

PROPOSED RULEMAKING

STATE BOARD OF EDUCATION

[22 PA. CODE CHS. 7 AND 12]

Pupil Personnel Services and Students

The State Board of Education (State Board) proposes to delete Chapter 7 (relating to pupil personnel services) and amend Chapter 12 (relating to students) to read as set forth in Annex A. The State Board acts under the authority of The Public School Code of 1949 (code) (24 P. S. §§ 1-101—27-2702), including section 2603-B of the code (24 P. S. § 26-2603-B).

Purpose

The proposed revisions to Chapter 12 make changes to Chapter 12 and replace existing Chapter 7 by adding new sections to Chapter 12 that are now addressed in Chapter 7. The overarching purposes of the proposed changes are to update and align the regulations with current statutory provisions and relevant case law. In addition, the proposed amendments would add a new subchapter regarding student services and update the same subject matter now included in Chapter 7.

Requirements of the Regulations

Chapter 12 address student rights and responsibilities, in particular in the areas of free education and attendance; student responsibilities; discrimination; corporal punishment; exclusions from school; hearings; hair and dress; and searches.

The proposed rulemaking also address student records and student services and provisions relevant to student services that are to be deleted from the text of existing Chapter 7. A new regulatory requirement would be added that requires schools to operate student assistance programs. This proposed rulemaking would incorporate into regulations a long-standing Commonwealth policy established through section 1547(g) of the code (24 P. S. § 15-1547(g)). Due to recent changes made by the No Child Left Behind Act of 2001 (Pub. L. No. 107—110, 115 Stat. 1425) (20 U.S.C.A. § 6311), and the act of December 6, 2002 (P. L. 1317, 153) (Act 153) relative to student records, the State Board also proposes to remove from Chapter 12 the Exhibit that contains detailed, but outdated, guidelines on student records.

Specific proposed changes to the regulations include the following:

- The current Chapter 7 regulations that address pupil personnel services would be deleted in their entirety. The State Board proposes to address student services by creating a new subchapter in Chapter 12 and by renaming Chapter 12 as Students and Student Services. The State Board believes that Chapter 7 as it currently exists is too detailed and prescriptive for today's educational environment. The regulations are also inconsistent with other State Board regulations in that they limit flexibility provided to school districts and other educational entities in the planning, implementation and administration of cost effective, comprehensive student services programs.

- The modifying term "full" is proposed for deletion from § 12.1(a) (relating to free education and attendance), which would then describe a student's right to a "free" public education. In addition, language would be

added to prohibit the exclusion of students from school solely on the basis of a handicapping condition or disability.

- Homework would be added to the list of student responsibilities outlined in § 12.2(a) (relating to student responsibilities). The State Board believes that students should make a conscientious effort in completing assigned homework.

- The modifier "fair" would be deleted from the term "standards of safety and health," which appears in § 12.2(d)(3). The State Board believes that the modifier is vague when referring to student dress and grooming.

- Section 12.2(d)(9) would be revised to remove reference to courses of study prescribed by the "Commonwealth." Local school districts prescribe courses of study, not the Commonwealth.

- Section 12.2(d)(10) would be revised to reflect the use of technology as means of publishing student work by covering student work beyond that distributed through traditional hard copy publications.

- Section 12.3(b) (relating to school rules) would be amended to clarify the test that school board policies must accomplish some legitimate school purpose by deleting the vague terms "fairness and reasonableness" from the regulation.

- The term "full" would be deleted from § 12.4 (relating to discrimination) to make it consistent with § 12.1.

- Amend § 12.5 (relating corporal punishment), which now permits use of corporal punishment as a form of student discipline, to prohibit the use of corporal punishment. However, the regulation would continue to permit use of reasonable force to quell a disturbance, take possession of weapons or dangerous objects and to protect persons or property.

- Section 12.6(a) (relating to exclusions from school) would be revised to update the references to both revised Chapter 14 (relating to special education and services and programs) and Federal regulations under the Individuals With Disabilities Education Act (20 U.S.C.A. §§ 1400—1487).

- Section 12.6(d) would replace current language that permits a time extension for conducting a formal disciplinary hearing if the hearing would not be unreasonably delayed. The proposed language limits the extension to 15 days unless mutually agreed upon by both parties.

- Section 12.6(e)(2) would be revised to clarify the current obligation of parents of expelled students to notify the board of school directors within 30 days that they are unable to provide for an education for their child, whereupon the district would be obliged to provide for the student's education.

- Section 12.8(a) (relating to hearings) would be clarified to require that all elements of due process be afforded to students if they are to be excluded from school. A requirement would be added to § 12.8(b)(1)(i) that a copy of the expulsion policy, notice that the student may be represented by counsel, hearing procedures and notice of the right to appeal be provided with notice of the time and place of the hearing.

- Section 12.8(b)(1)(iv) would be revised to clarify that a student may be represented by counsel at their parents' expense and that parents or guardians may attend the hearing.

- Proposed § 12.8(b)(1)(viii) would update the section to reflect current use of technology to keep and make available a copy of the hearing record.
- Section 12.8(b)(1)(ix) would be revised to make it consistent with § 12.6(d).
- Section 12.8(b)(2), regarding appeal of the school board's determination, would be deleted as unnecessary, given the addition of § 12.8(b)(1)(ii).
- Section 12.8(c) is proposed for revision to add a subsection headed "informal hearings" to clarify the meaning and application of the subsection.
- The wording of § 12.8(c)(1) concerning the purpose of an informal hearing would be revised to clarify the meaning and intent of the regulation.
- The State Board proposes to revise § 12.11 (relating to hair and dress) to reflect new statutory authority granted to school boards that permits school boards to adopt dress codes or to require students to wear school uniforms. The section is also revised to indicate that when the length or style of hair presents a health or safety hazard, the hair shall be covered.
- Section 12.14 (relating to searches) would be revised to update language pertaining to searches of student lockers to make it consistent with current case law.
- Section 12.31 (relating to general requirements) would be revised to update language and to provide that copies of the student record plan that should be submitted only to the Department of Education (Department) upon request of the Secretary.

The State Board is also proposing to delete the guidelines for the collection, maintenance and dissemination of pupil records from Chapter 12. The State Board believes that the guidelines are outdated and cannot be updated in a timely manner to reflect court decisions and Federal and State statutory changes. Instead, the State Board would instruct the Department to issue guidelines that would be published in the *Pennsylvania Bulletin* for use of local education agencies.

The State Board proposes to add to Chapter 12 a new subchapter on student services. This subchapter would provide regulation of student services that are currently addressed in Chapter 7. New § 12.41 (relating to definitions) would provide definitions and § 12.42 (relating to students services) would provide revised requirements for the planning and implementation of a comprehensive K-12 program of student services. Local education agencies would be required to prepare a written student services plan (plan) that might include guidance counseling, health services, psychological services, social work and student attendance services. To assist in the development of the plan, the Department would be required to issue guidance to local educational agencies and to publish the guidance in the *Pennsylvania Bulletin*. In addition, the student assistance program, which has operated in this Commonwealth's secondary schools since 1991, would be added to Chapter 12.

Affected Parties

The proposed rulemaking would affect the students and professional employees of the public schools in this Commonwealth (including intermediate units, area vocational-technical schools, public charter and alternative schools).

Cost and Paperwork Estimates

The proposed rulemaking would have negligible costs. The proposed rulemaking largely would bring the regulations into alignment with current statutory provisions

and relevant case law. To comport with the new provisions of the regulations, school districts might have to change their disciplinary policies and procedures, as well as their expulsion hearing policies. School districts also might have to revise their records policies to comply with the guidelines regarding records that would be issued by the Department. There might be costs associated with all of these changes.

The student assistance program, which is currently operated under Department guidelines, would be mandated by the proposed regulations. As a result of the regulations, the Department also would be required to compile K-12 program guidelines for student services, and school districts would be required to develop a comprehensive written plan for student services. There might be costs associated with implementation of both of these programs and procedures.

Public schools might need to revise and update school district policies and practice regarding student discipline, maintenance of student records and student services as a result of the proposed rulemaking. This would include, if it does not already exist, a plan that outlines the school entity's program of student services. In addition, based on guidelines to be issued by the Department, each school entity would need to update its student records policy. Compliance with these requirements is estimated to be less than \$20,000. Actual costs incurred by each school entity for compliance with these requirements would vary from school entity to school entity. However, school entities that have updated student records policies based on Federal laws and court decisions would already meet these new requirements. Schools that currently describe student services in their strategic plans, as required by § 4.13 (relating to strategic plans), or in other documents, may currently meet this requirement as well.

By consolidating the regulations into the student services section (Chapter 12), previously addressed in Chapter 7, schools would be provided additional flexibility to deliver a comprehensive program of student services to their students. Depending upon implementation on the local level, this might lead to improving the scope and quality of services provided to students while also providing cost savings.

Effective Date

The proposed rulemaking would become effective upon final-form publication in the *Pennsylvania Bulletin*.

Sunset Date

The effectiveness of Chapter 12 would be reviewed by the State Board every 4 years, in accordance with the State Board's policy and practice respecting all regulations promulgated by the State Board. Thus, no sunset date is necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 11, 2003, the State Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Education. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory

review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the State Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comments and Contact Person

Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to Patricia A. White, Executive Director, State Board of Education, 333 Market Street, Harrisburg, PA 17126-0333 within 30 days following publication in the Pennsylvania Bulletin.

Persons with disabilities needing an alternative means of providing public comment may make arrangements by calling Patricia A. White at (717) 787-3787 or TDD (717) 787-7367

PATRICIA A. WHITE,
Executive Director

Fiscal Note: 6-280. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 22. EDUCATION

PART I. STATE BOARD OF EDUCATION

Subpart A. MISCELLANEOUS PROVISIONS

CHAPTER 7. [PUPIL PERSONNEL SERVICES]
(Reserved)

(Editor's Note: The State Board is proposing to delete Chapter 7 as it currently appears in the Pennsylvania Code, pages 7-1 to 7-6, serial pages (252439), (252440), (279547), (279548), (244443) and (244444).)

CHAPTER 12. STUDENTS AND STUDENT SERVICES

STUDENT RIGHTS AND RESPONSIBILITIES

§ 12.1. Free education and attendance.

(a) All persons residing in this Commonwealth between the ages of 6 and 21 years of age are entitled to a free [and full] education in [the] this Commonwealth's public schools.

(b) Parents or guardians of all children between the ages of 8 and 17 are required by the compulsory attendance law to ensure that their children attend an approved educational institution, unless legally excused. Students who have not graduated may not be asked to leave school merely because they have reached 17 years of age if they are fulfilling their responsibilities as students. A student may not be excluded from the public schools [nor] or from extracurricular activities because:

(1) The student is married [or].

(2) The student is pregnant.

(3) The student has a handicapping condition as identified by Chapter 15 (relating to protected handicapped students).

(4) The student is an eligible student identified under Chapter 14 (relating to special education services and programs).

§ 12.2. Student responsibilities.

(a) Student responsibilities include regular school attendance, conscientious effort in classroom work and homework, and conformance to school rules and regulations. Most of all, students are responsible to share

with the administration and faculty a responsibility to develop a climate within the school that is conducive to wholesome learning and living.

* * * * *

(d) It is the responsibility of the students to conform [with] to the following:

* * * * *

(3) Dress and groom so as to meet [fair] standards of safety and health, and not to cause substantial disruption to the educational processes.

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(9) Pursue and attempt to complete satisfactorily the courses of study prescribed by [Commonwealth and] local school authorities.

(10) Report accurately [and not] in student media.

(11) Not use [indecent or] obscene language in student [newspapers or publications] media or on school premises.

§ 12.3. School rules.

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(b) School boards may not make rules [which] that are arbitrary, capricious or outside their grant of authority from the General Assembly. [Their rules must stand the test of fairness and reasonableness.] A rule is generally considered reasonable if it uses a rational means of accomplishing some legitimate school purpose.

(c) Each board of school directors shall adopt a code of student conduct [which] that shall include policies governing student discipline and a listing of students rights and responsibilities as outlined in this chapter. This conduct code shall be published and distributed to students and parents. Copies of the code shall also be available in each school library.

§ 12.4. Discrimination.

Consistent with the Pennsylvania Human Relations Act (43 P. S. §§ 951-963), [no] a student [shall] may not be denied access to a free [and full] public education on account of race, religion, sex, national origin, or handicaps.

§ 12.5. Corporal punishment.

(a) Corporal punishment[, namely] is defined as physically punishing a student for an [offense, may be administered by teachers and school officials to discipline students when authorized by, and in accordance with policies and guidelines established by, the board of school directors] infraction of the discipline policy. Use of corporal punishment is prohibited.

(b) [Reasonable force may be used but under no circumstances shall a student be punished in such a manner as to cause bodily injury.

(c) Where corporal punishment is authorized, school authorities shall notify all parents of this policy. Corporal punishment may not be administered to a child whose parents have notified school authorities that such disciplinary method is prohibited.

(d) In situations where a parent or school board prohibits corporal punishment reasonable force may still be used by teachers. Teachers and school authorities may use reasonable force under the following circumstances:

* * * * *

(e) Corporal punishment should never be administered in the heat of anger. It should be recognized that corporal punishment always contains the danger of excessiveness. No disciplinary action should exceed in degree the seriousness of the offense. Students shall not be required to remove clothing when being punished.

§ 12.6. Exclusions from school.

(a) The board of school directors shall define and publish the types of offenses that would lead to exclusion from school. Exclusions affecting certain exceptional students shall be governed by [§ 14.35 (reserved)] § 14.143 (relating to disciplinary placements) and 34 CFR 300.519—300.529 (relating to discipline procedures).

* * * * *

(d) If it is determined after an informal hearing that a student's presence in his normal class would constitute a threat to the health, safety[, morals] or welfare of others and it is not possible to hold a formal hearing within the period of a suspension, the student may be excluded from school for more than 10 school days[, if the formal hearing is not unreasonably delayed]. A student may not be excluded from school for longer than 15 school days without a formal hearing unless mutually agreed upon by both parties. Any student so excluded shall be provided with alternative education, which may include home study.

(e) Students who are [less than] under 17 years of age are still subject to the compulsory school attendance law even though expelled[,] and [they] must be provided an education.

(1) The initial responsibility for providing the required education rests with the student's parents or guardian, through placement in another school, [through] tutorial or correspondence study, or [through] another educational program approved by the district's superintendent.

(2) [If the parents or guardian are unable to provide for the required education, they must within] Within 30 days of action by the board of school directors, the parents or guardian shall submit to the school district written evidence [so stating] that the required education is being provided as described in paragraph (1) or that they are unable to do so. [The] If the parents or guardian are unable to provide the required education, the district then [has the responsibility to] shall make [some] provision for the student's education. [If 30 days pass without the district receiving satisfactory evidence that the required education is being provided to the student, it must recontact the parent and, pending the parents' or guardian's provision of such education, the district must make some provision for the student's education or proceed under paragraph (3) or do both.]

(3) If the approved educational program is not complied with, the school district may take action in accordance with 42 Pa.C.S. Chapter 63 [of the] (relating to the Juvenile Act) to ensure that the child will receive a proper education. See § 12.1(b) (relating to free education and attendance).

§ 12.7. Exclusion from classes—in-school suspension.

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(d) The student's school district has the responsibility to make [some] provision for the student's education during the period of the in-school suspension.

§ 12.8. Hearings.

(a) General. Education is a statutory right, and students [must] shall be afforded all appropriate elements of due process if they are to be excluded from school. In a case involving a possible expulsion, the student is entitled to a formal hearing[, which is a fundamental element of due process].

(b) Formal hearings. A formal hearing is required in all expulsion actions. This hearing may be held before the board of school directors or an authorized committee of the board, or a qualified hearing examiner appointed by the board. [Where] When the hearing is conducted by a committee of the board or a hearing examiner, a majority vote of the entire school board is required to expel a student.

[(1)] The following due process requirements [are to] shall be observed with regard to the formal hearing:

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(ii) Sufficient notice of the time and place of the hearing [must] shall be given. A copy of the expulsion policy, notice that the student may be represented by counsel, hearing procedures, and notice of the right to appeal shall be included with the hearing notice. A student may request the rescheduling of the hearing when the student demonstrates good cause for an extension.

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(iv) The student [has the right to] may be represented by counsel, at parents' expense, and may have his parent or guardian attend the hearing.

* * * * *

(viii) A written or audio record [must] shall be kept of the hearing[, either by a stenographer or by tape recorder]. The student is entitled, at the student's expense, to a copy [of the transcript].

(ix) The proceeding must be held [with all reasonable speed] within 15 school days of the notification of charges, unless mutually agreed to by both parties.

[(2) Where the student disagrees with the results of the hearing, recourse is available in the appropriate court of the Commonwealth. If it is alleged that a constitutional issue is involved, the student may file a claim for relief in the appropriate Federal district court.]

(c) Informal hearings. The purpose of the informal hearing is to enable the student to meet with the

appropriate school official to explain the circumstances surrounding the event for which the student is being suspended or to show why the student should not be suspended.

(1) The informal hearing is **[meant to encourage the student's parents or guardian to meet with the principal to discuss ways by which future offenses can be avoided]** held to bring forth all relevant information regarding the event for which the student may be suspended and for students, their parents or guardians and school officials to discuss ways by which future offenses can be avoided.

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§ 12.9. Freedom of expression.

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(f) Bulletin boards shall conform **[with]** to the following:

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(g) School newspapers and publications shall conform **[with]** to the following:

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(i) School officials may set forth the time and place of distribution of materials so that distribution would not materially or substantially interfere with the requirements of appropriate discipline in the operation of the school.

(1) A proper time and place set for distribution is one **[which]** that would give the students the opportunity to reach fellow students.

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§ 12.11. Hair and dress.

(a) **The board of directors may establish dress codes or require that students wear school uniforms. Policies may apply to individual school buildings or to all school buildings.**

(b) Students have the right to govern the length or style of their hair including facial hair. Any limitation of this right shall include evidence that length or style of hair causes disruption of the educational process or constitutes a health or safety hazard. **[Where]** **When** length or style of the hair presents a **[problem]** **health or safety hazard**, some types of covering **[should]** shall be **[considered]** used.

[(b) School officials may not impose limitations on dress unless the attire causes the disruption of the educational process or constitutes a health or safety hazard.]

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§ 12.14. Searches.

[School authorities may search a student's locker and seize any illegal materials. Such materials may be used as evidence against the student in disciplinary proceedings. Prior to a locker search the students shall be notified and given an opportunity to be present. However, where school authorities have a reasonable suspicion that the locker contains materials which pose a threat to the health, welfare and safety of students in the school, student lockers may be searched without prior warning.]

(a) **The governing board of every local education agency shall adopt reasonable policies and procedures regarding student searches. The local education agency shall notify students and their parents of the policies and procedures regarding student searches.**

(b) **Any illegal or prohibited materials seized during a student search may be used as evidence against the student in a school disciplinary proceeding.**

(c) **Prior to a locker search, students shall be notified and given an opportunity to be present. However, when school authorities have a reasonable suspicion that the locker contains materials that pose a threat to the health, welfare or safety of students in the school, student lockers may be searched without prior warning.**

[PUPIL] STUDENT RECORDS

§ 12.31. General requirements.

(a) The governing board of every **[school district, intermediate unit and area vocational-technical school]** local education agency shall adopt a plan for the collection, maintenance and dissemination of **[pupil]** student records **[and submit the same to the Department for approval]**.

(b) Copies of the **[approved]** adopted plan shall be maintained by the local educational agencies and updated as required by changes in State or Federal law. **[Copies of the updated plan shall be submitted to the Department only upon request of the Secretary.]**

(c) **Copies of the plan shall be submitted to the Department only upon request of the Secretary.**

§ 12.32. Elements of the plan.

(a) The plan for **[pupil]** student records shall conform to **[§ 12.33 (relating to guidelines), except that a school district may modify § 12.33 with the approval of the Secretary, to conform with local policy]** guidelines issued by the Department of Education.

(b) The plan shall establish policies on **[pupil]** student records consistent with the minimum requirements of section 13(a) of the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.A. § 1232g) and in 34 CFR Part 99 (relating to privacy rights of parent and students[.]).

§ 12.33. [Guidelines] (Reserved).

[(a) The full text of the Guidelines for the Collection, Maintenance and Dissemination of Pupil Records appears at 4 Pa.B. 1092 (June 1, 1974).

(c) Portions of Guidelines for the Collection, Maintenance and Dissemination of Pupil Records are attached hereto as Exhibit A and made a part of this chapter.]

(Editor's Note: The State Board is proposing to delete Exhibit A and Sample Forms A—E as they currently appear in the Pennsylvania Code pages 12-13 to 12-24, serial pages (227273) to (227282), (256349) and (256350).)

SERVICES TO STUDENTS

§ 12.41. Definitions.

The following words and terms, when used in this section and §§ 12.42 and 12.43 (relating to student

services; and student assistance program), have the following meanings, unless the context clearly indicates otherwise:

Student services—Services designed by a local education agency entity to complement the instructional program and to help students attain their educational and career goals. Services may include guidance counseling, health services (under Article XIV of the Public School Code of 1949 (24 P. S. §§ 14-1401—14-1423) and 28 Pa. Code Chapter 23 (relating to school health), psychological services, social work and student attendance services.

Student assistance program—A systematic process by which school personnel can respond to referred students experiencing difficulties in school because of drug, alcohol or mental health problems.

§ 12.42. Student services.

(a) Each local education agency shall prepare a written plan for the implementation of a comprehensive K-12 program of the student services based on the needs of its students. Services offered by community agencies in public schools shall be coordinated by and under the general direction of the local education agency. The plan shall include policies and procedures for emergency care and administration of medication and treatment under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and guidelines issued by the Department of Health. The Department of Health guidelines are available from the Division of School Health, Department of Health, Post Office Box 90, Harrisburg, Pennsylvania 17108.

(b) Though the variety of student services offered will differ from school to school depending upon its size and the needs of its students, the following categories of services shall be provided by each local education agency in planning its student services:

(1) Developmental services for students that address their developmental needs throughout their enrollment in school.

(2) Diagnostic, intervention and referral services for students who are experiencing problems attaining educational achievement appropriate to their learning potential.

(3) Consultation and coordination services for students who are experiencing chronic problems which require multiple services by teams or specialists.

(c) Student services shall:

(1) Be an integral part of the instructional program at all levels of the school system.

(2) Provide information to students and parents about educational opportunities of the school's instructional program and how to access these opportunities.

(3) Provide career information and assessments so that students and parents might become aware of the world of work and of a variety of career options available to individual students.

(4) Provide basic health services outlined in Article XIV of the Public School Code 1949 for students and information to parents about the health needs of their children.

(d) When student assessments using individual standardized psychological tests are administered, parents shall be informed of the nature and scope of local education agencies' student tests and of their relationship to the educational program of their child. The parents shall have the right to challenge the appropriateness of any individual standardized psychological tests via procedures established by the local education agency.

(e) Persons delivering student services shall be specifically licensed or certified as required by statute or regulation.

(f) The Department will provide guidance and technical assistance to local education agencies in planning student services.

§ 12.43. Student assistance program.

Local education agencies shall plan and provide for a student assistance program under the Early Intervention Services System Act (11 P. S. §§ 875-101—875-503).

[Pa.B. Doc. No. 03-2230. Filed for public inspection November 21, 2003, 9:00 a.m.]

STATE BOARD OF LANDSCAPE ARCHITECTS

[49 PA. CODE CH. 15]

Deletion of Examination Fees

The State Board of Landscape Architects (Board) proposes to amend §§ 15.1, 15.11, 15.12, 15.51, 15.52 and 15.53 to read as set forth in Annex A. The proposed rulemaking is designed to remove specific references to details of the landscape architect licensure examination process to clarify the procedures, eliminate obsolete procedures and allow the regulations to remain viable for a longer term as specific items such as fees and dates change. The proposed rulemaking deletes references to the fees charged by testing organizations from the schedule of fees for the examination and directs applicants for examination to apply and pay fees directly to the professional testing organization. The proposed rulemaking also deletes references to the specific title of the examination currently in use. The proposed rulemaking also deletes Board testing protocols and recordkeeping practices which are obsolete, as these functions are now provided by the testing administrator, rather than by the Board.

Effective Date

The proposed rulemaking is effective on final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

Section 812.1 of The Administrative Code of 1929 (code) (71 P. S. § 279.3a) and section 4 of the Landscape Architects' Registration Law (63 P. S. § 904) set forth the powers and duties of the Board with regard to the administration of examinations.

Background and Need for Proposed Rulemaking

The proposed rulemaking deletes references to the fees for the licensing examination procedures and makes clear the fees are set by the professional testing organizations.

The proposed rulemaking also clarifies that examination applicants should apply to the professional testing organization and not to the Board.

Description of Proposed Rulemaking

Provision and Submission of Applications

The proposed amendment to § 15.1 (relating to definitions) deletes the definition of "LARE." By referencing the examination generically, the Board would not need to amend its regulations each time the particular examination changes, which it has had to do in the past. The proposed amendment to § 15.11 (relating to filing procedures) reflects that applicants apply to the professional testing organization, not the Board, to take the examination. The professional testing organization determines a candidate's eligibility to take the exam and administers the examination to eligible candidates. Section 812.1 of the code requires that the licensing examination be prepared and administered by a professional testing organization. This proposed amendment clears confusion that may result from the existing regulations that are unclear about where examination applicants should file their applications. The proposed amendment to § 15.11 also makes clear that application deadlines are set by the testing administrator and not by the Board. The proposed amendment incidentally simplifies the procedure for filing registration applications and removes a reference to refunds of exam fees and licensure fees.

Elimination of References to Examination Fees

The proposed amendment to § 15.12 (relating to fees) deletes references to the fees for licensure examination. These fees are set by the administrators of the examinations, not by the Board. To avoid the necessity of amending the regulations whenever the examination administrator changes the fees, the Board proposes to delete references to the fees.

Examination Dates, Testing Procedures and Grading

The proposed rulemaking deletes obsolete language in § 15.51 (relating to eligibility) that states that the examination will be given in June. The Council of Landscape Architectural Registration Boards (CLARB) now administers parts of the examination at least two times per year. The proposed amendment also deletes references to a "written examination" so that the regulations do not have to be amended as the technology of examination evolves. The Board also proposes to delete references to admittance and recordkeeping protocols that are established by the CLARB and not by the Board.

The proposed rulemaking deletes § 15.52 (relating to examination procedure). The first sentence is unnecessary, as the Board's obligation to provide third party testing is statutory. Section 15.52(b) and § 15.53(a) (relating to grading) are proposed to be deleted as the testing administrator, not the Board, establishes testing protocols, including proctoring and grading.

Fiscal Impact

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking should have no fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will avoid preparation of new regulations each time that an examination fee is changed and should not create additional paperwork for the private sector.

Sunset Date

The Board monitors its regulations on a continuing basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 12, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. 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 comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Shirley Klinger, Administrator, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

DANIEL J. DAHLKEMPER, RLA,
Chairperson

Fiscal Note: 16A-617. 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 15. STATE BOARD OF LANDSCAPE ARCHITECTS

GENERAL PROVISIONS

§ 15.1. Definitions.

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

* * * * *

[*LARE*—The Landscape Architect Registration Examination of CLARB approved by the Board as the landscape architecture examination.]

* * * * *

APPLICATION PROCEDURES

§ 15.11. Filing procedures.

* * * * *

(b) An application shall be [**made**] submitted on forms [**furnished and in the manner prescribed**] provided by the Board[, and shall be accompanied

by the required fee, certified check, cashier's check or money order made payable to "Commonwealth of Pennsylvania." Applicants may not send cash. Refund policies for application and examination fees shall be as specified in the application] along with the appropriate fee.

(c) An application for examination shall be submitted [by February 10] directly to the professional testing organization along with the fee in accordance with the deadline provided by the professional testing organization.

* * * * *

§ 15.12. Fees.

Following is the schedule of fees charged by the Board:

- (1) [Application for examination..... \$40
- (2)] Application for licensure under § 15.54(b)(1), (2) and (3) or § 15.56(a)(3) \$60
- [(3)] (2) * * *
- [(4)] (3) * * *
- [(5)] (4) * * *
- [(6) Administration of examination for one section or more \$45
- (7)] (5) * * *
- [(8)] (6) * * *
- [(9)] (7) * * *
- [(10)] (8) * * *
- [(11)] (9) * * *
- [(12)] (10) * * *

EXAMINATIONS

§ 15.51. Eligibility.

An applicant qualifying under section 6(b) of the act (63 P. S. § 906(b)) is eligible to take the regular examination which will be [a written] an examination administered on the dates and times and at the places established by the [Board] professional testing organization. A copy of the instructions will be furnished to the applicant.

(1) [Yearly examination] Examination. The [LARE] examination will be given [in June on a date selected by CLARB] on dates selected by the professional testing organization.

* * * * *

(4) [Admittance. An applicant shall present his admission letter and photograph identification to the proctor for admittance to the examination.

(5)] * * *

[(6) Inactive record. Records of applicants for registration that are inactive for 5 years will be destroyed. A record will be considered inactive if an applicant has taken the examination, has failed one or more parts of the examination and has failed to retake those failed parts of the examination for 5 years, or if an applicant has been declared eligible

to sit for the examination and fails to sit for the examination for 5 years.]

§ 15.52. [Examination procedure] (Reserved).

[(a) Examination of applicants. The Board, in consultation with the Bureau, will contract for the preparation, administration and evaluation of its licensure examination.

(b) Proctors. The professional testing organization will arrange for proctors to administer the conduct of the examination. The proctor shall confiscate the examination paper of the applicant found copying, photographing or using unauthorized materials. The applicant shall be dismissed from the examination and may be disqualified from future examinations.]

§ 15.53. Grading.

(a) [The examination will be graded using procedures developed by CLARB in consultation with a professional testing organization under contract to the Bureau.] Test results will be recorded by the Board in a permanent record of the applicant.

* * * * *

[Pa.B. Doc. No. 03-2231. Filed for public inspection November 21, 2003, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]
Certificate of Authorization

The State Board of Physical Therapy (Board) proposes to amend § 40.5 (relating to fees) and add §§ 40.61—40.63 (relating to certificate of authorization to practice physical therapy without a referral; professional liability insurance; and continuing education) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under section 3 of the Physical Therapy Practice Act (act) (63 P. S. § 1303) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a). The act of February 21, 2002 (P. L. 234, No. 6) (Act 6) (63 P. S. § 1309) amended the act to permit a physical therapist to practice physical therapy without obtaining a referral from a physician if the physical therapist qualifies for and obtains from the Board a certificate of authorization to practice physical therapy without a referral. The proposed rulemaking implements Act 6.

Background and Purpose

The proposed rulemaking provides for the issuance of a certificate of authorization by the Board under Act 6. The

proposed rulemaking establishes a fee for the issuance of a certificate and otherwise establishes the requirements and conditions for obtaining and practicing under a certificate. The following is a description of the proposed amendments.

Section 40.5—Section 8(b) of the act (63 P. S. § 1308(b)) requires the Board to set all fees by regulation. Expenses related to applications or services which are provided directly to individual licensees or applicants are excluded from revenues and are funded through fees. The cost of providing the service forms the basis for the fee.

It was determined that upon the implementation of Act 6, approximately 5,500 applications would be submitted to the Board for initial certificates of authorization to practice physical therapy without a physician's referral with approximately 1,300 new applications being submitted each biennial cycle thereafter. The analysis undertaken by the Budget Office of the Department of State establishes a fee of \$30 for the initial certificate. It was also estimated that approximately 6,800 biennial renewal applications would be submitted each biennium and that a biennial renewal fee of \$37 should be established. The Board plans on monitoring the numbers of applications received and adjusting these fees by further regulation as necessary.

Section 40.61—Section 40.61 reflects the requirements and language of Act 6 pertaining to the eligibility of a licensee to obtain a certificate. Act 6 requires that an applicant must be licensed in this Commonwealth as a physical therapist. Therefore, this requirement is in § 40.61(a)(1). Also, Act 6 requires that the licensee must have either passed an examination for licensure which included testing on the appropriate evaluative procedures to treat a person without a referral or have passed an examination for licensure prior to 1990 and successfully completed a course approved by the Board on the appropriate evaluative procedures to treat a person without a referral. In implementing these statutory provisions, the Board notes that its recognized examination is the National Physical Therapy Examination (NPTE). After January 1, 1990, the NPTE included testing on the appropriate evaluative procedures to treat a patient without a referral. Prior to January 1, 1990, the NPTE did not include this testing. Therefore, § 40.61(a)(2)(ii) requires that a licensee who passed the NPTE prior to January 1, 1990, must have successfully completed within the 2 years preceding application a Board-approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. This subsection would require the Board to maintain a list of currently approved courses meeting the Board's criteria. The Board believes that requiring at least 10 hours within 2 years preceding application is the minimum number of hours acceptable to assure that licensees are fresh and knowledgeable in this area to practice safely.

In addition to the educational requirement of Act 6, the statute requires that the licensees have practiced physical therapy in this Commonwealth or in a reciprocal state in the delivery of patient care on a continuous basis for at least 2 years immediately preceding application for the certificate or through the combination of 2 years practice in this Commonwealth and a reciprocal state. These requirements are in § 40.61(a)(3).

Subsection (b) would define "continuous practice" as a minimum of 200 hours each year in the delivery of direct

patient care. The Board has determined that 200 hours each year represents approximately 10% of a physical therapist's annual practice time. Subsection (c) reflects the requirement in the act that certificates of authorization be displayed in a conspicuous manner to the public.

Act 6 requires that only a licensee holding a certificate of authorization may practice without the required referral from a physician. Subsection (d) clarifies that a physical therapist who holds a certificate cannot delegate the care of a patient to another physical therapist who does not have a certificate.

Section 40.62—Section 9(b)(4) of the act (63 P. S. § 1309(b)(4)) was amended by Act 6 to require that a certificate holder have professional liability insurance in the minimum amounts required to be maintained by physicians under the Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006). The Board notes, in implementing this statutory provision, that the Health Care Services Malpractice Act was subsequently replaced by the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.5108). Specifically, section 711 of the MCARE Act (40 P. S. § 1303.711) sets forth the insurance requirements. Accordingly, the Board references section 711 of the MCARE Act in § 40.62(a).

Act 6 sets forth the requirement that a licensee shall notify the Board within 30 days of the licensee's failure to be covered by the required insurance. Also, Act 6 provides for the automatic suspension of a certificate upon the failure to be covered by the required insurance and that the certificate not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance. Section 40.62(b) and (c) mirrors these statutory provisions.

Act 6 amended section 9(b)(iii) of the act to set forth the kinds of insurance satisfactory for compliance with this requirement. Section 40.62(c) reflects these options. With respect to self-insurance, section 9(b)(iv) of the act requires that the Board adopt by regulation standards and procedures established by the Insurance Commissioner for self-insurance. This has been accomplished through § 40.62(c)(1) of the proposed rulemaking.

Section 40.63—Act 6 requires that for a licensee to biennially renew a certificate, the licensee must complete, within the biennial period, at least 20 hours of continuing education regarding keeping the certificate holder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 hours are required to be in appropriate evaluative procedures to treat a person without a referral. Act 6 further requires that the Board approve continuing education programs and program providers in accordance with standards and criteria approved by the Board by regulation including any fees necessary to implement these provisions.

Section 40.63 implements these provisions of Act 6. First, the Board defines appropriate terms used in this section. In particular, the term "contact hour" would be defined as "a unit of measure equaling 60 minutes of participation in an approved continuing education course or program."

Subsections (b) and (c) mirror the continuing education requirements of Act 6. Subsection (c) further provides for the keeping of continuing education records for 4 years and for the auditing of continuing education records by the Board.

Subsection (d) establishes sponsors and acceptable courses and programs. Section 40.63(d)(1) clarifies that it is the responsibility of the certificate holder to ascertain the approval status of the sponsor before taking a course. Paragraph (2) provides that even if a sponsor is approved, a course may be rejected by the Board if the course is outside the scope of practice of physical therapy. Also, this provision mirrors the act in that credit will not be given for courses in office management or practice building. Paragraph (2) provided that a certificate holder will be notified of a rejected course in writing along with the reason for the rejection.

Section 40.63(d)(3) sets forth the process for applying for approval as a sponsor of continuing education and the criteria for approval. Under § 40.63(e), home study courses would be authorized if given by approved sponsors. Subsection (f) reflects the statutory provision that the continuing education requirements do not apply until after the first renewal of the certificate of authorization.

Subsection (g) required that for a certificate to be reinstated or reactivated, continuing education compliance must be substantiated. Subsection (h) provides for waivers of the continuing education requirement due to illness or hardship as set forth in section 9(c)(2) of the act.

Fiscal Impact and Paperwork Requirements

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 12, 2003, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. 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 comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Robert Kline, Administrative Assistant, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-651, Practice of Physical Therapy without Referral, when submitting comments.

JAMES J. IRRGANG,
Chairperson

Fiscal Note: 16A-6510. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

GENERAL PROVISIONS

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

* * * * *

Application for Certificate to Practice Physical Therapy without a referral \$30

Biennial renewal of Certificate to Practice Physical Therapy without a referral \$37

Application for approval of continuing education provider or program (per each course offered) . . \$40

* * * * *

(Editor's Note: Sections 40.61—40.63 are new. They are printed in regular type to enhance readability.)

PRACTICE WITHOUT PHYSICIAN REFERRAL

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without the referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

(1) Holds a current license to practice physical therapy in this Commonwealth.

(2) Has done one of the following:

(i) Passed the National Physical Therapy Examination (NPTE) after January 1, 1990.

(ii) Passed the NPTE prior to January 1, 1990 and successfully completed, within 2 years prior to application, a Board approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

(3) Has done one of the following:

(i) Practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(ii) Been licensed by endorsement and practiced physical therapy in the delivery of patient care as a licensed physical therapist in the other state on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(iii) Provided proof of meeting these practice requirements through any combination of subparagraphs (i) and (ii).

(4) Has obtained professional liability insurance under the requirements of § 40.62 (relating to professional liability insurance).

(5) For purposes of this section, continuous practice is defined as a minimum of 200 hours each year in the delivery of direct patient care.

(b) A certificate holder shall display the certificate of authorization in a manner conspicuous to the public.

(c) A certificate holder may not delegate the care of a patient being treated without a referral to a physical therapist who is not a certificate holder.

(d) A certificate holder may treat a person without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat a person beyond 30 days from the date of the first treatment unless the person has obtained a referral from a licensed physician, dentist or podiatrist. The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

§ 40.62. Professional liability insurance.

(a) Beginning January 1, 2005, or upon applying for a certificate of authorization, whichever occurs earlier, a licensee who applies for and obtains a certificate of authorization shall obtain and maintain professional liability insurance coverage in the minimum amount required to be maintained by physicians under section 711 of the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. § 1303.711).

(b) A certificate holder shall notify the Board within 30 days of the holder's lapse in coverage of the required insurance.

(c) The certificate of authorization shall automatically be suspended upon failure to be covered by the required insurance and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance.

(d) Satisfactory evidence of insurance coverage is any one of the following:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee's employer.

(4) A similar type of coverage.

§ 40.63. Continuing education

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Certificate holder—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.

Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program.

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have com-

pleted during the preceding biennium a minimum of 20 contact hours of physical therapy continuing education related to keeping the certificate holder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 20 contact hours shall be in evaluative procedures to treat a person without a referral.

(c) *Reports to the Board.* A certificate holder shall certify compliance with the continuing education hours requirement at the time of biennial renewal of the certificate. A certificate holder shall retain for at least 4 years, certificates, transcripts or other documentation showing completion of the prescribed number of hours. These records are subject to audit by the Board.

(d) *Approved sponsors; acceptable courses and programs.*

(1) Courses and programs provided by Board-approved sponsors will be accepted as satisfying the continuing education requirement. It is the responsibility of the certificate holder to ascertain the approval status of the sponsor before undertaking a continuing education activity.

(2) Irrespective of the sponsor, the Board reserves the right to reject a continuing education course or program submitted by a certificate holder if it is outside the scope of practice of physical therapy. The Board will not accept courses or programs which are unrelated to the actual practice of physical therapy—for example, instruction in office management or practice building. A certificate holder will be notified of a rejected course or program in writing, along with the reason for the rejection.

(3) Sponsors of physical therapy continuing education seeking Board approval shall submit an application on forms provided by the Board and pay the required fee. The applicant will be notified of approval or disapproval in writing. Notifications of disapproval will set forth reasons. The Board will not approve a sponsor unless it:

(i) Offers courses or programs, or both, with specific learning objectives geared to improve the professional competence of the participant.

(ii) Verifies attendance of the course.

(iii) Provides each attendee with a certificate which includes participant's name, date, place, course title, presenter and number of contact hours.

(4) The Board may withdraw approval of a sponsor for cause. The sponsor will be notified in writing of the reasons for withdrawal of approval.

(e) *Distance education.* A certificate holder may accrue all required hours in distance education courses offered by approved sponsors of continuing education as long as the course sponsor evaluates and assesses the extent of learning that has taken place.

(f) *Reinstatement of certificate.* Reinstatement of certificate shall be subject to the following conditions:

(1) A person whose certificate has lapsed or been inactive shall show compliance with the continuing education requirement during the biennium immediately preceding the request for reinstatement.

(2) A person whose certificate has been suspended or restricted shall show compliance with the continuing education requirement during the entire period of suspension or restriction.

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disabil-

ity or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. No waiver or extension of time will be granted unless a written request is submitted by the licensee; or in cases of physical disability or illness, by a physician licensed in this state or another state or territory of the United States or the District of Columbia and whose license is in good standing, or both. All necessary documentation must be received by the Board no later than 90 days preceding the

biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted require the applicant to make up all or part of the continuing education waived.

[Pa.B. Doc. No. 03-2232. Filed for public inspection November 21, 2003, 9:00 a.m.]
