

PROPOSED RULEMAKING

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Oral Orders

The State Board of Nursing (Board) proposes to amend §§ 21.14 and 21.145 (relating to administration of drugs; and functions of the LPN) to read as set forth in Annex A.

A. Effective Date

The proposed amendments will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

B. Statutory Authority

The Board is authorized to establish rules and regulations for the practice of professional and practical nursing under 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

The proposed amendments originated in the Board's review of its regulations under Executive Order 1996-1, which directs executive agencies to evaluate existing regulations and amend and repeal regulations as necessary to comply with the order, and in response to requests from the regulated community. The proposed amendments were generated by a request from the Pennsylvania Health Care Association (PHCA) which suggested that the Board consider removing language in § 21.145 which prohibits a licensed practical nurse (LPN) from accepting an oral order except in urgent circumstances. In accordance with the Executive Order, a draft of the proposed amendments was sent on December 12, 2000, to 27 agencies, associations, health care entities and individuals who have been identified as interested parties or who have expressed an interest in the proposed amendments. The Board reviewed these comments at its meeting of February 9, 2001.

The Board seeks to remove the prohibition in § 21.145(b) against an LPN accepting an oral order except in urgent circumstances, which the Board now regards as unnecessary and burdensome. The Board also seeks to update and clarify the language of § 21.14, which currently appears to limit the administration of medications to registered nurses (RN) only and limits the ability of an RN to accept orders from a practitioner other than a licensed doctor of the healing arts.

D. Description of Proposed Amendments

The proposed amendments would make changes to two sections of the existing regulations.

§ 21.14. Administration of drugs.

The current language of this section states that the administration of drugs is a function performed by an RN and may not be performed by anyone other than an RN and a nursing student or a graduate nurse supervised by an RN. The current language is unduly restrictive and appears to limit administration of drugs to RNs only, when, in fact, LPNs may also administer medications in accordance with § 21.145(b).

The Board also recognizes that other licensed health care practitioners are permitted to administer medications under law and proposes to amend the language of § 21.14(a) accordingly. Therefore, the proposed amendments would also remove reference to "a licensed doctor of the healing arts" as the sole prescribers of drugs, to reflect the Board's desire that RNs and LPNs be permitted to accept orders from other practitioners with prescriptive authority who are not licensed doctors. These practitioners include certified registered nurse practitioners who prescribe medical, therapeutic or corrective measures in collaboration with and under the direction of a physician (see 63 P. S. §§ 212 and 422.15(b) and 49 Pa. Code §§ 18.21 and 21.251 (relating to definitions)), and physician assistants who prescribe and dispense drugs at the direction of a physician (see 63 P. S. § 422.13(f) and 49 Pa. Code § 18.158 (relating to prescribing and dispensing drugs)).

§ 21.145(b). Oral orders and the LPN.

PHCA, an organization representing more than 280 Commonwealth long-term care facilities, by letter of September 22, 1994, requested the Board to reconsider § 21.145(b). The Pennsylvania Medical Directors Association (PMDA), an organization of long-term care physicians, by letter of October 11, 1994, supported the PHCA request and recommended that the Board remove any restriction that limits the authority of an LPN to receive an oral order. These organizations maintained that removing the restriction would enhance quality of care and eliminate delays in getting medication to a patient. PMDA maintained that the current practice in long-term care facilities was for LPNs to receive oral orders.

The Board concurs in the need for regulatory relief with regard to the language of § 21.145. The Board notes that in long-term care facilities with a census of 59 years of age and under, an LPN may be the only licensed nurse on the premises during night shifts. See 28 Pa. Code § 211.12(f)(1) (relating to nursing services). The prohibition against an LPN receiving an oral order when the LPN is the only nurse on the premises delays treatment. Even if an RN is on the premises, the RN may not be immediately available to receive the oral or telephone order and there will be a delay in treatment. These delays cannot benefit the patient.

Current regulations pertaining to long-term care facilities and general and special hospitals permit both RNs and LPNs to receive oral orders in varying circumstances. Regulations of the Department of Health pertaining to long-term care facilities authorize "a registered nurse, physician or other individual authorized by appropriate statutes and the State Boards in the Bureau of Professional and Occupational Affairs" (regardless of whether the circumstances are urgent) to receive a telephone or oral order for medication from a physician. See 28 Pa. Code § 211.3(a) (relating to oral and telephone orders). Regulations pertaining to general and special hospitals authorize both an RN and LPN to accept an oral order for medication or treatment "under urgent circumstances when it is impractical for the orders to be given in written manner by the responsible practitioner," and the medical staff bylaws specify the RN or LPN as personnel qualified to accept the oral order. See 28 Pa. Code § 107.62 (relating to oral orders). Regulations pertaining to ambulatory surgical facilities authorize "personnel qualified by their professional license or certification issued by the Commonwealth and according to

medical staff bylaws or rules" to accept oral orders "under urgent circumstances when it is impractical for the orders to be given in written manner by the responsible practitioner." See 28 Pa. Code § 555.12 (relating to oral orders).

The Board does not encourage the use of oral orders, but wishes to remove unnecessary restrictions which may delay delivery of safe health care. To ensure that only an adequately instructed LPN will receive oral orders and make clear that the Board does not encourage any type of facility to unnecessarily broaden its use of oral orders, the Board proposes to add the requirements of § 21.145(b)(2)(ii)-(iv) so that an LPN may accept an oral order only if the LPN has been instructed in accepting oral orders in an educational program or in accordance with the policies and protocols of the facility and the policy of the facility and the regulations governing the facility permit an LPN to accept oral orders.

In October and November 1997, the Board solicited input from practical nursing education programs to determine the extent of LPN education in the area of pharmacology and the taking of oral orders. The Board found that practical nursing education programs in this Commonwealth gave instruction in pharmacology to practical nursing students which was the same as or similar to that received by professional nursing students. The instruction received by practical nursing students includes dose calculation, drug classification and usage and drug information sources; drug administration; and critical thinking. Pharmacology is taught both as a separate subject and is integrated into other academic and clinical subjects. The Board concluded that LPNs currently receive adequate instruction in pharmacology and critical thinking skills to render the prohibition against the receipt of oral orders other than in urgent circumstances outdated and a barrier to the delivery of safe, timely health care.

The proposed amendment to § 21.145(b)(3) also would require an LPN to question any order which is not clear or perceived as unsafe or contraindicated and take action in accordance with standards of practice and consistent with the protocols or policies of the facility. The purpose of this provision is to put licensees on notice that a nurse has a duty to attempt to resolve situations in which the nurse receives an apparently unclear, unsafe or contraindicated order, whether oral or written. In requiring an LPN to question unclear orders, the Board does not propose to grant the LPN a right, but rather would be codifying a professional obligation in the interest of patient safety. The obligation would not go beyond good nursing practice.

The Board declines to propose a single specific procedure for questioning an apparently unclear order. The particular situation itself may determine how an apparently unclear order might be clarified. Sometimes it might be necessary to contact the practitioner who issued the order. Sometimes an RN, director of nursing, pharmacist or other responsible health care practitioner might be able to resolve the situation. A facility may well have a protocol or policy which reflects its own structure or needs.

Nothing in this section suggests that anyone other than a physician will make the ultimate determination of whether an order is appropriate. It is the experience of the professional members of the Board that questions regarding orders can almost always be answered to the satisfaction of all parties, including the physician and nurse.

E. Fiscal Impact and Paperwork Requirements.

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

F. Sunset Date

The Board continuously monitors 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)), on November 14, 2001, the Board submitted a copy of this proposed rulemaking 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 rulemaking, 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 rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Martha Brown, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed amendments in the *Pennsylvania Bulletin*. Reference (16A-5115) Oral Orders when submitting comments.

K. STEPHEN ANDERSON, CRNA
Chairperson

Fiscal Note: 16A-5115. 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 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

RESPONSIBILITIES OF THE REGISTERED NURSE

§ 21.14. Administration of drugs.

(a) **[Administering to a patient a drug ordered for that patient by a licensed doctor of the healing arts in the dosage prescribed is a procedure regulated by this section, and the function may not be performed by a person other than a licensed registered nurse, except that a licensed registered nurse, responsible for administering a drug, may supervise a nursing student in an approved pro-**

gram and a graduate nurse.] A licensed registered nurse or a licensed practical nurse who is acting in accordance with § 21.145(b) (relating to functions of the LPN) may administer a drug ordered for a patient in the dosage and manner prescribed.

(b) A licensed registered nurse, responsible for administering a drug, may supervise a graduate nurse or a nursing student in an approved nursing education program in the administration of the drug. In this section, [“supervision”] “supervise” means the licensed registered nurse is physically present in the area or unit where the student or unlicensed graduate is practicing. This definition [of “supervision”] is not intended to limit in any way the practice of practical nursing as defined in the Practical Nurse Law (63 P. S. §§ 651—667).

**Subchapter B. PRACTICAL NURSES
GENERAL PROVISIONS**

§ 21.145. Functions of the LPN.

* * * * *

(b) The LPN administers medication and carries out the therapeutic treatment prescribed or ordered for the patient in accordance with the following:

(1) The LPN [shall] may accept [only] a written [prescriptions] prescription or [orders] order for medication and therapeutic treatment from [the responsible] a practitioner [for medication and therapeutic treatment unless the urgency of the medical circumstances requires immediate medication or therapeutic treatment.] authorized by law and by facility policy to issue orders for medical and therapeutic measures.

(2) The LPN may [not] accept an oral prescription or order if the following conditions are met:

(i) The practitioner issuing the oral order is authorized by law and by facility policy to issue oral orders for medical and therapeutic measures.

(ii) The LPN has received instruction and training in accepting an oral prescription or order in an approved nursing education program or has received instruction and training in accepting an oral prescription or order in accordance with the established policies and protocols of the facility.

(iii) The policy of the facility permits an LPN to accept an oral prescription or order.

(iv) The regulations governing the facility permit an LPN to accept an oral prescription or order.

(3) The LPN shall question any prescription or order which is perceived as unsafe or contraindicated for the patient or which is not clear. If a prescription or order appears to be unclear, unsafe or contraindicated for the patient, the LPN shall raise the issue with the ordering practitioner or other responsible person consistent with the protocols or policies of the facility.

(4) The LPN may not accept an oral prescription or order [under this subsection] which is not within the scope of functions permitted by this [subsection] section or which the LPN does not understand.

(5) An oral prescription or order accepted by the LPN [under this subsection] shall be immediately tran-

scribed by the LPN in the proper place on the medical record of the patient. The transcription shall include the [name of the physician giving the order] prescriber’s name, the date, [and] the time of acceptance of the oral prescription or order and the full signature of the LPN accepting the oral prescription or order. [The countersignature of the physician shall be obtained in accordance with applicable regulations of the Department of Health governing the licensed facility.]

* * * * *

[Pa.B. Doc. No. 01-2126. Filed for public inspection November 30, 2001, 9:00 a.m.]

**STATE BOARD OF
PSYCHOLOGY**

[49 PA. CODE CH. 41]

Computerized Examinations

The State Board of Psychology (Board) proposes to amend §§ 41.41, 41.42 and 41.52 (relating to examinations; reexamination; and persons licensed in other states) to account for examination changes necessitated by the computerization of the National portion of the licensure examination.

Background and Purpose

Effective April 1, 2001, applicants for licensure have been able to take the National portion of the examination by computer, rather than paper and pencil. Due to the number of items in the item bank, applicants for this National examination are able to take the examination four times a year but must wait 60 days between administrations. Applicants from this Commonwealth, however, are precluded from taking these National portions of the examination as frequently due to limitations in current § 41.42.

The State portion of the examination is still a paper and pencil examination, however efforts are being made to computerize the examination. It is currently being given two times a year, however, the number of administrations will also increase once the examination is computerized.

Statutory Authority

The amendments are proposed under the authority of section 3.2(1) of the Professional Psychologists Practice Act (63 P. S. § 1203.2(1)).

Proposed Amendments

Current § 41.41(a) explains that the written examination was developed by the Association of State and Provincial Psychology Boards (ASPPB). Current subsection (b) explains that a professional testing organization administers the examination and current subsection (c) addresses the Boards policy to accommodate persons with handicapping conditions. The Board proposes to amend subsection (a) to clarify that the examination is composed of both a National and a State portion. The Board proposes to delete subsections (b) and (c) since these provisions are governed by the Third Party Testing Law (71 P.S. § 279.3a(a)) and the Equal Opportunity for Individuals with Disabilities Act (42 U.S.C.A. §§ 12101—

12213). The Board has also proposed to delete the reference to ASPPB from the regulations to save the Board from amending the regulations in the event that another association prepares the National examination.

Current § 41.42(a) contains the examination requirements for applicants who fail the examination two times. Subsection (b) contains the reexamination requirements for applicants who fail more than two times. Since the requirements in subsections (a) and (b) are substantially similar, in proposed form, the Board consolidated the reexamination requirement into subsection (a). Proposed subsection (d) would be amended to track an applicant's ability to take the National portion of the examination up to four times each year at 60-day intervals. As such, the Board proposes to delete the requirement in current subsection (b), that applicants wait for 1 year prior to being reexamined after a second failure and the requirement in subsection (d) that prohibited the applicant from taking the examination more than four times in 8 years.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no fiscal impact and will not create additional paperwork on licensees, the private sector, the general public or political subdivisions.

Compliance with Executive Order 1996-1

In compliance with Executive Order 1996-1, the Board extended an invitation to the following boards, associations and interested licensees and educators to preliminarily review and comment on the Board's draft regulatory proposal: National Association of School Psychologists; Association of School Psychologists of Pennsylvania; Pennsylvania Mental Health Consumer's Association; Pennsylvania Psychological Association; North-western PA Psychological Association; Philadelphia Society of Clinical Psychologists; Philadelphia Neuropsychology Society; Northeastern PA Psychological Association; Mideast PA School Psychological Association; Lehigh Valley Psychological Association; Laurel Mountains Psychological Association; Lancaster/Lebanon Psychological Association; Harrisburg Area Psychological Association; Greater Pittsburgh Psychological Association; Delaware County Association of School Psychologists; Central Pennsylvania Psychological Association; Berks Area Psychological Society; Academy of Psychologists Engaged in Private Practice in the Lehigh Valley; Hospital and Healthsystem Association of Pennsylvania; and Philadelphia Society of Clinical Psychologists.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 14, 2001, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC and HPLC 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 (71 P. S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the SCP/PLC and HPLC review period. The notification shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, of

objections by the Board, the General Assembly and the Governor prior to publication of the final-form regulations.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Judith Pachter Schulder, Counsel, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649; (717) 783-7200, www.state.pa.us., within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ALEX M. SIEGEL, J.D., Ph.D.,
Chairperson

Fiscal Note: 16A-6310. 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 41. STATE BOARD OF PSYCHOLOGY EXAMINATIONS

§ 41.41. Examinations.

[(a)] The **[Board has adopted the written]** examination **[developed by the Association of State and Provincial Psychology Boards, which]** is **composed of a National and State portion. [given at regularly scheduled times and places specified by the Board.]** Applicants shall obtain a passing score **[as established by the Board]** to qualify for licensure. Information about the content of the examination is available from the Board office.

[(b)] The Board reserves the right to direct the professional testing organization responsible for administering its examination to adopt alternative or additional examination procedures such as simulation techniques; other written examinations; essay or oral examinations; submission of work samples to demonstrate knowledge or skills in specified areas of psychology; and demonstration of familiarity with ethical, statutory or regulatory requirements bearing on the practice of psychology. The Board will exercise this right only in conformity with section 812.1 of the act of April 9, 1929 (P. L. 177, No. 175), known as the Third-Party Testing Law (71 P. S. § 279.3a(a)). Notice of substantive changes in the licensing examination will be given at least 6 months before the first administration of the new examination.

[(c)] It is the policy of the Board to accommodate persons with handicapping conditions who qualify to take the licensing examination.]

§ 41.42. Reexamination.

(a) After first-time failure, candidates may **[take a second examination]** be reexamined, upon filing an updated application and paying the reapplication **[and examination fees]** fee specified in § 41.21 (relating to fees) **[, but only after the expiration of 6 months and within 2 years following the first examination date]**.

(b) **[After two unsuccessful examinations, applicants] Applicants** may reapply **[for admission to the licensing] to take any portion of the** examination, but shall satisfy conditions prevailing at the time of the reapplication, including administrative, education and experience requirements. **[The Board will permit applicants to retake the examination after a second failure only within 2 years after a 12-month interval has elapsed. The applicant shall file the verification of experience form included in the application packet and shall pay the reapplication and examination fees specified in § 41.12. After a third failure, applicants may retake the examination under the conditions in subsection (a).]**

* * * * *

(d) No applicant will be permitted to sit for more than four examinations in any **[8] 1-year period. Applicants shall wait at least 60 days between examinations.**

MISCELLANEOUS

§ 41.52. Persons licensed in other states.

* * * * *

(b) An applicant who has passed the **[written] National portion of the** examination **[prepared by the Association of State and Provincial Psychology Boards]** with a score equivalent to or higher than the passing score then prevailing in this Commonwealth will not be required to repeat this **portion of the** examination.

* * * * *

[Pa.B. Doc. No. 01-2127. Filed for public inspection November 30, 2001, 9:00 a.m.]