

PROPOSED RULEMAKING

STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

[49 PA. CODE CH. 39]

Deletion and Correction of Fees

The State Board of Examiners of Nursing Home Administrators (Board) proposes to amend § 39.72 (relating to fees) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The amendments are authorized under section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) and section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P. S. § 1107.1(a)). Section 7.1(a) of the act authorizes the Board to fix fees by regulation. Section 4(a)(1) and (2) of the act (63 P. S. § 1104(a)(1) and (2)) sets forth the functions and duties of the Board, which include the development and application of appropriate techniques, including examinations, for determining whether an individual meets standards to receive a license as a nursing home administrator. Section 4(c) of the act authorizes the Board to make rules and regulations, not inconsistent with law, as may be necessary for the proper performance of its duties. Section 7 of the act (63 P. S. § 1107) directs the Board to prescribe the subject, character, manner, time and place of the examination and requires that all examinations shall be prepared and administered by a qualified and approved professional testing organization.

C. *Background and Purpose*

Deletion of Examination Fees

The General Assembly has indicated its preference for the recognition of National uniform examinations and grading services in accordance with section 812.1 of The Administrative Code of 1929. The Board currently requires two examinations for initial licensure: the National Association of Boards of Examiners of Long-Term Care Administrators (NAB) examination and a State rules and regulations examination. The proposed amendment to § 39.72 deletes the examination fees for the NAB examination, the State rules and regulations examination and the combined examination. These fees are set by the testing organization which develops and administers the examinations, not by the Board. All 51 state boards or licensing agencies administer the NAB examination as a requirement for licensure and the examination fees are uniform throughout the United States. To avoid the necessity of amending its regulations whenever the testing organization might change the fees, the Board proposes to delete references to the examination fees.

The fees for the examinations are established by the NAB and communicated to applicants by both the NAB and the Board as part of the licensure application. Applicants for these exams pay the examination fees directly to the National examiners, with a certified check or money order payable to NAB, which the Board collects with the application submitted to the Board. The fee is

held by the Board until the application is approved. After the Board grants the applicant permission to take the licensing examination, the fee payable to the NAB is transmitted to the test administrator. It is unnecessary and impractical for the Board to continue to publish the National examiners' examination fees in § 39.72. Because examination fees are no longer established by the Board, section 7.1 of the act is inapplicable as to the National uniform examination and the State rules and regulations examination developed by the National examiner. Thus, the Board is eliminating reference to these examination fees in § 39.72.

Other references to examination fees are in §§ 39.5(a)(3) and 39.6(b) (relating to requirements for admission to licensing examination; examination procedures; and examination applications). These sections require that the candidate for admission to the licensing examination pay the required fee for examination and licensure and also that the examination application be accompanied by the required fee. It would be inappropriate to delete these references to the examination fee, when the examination fee will continue to be submitted to the Board and transmitted to the test administrator once the application for examination is approved by the Board. There are no fees paid directly to the test administrator. All certified checks or money orders for the examination are made payable to the NAB, the National examiner and the test developer.

Correction of Fees for Continuing Education Program Applications

The fee for continuing education program application per clock hour was changed from \$10 per clock hour to \$15 per clock hour as part of a final-form rulemaking published at 30 Pa.B. 6199 (December 2, 2000). This fee is for continuing education providers seeking Board approval of an upcoming course. However, this fee was inadvertently published as \$10 per clock hour in another final-form rulemaking published at 31 Pa.B. 1362 (March 10, 2001). The need for the \$15 per clock hour fee was explained in the final-form rulemaking published at 30 Pa.B. 6199, promulgated under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). This proposed rulemaking corrects the erroneous fee published at 31 Pa.B. 1362.

In addition, the fee for continuing education individual program applications was initially proposed to be deleted in a proposed rulemaking published at 29 Pa.B. 662 (February 6, 1999), because the Board intended to eliminate all individual retroactive approval for continuing education courses. In light of the concerns of the commentators on the proposed rulemaking, the Board reinstated limited retroactive continuing education course approval for individuals in the final-form rulemaking published at 31 Pa.B. 1362. However, the fee for continuing education individual program applications was not reinstated in the final-form rulemaking. The need for the \$20 per application fee was explained in the final-form rulemaking published at 18 Pa.B. 3211 (July 23, 1988), promulgated under the Regulatory Review Act. This proposed rulemaking corrects the erroneous omission of the fee published at 31 Pa.B. 1362.

D. *Fiscal Impact and Paperwork Requirements*

The deletion of examination fees will have no adverse fiscal impact on the Board or its licensees. The continuing education fees will have fiscal impact on the Board and its licensees, but only insofar as it will reinstate the

proper fees and permit the Board to charge the fees for continuing education approval which it has continuing authority to charge. The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

E. *Sunset Date*

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

F. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 16, 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.

G. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Christina Stuckey, Board Administrator, State Board of Examiners of Nursing Home Administrators, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-628 (Deletion of Examination Fees) when submitting comments.

ROBERT H. MORROW, NHA,
Chairperson

Fiscal Note: 16A-628. 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 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS
RENEWAL**

§ 39.72. Fees.

The following is a schedule of fees charged by the Board:

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**[N.A.B. examination fee \$235
State rules and regulations examination \$87**

Complete nursing home administration examination \$322]

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Continuing education program application fee per clock hour **[\$10] \$15**

Continuing education individual program application fee \$20

[Pa.B. Doc. No. 04-15. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Continuing Medical Education

The State Board of Medicine (Board) proposes to amend § 16.1 (relating to definitions) and add § 16.19 (relating to continuing medical education) to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*. The Legislature has required that the Board promulgate regulations within 6 months of the effective date of section 910 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. § 1303.910).

Statutory Authority

Under section 910 of the act, the Board is required to establish requirements for continuing medical education for physicians as a condition for renewal of their licenses. Physicians are required to complete 100 credit hours of mandatory continuing medical education during each 2-year licensure period.

Background and Purpose

The proposed rulemaking will implement section 910 of the act, which requires completion of 100 credit hours of continuing education as a condition of biennial license renewal of physician licenses by the Board and the State Board of Osteopathic Medicine.

Description of Proposed Rulemaking

The proposed rulemaking requires proof of completion of 100 credit hours of continuing medical education as a condition of license renewal and requires that at least 20 of the 100 hours be American Medical Association Physician Recognition Award category 1 credits and that at least 10 credit hours must be in the areas of patient safety and risk management. Courses in the areas of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The proposed rulemaking further designates the Accreditation Council on Continuing Medical Education as the accrediting body for purposes of approving continuing medical education providers.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will require the Board to alter its license renewal forms to include data regarding

the physician's compliance with the continuing education requirements and will also require physicians to maintain their own records of continuing education credits, but otherwise, should have no adverse fiscal impact on the Commonwealth or its political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 16, 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 the proposed rulemaking to Amy L. Nelson, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,
Chairperson

Fiscal Note: 16A-4914. 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 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1 Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

ACCME—The Accreditation Council for Continuing Medical Education.

AMA—American Medical Association.

AMA PRA—American Medical Association Physician's Recognition Award.

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Approved course—A continuing medical education course offered by a provider accredited by the ACCME.

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Immediate family member—A parent, spouse, child or adult sibling residing in the same household.

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Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.19. Continuing medical education.

Beginning with the licensure renewal period commencing January 1, 2005, proof of completion of 100 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for medical doctors.

(1) At least 20 credit hours shall be completed in AMA PRA category 1 approved courses. At least 10 credit hours shall be completed in approved courses in the area of patient safety and risk management. Approved courses in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The remaining 70 credit hours shall be completed in any approved courses. Credit will not be granted for courses in office management or practice building.

(2) Physicians shall retain official documentation of attendance for 2 years after renewal, and shall certify completed courses on a form provided by the Board for that purpose, to be filed with the biennial renewal form. Official documentation proving attendance shall be produced, upon Board demand, under random audits of reported credit hours. Electronic submission of documentation is permissible to prove compliance with this subsection. Noncompliance may result in disciplinary proceedings under section 41(6) of the Medical Practice Act of 1985 (63 P. S. § 422.41(6)).

(3) The following exemptions apply for certain physicians:

(i) A physician applying for licensure in this Commonwealth for the first time shall be exempt from the continuing medical education requirement for the biennial renewal period following initial licensure.

(ii) A physician holding a current temporary training license shall be exempt from the continuing medical education requirement.

(iii) A retired physician who provides care only to immediate family members shall be exempt from the continuing medical education requirement.

(iv) A physician who is on inactive status shall be exempt from the continuing medical education requirement, except that a physician who is seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium.

(4) A physician suspended for disciplinary reasons is not exempt from the requirements of this section.

(5) Waiver of the CME requirements may be permitted, as follows:

(i) The Board may grant a hardship waiver of all or a part of the continuing medical education requirement in cases of serious illness, military service or other good cause provided that the public's safety and welfare will not be jeopardized by the granting of the waiver.

(ii) Requests for waiver shall be made in writing, with appropriate documentation, and shall include a description of circumstances sufficient to show why compliance is impossible.

(iii) Waiver requests will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

[Pa.B. Doc. No. 04-16. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Delegation of Medical Services

The State Board of Osteopathic Medicine (Board) proposes to amend § 25.1 (relating to definitions) by adding a definition for "emergency medical services personnel" and to add § 25.217 (relating to delegation) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 16 of the Osteopathic Medical Practice Act (act) (63 P. S. § 271.16) authorizes the Board to promulgate regulations necessary to carry out the purposes of the act. Section 3 of the act (63 P. S. § 271.3) permits osteopathic physicians to delegate medical services and acts to physician assistants, technicians or other allied medical personnel if services and acts are rendered under the supervision, direction or control of a licensed physician.

C. *Background and Purpose*

The Board routinely receives inquiries about whether a particular delegation of medical services is appropriate. In an effort to be responsive to the regulated community and to provide a framework that places patient safety and welfare at the forefront of the osteopathic physician's decision making process, the Board determined to codify basic criteria under which an osteopathic physician may delegate the performance of medical services to nonphysicians.

D. *Description of Proposed Rulemaking*

Section 3 of the act permits osteopathic physicians to delegate the performance of medical services. Section 3 of the act provides in relevant part as follows:

"Nothing in this act shall be construed to prohibit services and acts rendered by a qualified physician assistant, technician or other allied medical person if such services and acts are rendered under the supervision, direction or control of a licensed physician."

The proposed rulemaking adds § 25.217. This section establishes general criteria under which an osteopathic physician may exercise professional judgment in making the decision to delegate medical services.

Section 25.217(a) establishes the criteria under which delegation could occur. Specifically, § 25.217(a)(1) requires that delegation be consistent with standards of acceptable medical practice. Standards of acceptable medical practice may be discerned from current medical literature and texts, medical teaching facilities publications and faculty, expert practitioners in the field and the commonly accepted practice of practitioners experienced in the field.

Section 25.217(a)(2) prohibits an osteopathic physician from expanding the scope of practice of other health care practitioners where the General Assembly or the licensing board responsible for regulating the other health care practitioner has prohibited the performance of those services by the other health care practitioner. Section 25.217(a)(3) requires the osteopathic physician to assure that the individual practitioner or technician to whom the delegation is being made has sufficient education, training and competency so that the delegatee knows how to perform the service safely. Accordingly, the osteopathic physician would be obligated to determine whether the delegatee is competent to perform the procedure. This may be accomplished by determining whether the delegatee is licensed, certified or possesses documented education and training related to the service. The physician may choose to monitor the delegatee to become satisfied as to the delegatee's competence.

Section 25.217(a)(4) prohibits delegation when the particular patient presents with unusual complications, family history or condition so that the performance of the medical service poses a special risk to that particular patient. Unlike the other provisions, this section directs the osteopathic physician's attention to the needs of the particular patient. A determination shall be made that the service may be rendered to the particular patient without undue risk. It is the physician's responsibility to make that assessment.

Section 25.217(a)(5) recognizes that patients are autonomous and that consideration of patient autonomy and dignity is a responsibility of the osteopathic physician. Thus, it is the osteopathic physician's responsibility to assure that the patient is advised as to the nature of the medical service and the reason for the delegation, so that the patient might exercise his right to request the service be performed by the osteopathic physician. The primary relationship in the delivery of medical services is between the patient and the physician. The person in charge of this relationship is the patient. Communication with the patient and education of the patient is essential to the proper delivery of medical services, and a primary obligation of physicians.

Section 25.217(a)(6) directs the osteopathic physician to provide the level of supervision and direction appropriate to the circumstance surrounding the delivery of the medical service. It underscores the fact that the osteopathic physician is ultimately responsible for the patient's well-being and requires the physician to maintain the level of involvement in the treatment process as required by section 3 of the act.

Section 25.217(b) prohibits the delegation of a medical service when the service is sufficiently complicated, difficult or dangerous that it would require a degree of education and training possessed by osteopathic physi-

cians, but not commonly possessed by nonphysicians. Additionally, this section prohibits delegation of medical services in situations when potential adverse reactions may not be readily apparent to an individual without physician training. These criteria are intended to prohibit the delegation of medical services when the delegation poses undue risk to patients generally.

Section 25.217(c) requires the osteopathic physician to be sufficiently knowledgeable about the medical service so that the osteopathic physician is not merely a straw man. It should be axiomatic that the individual who has responsibility and authority for directing others in delivering medical services has the knowledge, ability and competency pertaining to the performance of those services.

Section 25.217(d) reminds osteopathic physicians that they retain responsibility for the performance of the service whether they perform it themselves or direct another to do so.

Section 25.217(e) recognizes the reality that emergencies arise when available health care personnel must immediately attend to patients, even though under nonemergency circumstances, the osteopathic physician would be the most appropriate person to care directly for the patient.

Section 25.217(f) recognizes that licensed or certified health care practitioners have a scope of practice defined by statute and regulations. This proposed rulemaking is not intended to restrict or limit the performance of medical services that fall within the parameters established by law. Specific examples have been provided because of concerns that were expressed to the Board pertaining to those practitioners. They are provided as examples and are not intended to be all-inclusive.

E. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector. Citizens of this Commonwealth will benefit in that this proposed rulemaking promotes patient safety and welfare as a consideration in making medical service delegation decisions.

F. Sunset Date

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

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 16, 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.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Amy L. Nelson, Board Counsel, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Cite "delegation of medical services" when submitting comments.

THOMAS R. CZARNECKI, D.O.,
Chairperson

Fiscal Note: 16A-5312. 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 25. STATE BOARD OF OSTEOPATHIC MEDICINE
Subchapter A. GENERAL PROVISIONS

§ 25.1 Definitions.

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

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Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P. S. §§ 6921—6938).

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Subchapter D. MINIMUM STANDARDS OF PRACTICE

§ 25.217. Delegation.

(a) An osteopathic physician may delegate to a health care practitioner or technician the performance of a medical service if the following conditions are met:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the osteopathic physician community in this Commonwealth. Standards of acceptable medical practice may be discerned from current peer reviewed medical literature and texts, teaching facility practices and instruction, the practice of expert practitioners in the field and the commonly accepted practice of practitioners in the field.

(2) The delegation is not prohibited by the statutes or regulations relating to the other health care practitioner.

(3) The osteopathic physician has knowledge that the delegatee has education, training, experience and continued competency to safely perform the medical service being delegated.

(4) The osteopathic physician has determined that the delegation to a health care practitioner or technician does not create an undue risk to the particular patient being treated.

(5) The nature of the service and the delegation of the service has been explained to the patient and the patient does not object to the performance by the health care practitioner or technician. Unless otherwise required by

law, the explanation may be oral and may be given by someone other than the osteopathic physician.

(6) The osteopathic physician assumes the responsibility for the delegated medical service, including the performance of the service, and is available to the delegatee as appropriate to the difficulty of the procedure, the skill of the delegatee and risk to the particular patient.

(b) An osteopathic physician may not delegate the performance of a medical service if performance of the medical service or if recognition of the complications or risks associated with the delegated medical service requires knowledge and skill not ordinarily possessed by nonphysicians.

(c) An osteopathic physician may not delegate a medical service which the osteopathic physician is not trained, qualified and competent to perform.

(d) An osteopathic physician shall be responsible for the medical services delegated to the health care practitioner or technician.

(e) An osteopathic physician may approve a standing protocol delegating medical acts to another health care practitioner who encounters a medical emergency that requires medical services for stabilization until the osteopathic physician or emergency medical services personnel are available to attend to the patient.

(f) This section does not prohibit a health care practitioner who is licensed or certified by a Commonwealth agency from practicing within the scope of that license or certificate or as otherwise authorized by law. For example, this section is not intended to restrict the practice of certified registered nurse anesthetists, nurse midwives, certified registered nurse practitioners, physician assistants or other individuals practicing under the authority of specific statutes or regulations.

[Pa.B. Doc. No. 04-17. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Notice Requirements

The State Board of Psychology (Board) proposes to add §§ 41.91 and 41.92 (relating to reporting of crimes and disciplinary actions; and notice of active suspension or revocation) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The amendments are proposed under the authority of sections 3.2(2), 8(a)(6)–(8), 8.1, 11(c) and 17 of the Professional Psychologists Practice Act (act) (63 P.S. §§ 1203.2(2), 1208(a)(6)–(8), 1208.1, 1211(c) and 1217).

C. *Purpose and Background*

Sections 8(a)(6)–(8) of the act authorize the Board to discipline licensees who have been convicted or plead guilty or nolo contendere to a felony or misdemeanor in the practice of psychology; have been disciplined by the

licensing authority of another state, territory or country; or are unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material. However, there is no provision in the Board's regulations that requires licensees to report pleas or convictions to the Board in advance of biennial renewal. It may be almost 2 years before the Board first learns of the conviction. Similarly, although section 11(c) of the act requires licensees to return suspended and revoked licenses to the Board, there is no provision in the Board's regulations which requires that they be returned within a specified time.

Additionally, although section 8.1 of the act prohibits suspended and revoked licensees from providing service that falls within the practice of psychology, section 3 of the act (63 P.S. § 1203) carves out numerous exemptions for licensure, including one for qualified members of other recognized professions. A suspended or revoked psychologist may continue to provide similar services to clients/patients under another title without any interruptions. The Board believes that to properly protect the clients/patients of suspended or revoked licensees, the licensees shall advise their clients/patients of the disciplinary action so that the clients/patients can make an informed decision whether to continue treatment with the provider.

D. *Description of Proposed Rulemaking*

1. *Reporting of crimes and disciplinary actions*

Proposed § 41.91(a) requires licensees who have been convicted of or pleaded guilty or nolo contendere to a felony or misdemeanor to notify the Board of the action within 30 days of the verdict or plea or on the biennial renewal application, whichever is sooner. In requiring that all misdemeanors be reported, the Board recognizes that it may only take disciplinary action against a licensee where the misdemeanor involves the practice of psychology or where the misdemeanor evidences that the licensee is unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material. Under this proposed rulemaking, summary offenses would not have to be reported.

Proposed § 41.92(b) tracks the language of section 8(a)(7) of the act in connection with disciplinary actions taken by other jurisdictions. Licensees would be required to report those disciplinary actions within 30 days or on the biennial renewal application, whichever is sooner.

2. *Notice of active suspension or revocation*

In addition to requiring licensees who have been actively suspended or revoked to return their license to the Board within 30 days, proposed § 41.92 would require these licensees to advise their current clients/patients of the disciplinary action in writing.

E. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 17, 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.

F. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth, its political subdivisions or the public. The proposed rulemaking will cause additional reporting and other paperwork requirements on those licensees who are disciplined by the Board in that they will be required to notify their patients of the Board's disciplinary action. Because the act currently requires all licensees to report nolo or guilty pleas and licensees with multiple licenses to report discipline taken in other states, there are no new legal, reporting or other paperwork requirements on these licensees.

G. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judith Pachter Schulder, Counsel, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

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

Fiscal Note: 16A-6314. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

NOTICE REQUIREMENTS

§ 41.91. Reporting of crimes and disciplinary actions.

(a) A licensee shall notify the Board of having been convicted of, or having pleaded guilty or nolo contendere to, a felony or misdemeanor, within 30 days of the conviction, verdict or plea.

(b) A licensee shall notify the Board of disciplinary action in the nature of a final order taken against the licensee by the licensing authority of another state, territory or provincial board of psychology within 30 days of receiving notice of the disciplinary action, or on the biennial renewal application, whichever is sooner.

§ 41.92. Notice of active suspension or revocation.

A licensee whose license has been actively suspended or revoked by the Board shall return the suspended or revoked license to the Board and notify all current clients/patients of the disciplinary action in writing within 30 days of receiving notice of the disciplinary action. The notice shall contain the following:

- (1) The sanction imposed.
- (2) The effective date and length of the sanction.
- (3) The nature of the violation.

(4) A statement that the licensee will assist patients in obtaining alternative professional resources and in transferring psychological records.

[Pa.B. Doc. No. 04-18. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Deletion of Examination Fees

The State Real Estate Commission (Commission) proposes to amend §§ 35.203 and 35.271—35.275 to read as set forth in Annex A. The proposed rulemaking deletes references to the examination fee determined by contract and charged by a professional testing organization from the schedule of fees in § 35.203 (relating to fees) and examination provisions in §§ 35.271—35.275.

Effective Date

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

Statutory Authority

Section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a) sets forth the powers and duties of the Commission with regard to the administration of examinations.

Background and Need for the Proposed Rulemaking

Two fees are related to examination for the broker and cemetery broker examinations: a fee for review of the candidate's qualifications (review fee) and a fee for administration of the examination (examination fee). The review fee is determined by the Bureau of Professional and Occupational Affairs based upon the aggregate amount of time spent by staff to review candidate qualifications. The examination fee is determined through a competitive bid and contract process with professional testing organizations. The salesperson, time-share salesperson and rental listing referral agent examinations only require the examination fee.

The Commission plays no role in setting the examination fee. To avoid the necessity of amending § 35.203 whenever the examination fee is changed, the Commission proposes to delete the examination fee from § 35.203 and specific references to the examination fee prescribed in § 35.203 from the examination provisions in §§ 35.271—35.275.

Description of Proposed Rulemaking

The proposed rulemaking eliminates the examination fee from § 35.203 and deletes the references "prescribed in § 35.203 (relating to fees)" from the examination provisions in §§ 35.271—35.275.

Fiscal Impact

The proposed rulemaking will have no fiscal impact on the Commission 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 the examination fee is changed. It will not create additional paperwork for the private sector.

Sunset Date

The Commission 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 December 16, 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 Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

HELEN BILLAK,
Chairperson

Fiscal Note: 16A-569. 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 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.203. Fees.

The following fees are charged by the Commission:

[Licensing examination for broker, cemetery broker, salesperson, builder-owner salesperson or rental listing referral agent \$45]

* * * * *

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

(a) An individual who wants to take the broker's examination for a Pennsylvania broker's license shall:

* * * * *

(5) Submit a completed examination application to the Commission or its designee with:

* * * * *

(v) The [fees] fee for review of the candidate's qualifications to take the examination prescribed in § 35.203

(relating to fees) and the fee for administration of the examination [prescribed in § 35.203 (relating to fees)].

* * * * *

§ 35.272. Examination for salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a Pennsylvania salesperson's license shall:

* * * * *

(3) Submit a completed examination application to the Commission or its designee with the examination fee [prescribed in § 35.203 (relating to fees)].

* * * * *

§ 35.273. Examination for cemetery broker's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a Pennsylvania cemetery broker's license shall:

* * * * *

(4) Submit a completed examination application to the Commission or its designee with:

* * * * *

(iv) The [fees] fee for review of the candidate's qualifications to take the examination prescribed in § 35.203 (relating to fees) and the fee for administration of the examination [prescribed in § 35.203 (relating to fees)].

* * * * *

§ 35.274. Examination for builder-owner salesperson's license.

An individual who wants to take the salesperson's examination for the purpose of obtaining a Pennsylvania builder-owner salesperson's license shall:

* * * * *

(3) Submit a completed examination application to the Commission or its designee with the examination fee [prescribed in § 35.203 (relating to fees)].

§ 35.275. Examination for rental listing referral agent's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a Pennsylvania rental listing referral agent's license shall:

* * * * *

(3) Submit a completed examination application to the Commission or its designee with the examination fee [prescribed in § 35.203 (relating to fees)].

* * * * *

[Pa.B. Doc. No. 04-19. Filed for public inspection January 2, 2004, 9:00 a.m.]