

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

General Revisions

The State Board of Occupational Therapy Education and Licensure (Board) amends its regulations governing occupational therapists and occupational therapy assistants in Chapter 42 (relating to State Board of Occupational Therapy Education and Licensure).

A. *Effective Date*

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

B. *Statutory Authority*

The Board is authorized to promulgate and adopt regulations consistent with law as it deems necessary for the performance of its duties and the proper administration of its enabling statute under section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)). Section 6(a)(2) of the act (63 P. S. § 1516(a)(2)) anticipates that the Board will adopt a code of ethics in that this provision authorizes the Board to take disciplinary action against a licensee for violating a code of ethics adopted by the Board.

C. *Background and Purpose*

The Board seeks in these amendments to eliminate provisions that are outdated or have been rendered invalid, to standardize and simplify provisions that maintain their validity and to adopt a revised code of ethics. Proposed rulemaking was published at 30 Pa.B. 4255 (August 12, 2000). The proposal contained a detailed discussion of the background and purpose of the rulemaking.

D. *Compliance with Executive Order 1996-1*

In accordance with the principles and requirements of Executive Order 1996-1 of February 6, 1996, an exposure draft of this proposal was sent on May 18, 1999, to 21 agencies, associations and individuals who had been identified as interested parties or who had expressed an interest in this rulemaking. The Board received comments as a result of this mailing and reviewed them at its meeting of June 19, 1999. The Board made a number of changes to the draft proposal as a result of the comments.

E. *Summary of Comments and Responses to Proposed Rulemaking*

The publication of proposed rulemaking on August 12, 2000, was followed by a 30-day public comment period. The Board did not receive any comments from members of the public during this period. The Board received reports from the House Professional Licensure Committee (dated September 12, 2000) and the Independent Regulatory Review Commission (IRRC) (dated October 12, 2000).

The House Committee report stated that it would not take formal action until the final-form regulations were

promulgated. The House Committee called attention to a technical error in § 42.3 (relating to meetings of the Board). The Legislative Reference Bureau also noticed the error and published the correct version of that section in its publication of the proposed rulemaking, 30 Pa.B. 4255. The Board adopts the corrected version.

The code of ethics in the current regulations is the code adopted by the American Occupational Therapy Association (AOTA) in 1988. The proposed rulemaking sought to adopt the more recent code of ethics adopted by the AOTA in 1994 (1994 Code). During the course of its review of the proposed rulemaking, IRRC contacted the AOTA and learned that the AOTA had adopted a still newer code of ethics (2000 Code) than the one the Board proposed to adopt. The AOTA adopted its latest code May 15, 2000. Although the Board had corresponded with the AOTA in 1998 about adopting the 1994 Code and had sent a copy of an exposure draft to the AOTA on May 18, 1999 (see section D of this Preamble), the AOTA did not at any time, prior to the close of the public comment period, suggest to the Board that it was working on a new code of ethics. IRRC transmitted to the Board a letter it received from the AOTA, dated September 15, 2000, approximately 3 days after the close of the public comment period. That letter recommended that the Board adopt the 2000 Code. IRRC recommended that the Board should revise the final-form regulations to reflect the 2000 Code.

Despite the lateness of the AOTA's communication, the Board was able to review the 2000 Code at its meeting of March 2, 2001. For the following reasons the Board declines to adopt the 2000 Code and goes forward with its proposed rulemaking unchanged in regard to the code of ethics.

First, the new 2000 Code is significantly different from the 1994 Code. Neither the public in general nor the regulated community in particular has had the opportunity to comment on it. Second, the 2000 Code contains provisions that the Board may not have the statutory authority to adopt or are inconsistent with the Board's view of the requirements of ethical practice, or both. The Board's concerns about the 2000 Code include the following:

(1) Principle 1.B. of the 2000 Code requires occupational therapists to set fees "with due regard for the service recipient's ability to pay." The act does not give the Board express authority to regulate fees charged by licensees. This provision of the 2000 Code could be interpreted to mean that fees must be set in accordance with a service recipient's ability to pay and that a licensee could be considered in violation of the code if he or she charged a fee that was beyond a service recipient's ability to pay.

(2) Principle 1.C of the 2000 Code requires that "occupational therapy personnel shall make every effort to advocate for recipients to obtain needed services through available means." This provision of the 2000 Code could be interpreted to mean that a licensee must make not just a reasonable effort to advocate for a recipient to secure services, but must make every effort, even if unreasonable. Moreover, this provision does not specify with sufficient clarity what needed services are meant. It is not clear whether the "needed services" for which the occupational therapy personnel must advocate are restricted to occupational therapy services or whether they include other services such as medical or social services.

(3) Principle 3.C of the 2000 Code states that occupational therapists “shall obtain informed consent from participants involved in research activities and indicate that they have fully informed . . . the participants of potential risk” The provision goes on to state that occupational therapists “shall endeavor to ensure that the participant(s) comprehend these risks” The 1994 Code, which the Board seeks to adopt, requires written informed consent from research subjects. It is not clear to the Board why the 2000 Code retreats from requiring that the consent be written.

(4) Principle 4.B of the 2000 Code requires occupational therapists to “use procedures that conform to the standards of practice and other appropriate AOTA documents relevant to practice.” The 2000 Code does not explain or define “other appropriate AOTA documents relevant to practice.” A code of ethics should be understandable from examining the document itself, without referring to unexplained “other appropriate AOTA documents.”

(5) Principle 4.F of the 2000 Code requires occupational therapists to provide appropriate supervision to individuals for whom the practitioners have supervisory responsibility in accordance with the AOTA policies, local, state and Federal laws, and institutional values. The Board has its own regulations pertaining to supervision in §§ 42.21—42.23 (relating to delegation of duties to aides and other unlicensed personnel; supervision of occupational therapy assistants; and supervision of applicants with temporary licenses).

(6) Principle 5.A of the 2000 Code requires occupational therapists to “familiarize themselves with and seek to understand and abide by applicable Association policies Principle 5.B of the 2000 Code requires occupational therapists to “remain abreast of revisions in . . . laws and Association policies and . . . inform employers, employees, and colleagues of those changes.” Principle 7.D of the 2000 Code again requires occupational therapists to “familiarize themselves with . . . [the] policies and procedures created by the [AOTA].” The Board does not believe it can require, as a matter of ethics, that licensees keep abreast of unspecified policies of a professional association. If the Board were to adopt a code of ethics that required licensees to be familiar with unspecified policies of a professional organization, the Board would be putting pressure on licensees to join the organization so as to assure that they receive notice of those policies.

(7) Principle 6.D of the 2000 Code requires occupational therapists to “accept the responsibility for their professional actions which reduce the public’s trust in occupational therapy services” It is not clear to the Board how this provision should be interpreted or enforced. For these reasons, the Board declines to adopt the 2000 Code. The Board remains satisfied that the 1994 Code represents an improvement over the 1988 Code and will serve as a useful, practical guide to ethical behavior for licensees.

The letter of September 15, 2000, from the AOTA to IRRC also suggested a revision to § 42.12 (pertaining to waiver of licensure examination). Under the current regulation the Board may issue a license without examination to an applicant who: (1) is licensed in another jurisdiction which has requirements substantially equivalent to those of the Commonwealth; or (2) provides evidence of having completed the certifying examination and is currently certified by the AOTCB as an occupational therapist or occupational therapy assistant. The

AOTA proposes that the requirement of “currently certified” by the AOTCB be replaced by “initially certified” by the AOTCB. The Board declines to make this substantive change on final rulemaking. First, the only purpose in amending § 42.12(2) was to make a technical change to reflect the change in name of the certifying organization from the AOTCB to the National Board for Certification in Occupational Therapy, Inc. The purpose was not to make a substantive change in the qualifications that an applicant must demonstrate in order to be awarded a license without examination. Neither the public in general nor the regulated community in particular has had the opportunity to comment on the AOTA’s proposal. Second, while the AOTA recommends the change so that § 42.12(2) will be “consistent” with § 42.15(c)(3) (relating to application for temporary license), these two sections pertain to standards for different types of licenses, the former section pertaining to unrestricted licenses to practice, the latter to temporary licenses.

F. *Fiscal Impact and Paperwork Requirement*

The final-form rulemaking should not have any fiscal impact on the Commonwealth, its subdivisions, the regulated community or the residents of the Commonwealth. It is unlikely that the final-form rulemaking will impose additional paperwork on anyone. The revised code of ethics requires a licensee to obtain “written informed consent” from subjects involved in research activities. It is highly likely that those engaged in research activities already do this.

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)), on July 28, 2000, the Board submitted a copy of the notice of proposed rulemaking, published at 30 Pa.B. 4255 to IRRC and to the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee for review and comment. In compliance with section 5(b.1) of the Regulatory Review Act, the Board also provided IRRC and the Committees with copies of all comments received, as well as other documents.

In preparing these final-form regulations, the Board has considered all comments received from the House Professional Licensure Committee, the Commission and the public. No comments were received from the Senate Consumer Protection and Professional Licensure Committee.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), these final-form regulations were deemed approved by the House and Senate Committees on October 25, 2001. The Commission met on November 1, 2001, and approved the final-form regulations in accordance with Section 5(e) of the Regulatory Review Act.

I. *Public Comment*

Interested persons may obtain information regarding the amendments by writing to Herbert Abramson, Board Counsel, State Board of Occupational Therapy, Education and Licensure, P. O. Box 2649, 116 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) These amendments do not enlarge the purpose of proposed rulemaking published at 30 Pa.B. 4255.

(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:

(a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending §§ 42.1, 42.3, 42.11, 42.12, 42.14, 42.15, 42.21, 42.24, 42.31, 42.42—42.45 and 42.47; by adding § 42.19 and by deleting §§ 42.18, 42.32 and 42.33 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*.

MELANIE A. WENNICK,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6358 (November 17, 2001).)

Fiscal Note: Fiscal Note 16A-674 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 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

GENERAL PROVISIONS

§ 42.1. Definitions.

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

AOA—American Occupational Therapy Association.

Act—The Occupational Therapy Practice Act (63 P. S. §§ 1501—1519).

Applicant—An individual seeking licensure under the act as an occupational therapist or an occupational therapy assistant.

Board—The State Board of Occupational Therapy Education and Licensure of the Commonwealth.

Certification—Recognition by the NBCOT that an individual is a registered occupational therapist or a certified occupational therapy assistant.

Commissioner—The Commissioner of Professional and Occupational Affairs.

Equivalent program—A masters or certificate program in occupational therapy approved by the Board.

Licensee—An individual who has been licensed under the act as an occupational therapist or an occupational therapy assistant.

Licensure examination—The Certification Examination for Occupational Therapist, Registered, or the Certification Examination for Occupational Therapy Assistant prepared and administered by the NBCOT.

NBCOT—National Board for Certification in Occupational Therapy, Inc.

Service recipient—The patient or client who directly receives care or services from the licensee.

Surrogate—The spouse, parent or guardian of the service recipient.

§ 42.3. Meetings of the Board.

Action may be taken by the Board at a constituted meeting at which a majority of appointed Board members are present. A simple majority of the members present and voting determine action to be taken by the Board. Minutes will be kept of Board meetings, and, upon approval by the Board, will become the official minutes.

LICENSURE

§ 42.11. Licensure examination.

(a) The licensure examinations will be scheduled at least twice each year at times and places designated by the NBCOT.

(b) The applicant shall apply to NBCOT for admission to the licensure examination and shall pay the required fee at the direction of NBCOT.

(c) The applicant is responsible for directing that NBCOT send the applicant's examination results and other information requested to the Board.

(d) The passing score shall be that established by the NBCOT for each administration of the licensure examination.

(e) After the first failure, the applicant may take the next scheduled examination or the examination following the next scheduled examination. After a second or successive failure of the licensure examination, the Board may require the applicant to complete additional training approved by the Board. Written notice will be provided to the applicant as to what additional training will be required.

§ 42.12. Waiver of licensure examination.

An applicant may be licensed without examination who presents one of the following to the Board:

(1) Satisfactory evidence on forms provided by the Board, that the applicant is licensed or registered as an occupational therapist or occupational therapy assistant in another state, territory of the United States or the District of Columbia, which has requirements for licensure substantially equivalent to those of the Commonwealth.

(2) Satisfactory evidence that the applicant has successfully completed the NBCOT Certification Examination and is currently certified by NBCOT as a registered occupational therapist or an occupational therapy assistant.

§ 42.14. Foreign-educated applicants.

(a) To apply for licensure, the foreign-educated applicant shall, before examination, submit evidence satisfac-

tory to the Board, on forms provided by the Board, that the applicant meets the following requirements:

- (1) Is of good moral character.
- (2) Has completed educational requirements substantially equal to § 42.13(2) (relating to application for licensure). The Board will accept a credentials evaluation done by the NBCOT as proof that the foreign-educated applicant has completed the educational requirements.
- (b) The foreign-educated applicant may be licensed by the Board, if he has complied with subsection (a) and has met one of the following criteria:

- (1) Passed the licensure examination.
- (2) Qualified for a waiver of the licensure examination under § 42.12 (relating to waiver of licensure examination).

§ 42.15. Application for temporary license.

(a) The Board may issue a temporary license to an applicant who pays the required fee and submits evidence satisfactory to the Board, on forms provided by the Board, that the applicant:

- (1) Has met requirements for licensure under § 42.13 (relating to application for licensure).
- (2) Is eligible and has applied to take the licensure examination or has failed the licensure examination but applied to retake the examination on the next scheduled date if the following applies:

(i) The temporary license shall expire automatically upon the failure of the applicant to take the licensure examination, except for an appropriate excuse approved by the Board.

(ii) The temporary license shall expire automatically upon receipt by the applicant of notice of failure of reexamination, and the applicant may not be eligible for another temporary license for a period of 1 year from the date of the notice.

(iii) Even after 1 year from the date of notice of failure of reexamination, the applicant may not be issued another temporary license, except at the discretion of the Board.

(b) A temporary license issued under subsection (a) authorizes the practice of occupational therapy only as an assistant under the direct supervision of an occupational therapist licensed under the act and this chapter.

(c) The Board may also issue a temporary license to an applicant who:

- (1) Pays the required fee.
- (2) Submits evidence satisfactory to the Board, on forms provided by the Board, that the applicant is not a resident and is not licensed in this Commonwealth.
- (3) Submits evidence to the Board that the applicant is either licensed under the laws of the District of Columbia or of a state or territory of the United States which has licensure requirements substantially equal to the requirements of the act or has met the requirements for certification, as an occupational therapist registered or a certified occupational therapy assistant, established by NBCOT.

(4) Certifies that the applicant will perform services for not longer than a 6 consecutive month period in a calendar year, in association with an occupational therapist licensed under the act.

§ 42.18. (Reserved).

§ 42.19. Licensee's change of name or address; service of process and legal papers.

(a) A licensee's name and address on file with the Board shall be deemed the licensee's official name and address for the purpose of service of process and other legal papers.

(b) A licensee's name on file with the Board shall be the name that appears on the license unless that name is legally changed, in which case the licensee shall report the change and the reason for the change to the Board in writing within 10 days of the change.

(c) A licensee who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees who do not comply with this subsection shall bear full responsibility for failure to receive correspondence from the Board, including biennial renewal notification.

MINIMUM STANDARDS OF PRACTICE

§ 42.21. Delegation of duties to aides and other unlicensed personnel.

(a) A licensee may delegate to aides and other unlicensed personnel duties associated with nontreatment aspects of occupational therapy services if the following conditions are met:

(1) The licensee who delegates a duty shall accept professional responsibility for the performance of that duty by the aide or other unlicensed person to whom it is delegated. Responsibility for the performance of a duty delegated by an occupational therapy assistant shall lie with both the assistant and with the occupational therapist who supervises that assistant.

(2) The aide or other unlicensed person does not perform an activity which requires licensure under the act.

(b) The following are examples of the lawful use of aides or other unlicensed personnel in the occupational therapy setting:

- (1) Transporting patients.
- (2) Preparing or setting up a work area or equipment.
- (3) Attending to the personal needs of patients/clients during treatment.

(4) Assisting patients/clients with nontreatment aspects of occupational therapy services, such as monitoring and cuing patients/clients as they participate in activities.

(5) Performing clerical and housekeeping activities.

(c) The following are examples of the unlawful use of aides or other unlicensed personnel in the occupational therapy setting:

- (1) Evaluating patients/clients.
- (2) Treating patients/clients.
- (3) Recording occupational therapy progress reports on the chart of a patient/client.

(d) Failure to comply with this section constitutes unprofessional conduct under section 16(a)(2) of the act (63 P. S. § 1516(a)(2)).

§ 42.24. Code of Ethics.

Purpose. The Board adopts the following Code of Ethics to establish and maintain a high standard of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of licensees. The Code of Ethics is adapted with permission from the

“Occupational Therapy Code of Ethics” of the American Occupational Therapy Association (revised July 1994).

(1) *Principle 1.* Licensees shall demonstrate a concern for the well-being of the recipients of their services. (beneficence)

(i) Licensees shall provide services in an equitable manner for all individuals.

(ii) Licensees shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. Licensees shall avoid those relationships or activities that interfere with professional judgment and objectivity.

(iii) Licensees shall take all reasonable precautions to avoid harm to the recipient of services or to his property.

(2) *Principle 2.* Licensees shall respect the rights of the recipients of their services. (autonomy, privacy, confidentiality)

(i) Licensees shall collaborate with service recipients or their surrogates, or both, in determining goals and priorities throughout the intervention process.

(ii) Licensees shall fully inform the service recipients or their surrogates, or both, of the nature, potential risks and outcomes of any interventions.

(iii) Licensees shall obtain written informed consent from subjects involved in research activities indicating they have been fully advised of the potential risks and outcomes.

(iv) Licensees shall respect the individual's right to refuse professional services or involvement in research or educational activities.

(v) Licensees shall protect the confidential nature of information gained from educational, practice, research and investigational activities.

(3) *Principle 3.* Licensees shall achieve and continually maintain high standards of competence. (duties)

(i) Licensees shall use procedures that conform to the standards of acceptable and prevailing occupational therapy practice.

(ii) Licensees shall take responsibility for maintaining competence by participating in professional development and education activities.

(iii) Licensees shall perform their duties on the basis of accurate and current information.

(iv) Licensees shall protect service recipients by ensuring that duties assumed by or assigned to other licensees are commensurate with their qualifications and experience.

(v) Licensees shall provide appropriate supervision to individuals for whom the licensees have supervisory responsibility.

(vi) Licensees shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

(4) *Principle 4.* Licensees shall comply with laws and regulations governing the practice of occupational therapy in this Commonwealth. (justice)

(i) Licensees shall understand and abide by applicable local, State and Federal laws.

(ii) Licensees shall inform employers employees, and colleagues about those laws and regulations that apply to the profession of occupational therapy.

(iii) Licensees shall require those they supervise in occupational therapy related activities to adhere to this chapter.

(iv) Licensees shall accurately record and report all information related to professional activities.

(5) *Principle 5.* Licensees shall provide accurate information about occupational therapy services. (veracity)

(i) Licensees shall accurately represent their qualifications, education, experience, training and competence.

(ii) Licensees shall disclose any affiliations that may pose a conflict of interest.

(iii) Licensees shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive or unfair statements or claims.

(6) *Principle 6.* Licensees shall treat colleagues and other professionals with fairness, discretion and integrity. (fidelity, veracity)

(i) Licensees shall safeguard confidential information about colleagues and staff members.

(ii) Licensees shall accurately represent the qualifications, views, contributions and findings of colleagues.

(iii) Licensees shall report any breaches of the Board's law and this chapter to the Board.

DISCIPLINARY PROCEEDINGS

§ 42.31. Unprofessional conduct.

A licensee who engages in unprofessional conduct is subject to disciplinary action under section 16 of the act (63 P. S. § 1516). Unprofessional conduct includes the following:

(1) Harassing, abusing or intimidating a patient physically, verbally or sexually.

(2) Divulging, without patient or family consent, or both, information gained in the patient-therapist relationship to anyone not a member of the patient's immediate family or not a health-care professional or educational team member, unless under a statute or court order.

(3) Receiving a fee for referring a patient to a third person.

(4) Accepting a patient for treatment or continuing treatment if benefit cannot reasonably be expected to accrue to the patient or client, or misleading a patient as to the benefits to be derived from occupational therapy.

(5) Guaranteeing the results of therapy, consultation or procedure.

(6) Practicing while using or under the influence of alcohol, narcotics or another type of drug, chemical or material which impairs judgment or coordination.

(7) Practicing without reasonable skill and safety to patients due to a physical or mental condition which impairs judgment or coordination or addiction to alcohol, narcotics or another type of drug, chemical or material which impairs judgment or coordination.

(8) Practicing outside the lawful scope of occupational therapy as defined in section 3 of the act (63 P. S. § 1503) or not in accordance with section 14 of the act (63 P. S. § 1514).

§ 42.32. (Reserved).

§ 42.33. (Reserved).

CHILD ABUSE REPORTING REQUIREMENTS

§ 42.42. **Suspected child abuse—mandated reporting requirements.**

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensees who, in the course of the employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the licensee, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

(1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.

(2) Where the suspected abuse occurred.

(3) The age and sex of the subjects of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.

(5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.

(6) Family composition.

(7) The source of the report.

(8) The person making the report and where that person can be reached.

(9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.

(10) Other information which the Department of Public Welfare may require by regulation.

§ 42.43. **Photographs, medical tests and X-rays of a child subject to report.**

A licensee may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical test on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

§ 42.44. **Suspected death as a result of child abuse—mandated reporting requirement.**

A licensee who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner of the county where the injuries were sustained.

§ 42.45. **Immunity from liability.**

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a licensee who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensee shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensee's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 42.47. **Noncompliance.**

(a) *Disciplinary action.* A licensee who willfully fails to comply with the reporting requirements in §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P. S. § 1516).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensee who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

[Pa.B. Doc. No. 01-2177. Filed for public inspection December 7, 2001, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 51 AND 63]

Administration and Fishing

The Fish and Boat Commission (Commission) by this order amends Chapters 51 and 63 (relating to administrative provisions; and general fishing regulations). The Commission is publishing these amendments under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments relate to administration and fishing.

A. Effective Date

The amendments will go into effect upon publication of this order adopting the amendments in the *Pennsylvania Bulletin*.

B. Contact Person

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

C. Statutory Authority

The amendments to § 51.25 (relating to demand for or waiver of hearing) are published under the statutory authority of section 928 of the code (relating to revocation, suspension or denial of license, permit or registration). The amendments to § 51.41 (relating to general) are published under the statutory authority of sections 928, 2102, 2305, 2711, 2903 and 2904 of the code. The amendments to §§ 51.89, 63.5, 63.11, 63.15 and 63.21 are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The amendments are designed to update, modify and improve the Commission's regulations pertaining to administration and fishing. The specific purpose of the amendments is described in more detail under the summary of changes.

E. Summary of Changes

(1) *Section 51.25.* The Commission's regulations provide that before the Commission may suspend, deny or revoke an individual's license, permit, special license or boat registration issued under the authority of the code, the Commission must give that individual an opportunity to be heard. The individual must submit a timely demand for a hearing, and the demand shall be in writing. After an individual requests a hearing, the Executive Director appoints a presiding officer to conduct the hearing on the Commission's behalf. Although the Commission's regulations provide for a nonrefundable filing fee of \$35, the Commission historically had not charged a fee. The Commission accordingly has amended its regulations to provide for a \$35 nonrefundable filing fee. The Commission also has amended its regulations to provide that if an individual demands a hearing and subsequently fails to appear, the individual waives his right to a hearing, and a hearing will not be conducted.

(2) *Sections 51.41, 51.89, 63.11 and 63.15.* When the General Assembly amended the law to transfer administrative responsibility related to commercial artificial propagation from the Commission to the Department of Agriculture, it repealed Chapter 33 of the code (relating

to propagation and sale of fish). Therefore, the Commission has amended its regulations to remove any references to this chapter or any of the sections contained in the chapter.

(3) *Sections 63.5 and 63.21 (relating to methods of fishing; and designation of fishing regulations).* The code provides that if a person violates a regulation promulgated under section 2102(a) of the code (relating to general rules) that the Commission has designated as being for the protection of fish or fish habitat or for the health and safety of persons who fish, that person commits a summary offense of the second degree. The penalty is a \$100 fine or imprisonment not exceeding 20 days. If a person violates a regulation promulgated under section 2102(b) of the code, that person commits a summary offense of the third degree. The penalty is a \$50 fine. An individual who is caught intentionally snagging steelhead, for example, pays a \$100 fine, whereas an individual who is caught netting steelhead pays only a \$50 fine. This disparity occurs because the Commission promulgated § 63.9 (relating to snatch fishing, foul hooking and snag fishing) under section 2102(a) of the code and designated it as being for the protection of fish or fish habitat or for the health and safety of persons who fish. The Commission, on the other hand, promulgated § 63.5 (relating to fishing devices) under section 2102(b) of the code.

The Commission, accordingly, has adopted amendments to correct the inconsistency in the current fine structure for using various illegal methods of taking fish from Commonwealth waters.

F. Paperwork

The amendments will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. Currently, no more than 20 individuals per year request administrative hearings regarding the proposed suspension, denial or revocation of their licenses, permits, special licenses or boat registrations issued under the authority of the code. Therefore, the fiscal impact of the amendments to § 51.25 will be minimal. With the exception of the changes to § 51.25, the amendments will impose no new costs on the private sector or the general public. The amendments to § 51.25, as previously stated, will impose a \$35 non-refundable filing fee.

H. Public Involvement

A notice of proposed rulemaking was published at 31 Pa.B. 4652 (August 25, 2001). The Commission did not receive any public comments concerning the proposals.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided, and no comments were received.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 51 and 63, are amended by amending §§ 51.25, 51.41, 51.89, 63.5, 63.11, 63.15 and 63.21 to read as set forth in 31 Pa.B. 4652.

(b) The Executive Director will submit this order and 31 Pa.B. 4652 to the Office of Attorney General for approval as to legality as required by law.

(c) The Executive Director shall certify this order and 31 Pa.B. 4652 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

PETER A. COLANGELO,
Executive Director

Fiscal Code: Fiscal Note 48A-118 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 01-2178. Filed for public inspection December 7, 2001, 9:00 a.m.]

Title 67—TRANSPORTATION

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 453]

Distribution of Highway Maintenance Funds

The Department of Transportation (Department), Bureau of Maintenance and Operations, by this order deletes Chapter 453 (relating to distribution of highway maintenance funds) to read as set forth in Annex A.

Purpose of Final-Form Rulemaking

The purpose of this final-form rulemaking is to delete Chapter 453. Chapter 453 is no longer needed because 75 Pa.C.S. § 9104 (relating to standards and methodology for data collection) no longer requires the promulgation of standards and methodology for data collection in the form of regulations. Changes to the standards and methodology for data collection are now to be published as a notice in the *Pennsylvania Bulletin*.

The Department will publish any changes to the standards and methodology for data collection in the *Pennsylvania Bulletin*. A notice will first be published announcing that changes to the standards and methodology of data collection are being considered, inviting questions and comments from interested persons and the public. After a sufficient period for questions or comments concerning the proposed changes, a subsequent notice of the changes to the standards and methodology for data collection will be published in the *Pennsylvania Bulletin*.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking, published at 29 Pa.B. 5098 (October 2, 1999), to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Transportation Committees. In addition to this final-form rulemaking, the Department provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Department in

compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

No comments were received from the public, IRRC or the Committees. Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form rulemaking was deemed approved by the House and Senate Committees on October 26, 2001. Under section 5(g) of the Regulatory Review Act, this final-form rulemaking was deemed approved by IRRC effective October 26, 2001, confirmed at meeting of IRRC on November 1, 2001.

Comments and Responses

As there were no comments received from the public, IRRC or the Committees, the final-form text of these regulations contains no additions, deletions or other modifications to the rulemaking as previously proposed at 29 Pa. B. 5098.

Statutory Authority

These final-form regulations are deleted under the authority contained in 75 Pa.C.S. §§ 6103 and 9104 (relating to promulgation of rules and regulations by department; and standards and methodology for data collection).

Persons and Entities Affected

This rulemaking affects Department maintenance districts within this Commonwealth and the general motorist public which has occasion to use the State roadway network.

Fiscal Impact: Paperwork Requirements

This rulemaking will not impose any increased costs on private persons, State or local governments. This rulemaking will not occasion the development of any additional reports or other paperwork requirements.

Effective Date

This deletion will be effective on the date of final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

As this rulemaking effects a rescission of regulations, no sunset date is established.

Contact Person

Individuals who seek information regarding this final-form rulemaking may contact J. Michael Long, P.E., Chief, Roadway Inventory and Testing Section, Roadway Management Division, Bureau of Maintenance and Operations, BOMO Annex Building, 907 Elmerton Avenue, Harrisburg, PA 17110, (717) 705-8920.

Order

The Department orders that:

(a) The regulations of the Department, 67 Pa. Code Chapter 453, are amended by deleting §§ 453.1—453.4 to read as set forth in Annex A.

(b) The Secretary of the Department shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to legality and form, as required by law.

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

BRADLEY L. MALLORY,
Secretary

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 31 Pa.B. 6358 (November 17, 2001).)

Fiscal Note: Fiscal Note 18-352 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart B. VEHICLE CODE PROVISIONS

ARTICLE III. HIGHWAY

CHAPTER 453. (Reserved)

§§ 453.1—453.4 (Reserved).

[Pa.B. Doc. No. 01-2179. Filed for public inspection December 7, 2001, 9:00 a.m.]