMAKING

## Annex A

## TITLE 58. RECREATION

## PART III. GAME COMMISSION

## CHAPTER 139. SEASONS AND BAG LIMITS

*(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the existing text of § 139.4, which currently appears at 58 Pa. Code pages 139-3—139-11, serial pages (265977)—(265984) and (267199) and replace it with the following text, which has been printed in regular type to enhance readability.)*

**§ 139.4. Seasons and bag limits for the license year.**

**2001-2002 OPEN HUNTING AND FUR TAKING SEASONS, DAILY LIMIT, FIELD POSSESSION LIMIT AND SEASON LIMIT OPEN SEASON INCLUDES FIRST AND LAST DATES LISTED**

<i>Species</i>	<i>First Day</i>		<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Squirrels—(Combined species) Eligible Junior Hunters only, with or without the required license, when properly accompanied as required by law	Oct. 6		Oct. 8	6	12
Squirrels—(Combined species)	Oct. 13	and	Nov. 24	6	12
	Dec. 10		Feb. 28, 2002		
Ruffed Grouse—(Statewide)	Oct. 13	and	Nov. 24	2	4
	Dec. 10		Jan. 26, 2002		
Ruffed Grouse—There is no open season for taking ruffed grouse in that portion of State Game Lands No. 176 in Centre County which is posted "RESEARCH AREA—NO GROUSE HUNTING"					
Rabbits, Cottontail	Oct. 27	and	Nov. 24	4	8
	Dec. 10		Feb. 28, 2002		
Ringneck Pheasant—Male only	Oct. 27		Nov. 24	2	4
Ringneck Pheasant—Male or female combined when hunting in designated hen shooting area	Oct. 27	and	Nov. 24	2	4
	Dec. 10		Feb. 28, 2002		
Bobwhite Quail—The hunting and taking of bobwhite quail is permitted in all counties except Adams, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Perry, Snyder and York where the season is closed.	Oct. 27		Nov. 24	4	8
Hares (Snowshoe Rabbits) or Varying Hares	Dec. 26		Jan. 1, 2002	1	2
Woodchucks (Groundhog)	No closed season except during the antlered and antlerless deer season and until 12 noon daily during the spring gobbler turkey season				Unlimited

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Turkey—Male or Female			1	1
Management Areas #1-A, 1-B, 2 & 7-A	Oct. 27	Nov. 10		
Management Areas #3, 4, 5, 6 & 8	Oct. 27	Nov. 17		
Management Area #7-B	Oct. 27	Nov. 3		
Management Area #9-A	Closed to fall turkey hunting			
Management Area #9-B	Oct. 27	Nov. 3		
Turkey (Spring Gobbler) Statewide Bearded Bird only	April 27, 2002	May 25, 2002	1	1

**MIGRATORY GAME BIRDS**

Except as further restricted by this chapter, the seasons, bag limits, hunting hours and hunting regulations for migratory game birds shall conform to regulations adopted by the United States Secretary of the Interior under authority of the Migratory Bird Treaty Act (16 U.S.C.A. §§ 703—711) as published in the *Federal Register* on or about August 27 and September 28 of each year. Exceptions:

- (a) Hunting hours in § 141.4 (relating to hunting hours).
- (b) Nontoxic shot as approved by the Director of the United States Fish and Wildlife Service is required for use Statewide in hunting and taking of migratory waterfowl.
- (c) Subject to approval by the United States Fish and Wildlife Service, an early and late season for Canada geese will be held as defined in § 141.25.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Field Possession Limit After First Day</i>
Crows (Hunting permitted on Friday, Saturday and Sunday only)	July 1 and Dec. 28	Nov. 25 April 7, 2002		Unlimited
Starlings and English Sparrows	No closed season except during the antlered and antlerless deer seasons and until 12 noon daily during the spring gobbler turkey season			Unlimited

**FALCONRY**

Squirrels—(Combined species)	Sep. 1	Mar. 31, 2002	6	12
Quail	Sep. 1	Mar. 31, 2002	4	8
Ruffed Grouse	Sep. 1	Mar. 31, 2002	2	4
Cottontail Rabbits	Sep. 1	Mar. 31, 2002	4	8
Snowshoe or Varying Hare	Sep. 1	Mar. 31, 2002	2	4
Ringneck Pheasant—Male and Female—(Combined)	Sep. 1	Mar. 31, 2002	2	4

Migratory Game Birds—Seasons and bag limits shall be in accordance with Federal regulations.

*Deer  
Field  
Possession  
Limit*

<i>Species</i>	<i>First Day</i>		<i>Last Day</i>	<i>Daily Limit</i>	
<b>DEER</b>					
Deer, Antlered with 2 or more points to an antler or a spike 3 or more inches long (Archery—Bows and Arrows Only)	Sept. 29	and	Nov. 10	One antlered. <sup>1</sup>	
	Dec. 26		Jan. 12		
Deer, Antlerless (Archery—Bows and Arrows Only)	Sept. 15	and	Nov. 10	An antlerless deer with each required antlerless license.	
	Dec. 10		Jan. 12		
Deer, Regular Antlered—(Statewide) with 2 or more points to an antler or a spike 3 or more inches long	Nov. 26		Dec. 8	One antlered.	
Deer, Antlerless—(Statewide) Only Junior and Senior License Holders, <sup>2</sup> Disabled Person Permit (to use a vehicle) Holders and Residents serving on active duty in the U.S. Armed Forces, or in the U.S. Coast Guard, with required antlerless license	Oct. 18		Oct. 20	An antlerless deer with each required antlerless license.	
Deer, Regular Antlerless—(Statewide) <sup>3</sup>	Nov. 24		Dec. 8	An antlerless deer with each required antlerless license.	
Deer, Antlerless only—(Statewide) (Flintlock Muzzleloading firearms only)	Oct. 18		Oct. 20	An antlerless deer with each required antlerless license.	
Deer, Antlered or Antlerless—(Statewide) (Flintlock Muzzleloading firearms only)	Dec. 26		Jan. 12	One antlered <sup>1</sup> , or one antlerless-plus an additional antlerless deer with each required antlerless license.	
Deer, Antlerless (Letterkenny Army Depot, Franklin County and New Cumberland Army Depot, York County and Fort Detrick, Raven Rock Site, Adams County)	Hunting is permitted on days established by the United States Department of the Army.			An antlerless deer with each required antlerless license.	

**SPECIAL REGULATIONS AREAS SOUTHEASTERN PENNSYLVANIA AND ALLEGHENY COUNTY**

<i>Species</i>	<i>First Day</i>		<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Deer, Antlered with 2 or more points to an antler or a spike 3 or more inches long (Archery—Bows and Arrows Only)	Sept. 29	and	Nov. 10	One antlered. <sup>1</sup>	
	Dec. 26		Jan. 12		
Deer, Antlerless (Archery—Bows and Arrows Only)	Sept. 15	and	Nov. 10	An antlerless deer with each required antlerless license.	
	Dec. 10		Jan. 12		
Deer, Antlered with 2 or more points to an antler or a spike 3 or more inches long	Nov. 26		Dec. 8	One antlered deer. <sup>1</sup>	
Deer, Antlerless	Nov. 24		Jan. 12	An antlerless deer with each required antlerless license.	

**BEAR**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Bear, any age	Nov. 19	Nov. 21	1	1

**ELK**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Elk, Antlered	Nov. 12	Nov. 17 <sup>4</sup>	1	1
Elk, Antlerless	Nov. 12	Nov. 17 <sup>4</sup>	1	1

**FUR TAKING—TRAPPING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Minks and Muskrats—(Statewide)	Nov. 18	Jan. 13, 2002	Unlimited	
Beaver—(Statewide)	Dec. 26	Mar. 31, 2002		
Zones 1 & 2 (except McKean, Potter and Tioga Counties)			20	20
Zone 2 McKean, Potter and Tioga Counties			20	40
Zone 3			20	40
Zones 4 & 5			10	10
Zone 6			6	6
Coyotes, Foxes, Opossums, Raccoons, Skunks, Weasels—(Statewide)	Oct. 14	Feb. 23, 2002	Unlimited	
Bobcat (Zones 2 & 3)	Oct. 14	Feb. 23, 2002	1	1 <sup>5</sup>

**FUR TAKING—HUNTING**

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Coyotes—(Statewide)			Unlimited	
Opossums, Skunks, Weasels— (Statewide)				

No closed season. Coyotes may be taken during the regular antlered and antlerless deer seasons or extensions only by hunters who have a valid deer tag or during the spring gobbler turkey season by hunters who have a valid spring turkey tag and meet fluorescent orange and shot size requirements.

No closed season. These species may not be hunted prior to 12 noon during the spring gobbler turkey season.

<i>Species</i>	<i>First Day</i>	<i>Last Day</i>	<i>Daily Limit</i>	<i>Season Limit</i>
Raccoons and Foxes—(Statewide)	Oct. 13	Feb. 23, 2002		Unlimited
Bobcat (Zones 2 & 3)	Oct. 13	Feb. 23, 2002	1	1 <sup>5</sup>

No open seasons on other wild birds or wild mammals.

<sup>1</sup> Only one antlered deer (buck) may be taken during the hunting license year.  
<sup>2</sup> Includes persons who have reached or will reach their 65th birthday in the year of the application for the license and hold a valid adult license or qualify for license and fee exemptions under section 2706 of the act (relating to resident license and fee exemptions).  
<sup>3</sup> The Executive Director is hereby authorized to extend, by order, in accordance with § 139.3, this season by 1 day either Statewide or on a designated area basis when it appears, after polling the Commissioners and regional offices, that there has been an underharvest of antlerless deer. Public notice of the extension shall be given by extensive publication.  
<sup>4</sup> The Executive Director is hereby authorized to extend, by order, in accordance with § 139.3, this season by 5 days from December 26, 2001, to December 31, 2001, (excluding Sunday), if the harvest quota is not met during the first season. If the quota is not met during the first extension, a second 5 day extension from January 2, 2002, to January 7, 2002, (excluding Sunday) may be ordered.  
<sup>5</sup> Bobcat may only be taken by furtakers in possession of a Bobcat Hunting—Trapping Permit.

[Pa.B. Doc. No. 01-445. Filed for public inspection March 16, 2001, 9:00 a.m.]

# STATE BOARD OF FUNERAL DIRECTORS

## [49 PA. CODE CH. 13] Application Fees

The State Board of Funeral Directors (Board) proposes to amend § 13.12 (relating to fees) by revising certain application fees to read as set forth in Annex A.

### A. Effective date

The amendment will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

### B. Statutory Authority

The amendment is authorized under section 18.1 of the Funeral Director Law (act) (63 P. S. § 479.18.1).

### C. Background and Purpose

The act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs (Bureau), the fees for services to licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{aligned} & \text{number of minutes to perform the function} \\ & \quad \times \\ & \text{pay rate for the classification of personnel performing the function} \\ & \quad + \\ & \text{a proportionate share of administrative overhead.} \end{aligned}$$

In computing overhead charges, the 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 board. Once determined, the Bureau's total administrative charge is apportioned to

each board based upon that board's share of the total active licensee population. In turn, the 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 Senate and House Standing Committees and IRRC as reasonable and consistent with the legislative intent of statutory provisions which require the Board to establish fees which meet or exceed expenses.

The systems audit determined that the fees for 16 services do not accurately reflect the actual cost of providing those services.

The current fees have not been revised since 1986. In addition, no fees are currently in place for: license application for shared funeral establishment; application for registration as preceptor or change; reinspection after failure; and verification of license or registration.

In this proposal, fees for these services would be adjusted to allocate costs to those who use the service or make application. The Board would continue to apportion enforcement and operating costs to the general licensing population by means of its license renewal fee through the biennial reconciliation of revenue and expenditures.

### D. Description of Services

Professional licensing boards other than the Board of Funeral Directors have also been proposing revisions to nonrenewal fees. Review of the proposed new fee regulations by the legislative committees indicated that certain explanations of the services for which fees are charged would be helpful for an understanding of the need to set appropriate fees.

The certification of an examination 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 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 Pennsylvania board and other boards certify the examination score the applicant achieved on the licensure examination.

The difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. As noted, states request different information when making a determination 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 to 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 Board 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 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 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 in order to provide the information requested. The Board staff then seals and issues the document.

*E. Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the proposed amendment the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

*F. Fiscal Impact and Paperwork Requirements*

The proposed 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 amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*G. Sunset Date*

The Board continuously monitors the cost effectiveness of 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)), on March 6, 2001, the Board submitted a copy of this proposed amendment to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor, of objections raised.

*I. Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendment to Cheryl B. Lyne, Administrative Officer, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No.16A-482 (Application Fees), when submitting comments.

GREGORY JORDAN,  
*Chairperson*

**Fiscal Note:** 16A-482. 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 19. STATE BOARD OF FUNERAL DIRECTORS**

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

Initial registration for student trainee.....	\$ [ 15 ] 25
* * * * *	
Initial registration for resident intern.....	\$ [ 15 ] 25
<b>[ Licensing examination for funeral director (oral, written and practical or any combination thereof) .....</b>	<b>\$ 87 ]</b>
Initial license for funeral director.....	\$ [ 20 ] 25
Initial license for restricted business corporation, professional corporation, <b>[ branch of office or ] partnership or shared funeral establishment.....</b>	<b>\$ [ 60 ] 150</b>
Initial license for estate or widow, <b>sole proprietorship or branch office .....</b>	<b>\$ [ 100 ] 125</b>
Initial registration for supervisor .....	\$ [ 35 ] 25
<b>[ License examination for funeral directors based in other states.....</b>	<b>\$ 130 ]</b>
Address change without inspection.....	\$ [ 15 ] 35

Address change with inspection.....	\$[ 60 ]	125
<b>Reinspection after failure</b> .....		<b>\$85</b>
Certification.....	\$[ 15 ]	25
<b>Verification of licensure or registration..</b>		<b>\$15</b>

\* \* \* \* \*

[Pa.B. Doc. No. 01-446. Filed for public inspection March 16, 2001, 9:00 a.m.]

# STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

## Sexual Misconduct

The State Board of Physical Therapy (Board) proposes to adopt regulations regarding sexual misconduct committed by physical therapists, physical therapist assistants and certified athletic trainers (PTs, PTAs and ATCs) by adding §§ 40.301—40.304 to read as set forth in Annex A.

*Effective Date*

These regulations will be effective upon publication of final-form regulations in the *Pennsylvania Bulletin*.

*Statutory Authority*

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 3(a) of the Physical Therapy Practice Act (63 P. S. § 1303(a)) (act).

*Background and Purpose*

This proposed rulemaking was developed against a background of increasing complaints of sexual misconduct against health care professionals who are licensed by the Bureau of Professional and Occupational Affairs. In this proposal, the Board addresses issues concerning sexual misconduct in the context of the provision of physical therapy and athletic training services.

The proposed regulations seek to better protect consumers of physical therapy and athletic training services and to provide guidance to the professions by defining terms such as “patient,” “professional relationship,” “sexual impropriety” and “sexual violation.” The proposed regulations guide licensees and certificateholders by informing them that conduct defined as a sexual violation or sexual impropriety with a patient during the course of a professional relationship violates standards of professional conduct for PTs, PTAs and ATCs. These proposed regulations guide PTs, PTAs and ATCs by informing them that their professional relationship with a patient exists for a time period beginning with the first professional contact or consultation and ends upon discharge from or discontinuance of services. The proposed regulations notify PTs, PTAs and ATCs that the consent of a patient to a sexual impropriety or violation cannot be a defense in a disciplinary proceeding before the Board and that a PT, PTA or ATC who engages in conduct prohibited by the regulations will not be eligible for placement into an impaired professional program under the act.

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

In compliance with Executive Order 1996-1, prior to drafting these proposed regulations, the Board invited

interested associations and colleges and universities to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The interested associations, colleges and universities included the Pennsylvania Physical Therapy Association, Hospital Association of Pennsylvania, Pennsylvania Association of Rehabilitation Facilities, Pennsylvania Athletic Trainers Society, Beaver College, Chatham College, College Misericordia, Duquesne University, Gannon University, Medical College of Pennsylvania and Hahnemann University, Philadelphia College of Pharmacy and Science, Slippery Rock University, Temple University, Thomas Jefferson University, University of Pittsburgh, University of Scranton, Alvernia College, Central Pennsylvania Business School, Community College of Allegheny County Boyce Campus, Harcum College, Lehigh Carbon Community College, Mercyhurst College, Mount Aloysius College, Penn State University, Penn State University Mont Alto Campus, East Stroudsburg University, Lock Haven University, California University of Pennsylvania, University of Pittsburgh, Slippery Rock University, West Chester University, Temple University, Messiah College, Waynesburg College and Mercyhurst College.

*Description of Amendments*

*§ 40.301 (relating to definitions)*

The proposed regulation defines “patient,” “professional relationship,” “sexual impropriety” and “sexual violation” as used in §§ 40.302—40.304.

The term “patient” is defined to mean a person other than a spouse or immediate family member, who receives professional services from a PT, PTA or ATC regardless of whether the practitioner receives remuneration for the services.

The term “sexual impropriety” is defined as offenses including making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient’s body or undergarments; unnecessarily exposing a patient’s body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance; examining or touching genitals without the use of gloves when performing an otherwise appropriate examination; discussing or commenting on a patient’s 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; soliciting a date from a patient; and volunteering information to a patient about one’s sexual problems, preferences or fantasies.

The term “sexual violation” is defined as offenses including sexual intercourse, genital to genital contact and oral to genital contact between a PT, PTA or ATC and a patient during the period of the professional relationship; touching breasts, genitals or any other body part for any purpose other than appropriate examination or treatment; using prolonged or improper examination techniques, or examining a patient when the patient has refused or has withdrawn consent; encouraging a patient to masturbate in the presence of the PT, PTA or ATC or masturbating while the patient is present; and providing or offering to provide treatment in exchange for sexual favors.

The term “professional relationship” for a PT, PTA or ATC means the period of time beginning with the first

professional contact or consultation with the patient and ending upon discharge from or discontinuance of services by the PT, PTA or ATC.

*§ 40.302 (relating to procedural matters)*

This proposed section of the regulations addresses procedural issues in disciplinary matters before the Board. Subsection (a) would put all licensees and certificateholders on notice that the consent of a patient to a sexual impropriety or violation will not be a defense in a sexual misconduct proceeding. A patient cannot consent to unprofessional forms of treatment. Subsection (b) would put all licensees and certificateholders on notice that neither evidence of specific instances, nor opinion evidence, nor reputation evidence of a patient's past sexual conduct is admissible in proceedings alleging conduct which constitutes a sexual impropriety or violation. Subsection (c) would put all licensees and certificateholders on notice that if a licensee or certificateholder accused of a sexual impropriety or violation raises the defense that the certificateholder's conduct was appropriate to the treatment, the licensee or certificateholder will have to demonstrate the relevancy of the conduct in question to the patient's condition or diagnosis.

*§ 40.303 (relating to impaired professional program)*

This proposed provision of the regulations would inform licensees and certificateholders that a licensee or certificateholder subject to disciplinary action for a sexual impropriety or violation will not be eligible for an impaired professional program under the act.

*§ 40.304 (relating to disciplinary action)*

This provision would notify licensees and certificateholders that a PT, PTA or ATC who engages in sexual misconduct will be subject to discipline under the act and § 40.52, § 40.121(a)(6) or § 40.181(a)(6) (relating to unprofessional conduct, physical therapists; refusal, suspension or revocation of certificate; and refusal, suspension or revocation of registration).

*Fiscal Impact and Paperwork Requirements*

The proposed regulations should have no fiscal impact and will not impose additional paperwork on the private sector, the general public, the Commonwealth or its political subdivisions.

*Sunset Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted a copy of these proposed regulations on March 6, 2001, to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the regulations, the Board has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Act, if IRRC has any objections to any portion of the proposed regulations, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify that regulatory review criteria which have not been met

by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Board, the General Assembly and the Governor of objections raised.

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed regulations to Beth Sender Michlovitz, Counsel, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed regulations in the *Pennsylvania Bulletin*. Reference (16A-656) Sexual Misconduct when submitting comments.

JAMES J. IRRANG,  
*Chairperson*

**Fiscal Note:** 16A-656. No fiscal impact; (8) recommendations adoption.

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

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY**

**Subchapter E. SEXUAL MISCONDUCT**

Sec.	
40.301.	Definitions.
40.302.	Procedural matters.
40.303.	Impaired professional program.
40.304.	Disciplinary action.

**§ 40.301. Definitions.**

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

*Patient (includes resident and client)*—A person, other than a spouse or immediate family member, who receives professional services from a physical therapist, physical therapist assistant or certified athletic trainer, regardless of whether the services are provided for remuneration.

*Professional relationship*—For a physical therapist, physical therapist assistant or certified athletic trainer, the relationship shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a physical therapist, physical therapist assistant or certified athletic trainer and a patient and ending upon discharge from or discontinuance of services provided by the physical therapist, physical therapist assistant or certified athletic trainer.

*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 physical therapist, physical therapist assistant or certified athletic trainer and a patient during the professional relationship.

(ii) Genital to genital contact between a physical therapist, physical therapist assistant or certified athletic trainer and a patient during the professional relationship.

(iii) Oral to genital contact between a physical therapist, physical therapist assistant or certified athletic trainer and a patient during the professional relationship.

(iv) Touching breasts, the genitals, or any other part of the body of a patient in a sexual, erotic or romantic manner. Touching for the purpose of an appropriate examination or treatment does not constitute a sexual violation.

(v) Encouraging a patient to masturbate in the presence of the physical therapist, physical therapist assistant or certified athletic trainer or masturbating while a patient is present.

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

**§ 40.302. 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 chapter.

(b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is

not admissible in proceedings brought under §§ 40.52, 40.121 and 40.181 (relating to unprofessional conduct, physical therapists; refusal, suspension or revocation of certificate; and refusal, suspension or revocation of registration). The Board may consider sexual relationships between the physical therapist or the physical therapist assistant or the certified athletic trainer and the patient occurring prior to the professional relationship.

(c) A physical therapist or the physical therapist assistant or the certified athletic trainer 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 the relevancy of the conduct in question to the patient's condition or diagnosis. Appropriate discussions of sexual matters between a physical therapist, or the physical therapist assistant or the certified athletic trainer and a patient shall be fully documented in patient records.

**§ 40.303. Impaired professional program.**

When the Board is empowered to take disciplinary or corrective action against a physical therapist, physical therapist assistant or certified athletic trainer for conduct defined as a sexual violation or sexual impropriety, the physical therapist, physical therapist assistant or certified athletic trainer will not be eligible for placement into an impaired professional program under section 13 of the act (63 P. S. § 1313).

**§ 40.304. Disciplinary action.**

A physical therapist, physical therapist assistant or certified athletic trainer who engages in sexual impropriety or violation as defined in § 40.301 (relating to definitions) will be subject to disciplinary action under §§ 40.52, 40.121(a)(6) and 40.181(a)(6) (relating to unprofessional conduct; physical therapists; refusal, suspension or revocation of certificate; and refusal, suspension or revocation of registration) and section 11 of the act (63 P. S. § 1311).

[Pa.B. Doc. No. 01-447. Filed for public inspection March 16, 2001, 9:00 a.m.]