

# PROPOSED RULEMAKING

## GAME COMMISSION

[58 PA. CODE CH. 135]  
Lands and Buildings

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendment:

Amend § 135.2 (relating to unlawful actions) by eliminating redundant language.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

### 1. Introduction

The Commission is proposing to amend § 135.2(6) by eliminating redundant language.

### 2. Purpose and Authority

Section 135.2 provides a list of actions deemed unlawful. Specifically, § 135.2(6) makes it unlawful, except with the permission of the person in charge of the State owned or controlled lands, to "Remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken 'during the open season.'" The additional language "during the open season" is redundant and unnecessary. Therefore, the Commission is proposing to amend § 135.2(6) by removing "during the open season."

Section 721(a) of the code (relating to control of property) provides "the administration of all lands and waters owned, leased or otherwise controlled by the Commission shall be under the sole control of the Director, and the Commission shall promulgate regulations . . . for its use and protection as necessary to properly manage these lands or waters." The amendment to § 135.2 is proposed under this authority.

### 3. Regulatory Requirements

The proposed rulemaking does not change the substance of an existing regulation, but rather removes redundant language.

### 4. Persons Affected

Persons wishing to remove natural or manmade objects from lands under Commission control or ownership will be affected by the proposed rulemaking.

### 5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

### 6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

### 7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-184. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

### PART III. GAME COMMISSION

### CHAPTER 135. LANDS AND BUILDINGS

### Subchapter A. GENERAL PROVISIONS

### § 135.2. Unlawful actions.

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, to:

\* \* \* \* \*

(6) Remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken **[during the open season]**. Objects which may not be removed include animals, rocks, minerals, sand and historical or archaeological artifacts.

\* \* \* \* \*

[Pa.B. Doc. No. 04-600. Filed for public inspection April 9, 2004, 9:00 a.m.]

## [58 PA. CODE CH. 141]

### Hunting and Trapping; Firearm Caliber Limitations

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following rulemaking:

Amend § 141.22 (relating to small game) to permit rimfire and centerfire firearms of less than .23 caliber to hunt small game and § 141.43 (relating to deer) to permit the use of rimfire firearms of .22 caliber or less to dispatch legally trapped furbearers during the regular or special firearms deer seasons to make the regulations more consistent and reduce confusion related to firearm caliber limitations.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. Introduction

The Commission is proposing to amend § 141.22 to permit rimfire and centerfire firearms of less than .23 caliber to hunt small game and § 141.43 to permit the use of rimfire firearms of .22 caliber or less to dispatch legally trapped furbearers during the regular or special firearms deer seasons to make the regulations more consistent and reduce confusion regarding firearm caliber limitations.

2. Purpose and Authority

Currently, § 141.22 makes it unlawful to take small game with a centerfire firearm. Only rimfire, .22 caliber or less firearms are permitted to take small game. The Commission is proposing to amend § 141.22 to permit the use of rimfire and centerfire firearms of less than .23 caliber to take small game.

Currently, § 141.43 permits trappers to dispatch legally trapped furbearers during the regular or special firearms deer seasons with a .22 caliber firearm only. However, the Commission has recently amended the restrictions relating to the caliber of single projectile firearms that are permitted during the small game season to include smaller caliber firearms such as the .17 caliber. To maintain consistency between the regulations and reduce confusion regarding the calibers permitted, the Commission proposes to amend § 141.43 to permit the use of .22 caliber or less firearms for the dispatch of legally trapped furbearers during the regular or special firearms deer seasons.

Section 2102(d) of the code (relating to regulations) authorizes the Commission to "promulgate regulations stipulating the size and type of traps, the type of firearms and ammunition and other devices which may be used, the manner in which and the location where the devices may be used, the species the devices may be used for and the season when the devices may be used." Section 322(c)(5) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix the type and number of devices which may be used to take game or wildlife." Section 2102(a) of the code provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to . . . the ways, manner, methods and means of hunting or furtaking . . . in this Commonwealth." The amendments to §§ 141.22 and 141.43 are proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will permit the use of rimfire and centerfire firearms of less than .23 caliber to hunt small game and will also permit trappers to dispatch legally trapped furbearers during the regular or special firearms deer seasons with firearms of .22 caliber or less.

4. Persons Affected

Persons wishing to hunt small game in this Commonwealth with single projectile firearms will be affected by the proposed rulemaking. Additionally, persons wishing to dispatch legally trapped furbearers during the regular or special firearms deer seasons will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-183. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter B. SMALL GAME

§ 141.22. Small game.

(a) *Unlawful activities.* It is unlawful to:

\* \* \* \* \*

(8) Unless otherwise provided in the act or this title, hunt or take small game with anything other than a shotgun with fine shot, muzzleloading rifle or handgun .40 caliber or less, [rimfire] rifle or handgun [.22 caliber or] less than 23 caliber, or bow and arrow with or without broadheads. The caliber restrictions do not apply to rifles or handguns while hunting woodchuck.

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Subchapter C. BIG GAME

§ 141.43. Deer.

\* \* \* \* \*

(h) .22 caliber or less rimfire required for furbearers. When using a firearm only a [.22 caliber] rimfire rifle or handgun .22 caliber or less may be used to dispatch legally trapped furbearers during the regular or special firearms deer seasons.

[Pa.B. Doc. No. 04-601. Filed for public inspection April 9, 2004, 9:00 a.m.]

[58 PA. CODE CH. 141]

Hunting and Trapping; Furbearer Tagging Requirements

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendment:

Amend § 141.5 (relating to furbearer tagging requirements) to eliminate fur tagging requirements for beaver.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend § 141.5 to eliminate fur tagging requirements for beaver.

2. *Purpose and Authority*

To lawfully possess or transfer beaver pelts from this Commonwealth, current regulations require a trapper to first obtain a tag from the Commission to be secured upon the pelt. At one time the information gathered from the beaver tagging process was considered essential data by the Commission in maintaining and monitoring beaver populations across this Commonwealth. However, the Bureau of Wildlife Management has since indicated that it is no longer necessary to collect the data in this manner. The Commission is proposing to eliminate the fur tagging requirements for beaver and all references from § 141.5. By eliminating these requirements, trappers and wildlife conservation officers should be relieved of the time consuming burdens of arranging meetings throughout the state to tag beavers taken.

Section 2102(b)(1) of the code (relating to regulations) authorizes the Commission to "promulgate regulations relating to seasons and bag limits for hunting or furtaking, the possession of certain species or parts thereof . . ." Section 2102(a) of the code provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat . . . in this Commonwealth." The amendment to § 141.5 is proposed under this authority.

3. *Regulatory Requirements*

The proposed rulemaking will eliminate the fur tagging requirements for beaver.

4. *Persons Affected*

Persons wishing to trap beavers within this Commonwealth will be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-185. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.5. **Furbearer tagging requirements.**

(a) *Tag required.*

(1) Before possessing or removing any of the following wildlife or parts thereof from this Commonwealth, a tag shall be acquired from a representative of the Commission:

\* \* \* \* \*

**[(v) Beaver.]**

\* \* \* \* \*

(3) The fee for the tag is 50¢ **[except for beaver].**

\* \* \* \* \*

(c) **[Beaver tag. A beaver pelt shall be presented for tagging to a Commission representative in the district or county where trapped, unless prohibited by unusual circumstances which would create a hardship on the trapper. The deadline for tagging beaver is not later than 4 p.m. on the 10th day following the closing of the beaver season. Before a beaver or beaver pelt is sold or removed from this Commonwealth, it shall be tagged by an officer of the Commission.**

(d) **[(c) \* \* \***

**](e) (d) \* \* \***

[Pa.B. Doc. No. 04-602. Filed for public inspection April 9, 2004, 9:00 a.m.]

**[58 PA. CODE CH. 141]**

**Hunting and Trapping; Table of Hunting Hours**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following rulemaking:

Amend Chapter 141, Appendix G (relating to table of hunting hours) to reflect the annual change in days and subsequent hunting times.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

1. *Introduction*

The Commission is proposing to amend Appendix G to reflect the annual change in days and subsequent hunting times.

2. Purpose and Authority

Each year there is a shift in calendar days for each month. As a result of this occurrence, the table of hunting hours in Appendix G must be amended and updated to reflect the current year's hunting dates and corresponding legal hunting hours. The Commission is proposing to amend Appendix G by updating the table of hunting hours for the 2004-2005 hunting year.

Section 322(c)(1) of the code (relating to powers and duties of commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(a) of the code (relating to regulations) provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth. . . ." The amendment to Appendix G is proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will amend Appendix G to update the table of hunting hours to reflect the annual change in days and subsequent hunting times.

4. Persons Affected

Persons wishing to hunt or trap in this Commonwealth will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-181. No fiscal impact; (8) recommends adoption.

**Annex A**  
**TITLE 58. RECREATION**  
**PART III. GAME COMMISSION**  
**CHAPTER 141. HUNTING AND TRAPPING**  
**APPENDIX G**

\* \* \* \* \*

*(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete the text of the Table of Hunting Hours which appears in 58 Pa. Code pages 141-28 and 141-29, serial pages (297370) and (300827) and replace it with the following text.)*

**TABLE OF HUNTING HOURS**  
**FOR JUNE 27, 2004 THROUGH JULY 2, 2005**

<i>Dates</i>	<i>Begin a.m.</i>	<i>End p.m.</i>
June 27—July 3	5:06	8:33
July 4—July 10	5:10	8:32
July 11—July 17	5:14	8:29
July 18—July 24	5:20	8:24

<i>Dates</i>	<i>Begin a.m.</i>	<i>End p.m.</i>
July 25—July 31	5:26	8:18
Aug. 1—Aug. 7	5:32	8:12
Aug. 8—Aug. 14	5:39	8:02
Aug. 15—Aug. 21	5:45	7:54
Aug. 22—Aug. 28	5:52	7:43
Aug. 29—Sept. 4	6:00	7:32
Sept. 5—Sept. 11	6:05	7:22
Sept. 12—Sept. 18	6:12	7:10
Sept. 19—Sept. 25	6:18	6:57
Sept. 26—Oct. 2	6:24	6:47
Oct. 3—Oct. 9	6:33	6:35
Oct. 10—Oct. 16	6:40	6:24
Oct. 17—Oct. 23	6:46	6:15
Oct. 24—Oct. 30	6:54	6:05
Oct. 31—Nov. 6	6:01	4:56
Nov. 7—Nov. 13	6:10	4:50
Nov. 14—Nov. 20	6:18	4:44
Nov. 21—Nov. 27	6:36	4:39
Nov. 28—Dec. 4	6:33	4:37
Dec. 5—Dec. 11	6:40	4:36
Dec. 12—Dec. 18	6:45	4:37
Dec. 19—Dec. 25	6:50	4:40
Dec. 26—Jan. 1	6:52	4:44
Jan. 2—Jan. 8	6:53	4:51
Jan. 9—Jan. 15	6:49	5:05
Jan. 16—Jan. 22	6:48	5:08
Jan. 23—Jan. 29	6:44	5:13
Jan. 30—Feb. 5	6:39	5:22
Feb. 6—Feb. 12	6:30	5:30
Feb. 13—Feb. 19	6:23	5:38
Feb. 20—Feb. 26	6:14	5:46
Feb. 27—Mar. 5	6:03	5:54
Mar. 6—Mar. 12	5:53	6:01
Mar. 13—Mar. 19	5:41	6:09
Mar. 20—Mar. 26	5:30	6:16
Mar. 27—Apr. 2	5:19	6:23
Apr. 3—Apr. 9	6:08	7:30
Apr. 10—Apr. 16	5:57	7:38
Apr. 17—Apr. 23	5:47	7:44
Apr. 24—Apr. 30	5:36	7:52
May 1—May 7	5:28	7:58
May 8—May 14	5:20	8:05
May 15—May 21	5:14	8:12
May 22—May 28	5:08	8:18
May 29—June 4	5:05	8:24
June 5—June 11	5:02	8:28
June 12—June 18	5:02	8:31
June 19—June 25	5:03	8:33
June 26—July 2	5:05	8:33

[Pa.B. Doc. No. 04-603. Filed for public inspection April 9, 2004, 9:00 a.m.]

**[58 PA. CODE CHS. 141 AND 143]**  
**Hunting and Trapping; Hunting and Furtaker Li-**  
**censes**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendments:

Amend § 141.47 (relating to elk) to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hicks Run; § 141.48 (relating to elk management units) to allow the Director to estab-

lish elk management units prior to the opening of elk season; § 143.203 (relating to drawing) to permit elk hunters to meet the orientation requirement by completing one of the available orientation programs and also permit elk hunters whose military obligations prevent them from hunting during the current elk season to transfer their elk hunting eligibility to the next available season; and § 143.207 (relating to unlawful acts) to permit elk hunters to submit one application for an elk license for each elk season available.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

### 1. Introduction

The Commission is proposing to amend § 141.47 to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hicks Run, § 141.48 to allow the Director to establish elk management units prior to the opening of elk season, § 143.203 to permit elk hunters to meet the orientation requirement by completing one of the available orientation programs and also permit elk hunters whose military obligations prevent them from hunting during the current elk season to transfer their elk hunting eligibility to the next available season and § 143.207 to permit elk hunters to submit one application for an elk license for each elk season available.

### 2. Purpose and Authority

Currently, there is an area along Rt. 555 where elk are highly visible to the public from the roadway. These elk are often found in both private and public places; however, due to the proximity of these elk to the public, hunting them creates a danger for individuals located in or passing through this area. The proximity of these elk to Rt. 555 also encourages illegal poaching and the violation of the fair chase element to legal hunting. The Commission is proposing to amend § 141.47 to create a 150-yard wide no elk hunting zone on each side of the center line of Rt. 555 from Weedville to Hicks Run to protect people and elk in this exposed area from unsafe, illegal or incorrigible hunting practices.

At present, elk management units are, as some might say, "set in semipermanent stone" in the regulations. While the elk management units may be amended as needed, the process required to amend the regulations creates a substantial time delay before an amendment can be implemented and enforced. For elk management units, this delay means that by the time the elk management units are established and implemented, the information used to establish the new elk management units is no longer current. The Commission relies on various changing information to determine elk management unit locations including known elk herd locations, estimated elk populations and current elk problem areas. The Commission is proposing to amend § 141.48 to allow the Director to establish the elk management unit boundaries prior to the opening of elk season. This amendment will allow the Commission to more effectively manage the elk herd by allowing the elk management units to be defined in a more responsive manner. This means that hunters will have a greater opportunity to be successful and will

enable the Commission to reduce elk numbers in the most critical areas based upon the most recent information available.

Unfortunately, many successful applicants for an elk license are burdened with conflicts that prevent them from attending the orientation program sponsored by the Commission. As this orientation program is a required step to be completed before being issued an elk license, these conflicts can create an unfortunate dilemma for hunters. The Commission intends to relax this requirement and allow more flexibility in meeting the orientation requirement. Specifically, the Commission is proposing to amend § 143.203 to permit other options in programming to give the hunters the necessary orientation. The Commission also proposes to amend § 143.203 to allow persons serving in the armed forces, who were successfully drawn for an elk license but are unable to hunt during the current elk season because of their military obligation, to be issued an elk license for the following elk season.

Recently, the Commission proposed a second, early elk season. However, if implemented, current regulations would prevent an applicant from lawfully submitting an application for each season available. Specifically, § 143.207 currently makes it unlawful for a person to submit more than one application for an elk license during any hunting license year. The Commission is proposing to amend this language in § 143.207 to permit hunters to submit one application for each elk season available in any given hunting license year.

Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "define geographic limitations or restrictions." Section 2102(a) of the code (relating to regulations) provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and no elk hunting of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 141.47 and 141.48 are proposed under this authority.

Section 2722(g)(2) of the code (relating to authorized license-issuing agents) directs the Commission to adopt regulations for the administration, control and performance of activities related to license issuing. Section 2102(a) of the code provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking . . . in this Commonwealth." The amendments to §§ 143.203 and 143.207 are proposed under this authority.

### 3. Regulatory Requirements

The proposed rulemaking will make it unlawful to hunt within the 150-yard wide no elk hunting zone on each side of Rt. 555 from Weedville to Hicks Run, will allow the Director to establish elk management units prior to the opening of elk season, will permit elk hunters to meet the orientation by completing one of the available orientation programs, will permit hunters whose military obliga-

tions prevent them from hunting during the current elk season to transfer their elk hunting eligibility to the next available season and will allow elk hunters to submit one application for an elk license for each elk season available.

4. *Persons Affected*

Persons wishing to hunt for elk in this Commonwealth may be affected by the proposed rulemaking.

5. *Cost and Paperwork Requirements*

The proposed rulemaking should not result in additional cost or paperwork.

6. *Effective Date*

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. *Contact Person*

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-179. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter C. BIG GAME**

**§ 141.47. Elk.**

It is unlawful while hunting elk to:

\* \* \* \* \*

**(12) Hunt within 150 yards from the center line of Route 555, from the intersection of Routes 255 and 555, to the intersection of Huston Hill Road and Route 555.**

**§ 141.48. Elk management units.**

\* \* \* \* \*

**(b) [ The outline map of Pennsylvania sets forth elk management units. Elk management unit 11 comprises all areas outside Units 1-10 inclusive. (See map of Pennsylvania Elk Management Units in Appendix F.) ] The elk management units shall be established by the Director prior to the opening of elk season.**

*(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete Appendix F which appears in 58 Pa. Code pages 141-25 and 141-26, serial pages (297367) and (297368).)*

**APPENDIX F. (Reserved)**

**CHAPTER 143. HUNTING AND FURTKER LICENSES**

**Subchapter K. ELK LICENSES**

**§ 143.203. Drawing.**

\* \* \* \* \*

(d) Qualified applicants and alternates drawn for an elk license shall be required to obtain a regular hunting

license [ **prior to attending an orientation session sponsored by the Commission before the elk license is issued** ] and complete an orientation program as prescribed by the Director. Persons who are eligible for license and fee exemptions and meet the requirements in section 2706 of the act (relating to resident license and fee exemptions) are not required to purchase a regular hunting license.

**(e) [ The number of licenses shall be limited to a number set by the Commission. ] Qualified applicants drawn for an elk license whose military obligation prevents them from hunting the current elk season shall be eligible to hunt in the next available elk season.**

**(f) The number of licenses shall be limited to a number set by the Commission.**

**§ 143.207. Unlawful acts.**

It is unlawful for a person to:

**(1) Submit more than one application for an elk license for any elk season during any hunting license year.**

\* \* \* \* \*

[Pa.B. Doc. No. 04-604. Filed for public inspection April 9, 2004, 9:00 a.m.]

**[58 PA. CODE CH. 147]**

**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its January 27, 2004, meeting, proposed the following amendments:

Amend § 147.672 (relating to definitions) to expand the list of definitions; § 147.673 (relating to eligibility and application for DMAP) to remove limitations and expand eligibility for the Deer Management Assistance Program (DMAP); § 147.674 (relating to issuance of DMAP harvest permits) to establish separate fees related to submitting a DMAP coupon for a DMAP harvest permit for residents and nonresidents; and § 147.676 (relating to unlawful acts) to make it unlawful for a nonresident to apply for or possess a resident DMAP harvest permit.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

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

The proposed rulemaking was made public at the January 27, 2004, meeting of the Commission. Comments can be sent until April 16, 2004, to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797.

**1. Introduction**

The DMAP has been in effect for almost a full season and has already proven to be an asset to both the public and private landowners as a tool for the future management of local white-tailed deer herds on lands where excessive deer numbers have compromised the landowners' land uses and other interests. In response to these successes, the Commission has identified a few changes that could make the DMAP even more successful in the future.

2. Purpose and Authority

When the Commission first approved DMAP regulations, they included language limiting DMAP applications to public land and private land enrolled in one of the Commission's public access programs for the 2003-2004 license year only. This language will no longer be in effect for the 2004-2005 license year; therefore, the Commission is proposing to amend § 147.673 by removing this language. In addition, the Commission is proposing to amend § 147.673 to expand eligibility for the DMAP by allowing more private land, such as eligible hunting clubs, to be enrolled in the DMAP.

The Commission is proposing to amend § 147.672 to expand the list of definitions to include "hunting club" and "private land." Adding the definition of "hunting club" will permit the Commission to effectively limit the types and size of clubs eligible for the DMAP. Defining "private land" will permit the Commission to deny eligibility to private landowner applicants where hunting rights on that land are leased or where there is a fee charged for hunting.

Current regulations do not establish separate fees for residents and nonresident hunters who submit the DMAP coupons for the DMAP harvest permits. To stay consistent with related fee scales for antlerless deer licenses, the Commission is proposing to amend § 147.674 to establish separate fees for residents and nonresident hunters who submit a DMAP coupon for a DMAP harvest permit.

Currently, there is no distinction in the regulations between a resident and nonresident DMAP harvest permit. If the separate fee schedule for resident and nonresident hunters is finally adopted, the regulations would provide no limitations to prevent a nonresident hunter from applying for or possessing a resident DMAP harvest permit. Therefore, the Commission is proposing to amend § 147.676 to make it unlawful for a nonresident to apply for or possess a resident DMAP harvest permit.

Section 2901(b) of the code (relating to authority to issue permits) provides "the Commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 322(c)(4) of the code (relating to powers and duties of commission) specifically authorizes the Commission to "define geographic limitations or restrictions." Section 2102(a) of the code (relating to regulations) provides that "the Commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 147.672, 147.673, 147.674 and 147.676 are proposed under this authority.

3. Regulatory Requirements

The proposed rulemaking will define and limit eligibility for the DMAP, establish separate fees related to submitting a DMAP coupon for a DMAP harvest permit for residents and nonresidents and make it unlawful for a nonresident to apply for or possess a resident DMAP harvest permit.

4. Persons Affected

Persons wishing to apply to have their land enrolled in DMAP or persons wishing to submit a DMAP coupon for a DMAP harvest permit will be affected by the proposed rulemaking.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information regarding the proposed rulemaking, contact Michael A. Dubaich, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,  
*Executive Director*

**Fiscal Note:** 48-182. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 147. SPECIAL PERMITS

Subchapter R. DEER CONTROL

DEER MANAGEMENT ASSISTANCE PROGRAM PERMITS

§ 147.672. Definitions.

The following words and terms, when used in this section and §§ 147.671 and 147.673—147.676, have the following meanings unless the context clearly indicates otherwise:

\* \* \* \* \*

**Hunting club**—A corporation or legal cooperative which owns 1,000 or more contiguous acres in fee title, was established prior to January 1, 2000, and has provided its club charter and list of current members to the Commission.

**Private land**—Land not defined as public land where the hunting rights are not leased or there is no fee charged for hunting.

\* \* \* \* \*

§ 147.673. Eligibility and application for DMAP.

(a) [ In the 2003-2004 license year, DMAP applications will only be accepted for public land, and private land enrolled in one of the Commission's public access programs (Farm Game, Forest Game or Safety Zone—P.1-2-3). ] Owners or lessees of private land, hunting clubs or authorized officers or employees of political subdivisions or government agencies shall apply for the DMAP in a manner and on a form required by the Director. Separate applications for DMAP areas will not be accepted for areas that are within 1 air mile of another area that is owned, leased or controlled by the same person, political subdivision or government agency without an approved management plan.

\* \* \* \* \*

§ 147.674. Issuance of DMAP harvest permits.

\* \* \* \* \*

(c) Coupon holders shall mail the completed coupon to the Commission along with a [ \$6 ] check or money order payable to the "Pennsylvania Game Commission." The fee for the coupon is \$6 for residents and \$26 for nonresidents.

\* \* \* \* \*

§ 147.676. Unlawful acts.

It is unlawful to:

\* \* \* \* \*

(8) [ Fail to comply with any other provisions of §§ 147.672—147.675 ] Apply for, receive or possess a resident DMAP permit if you are a nonresident.

(9) Fail to comply with any other provisions of §§ 147.672—147.675.

[Pa.B. Doc. No. 04-605. Filed for public inspection April 9, 2004, 9:00 a.m.]

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9] Definitions and Fees

The State Architects Licensure Board (Board) proposes to amend §§ 9.2 and 9.3 (relating to definitions; and fees) by defining "sole proprietorship" and clarifying which firm practices are subject to the annual renewal fee 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 proposed rulemaking is authorized under section 6(a) of the Architects Licensure Law (act) (63 P. S. § 34.6(a)).

C. Background and Purpose

On January 4, 2003, the Board implemented a regulation that assesses a \$50 annual renewal fee for registered architecture firms. All currently registered architecture firms received notice of this new regulation and an assessment of \$100 (the fee is collected biennially). Under section 13(j) of the act (63 P. S. § 34.13(j)), this fee must be paid by partnerships, professional associations, professional corporations, business corporations, limited liability companies and limited liability partnerships. Although sole proprietorship is listed under section 13 of the act as an acceptable type of firm practice, it is excluded from the list of firm practices in section 13(j) of the act that are required to pay the annual renewal fee. However, sole proprietors received the annual renewal fee bill in error. Once the error was realized, a refund check was issued to those sole proprietors who paid the bill.

The proposed rulemaking, therefore, defines "sole proprietorship" and clarifies which firm practices are subject to the annual renewal fee.

D. Description of the Proposed Rulemaking

The Board proposes to amend § 9.2 to define sole proprietorship as "a business in which an architect

licensed in the Commonwealth owns all the assets and operates in his personal capacity."

The Board further proposes amending § 9.3 to clarify that only partnerships, professional associations, professional corporations, limited liability companies and limited liability partnerships are subject to the annual renewal fee for registered architecture firms.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

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 March 30, 2004, 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, recommendations or objections regarding this proposed rulemaking to Dorna Thorpe, State Architects Licensure Board, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

ANN SHEPARD HOUSTON, President

Fiscal Note: 16A-418. 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 9. STATE ARCHITECTS LICENSURE BOARD

GENERAL PROVISIONS

§ 9.2. Definitions.

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



\* \* \* \* \*

**Sole proprietorship—A business in which an architect licensed in this Commonwealth owns all the assets and operates in his personal capacity.**

\* \* \* \* \*

**§ 9.3. Fees.**

\* \* \* \* \*

*Annual renewal fee for registered [ architecture firms ] partnerships, professional associations, professional corporations, business corporations, limited liability companies and limited liability partnerships (\$100 fee shall be assessed biennially) . . . . . \$ 50*

[Pa.B. Doc. No. 04-606. Filed for public inspection April 9, 2004, 9:00 a.m.]

# STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

## Administration of General Anesthesia, Deep Sedation, Conscious Sedation and Nitrous Oxide/Oxygen Analgesia

The State Board of Dentistry (Board) proposes to amend Subchapter E (relating to administration of general anesthesia, conscious sedation and nitrous oxide/oxygen analgesia) 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 Board is authorized to adopt regulations concerning anesthesia under sections 3(o) and 11.2(a) of the Dental Law (act) (63 P. S. §§ 122(o) and 130c(a)).

*C. Background and Purpose*

In 1986, the act was amended to establish standards for the administration of general anesthesia and conscious sedation in a dental office. Subchapter E was adopted to implement the amendments to the act at 18 Pa.B. 3045 (July 9, 1988). In 1999, the Commonwealth Court in *Watkins v. State Board of Dentistry*, 740 A.2d 760 (Pa. Cmwlth. 1999) invalidated a provision of § 33.340 (relating to duties of dentists who are permit holders) concerning "appropriate monitoring equipment" required for the administration of general anesthesia as unconstitutionally vague.

In response to the *Watkins* decision, the Board undertook a comprehensive review of all regulations dealing with the administration of general anesthesia, conscious sedation and nitrous oxide adopted under the 1985 amendments to the act. While the Board focused its attention primarily upon clarifying necessary monitoring equipment, it considered the need to update and improve other requirements of the regulations to conform to current standards of safe dental practice.

The Board empanelled an Anesthesia Committee (Committee) which was tasked with reviewing state-of-the-art equipment, procedures and protocols for safe and effective

delivery of anesthesia and analgesia in dental offices. The Committee sought input from 138 dental associations, schools and interested licensees. From the discussions, the Board published a proposed rulemaking at 31 Pa.B. 6691 (December 8, 2001). The Board entertained public comment on the proposal and considered comments and suggestions on regulatory review throughout the following year. On November 25, 2002, the act of November 25, 2002 (P. L. 1109, No. 135) (Act 135) was enacted which amended section 11.2 of the act, further regulating the administration of anesthesia and sedation in dental offices. Section 2 of Act 135 required the Board to promulgate regulations necessary to implement the amendments within 1 year of the effective date, December 26, 2002.

Act 135 amended section 11.2 of the act as follows:

1. Section 11.2(a)(1) of the act requires the Board to establish minimal training and education or certification to issue permits to dentists to administer general anesthesia on an outpatient basis and requires a minimum of 1 year of advanced training in anesthesiology beyond graduation from dental school.

2. Section 11.2(a)(2) of the act requires the Board to establish further requirements for use of general anesthesia including equipment standards and conducting workplace inspections, permit fees, temporary permit fees, biennial renewal fees, office inspection fees and clinical evaluation fees.

3. Section 11.2(a)(3) of the act requires the Board to establish minimal training and education for conscious sedation permits and directs the Board to require a minimum period of didactic instruction/clinical experience in accredited program.

4. Section 11.2(a)(4) of the act requires the Board to establish further requirements for use of conscious sedation including equipment standards, conducting workplace inspections and collection of permit fees, temporary permit fees, biennial renewal fees, office inspection fees and clinical evaluation fees.

5. Section 11.2(a)(5) of the act requires the Board to establish minimal training and education for nitrous permits and directs the Board to require a minimum period of didactic instruction/clinical experience in an accredited program.

6. Section 11.2(a)(6) of the act requires the Board to establish further requirements for use of nitrous oxide/oxygen analgesia including equipment standards, conducting workplace inspections and collection of permit fees.

7. Under section 11.2(b)(1) of the act, beginning April 1, 2004, prior to issuing initial permits to administer general anesthesia, deep sedation or conscious sedation, the Board is to require applicants to satisfactorily undergo clinical evaluations and office inspections. The Board may contract with dental schools, organizations or individuals with expertise in dental outpatient anesthesia to perform office inspections and clinical evaluations and requires written reports of all inspections and evaluations to be provided to the Board. If the results of an evaluation or inspection are deemed unsatisfactory, subsequent evaluations or inspections may be conducted upon written request of the applicant, and no permit may be issued until the applicant satisfactorily completes a clinical evaluation and office inspection.

8. Under section 11.2(b) of the act, beginning April 1, 2004, prior to issuing initial nitrous permits, the Board must require applicants to provide the make, model and

serial number of all nitrous equipment and certify that the equipment is in proper working order. Thereafter, permit holders must provide evidence that equipment is properly calibrated, at least once every 6 years.

9. Under section 11.2(b)(3) of the act, the Board must establish standards and procedures necessary to perform clinical evaluations and office inspections to include the requirement that equipment be maintained in good working order and in accordance with manufacturer's specifications. Equipment standards must be updated periodically and all staff assisting in the administration of anesthesia must maintain, at a minimum, current CPR certification.

10. Under section 11.2(b)(4) of the act, itinerate permit holders must ensure that the office location they are working in has the required equipment and staff properly trained to handle anesthesia-related emergencies.

11. Under section 11.2(b)(5) of the act, nonpermit holders who allow itinerate permit holders to administer anesthesia in their offices must meet the same requirements pertaining to equipment and staffing.

12. Under section 11.2(b)(6) of the act, beginning April 1, 2005, as a condition for permit renewal, the Board must require unrestricted and restricted permit I holders to have satisfactorily passed a clinical evaluation and office inspection. This requirement may be waived if the permit holder can satisfactorily demonstrate a successful clinical evaluation administered by an organization acceptable to the Board, within 6 years preceding the effective date of section 11.2(b)(6) of the act. Thereafter, clinical evaluations and office inspections must be done at least once every 6 years.

13. Under section 11.2(c) of the act, beginning April 1, 2004, the Board may issue temporary permits, valid for 1 year which are not renewable.

14. Beginning April 1, 2005, as a condition of permit renewal, unrestricted permit holders must have completed 15 hours of Board-approved courses related to general anesthesia and deep sedation and restricted I permit holders must have completed 15 hours of Board-approved courses related to conscious sedation. Nonpermit holder dentists who maintain offices where general anesthesia, deep sedation or conscious sedation is administered must have completed 5 hours of Board-approved courses related to anesthesia. Continuing anesthesia education will be credited toward the licensee's continuing education requirement.

15. Permit holders are required under section 11.2(e) of the act to conduct a physical evaluation and take a medical history prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous, and maintain records.

16. Written informed consent is required under section 11.2(f) of the act prior to administration of general anesthesia, deep sedation, conscious sedation or nitrous to include the description of the procedure, risks and alternatives.

The Committee and the Department of State (Department) discussed problems with implementing the provisions of Act 135 within the time parameters specified in the act. The most difficult area has been implementing provisions that require clinical evaluations and office inspections as a condition of the issuance or renewal of a permit. Although current § 33.342 (relating to inspection of dental offices) authorizes the Board to make office inspections, none have been conducted due to difficulties

encountered in obtaining qualified inspectors. The proposed rulemaking is designed to address these issues.

On September 5, 2003, the Board approved a new proposed rulemaking in response to the mandate of Act 135. In its proposal, the Board incorporates many proposed amendments from the proposed rulemaking published at 31 Pa.B. 6691.

#### D. Description of Proposed rulemaking

The proposed rulemaking to Subchapter E makes substantive and editorial changes to §§ 33.331—33.342.

##### § 33.331 (relating to definitions)

The Board proposes to add a definition for "deep sedation" derived from the American Academy of Pediatric Dentistry's (AAPD) *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients* (Guidelines). In so doing, the proposed rulemaking recognizes that even though sedation is on a continuum, deep sedation is a defined stage between general anesthesia and conscious sedation. The AAPD, the American Association of Oral and Maxillofacial Surgeons (AAOMS) and the American Dental Association (ADA) all recognize distinctions between general anesthesia and deep sedation.

Deep sedation is a state of depressed consciousness accompanied by a partial loss of protective reflexes, including the ability to continually maintain an airway independently. General anesthesia is a state of unconsciousness accompanied by a partial or complete loss of protective reflexes, including the ability to continually maintain an airway independently. (See the ADA *Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists* (Guidelines).) Because of the partial loss of protective reflexes with deep sedation and the necessity to have similar monitoring and resuscitation equipment as with general anesthesia, deep sedation was grouped with general anesthesia under the unrestricted permit. Consequently, only a licensee holding an unrestricted permit may administer general anesthesia or deep sedation.

The Board also proposes to add definitions for "AAOMS," "AAOMS Guidelines," "AAOMS Manual," "AAPD," "AAPD Guidelines," "ADA" and "ADA Guidelines."

The following acronyms and terms have also been defined in this proposed rulemaking: "ACLS," "adult patient," "BLS," "CRNA," "clinical evaluation," "communications equipment," "general dentist," "PALS," "patient physical evaluation," "pediatric patient," "peer evaluation organization," "peer evaluator," "physician," "OMS" and "office inspection."

##### § 33.332 (relating to requirement of permit to administer general anesthesia, conscious sedation or nitrous oxide/oxygen analgesia)

The proposed rulemaking clarifies that a permit is required to administer deep sedation in a dental office.

##### § 33.333 (relating to types of permits)

The proposed rulemaking clarifies that an unrestricted permit is required to administer deep sedation and creates a new type of permit, a temporary permit, which is limited to 1 year, as required by Act 135.

##### § 33.334 (relating to application for permit)

This section makes permit application requirements applicable to permission to administer deep sedation and to the temporary permit.

*§ 33.335 (relating to requirements for unrestricted permit)*

The proposed rulemaking removes one of the three possible requirements that must be met for securing an unrestricted permit, specifically that of having administered general anesthesia on a regular basis in the course of dental practice for 5 years prior to January 1, 1986. The 1985 "grandparenting" clause of section 11.2(b) of the act, tracked in the regulation, is no longer necessary.

The proposed rulemaking increases the time required in a postgraduate program for advanced training in anesthesiology from 1 year to 2 years to conform to the ADA's Guidelines.

*§ 33.336 (relating to requirements for restricted permit I)*

The proposed rulemaking removes one of the two possible requirements for securing a restricted permit I, specifically that of having administered conscious sedation on a regular basis in the course of dental practice for 5 years prior to January 1, 1986. As described previously, that requirement is no longer necessary.

The proposed rulemaking reduces the number of hours of undergraduate or postgraduate didactic instruction and clinical experience in a program conforming to Part I or III of the ADA Guidelines.

*§ 33.336a (relating to requirements for unrestricted permit and restricted permit I)*

Subsection (a) requires all initial unrestricted and restricted I permit applicants to have satisfactorily completed an office inspection and clinical evaluation conducted by an approved peer evaluation organization, beginning April 1, 2004. After April 1, 2005, all renewal applicants must complete an office inspection and clinical evaluation for permit renewal. If an applicant can demonstrate satisfactory completion of an office inspection and clinical evaluation within the 6 years preceding April 1, 2005, the office inspection and clinical evaluation may be waived.

This subsection also requires all renewal applicants to satisfactorily complete an office inspection and clinical evaluation every 6 years. Applications for initial or renewal permits must contain an original letter from the peer review organization that conducted the office inspection/clinical evaluation evidencing the applicant's satisfactory completion of the office inspection/clinical evaluation.

Subsection (b) requires an oral and maxillofacial surgeon (OMS) applicant to attest that the administration of anesthesia to adult and pediatric patients will be conducted in conformance with standards outlined in the AAOMS *Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients* (Guidelines) and the AAOMS *Office Anesthesia Manual* (Manual). It would require a general dentist applicant to attest that the administration of anesthesia to adult patients would be conducted in accordance with the ADA Guidelines and that the administration of anesthesia to pediatric patients would be conducted in conformance with the AAPD Guidelines.

Under subsection (c), applicants are required to have successfully completed and maintained current certification in advanced cardiac life support (ACLS) prior to the administration of anesthesia to an adult patient, and certification in pediatric advanced life support (PALS) prior to the administration of anesthesia to a pediatric patient.

Subsection (d) provides that as of April 1, 2005, applicants for unrestricted permits are required to complete 15

hours of Board-approved courses related to general anesthesia and deep sedation, and restricted permit I applicants have to complete 15 hours of Board-approved courses related to conscious sedation. These continuing anesthesia education hours would be credited toward the permit holder's regular continuing education requirement.

*§ 33.336b (relating to approved peer evaluation organizations for administering clinical evaluations and office inspections)*

This section specifies peer evaluation organizations approved by the Board for conducting clinical evaluations and office inspections. The Board proposes to initially approve the AAOMS and the Pennsylvania Society of Oral and Maxillofacial Surgeons. Other organizations may apply to the Board for approval to serve as an organization that conducts clinical evaluations and office inspections. Subsection (b) outlines factors the Board will consider in approving an organization.

*§ 33.336c (relating to standards for office inspections and clinical evaluations)*

This section proposes to conduct office inspections and clinical evaluations in accordance with the AAOMS Manual and the AAOMS Guidelines. This continues the current policy in § 33.342(e) of utilizing the AAOMS materials as they represent the most current and comprehensive standards, and should apply to any permit holder. In addition, the AAOMS Manual is the only office inspection manual of this caliber.

*§ 33.336d (relating to qualifications of peer evaluators conducting office inspections and clinical evaluations)*

This section proposes that peer evaluators must be licensed dentists holding a current unrestricted permit and be independent from, and have no conflict of interest with, the dentist or dental practice being reviewed.

*§ 33.336e (relating to confidentiality of peer review evaluation reports)*

Office inspection and clinical evaluation reports and related information would remain confidential except when included in the permit application to the Board and upon Board inquiry of the peer evaluation organization as to whether an applicant's office inspection or clinical evaluation reports have been accepted by the peer evaluation organization.

*§ 33.337 (relating to requirements for restricted permit II)*

This section removes one of the two possible requirements that must be met for securing a restricted permit II, specifically that of having administered nitrous oxide/oxygen analgesia on a regular basis in the course of dental practice for 5 or more years prior to January 1, 1986, for the previous reasons. Also, the Board proposes to reduce the number of required hours of undergraduate or postgraduate didactic instruction and clinical experience in a conforming program from 40 to 14.

As of April 1, 2004, all initial restricted II applicants must provide to the Board the make, model and serial number of any nitrous equipment utilized; certify that the equipment is properly calibrated, contains a fail-safe system and is in working order; and attest that the applicant has written office procedures for administering nitrous oxide/oxygen analgesia and handling emergencies related to the administration of nitrous oxide/oxygen analgesia.

After the initial permit renewal, applicants would provide an attestation to the Board every 6 years that the nitrous equipment that the applicant uses is properly calibrated.

*§ 33.337a (relating to requirements for temporary permit)*

This section requires an applicant for a temporary permit of any type to include with the application proof that the applicant possesses the qualifications for the permit requested. Temporary permits expire in 1 year and are not renewable.

*§ 33.338 (relating to expiration and renewal of permits)*

Under the proposed rulemaking, renewal requirements have been amended to include proof of current certification in ACLS or PALS, or both, for unrestricted and restricted I permits; an attestation that nitrous oxide/oxygen analgesia equipment has been installed and calibrated according to the equipment manufacturer's guidelines and contains a failsafe system; and proof of compliance with anesthesia continuing education requirements and proof of compliance with office inspection and clinical evaluation requirements.

*§ 33.339 (relating to fees for issuance of permits)*

Permit fees are proposed to be amended as follows: initial unrestricted permits and restricted permit I fees would be \$100 and the initial restricted permit II fee would remain \$15. The renewal unrestricted permit and restricted permit I fee would be \$200 and the renewal restricted permit II fee would remain \$15.

As a general rule, the establishment of a fee authorized by a licensing board in the Department is determined after an analysis by the Department's Budget Office of staff requirements to prepare forms and process applications. In the case of office inspections and clinical evaluations, however, the fees will be determined by dental professionals of the peer evaluation organizations approved by the Board to administer office inspections and clinical evaluations. The permit applicant will then select an approved peer evaluation organization to conduct his office inspection and clinical evaluation. The permit applicant will pay the fee charged by the approved peer evaluation organization to have the office inspection and clinical evaluation conducted. This is similar to what already occurs with the continuing education requirement (that is, an applicant selects an approved continuing education provider and pays the required course fee directly to the provider).

The Board proposes to lower the renewal permit fees for unrestricted permits and restricted permit based upon the Board's understanding that the clinical evaluation/office inspection fee would be in the range of \$400 to \$600, and the Board's understanding of the work performed by these dentist evaluators and the necessary and reasonable costs performed by dentists in the private sector.

The Board proposes to increase the one-time initial permit fee for those permit holders from \$15 to \$100 to cover additional administrative costs entailed in verifying compliance with new requirements. The Board had initially intended to promulgate regulations containing substantive anesthesia requirements, and to promulgate fee regulations at a later date when data became available upon which to base the new fees. However, Act 135 mandates promulgation of fee regulations by December 26, 2003, thus necessitating this approach.

*§ 33.340*

The proposed amendments to this section require that a patient medical history be taken prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

The equipment list for unrestricted permit holders would be amended to require suction equipment commensurate with the patient's age, size and condition; monitoring equipment, procedures and documentation conforming to the AAOMS Manual/AAPD Guidelines; a capnograph for intubated patients and a pulse oximeter; an ECG; a blood pressure monitoring device; a defibrillator; a stethoscope; and results of patient medical history and physical evaluation, anesthesia procedures to be utilized and signed written patient consent.

The proposed amendments to this section also require that auxiliary personnel assisting unrestricted permit holders in the administration of general anesthesia, deep sedation or conscious sedation (deletes reference to nitrous oxide/oxygen analgesia) be currently certified in basic life support. Certified registered nurse practitioners would be required to be certified in ACLS. Permit holders would be required to hold current certification in ACLS for adult patients and PALS for pediatric patients.

The Board proposes to require that general anesthesia or deep sedation administered to pediatric patients by or under the delegation of a general dentist must be administered by a person dedicated solely to the administration and monitoring of anesthesia, while the dental procedures are performed by a dental licensee not involved in the administration of the general anesthesia or deep sedation.

All monitoring equipment and equipment used to administer general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia would have to be installed and calibrated according to equipment manufacturer guidelines, be in proper working condition prior to administration and monitoring equipment must be used during the administration of general anesthesia.

The nonpermit holder dentist's office and equipment transported to his office by an itinerant permit holder must satisfactorily complete an office inspection conducted by an approved peer evaluation organization in accordance with the requirements of the AAOMS Manual and the AAOMS Guidelines for OMSs and in accordance with the ADA Guidelines and the AAPD Guidelines for general dentists.

OMS permit holders would be required to administer general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia in accordance with the AAOMS Guidelines and the AAOMS Manual. General dentists would be required to administer general anesthesia, deep sedation, conscious sedation and nitrous oxide oxygen to adult patients in accordance with the ADA Guidelines and to pediatric patients in accordance with the AAPD Guidelines.

The patient medical history and patient evaluation would be conducted by the permit holder, physician or certified registered nurse anesthetist.

*§ 33.340a (relating to duties of dentists who are restricted permit I holders)*

The proposed rulemaking amends this section in substantially the same manner as § 33.340 with the exceptions that a capnograph for intubated patients is not required and a separate person dedicated to the administration of anesthesia to a pediatric patient is not required.

*§ 33.340b (relating to duties of dentists who are restricted permit II holders)*

This section is added to require that patients be given a physical evaluation and a medical history be taken prior to the administration of nitrous oxide/oxygen analgesia.

Equipment and operating room requirements are similar to those of restrictive permit I holders, with the exception that restricted permit II holders are not required to have a recovery area, patient transport equipment, an oximeter, an ECG, a blood pressure monitoring device and a defibrillator, as specifically enumerated items. However, the permit holder's monitoring equipment, procedures and documentation must conform to the AAOMS Manual and the AAOMS Guidelines for adult and pediatric patients (if the permit holder is an OMS) or the ADA Guidelines for adult patients and the AAPD Guidelines for pediatric patients (if the permit holder is a general dentist).

Requirements for restricted permit II holders would be added to require that monitoring equipment and equipment used to administer nitrous oxide/oxygen analgesia be installed and calibrated according to the equipment manufacturers' guidelines, contain a fail-safe system and be in proper working condition.

§ 33.341 (relating to duties of dentists who are not permit holders)

This section would require that a permit may not be issued unless the dental office has been inspected and meets the appropriate equipment and facility requirements.

Anyone administering general anesthesia, deep sedation or conscious sedation must possess current certification in ACLS.

A nonpermit holding dentist would be required to verify with the permit holder that all monitoring equipment is present in the nonpermit holder's office, is properly calibrated and in proper working condition and is being used during the administration of general anesthesia.

The nonpermit holder's office and equipment transported to the nonpermit holder dentist's office would have to satisfactorily complete an office inspection conducted by a Board approved peer evaluation organization. As of April 1, 2005, nonpermit holders who maintain offices in which general anesthesia, deep sedation and conscious sedation is administered, would be required to complete 5 hours of Board-approved courses related to anesthesia.

§ 33.342

Under the proposed rulemaking, the classifications of inspections, routine and special, are deleted. This section now allows inspections of dental offices by Board authorized agents. It also allows for a reinspection to take place within 30 days of an inspection finding deficiencies.

E. Fiscal Impact and Paperwork Requirements

Some of the provisions of this proposed rulemaking will have a fiscal impact upon permit holders. Fees for an office inspection and clinical evaluation will be set by the approved peer evaluation organizations. Although the fee amounts are not known at this time, the Board believes they will be in the \$400 to \$600 range for an office inspection and clinical evaluation. In view of this, the Board proposes to lower the permit renewal fees for both unrestricted and restricted permit I holders from \$300 to \$200. The one-time initial permit fee for these permit holders would be increased from \$15 to \$100. Permit fees for restricted permit II holders would remain the same (\$15). In addition, requirements for current certification in ACLS and some additional required monitoring equipment may entail increased costs to permit holders. At this stage, it is not possible to estimate the fiscal impact with precision; however, cost data will be available at a later date. See the explanation for § 33.339.

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 March 30, 2004, 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, recommendations or objections regarding this proposed rulemaking to Deborah B. Eskin, Counsel, State Board of Dentistry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the *Pennsylvania Bulletin*. Reference No. 16A-4614 (Administration of General Anesthesia, Deep Sedation, Conscious Sedation and Nitrous Oxide/Oxygen Analgesia) when submitting comments.

VEASEY B. CULLEN, Jr., D.M.D.,  
Chairperson

**Fiscal Note:** 16A-4614. 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 33. STATE BOARD OF DENTISTRY**

**Subchapter E. ADMINISTRATION OF GENERAL ANESTHESIA, DEEP SEDATION, CONSCIOUS SEDATION AND NITROUS OXIDE/OXYGEN ANALGESIA**

**§ 33.331. Definitions.**

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

**AAOMS—American Association of Oral and Maxillofacial Surgeons, with principal offices at 9700 W. Bryn Mawr Avenue, Rosemont, Illinois 60018.**

**AAOMS Guidelines—AAOMS Parameters and Pathways 2000 Clinical Practice Guidelines for Oral and Maxillofacial Surgery, Anesthesia in Outpatient Facilities (AAOMS Par Path 2000), 4/15/99.**

**AAOMS Manual—AAOMS Office Anesthesia Manual, 6th Edition, 2000.**

**AAPD**—American Academy of Pediatric Dentistry, with principal offices at 211 East Chicago Avenue, Suite 700, Chicago, Illinois 60611-2663.

**AAPD Guidelines**—*AAPD Guidelines for the Elective Use of Conscious Sedation, Deep Sedation and General Anesthesia in Pediatric Dental Patients* (May, 1998).

**ACLS**—Advanced Cardiac Life Support.

**ADA**—American Dental Association.

**ADA Guidelines**—*ADA Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists* (October, 2000).

**Adult patient**—A patient 18 years of age or older.

**BLS**—Basic Life Support.

**CRNA**—A registered nurse certified as a Registered Nurse Anesthetist by the Council on Certification or Recertification of Nurse Anesthetists of the American Association of Nurse Anesthetists authorized to administer anesthesia under § 21.17 (relating to the administration of anesthesia by a registered nurse).

**Clinical evaluation**—A determination of the dentist's current technical competency to safely administer general anesthesia, deep sedation or conscious sedation and to effectively respond to anesthesia related emergencies, in accordance with the AAOMS Manual for OMSs or the ADA Guidelines for general dentists.

**Communications equipment**—Equipment capable of eliciting a response in an emergency.

\* \* \* \* \*

**Deep sedation**—A controlled, pharmacologically induced state of depressed consciousness from which the patient is not easily aroused and which may be accompanied by a partial loss of protective reflexes, including the ability to maintain a patent airway independently or respond purposefully to physical stimulation or verbal command, or both.

**General anesthesia**—A controlled state of unconsciousness [ , including deep sedation, ] that is produced by a pharmacologic method, a nonpharmacologic method, or a combination of both, and that is accompanied by a complete or partial loss of protective reflexes that include the patient's inability to maintain an airway independently and to respond purposefully to physical stimulation or verbal command.

**General dentist**—A dentist who is not an oral and maxillofacial surgeon.

\* \* \* \* \*

**OMS**—An Oral and Maxillofacial Surgeon who is a current member of the PSOMS or AAOMS.

**Office inspection**—A determination as to whether the offices where the dentist administers anesthesia is properly equipped as prescribed in § 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2) (relating to duties of dentists who are unrestricted permit holders; duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders), as appropriate to the type of permit, and in accordance with the AAOMS Manual for OMSs, or the ADA Guidelines for general dentists.

**PALS**—Pediatric Advanced Life Support.

**PSOMS**—Pennsylvania Society of Oral and Maxillofacial Surgeons, with principal offices at 2700 North Broad Street, Suite 106, Lansdale, Pennsylvania 19644.

**Patient physical evaluation**—An assessment of the patient's physical and mental condition relevant to the surgery to be performed and anesthesia or anesthetic to be utilized.

**Pediatric patient**—A patient under 18 years of age.

**Peer evaluation organization**—An entity approved by the Board for administering a program whereby licensed dentists with unrestricted permits conduct office inspections and clinical evaluations for dentists seeking initial or renewal unrestricted or restricted I permits.

**Peer evaluator**—A licensed dentist with a current unrestricted permit who conducts an office inspection or clinical evaluation under the auspices of a peer evaluation organization.

**Physician**—A Pennsylvania licensed medical or osteopathic physician who is currently credentialed to administer anesthesia in a hospital licensed by the Department of Health.

§ 33.332. Requirement of permit to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(a) *Permit required for administration of anesthetic modality in dental office.* [ **Effective January 9, 1990, a** ] A dentist shall possess a current permit issued by the Board under this subchapter before administering, or supervising the administration of, general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in a dental office.

(b) *Permit not required for administration of anesthetic modality in other facilities.* A dentist is not required to possess a permit under this subchapter before administering, or supervising the administration of, general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in a State- or Federally-regulated facility other than a dental office.

\* \* \* \* \*

**§ 33.333. Types of permits.**

The Board will issue the following permits to licensees qualified under this subchapter:

(1) *Unrestricted permit.* A permit which authorizes the holder to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

\* \* \* \* \*

(4) *Temporary permit.* A permit limited to 1 year which authorizes the applicant for an unrestricted, restricted I or restricted II permit to administer the appropriate type of anesthesia relevant to the applicant's qualifications.

**§ 33.334. Application for permit.**

(a) A dentist who desires to obtain a permit to administer general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia, or a **temporary permit**, shall submit an application on a form provided by the Board, pay the permit fee prescribed in § 33.339 (relating to fees for issuance of permits) and meet the requirements for the permit applied for as prescribed in this subchapter.

\* \* \* \* \*

**§ 33.335. Requirements for unrestricted permit.**

(a) To secure an unrestricted permit, a dentist shall have done one of the following:

(1) Successfully completed at least **[ 1 year ] 2 years** in a postgraduate program for advanced training in anesthesiology and related academic subjects that conforms to Part II of the American Dental Association's *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry*.

(2) **[ Be certified ] Possess current certification** as a Diplomate of the American Board of Oral and Maxillofacial Surgeons, a Fellow of the American Association of Oral and Maxillofacial **[ Surgeons ] Surgery** or a Fellow of the American Dental Society of **[ Dental ] Anesthesiology**, or be eligible for examination by the American Board of Oral and Maxillofacial **[ Surgeons ] Surgery**.

**[ (3) Administered general anesthesia on a regular basis in the course of his dental practice for at least 5 years prior to January 1, 1986, if the applicant:**

(i) **Is competent to administer general anesthesia.**

(ii) **Administers general anesthesia in a properly equipped dental office as prescribed in § 33.340 (a)(2) (relating to duties of dentists who are permit holders).**

(b) **To determine whether the requirements of subsection (a)(3) are satisfied, the Board will require the applicant to undergo a clinical evaluation and office inspection conducted by the Board through its authorized agents. The clinical evaluation and office inspection will be conducted in accordance with the American Association of Oral and Maxillofacial Surgeons' *Office Anesthesia Evaluation Manual*.**

(c) **A dentist who applies for a permit under subsection (a)(3) shall do so by January 9, 1990. ]**

**§ 33.336. Requirements for restricted permit I.**

**[ (a) ]** To secure a restricted permit I, a dentist shall have **[ done one of the following:**

(1) **Successfully ] successfully** completed a course on conscious sedation comprising at least **[ 80 ] 60** hours of undergraduate or postgraduate didactic instruction and clinical experience in a program that conforms to Part I (for an undergraduate program) or Part III (for a postgraduate program) of the **[ American Dental Association's ] ADA's *Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry*.**

**[ (2) Administered conscious sedation on a regular basis in the course of his dental practice for 5 or more years prior to January 1, 1986, if the applicant:**

(i) **Is competent to administer conscious sedation.**

(ii) **Administers conscious sedation in a properly equipped dental office as prescribed in § 33.340 (a)(2) (relating to duties of dentists who are permit holders).**

(b) **To determine whether the requirements of subsection (a)(2) are satisfied, the Board will require the applicant to undergo a clinical evaluation**

**and office inspection conducted by the Board through its authorized agents. The clinical evaluation and office inspection will be conducted in accordance with the American Association of Oral and Maxillofacial Surgeons' *Office Anesthesia Evaluation Manual*.**

**(c) A dentist who applies for a permit under subsection (a)(2) shall do so by January 9, 1990. ]**

**§ 33.336a. Requirements for unrestricted permit and restricted permit I.**

(a) *Office inspections and clinical evaluations.*

(1) *Initial permits.* Beginning April 1, 2004, all initial unrestricted and restricted I permit applicants shall satisfactorily complete an office inspection and clinical evaluation conducted by an approved peer evaluation organization under § 33.336b (relating to approved peer evaluation organizations for administering clinical evaluations and office inspections).

(2) *First renewal permit after April 1, 2005.* Beginning April 1, 2005, all renewal unrestricted and restricted I permit applicants shall satisfactorily complete an office inspection and clinical evaluation as a condition for permit renewal. Completion of an office inspection and clinical evaluation may be waived if the applicant can demonstrate satisfactory completion of an office inspection and clinical evaluation, administered by an organization approved by the Board, within 6 years preceding April 1, 2005.

(3) *Subsequent renewal permit.* Following the applicant's initial permit renewal after April 1, 2005, all unrestricted and restricted permit I renewal applicants shall satisfactorily complete an office inspection and clinical evaluation once every 6 years.

(4) *Report of office inspection and clinical evaluation.* An application for an initial or renewal permit shall contain an original letter from the peer review organization that conducted the office inspection and clinical evaluation that evidences the applicant's satisfactory completion of an office inspection and clinical evaluation and a written report of the results of the office inspection and clinical evaluation.

(b) *Standards for anesthesia administration.*

(1) An OMS applicant for an unrestricted or restricted I permit shall attest that the administration of anesthesia to adult and pediatric patients will be conducted in conformance with the standards outlined in the AAOMS Guidelines and the AAOMS Manual.

(2) A general dentist applicant for an unrestricted or restricted I permit shall attest that the administration of anesthesia to adult patients will be conducted in conformance with the standards outlined in the ADA Guidelines and that the administration of anesthesia to pediatric patients will be conducted in conformance with the standards outlined in the AAPD Guidelines.

(c) *ACLS/PALS certification.*

(1) *Adult patients.* An applicant for an unrestricted or restricted I permit shall have successfully completed and maintained current certification in ACLS prior to the administration of anesthesia to an adult patient.

(2) *Pediatric patients.* An applicant for an unrestricted or restricted I permit shall have successfully completed and maintained current certification in PALS prior to the administration of anesthesia to a pediatric patient.

(d) *Continuing anesthesia education.*

(1) Beginning April 1, 2005, and for all subsequent renewal periods, the following hours of continuing education are required as a condition of permit renewal:

(i) *Unrestricted permit.* An applicant for an unrestricted permit shall have completed 15 hours of Board approved courses related to general anesthesia and deep sedation.

(ii) *Restricted permit I.* An applicant for a restricted permit I shall have completed 15 hours of Board approved courses related to conscious sedation.

(2) Continuing anesthesia education will be credited toward the permit holder's continuing education requirement under § 33.401(a)(1) (relating to credit-hour requirements).

**§ 33.336b. Approved peer evaluation organizations for administering clinical evaluations and office inspections.**

(a) The following organizations are deemed qualified to conduct clinical evaluations and office inspections and do not require prior approval from the Board:

(1) The American Association of Oral and Maxillofacial Surgeons (AAOMS)

(2) The Pennsylvania Society of Oral and Maxillofacial Surgeons (PSOMS)

(b) An organization of oral and maxillofacial surgeons or of unrestricted permit holders that does not qualify as an organization to conduct clinical evaluations and office inspections under subsection (a) may apply to the Board for approval to serve as an organization to conduct clinical evaluations and office inspections. In determining whether to grant approval, the Board will consider the following factors:

(1) Whether the organization agrees to utilize peer evaluators meeting the following criteria:

(i) A minimum 5 years experience administering general anesthesia and deep sedation within the last 7 years.

(ii) A current unrestricted permit.

(iii) Completion of a minimum 7-hour course in conducting office inspections and clinical evaluations.

(2) Whether the organization has sufficient peer evaluators that meet the criteria listed in § 33.336d (relating to qualifications of peer evaluators conducting office inspections and clinical evaluations) to conduct office inspections and clinical evaluations.

(3) Whether the organization has the technical competence to administer office inspections and clinical evaluations to applicants for initial and renewal permits.

(4) Whether the organization's fee for office inspections and clinical evaluations is based upon reasonable costs.

(5) Whether the organization has standards for satisfactory completion of an office inspection and clinical evaluation.

(6) Whether the organization has an internal appeal procedure to contest the office inspection or clinical evaluation.

(7) Whether the organization has a peer review oversight committee whose members meet the following criteria:

(i) A minimum 5 years experience administering general anesthesia and deep sedation.

(ii) A current unrestricted permit.

(8) Whether the organization has procedures to facilitate fair, unbiased and equitable office inspections and clinical evaluations.

(9) Whether the organization agrees to make records of all office inspections and clinical evaluations available to the State Board of Dentistry upon request.

(10) Whether the organization agrees to conduct a subsequent office inspection or clinical evaluation within a reasonable time if the results of the initial office inspection or clinical evaluation are unsatisfactory.

(11) Whether the organization agrees to conduct office inspections and clinical evaluations in conformance with the standards outlined in the AAOMS Manual and AAOMS Guidelines, and in accordance with §§ 33.340 and 33.340a (relating to duties of dentists who are unrestricted permit holders; and duties of dentists who are restricted permit I holders).

(c) An approved peer evaluation organization may not require a permit applicant to become a member of the organization as a precondition for the organization to conduct a clinical evaluation and office inspection for the applicant.

**§ 33.336c. Standards for office inspections and clinical evaluations.**

Office inspections and clinical evaluations shall be conducted in accordance with the AAOMS Manual and AAOMS Guidelines.

**§ 33.336d. Qualifications of peer evaluators conducting office inspections and clinical evaluations.**

(a) A peer evaluator shall be a licensed dentist holding a current unrestricted permit.

(b) A peer evaluator shall be independent from, and have no conflict of interest with, the dentist or dental practice being reviewed.

(c) The administering approved peer evaluation organization shall ensure that its peer evaluators are qualified under this section.

**§ 33.336e. Confidentiality of peer evaluation reports.**

(a) Office inspection and clinical evaluation reports and related information shall remain confidential except as provided in § 33.336a(a)(4) (relating to requirements for unrestricted permit and restricted permit I) and the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1—66.4), known as the Right-to-Know Law.

(b) An administering approved peer evaluation organization must notify the Board within 30 days from the date the office inspection and clinical evaluation was conducted as to whether office inspection and clinical evaluation report has been accepted or rejected by the peer evaluation organization.

**§ 33.337. Requirements for restricted permit II.**

(a) To secure a restricted permit II, a dentist shall have [ done one of the following:

(1) **Successfully ] successfully** completed a course in nitrous oxide/oxygen analgesia comprising at least [ 40 ] 14 hours of undergraduate or postgraduate didactic instruction and clinical experience in a program that conforms to Part I (for an undergraduate program) or Part III (for a postgraduate program) of the [ **American**



Dental Association's ] ADA's Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry.

[ (2) Administered nitrous oxide/oxygen analgesia on a regular basis in the course of his dental practice for 5 or more years prior to January 1, 1986, if the applicant:

(i) Is competent to administer nitrous oxide/oxygen analgesia. The Board will consider an applicant competent if there are no reported or discovered incidents of mortality or morbidity resulting from the applicant's administration of nitrous oxide/oxygen analgesia.

(ii) Administers nitrous oxide/oxygen analgesia in a properly equipped dental office as prescribed in § 33.340(a)(2) (relating to duties of dentists who are permit holders). ]

(b) [ A dentist who applies for a permit under subsection (a)(2) shall do so by January 9, 1990. ]

Initial permits. Beginning April 1, 2004, all initial restricted II permit applicants shall provide the following:

(1) The make, model and serial number of any nitrous oxide/oxygen analgesia equipment utilized by the applicant.

(2) Certification that the equipment is properly calibrated, contains a fail-safe system and is in working order.

(3) An attestation that the applicant has written office procedures for administering nitrous oxide/oxygen analgesia and handling emergencies related to the administration of nitrous oxide/oxygen analgesia.

(c) Subsequent renewal permits. Following the applicant's initial permit renewal after April 1, 2004, for each subsequent renewal period, an applicant shall provide an attestation to the Board, in accordance with § 33.338(b)(4) (relating to expiration and renewal of permits), that the nitrous oxide/oxygen analgesia equipment that the applicant uses is properly calibrated and contains a fail-safe system.

§ 33.337a. Requirements for temporary permit.

(a) To secure a temporary unrestricted permit, restricted permit I or restricted permit II, an applicant shall include with the application proof that the applicant possesses the qualifications required for the type of permit requested.

(b) Temporary permits expire 1 year following the effective date and may not be renewed.

§ 33.338. Expiration and renewal of permits.

\* \* \* \* \*

(b) A dentist who desires to renew a permit shall submit [ a ] the following:

(1) A renewal application on a form provided by the Board [ and pay the ].

(2) The permit renewal fee prescribed in § 33.339 (relating to fees for issuance of permits).

(3) Proof of current certification in ACLS (adult patients) or PALS (pediatric patients), or both (for unrestricted permits and restricted I permits).

(4) An attestation, on the renewal application, that any nitrous oxide/oxygen analgesia equipment utilized has been installed, properly calibrated according to the equipment manufacturer's guidelines and contains a fail-safe system (for all permits).

(5) Proof of compliance with the continuing anesthesia education requirement under § 33.336a(d) (relating to requirements for unrestricted permit and restricted I permit).

(6) Proof of compliance with the office inspection and clinical evaluation requirements under § 33.336a(a).

§ 33.339. Fees for issuance of permits.

The following fees are charged for the issuance of permits under this subchapter:

(1) Unrestricted permit.

(i) [ Issuance under § 33.335(a)(1) or (2) ] Initial ..... \$ [ 15 ] 100

(ii) [ Issuance under § 33.335(a)(3) ] Renewal..... \$ [ 300 ] 200

(iii) Temporary ..... \$100

(2) Restricted permit I.

(i) [ Issuance under § 33.336(a)(1) ] Initial..... \$ [ 15 ] 100

(ii) [ Issuance under § 33.336(a)(2) ] Renewal..... \$ [ 300 ] 200

(iii) Temporary ..... \$100

(3) Restricted permit II.

(i) [ Issuance under § 33.337(a)(1) ] Initial..... \$15

(ii) [ Issuance under § 33.337(a)(2) ] Renewal..... \$15

(iii) Temporary ..... \$15

§ 33.340. Duties of dentists who are unrestricted permit holders.

(a) A dentist who possesses [ a ] an unrestricted permit issued under this subchapter shall ensure that:

(1) Prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia a patient medical history is taken or updated and the patient is given a physical evaluation sufficient to determine the patient's suitability to receive general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

\* \* \* \* \*

(iv) Suction equipment commensurate with the patient's age, size and condition.

\* \* \* \* \*

(xii) [ Appropriate monitoring ] Monitoring equipment, procedures and documentation to conform to the age, size and condition of the patient and the AAOMS Manual and AAOMS Guidelines for adult and pediatric patients (OMS); the ADA Guidelines

for adult patients (general dentists); and the AAPD Guidelines for pediatric patients (general dentists).

(xiii) Capnograph for intubated patients and pulse oximeter.

(xiv) ECG.

(xv) Blood pressure monitoring device.

(xvi) Defibrillator.

(xvii) Results of patient medical history and patient physical evaluation, and identification of anesthesia procedures to be utilized, prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

(xviii) Signed, written, informed patient consent, prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia, which includes a description of the procedure, its risks and possible alternative treatments. Consent for a minor patient shall be obtained from the minor's parent or guardian.

(xiv) Stethoscope.

(3) Auxiliary personnel who assist the permit holder in the administration of general anesthesia, deep sedation or conscious sedation [ or nitrous oxide/oxygen analgesia ]:

(i) Are trained to perform the duties that the permit holder delegates to them, if the duties do not require the professional judgment and skill of the permit holder and do not involve the administration of general anesthesia, deep sedation or conscious sedation [ or nitrous oxide/oxygen analgesia ].

\* \* \* \* \*

(iv) Are currently certified in BLS.

(4) Certified registered nurse anesthetists who are delegated the duties of administering general anesthesia, deep sedation or conscious sedation [ or nitrous oxide/oxygen analgesia ]:

\* \* \* \* \*

(iii) Are currently certified in ACLS.

(5) [ He ] The dentist possesses a current certification [ to administer cardiopulmonary resuscitation (CPR) ] in ACLS for adult patients and PALS for pediatric patients.

(6) The Board receives a complete report of a death or [ unusual ] incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia by the permit holder or by a certified registered nurse anesthetist working under the supervision of the permit holder. The permit holder shall submit the report within 30 days of the death or [ unusual ] incident.

(7) The Board receives prior notice of the first time that a dental office of the permit holder will be used for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia.

(8) General anesthesia or deep sedation administered to pediatric patients by or under the delegation of a general dentist is administered by a person dedicated solely to the administration and

monitoring of anesthesia, and the dental procedures are performed by a dental licensee who is not involved in the administration of the general anesthesia.

(9) Monitoring equipment and equipment used to administer general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia is installed and calibrated according to the equipment manufacturer's guidelines; is in proper working condition prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia; and monitoring equipment is being used during the administration of general anesthesia.

(10) The nonpermit holder dentist's office and equipment transported to the nonpermit holder dentist's office for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia by a permit holder shall satisfactorily complete an office inspection conducted by an approved peer evaluation organization under § 33.336b(a) (relating to approved peer evaluation organizations for administering clinical evaluations and office inspections) in accordance with the requirements of the AAOMS Manual and AAOMS Guidelines (OMS).

(11) General anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia is administered to adult and pediatric patients in accordance with the AAOMS Guidelines and AAOMS Manual (OMS) or to adult patients in accordance with the ADA Guidelines (general dentists) or to pediatric patients in accordance with the AAPD Guidelines (general dentists). Conflicts between the AAOMS Guidelines, the AAOMS Manual, the ADA Guidelines, or the AAPD Guidelines and this subchapter shall be resolved in favor of this subchapter.

(12) The patient medical history and patient physical evaluation are conducted by the permit holder, physician or CRNA.

\* \* \* \* \*

§ 33.340a. Duties of dentists who are restricted permit I holders.

(a) A dentist who possesses a restricted permit I issued under this subchapter shall ensure that:

(1) Prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia, a patient medical history is taken or updated and the patient is given a physical evaluation sufficient to determine the patient's suitability to receive conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers conscious sedation or nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

- (i) An operating room.
- (ii) An operating table or chair.
- (iii) A lighting system.
- (iv) Suction equipment commensurate with the patient's age, size and condition.
- (v) Oxygen and supplemental gas delivery systems, including primary and back-up sources and a fail-safe control mechanism.
- (vi) A sterilization area.

- (vii) A recovery area.
  - (viii) A gas storage area and scavenger system.
  - (ix) Emergency airway equipment and medications, including intravenous emergency equipment.
  - (x) Communications equipment.
  - (xi) Patient transport equipment.
  - (xii) Monitoring equipment, procedures, and documentation to conform to the age, size and condition of the patient and the AAOMS Manual and AAOMS Guidelines for adult and pediatric patients (OMS); the ADA Guidelines for adult patients (general dentists); and the AAPD Guidelines for pediatric patients (general dentists.)
  - (xiii) Pulse oximeter.
  - (xiv) ECG.
  - (xv) Blood pressure monitoring device.
  - (xvi) Defibrillator.
  - (xvii) Results of patient medical history and patient physical evaluation, and identification of anesthesia procedures to be utilized, prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia.
  - (xviii) Signed, written, informed patient consent, prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia, which includes a description of the procedure, its risks and possible alternative treatments. Consent for a minor patient shall be obtained from the minor's parent or guardian.
  - (xiv) Stethoscope.
- (3) Auxiliary personnel who assist the permit holder in the administration of conscious sedation:
- (i) Are trained to perform the duties that the permit holder delegates to them, if the duties do not require the professional judgment and skill of the permit holder and do not involve the administration of conscious sedation.
  - (ii) Perform their duties under the direct on-premises supervision of the permit holder, who shall assume full responsibility for the performance of the duties.
  - (iii) Do not render assistance in areas that are beyond the scope of the permit holder's authority.
  - (iv) Are currently certified in BLS.
- (4) Certified registered nurse anesthetists who are delegated the duties of administering conscious sedation:
- (i) Perform their duties under the direct on-premises supervision of the permit holder, who shall assume full responsibility for the performance of the duties.
  - (ii) Do not perform duties that are beyond the scope of the permit holder's authority.
  - (iii) Are currently certified in ACLS.
- (5) He possesses a current certification in ACLS for adult patients and PALS for pediatric patients.
- (6) The Board receives a complete report of a death or incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of conscious sedation or nitrous oxide/oxygen analgesia by the permit holder or by a certified registered nurse anesthetist working under the supervision of the permit holder. The permit holder shall submit the report within 30 days of the death or incident.

(7) The Board receives prior notice of the first time that a dental office of the permit holder will be used for the administration of conscious sedation or nitrous oxide/oxygen analgesia.

(8) Monitoring equipment and equipment used to administer conscious sedation and nitrous oxide/oxygen analgesia is installed and calibrated according to the equipment manufacturer's guidelines, contains a fail-safe system and is in proper working condition prior to the administration of conscious sedation or nitrous oxide/oxygen analgesia.

(9) The nonpermit holder dentist's office and equipment transported to the nonpermit holder dentist's office for the administration of conscious sedation or nitrous oxide oxygen analgesia by a permit holder must satisfactorily complete an office inspection conducted by an approved peer evaluation organization under § 33.336b(a) (relating to approved peer evaluation organizations for administering clinical evaluations and office inspections) in accordance with the requirements of the AAOMS Manual and AAOMS Guidelines.

(10) Conscious sedation and nitrous oxide/oxygen analgesia is administered to adult and pediatric patients in accordance with the AAOMS Guidelines and AAOMS Manual (OMS) or to adult patients in accordance with the ADA Guidelines (general dentists) or to pediatric patients in accordance with the AAPD Guidelines (general dentists). Conflicts between the AAOMS Guidelines, the AAOMS Manual, the ADA Guidelines, or the AAPD Guidelines and this subchapter shall be resolved in favor of this subchapter.

(11) The patient medical history and patient physical evaluation are conducted by the permit holder, physician or CRNA.

(b) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the dentist to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

**§ 33.340b. Duties of dentists who are restricted permit II holders.**

(a) A dentist who possesses a restricted permit II issued under this subchapter shall ensure that:

(1) Prior to the administration of nitrous oxide/oxygen analgesia, a patient medical history is taken or updated and the patient is given a physical evaluation sufficient to determine the patient's suitability to receive nitrous oxide/oxygen analgesia.

(2) The dental office in which the permit holder administers nitrous oxide/oxygen analgesia on an outpatient basis contains the following:

- (i) An operating room.
- (ii) An operating table or chair.
- (iii) A lighting system.
- (iv) Dental office suction equipment.
- (v) Oxygen and supplemental gas delivery systems, including primary and back-up sources and a fail-safe control mechanism.
- (vi) A sterilization area.
- (vii) A gas storage area and scavenger system.
- (viii) Communications equipment.
- (ix) Monitoring equipment, procedures and documentation to conform to the age, size and condition of the

patient and the AAOMS Manual and AAOMS Guidelines for adult and pediatric patients (OMS), the ADA Guidelines for adult patients (general dentists) and the AAPD Guidelines for pediatric patients (general dentists).

(x) Results of patient medical history, patient physical evaluation and identification of the nitrous oxide/oxygen analgesia procedure to be utilized, prior to the administration of nitrous oxide/oxygen analgesia.

(xi) Signed, written, informed patient consent, prior to the administration of nitrous oxide/oxygen analgesia, which includes a description of the procedure, its risks and possible alternative treatments. Consent for a minor patient shall be obtained from the minor's parent or guardian.

(xii) Stethoscope.

(3) Nitrous oxide/oxygen analgesia is administered to adult and pediatric patients in accordance with the AAOMS Guidelines and AAOMS Manual (OMS) or to adult patients in accordance with the ADA Guidelines (general dentists) or to pediatric patients in accordance with the AAPD Guidelines (general dentists). Conflicts between the AAOMS Guidelines, the AAOMS Manual, the ADA Guidelines or the AAPD Guidelines and this subchapter shall be resolved in favor of this subchapter.

(4) Monitoring equipment and equipment used to administer nitrous oxide/oxygen analgesia is installed and calibrated according to the equipment manufacturer's guidelines, contains a fail-safe system and is in proper working condition prior to the administration of nitrous oxide/oxygen analgesia.

(b) A dentist's failure to comply with this section will be considered unprofessional conduct and will subject the dentist to disciplinary action under section 4.1 of the act (63 P. S. § 123.1).

**§ 33.341. Duties of dentists who are not permit holders.**

(a) [ **Effective January 9, 1990, a** ] A dentist who does not possess a permit issued under this subchapter may not allow general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia to be administered on an outpatient basis in his dental office unless the following conditions are met:

(1) The Board receives prior notice of the first time that the dental office will be used for the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

(2) The dental office **has been inspected and** meets the **appropriate** equipment and facility requirements prescribed in § 33.340(a)(2), **§ 33.340a(a)(2) or § 33.340b(a)(2)** (relating to duties of dentists who are **unrestricted permit holders; duties of dentists who are restricted permit I holders; and duties of dentists who are restricted permit II holders**) and the Board receives a written certification from the dentist to that effect.

(3) The general anesthesia, **deep sedation**, conscious sedation and nitrous oxide/oxygen analgesia are administered by one of the following:

(i) The holder of a permit under this subchapter or **CRNA delegatee**.

\* \* \* \* \*

(4) Either the dentist who performs the dental procedure or the [ **person** ] **certified registered nurse anesthetist, physician or other unrestricted permit holder** who administers the general anesthesia, **deep sedation or** conscious sedation [ **or nitrous oxide/oxygen analgesia** ] possesses a current certification [ **to administer cardiopulmonary resuscitation (CPR)** ] in **ACLS**.

(5) **The nonpermit holder dentist verifies with the permit holder that all monitoring equipment and equipment used to administer general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia is present in the nonpermit holder's office, is properly installed and calibrated according to the equipment manufacturer's guidelines, contains a fail-safe system and is in proper working condition prior to the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia, and monitoring equipment is being used during the administration of general anesthesia.**

(6) **The nonpermit holder dentist's office and equipment transported to the nonpermit holder dentist's office for the administration of general anesthesia, deep sedation, conscious sedation or nitrous oxide/oxygen analgesia by a permit holder shall satisfactorily complete an office inspection conducted by an approved peer evaluation organization under § 33.336b(a), in accordance with the requirements of the AAOMS Manual and AAOMS Guidelines (OMS).**

(b) A dentist shall submit to the Board a complete written report on a death or [ **unusual** ] an incident requiring medical care and resulting in physical or mental injury that directly resulted from the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in his dental office. The report shall be submitted within 30 days of the death or [ **unusual** ] incident.

\* \* \* \* \*

(d) **Continuing anesthesia education. Beginning April 1, 2005, and for all subsequent renewal periods, nonpermit holder licensees who maintain offices in which general anesthesia, deep sedation or conscious sedation is administered, shall have completed 5 hours of Board approved courses related to anesthesia. These 5 hours shall be credited toward the nonpermit holder licensee's continuing education requirement under § 33.401(a)(1).**

**§ 33.342. Inspection of dental offices.**

(a) [ **Routine inspections** ] **Inspections.** [ **No more than once a year during regular business hours, the** ] The Board, through its authorized agents, may conduct [ **a routine inspection** ] inspections of a dental office **with or without prior notice**, for the purpose of determining whether the office is in compliance with the equipment and facility requirements prescribed in

# STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

## Limited License

The State Board of Funeral Directors (Board) proposes to amend §§ 13.1 and 13.12 (relating to definitions; and fees) and to add § 13.77 (relating to limited license) to read as set forth in Annex A.

### Effective date

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

### Statutory Authority

The proposed rulemaking is authorized under sections 9(c) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.9(c) and 479.16(a)).

### Background and Need for the Amendment

Section 2 of the act (63 P. S. § 479.2) defines the term "funeral director" to include any person who supervises the burial, transportation or disposal of deceased human bodies. A person who engages in that activity is practicing the profession of funeral director. However, no one may practice as a funeral director in this Commonwealth without being licensed to do so by the Board under section 13(a) of the act (63 P. S. § 479.13(a)). Accordingly, a person who is not licensed as a funeral director by the Board, even if licensed as a funeral director by another jurisdiction, cannot remove a deceased human body, transport a body or conduct a burial in this Commonwealth. This restriction led many out-of-State licensed funeral directors who practice near the State line to obtain licensure in this Commonwealth, in addition to the home state. However, licensure in multiple jurisdictions generally would not be feasible for a funeral director who does not intend to practice regularly across the State line.

New York and New Jersey authorize their respective licensing authorities to enter into agreements that permit a funeral director licensed in the other state to enter into the state to make a removal, transport a body or conduct a burial without being licensed in the state. West Virginia, Maryland and Delaware permit a funeral director licensed in another state to obtain licensure to enter into the state and make a removal, transport a body or conduct a burial without any agreement between the licensing authorities of those states. In each of these states, a funeral director must be fully licensed by that state to open an establishment.

The act of June 22, 2000 (P. L. 376, No. 48) authorized the Board to enter into an agreement with the appropriate licensing authority of any other state to issue limited licenses to funeral directors licensed in that state who wish to practice on a limited basis in this Commonwealth. A limited license would authorize a funeral director from another state to enter into this Commonwealth for the purpose of removing, transporting and burying dead human bodies and directing funerals. A limited license would not authorize the out-of-State funeral director to maintain an establishment or to hold himself out as a funeral director in this Commonwealth.

### Description of the Proposed Rulemaking

Under the proposed rulemaking, a funeral director licensed in a jurisdiction with which the Board has entered into an agreement must submit an application for

§ 33.340(a)(2), § 33.340a(a)(2) or § 33.340b(a)(2) (relating to duties of dentists who are **unrestricted** permit holders; **duties of dentists who are restricted permit I holders**; and **duties of dentists who are restricted permit II holders**) [ . ] or as follows:

[ (b) *Special inspections.* In addition to the routine inspections authorized by subsection (a), the Board, through its authorized agents, may conduct a special inspection of a dental office: ]

(1) Upon a death or injury related to the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia in the office.

\* \* \* \* \*

[ (4) As a follow-up to a previous inspection that revealed the office's noncompliance with the equipment and facility requirements prescribed in § 33.340(a)(2).

(c) ] (b) *Notice of inspection.* Prior to the start of [ a routine or special ] an inspection of a dental office, the Board's authorized agents will advise the dentist whose office is being inspected that the inspection is being made under this section and is limited in scope by this section.

[ (d) ] (c) *Access during inspection.* [ For purposes of a routine or special inspection, a ] A dentist shall give the Board's authorized agents access to:

(1) Areas of the dental office where general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia are administered.

(2) Equipment, supplies, records and documents relating to the administration of general anesthesia, **deep sedation**, conscious sedation or nitrous oxide/oxygen analgesia.

\* \* \* \* \*

[ (e) ] (d) *Guideline for inspection.* [ A routine ] An inspection will be conducted under provisions pertaining to office facilities and equipment in [ the American Association of Oral and Maxillofacial Surgeons' Office Anesthesia Evaluation Manual ] § 33.340(a)(2), § 33.340a(a)(2), § 33.340b(a)(2) or § 33.341(2).

[ (f) ] (e) *Inspection showing noncompliance.* If [ a routine or special ] an inspection reveals that a dental office is not in compliance with the equipment and facility requirements prescribed in § 33.340(a)(2), § 33.340a(a)(2), § 33.340b(a)(2) or § 33.341(2), the Board will give the dentist whose office was inspected written notice of the deficiencies and of the deadline for correcting the deficiencies. **A reinspection shall take place within 30 days, and, if noncompliance is still shown, formal administrative charges may be initiated.**

[Pa.B. Doc. No. 04-607. Filed for public inspection April 9, 2004, 9:00 a.m.]

a limited license, including an original certification of good standing from the applicant's home jurisdiction, and the required fee. It is anticipated that the application will include an affidavit by which the applicant would acknowledge the restrictions on practice under a limited license, that the applicant is familiar with and will comply with the act and the Board's regulations and that any unprofessional conduct in this Commonwealth may result in disciplinary action that would be reported to the applicant's home state.

A limited license will be subject to biennial renewal. Because section 10(b) of the act (63 P. S. § 479.10(b)) requires each licensed individual to successfully complete continuing education as a condition for renewal, a holder of a limited license will be required to complete the required amount continuing education. However, because the holder of a limited license is by definition licensed in another jurisdiction, continuing education successfully completed in another jurisdiction will satisfy this requirement for the holder of a limited license. A limited license will become inactive if the holder's funeral director license in the funeral director's home state is revoked, suspended, inactivated or otherwise lapsed. The Board will reinstate the limited license to active status upon proof that the holder's license in the home state has been reinstated, unless the Board has, by disciplinary action, suspended or revoked the limited license. Additionally, the proposed rulemaking sets forth the requirement of section 9(c) of the act that the Board may take disciplinary action against the holder of a limited license for unprofessional conduct in this Commonwealth and will report that disciplinary action to the limited license holder's home state.

Finally, the proposed rulemaking will set fees for a limited license. Fees for service are to be set to enable the Board to recover the cost of providing the service. The application fee will be \$35. In general, renewal fees are set at an amount, together with other fees, sufficient to fund the operations of a licensing board and to spread that cost out over all licensees. For limited licensure, however, this approach would disregard the limited use of the license by the out-of-State holders. Also, because there is no history of limited licensure, the Board cannot determine what costs may be attributable to holders of limited licenses. Accordingly, the Board will set the renewal fee for a limited license at \$35, the same amount as the application fee.

*Fiscal Impact and Paperwork Requirements*

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.

*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 March 30, 2004, 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 Michelle Smey, Administrative Officer, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4810 (Limited license) when submitting comments.

JOSEPH A. FLUEHR, III, FD,  
*Chairperson*

**Fiscal Note:** 16A-4810. 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 13. STATE BOARD OF FUNERAL DIRECTORS**

**GENERAL PROVISIONS**

**§ 13.1. Definitions.**

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

\* \* \* \* \*

**Limited license**—A license issued by the Board that authorizes a person licensed to practice funeral directing in a reciprocal state to practice funeral directing in this Commonwealth in accordance with section 9(c) of the act (63 P. S. § 479.9(c)).

\* \* \* \* \*

**Reciprocal state**—The District of Columbia or a state or territory of the United States of America whose agency that is authorized to license persons to practice the profession of funeral director in that jurisdiction has entered into an agreement with the Board under which persons licensed in that jurisdiction may receive a limited license in this Commonwealth.

\* \* \* \* \*

**LICENSURE**

**§ 13.12. Fees.**

Following is the schedule of fees charged by the Board:

\* \* \* \* \*

**Application for limited license** ..... \$35

**Biennial renewal of limited license** ..... \$35

## LICENSURE OF A FUNERAL DIRECTOR FROM ANOTHER STATE

### § 13.77. Limited license.

(a) A person licensed by a reciprocal state to practice the profession of funeral director who seeks a limited license shall apply to the Board on a form provided by the Board, including:

(i) An original certification from the reciprocal state that the applicant is licensed as a funeral director in that jurisdiction and is in good standing.

(ii) The fee prescribed by § 13.12 (relating to fees).

(b) A limited license shall be subject to biennial renewal.

(c) A limited license shall become inactive upon the revocation, suspension, placement upon inactive status, or other lapse of the holder's license in the reciprocal state. Unless a limited license is otherwise suspended or revoked, the Board may reinstate the limited license to active status upon proof that the holder's license in the reciprocal state is no longer revoked, suspended, placed on inactive status, or otherwise lapsed.

(d) The Board may take disciplinary action against the holder of a limited license for any unprofessional conduct that occurs within this Commonwealth. The Board will report to the reciprocal state any disciplinary action taken against the holder of a limited license.

[Pa.B. Doc. No. 04-608. Filed for public inspection April 9, 2004, 9:00 a.m.]

# STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

## Disciplinary Process and Procedure

The State Board of Medicine (Board) proposes to amend § 16.51 (relating to creation of list of hearing examiners) and add §§ 16.55—16.58 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

Sections 8 and 9 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.9) authorize the Board to promulgate regulations addressing procedures to be followed in proceedings before it consistent with the requirements of section 9 of the act.

### C. Background and Purpose

The proposed rulemaking will codify the process and procedures that are currently followed in disciplinary matters before the Board. These procedures are derived from sections 901—905 of the Health Care Services Malpractice Act (formerly 40 P. S. §§ 1301.901—1301.905). On March 20, 2002, the Governor signed into law the Medical Care Availability and Reduction of Error Act (MCARE Act) (40 P. S. §§ 1303.101—1303.910). Section 5104 of the MCARE Act (40 P. S. § 1303.) repealed 40 P. S. §§ 1301.901—1301.905. It is not clear what, if any, impact the repealer provisions have on the procedures followed by the Board. Because the Board's proce-

dures have been effective, the Board has determined that codifying the process will maintain the status quo and avoid unnecessary and unintended confusion.

### D. Description of the Proposed Rulemaking

Section 16.51 is amended to more accurately reflect that, consistent with the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506), attorneys, including hearing examiners, are assigned to agencies through the Office of General Counsel. The proposed rulemaking also provides for the Board's current process that, absent an order of the Board otherwise, all matters would be heard by the Board's hearing examiner.

Section 16.55 (relating to complaint process) is added to provide a description of the complaint process. Section 16.55(a) provides that a written complaint may be submitted to the complaints office. Section 16.55(b)—(d) describes the internal processing of complaints. Specifically, in keeping with the decision in *Lyness v. State Board of Medicine*, 605 A.2d 1204 (Pa. 1992), the Board prosecutor will cause to be conducted reasonable inquiry and will determine whether to initiate the filing of formal charges. Consistent with section 907 of the MCARE Act (40 P. S. § 1303.907), § 16.55(c) reiterates that documents, materials or information obtained during the course of an investigation shall be confidential and privileged unless admitted as evidence during the course of a formal disciplinary proceeding. Section 16.55(d) provides for the Board prosecutor to enter negotiations to settle the case by consent agreement.

Section 16.56 (relating to formal hearings open to public) provides for formal hearings to be open to the public.

Section 16.57 (relating to appeal from the hearing examiner's decision) provides for review of the hearing examiner's decision by the Board on the request of either party or on the Board's own motion. Section 16.57(b) provides that, unless otherwise ordered by the Board, neither the filing of an application for review nor the Board's own notice of intent to review would stay the hearing examiner's decision.

Section 16.58 (relating to appeal from the Board decision) provides for review of the Board's decision under 2 Pa.C.S. § 702 (relating to appeals).

### 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.

### 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 March 30, 2004, 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 House Professional Licensure Committee and the Senate Consumer Protection and 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, recommendations or objections regarding the proposed rulemaking to Joanne Troutman, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication in the *Pennsylvania Bulletin*. Refer to "disciplinary procedures" when submitting comments.

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

**Fiscal Note:** 16A-4918. 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 E. MEDICAL DISCIPLINARY PROCESS AND PROCEDURES

### HEARING EXAMINERS AND MEDICAL CONSULTANTS

§ 16.51. [ Creation of list of hearing ] Hearing examiners.

[ As provided under section 902 of the Health Care Services Malpractice Act (40 P. S. § 1301.902), the Board has created a list of individuals with the approval of the Governor from which hearing examiners can be selected to serve on a part-time basis in order to hear formal hearings and render adjudications. ] Hearing examiners are appointed by the Governor's Office of General Counsel to hear matters before the Board. Unless otherwise ordered by the Board, all disciplinary matters shall be heard by a hearing examiner.

#### § 16.55. Complaint process.

(a) A person, firm, corporation or public officer may submit a written complaint to the complaints office alleging a violation of the act or this chapter or Chapters 17 or 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), specifying the grounds therefore.

(b) The complaints office will assign a complaint to the prosecution and investigatory staff who, together with medical consultants as may be required, will make a determination that the complaint merits consideration. The Board prosecutor will cause to be conducted reasonable inquiry or investigation that is deemed necessary to determine the truth and validity of the allegations in the complaint. The Board prosecutor will provide reports to the Board at its regular meetings on the number, nature, procedure and handling of the complaints received.

(c) Upon review of the complaint, documentation, records and other materials obtained during the course of

an investigation, the Board prosecutor will determine whether to initiate the filing of formal charges. The documents, materials or information obtained during the course of an investigation shall be confidential and privileged unless admitted as evidence during the course of a formal disciplinary proceeding. A person who has investigated or has access to or custody of documents, materials or information which are confidential and privileged under this subsection will not be required to testify in any judicial or administrative proceeding without the written consent of the Board.

(d) The Board prosecutor may enter into negotiations at any stage of the complaint, investigation or hearing process to settle the case by consent agreement.

(1) Consent agreements must be approved as to form and legality by the Office of General Counsel and adopted by the Board.

(2) Until the Board approves a consent agreement, the terms of the agreement are confidential.

(3) Admissions made by a respondent during the course of negotiations may not be used against the respondent in any formal disciplinary proceeding if a consent agreement cannot be reached.

(4) Admissions made by a respondent in a consent agreement that is ultimately rejected by the Board may not be used against the respondent in any formal disciplinary proceeding.

(5) This subsection does not preclude the Board prosecutor from offering, at a formal disciplinary hearing, other evidence to prove factual matters disclosed during the negotiation process.

#### § 16.56. Formal hearings open to public.

Formal disciplinary proceedings are open to the public. Members of the press may request in advance of the hearing permission from the presiding officer for the electronic recording of the proceedings. Upon the consideration of objections by the parties, the hearing examiner may permit the electronic recording of the proceeding by members of the press if the presiding officer determines that the recording will not interfere with the efficient conduct or impartiality and fairness of the proceedings.

#### § 16.57. Appeal from the hearing examiner's decision.

(a) Unless otherwise ordered by the Board, the decision of the hearing examiner will become final after 20 days of its issuance.

(1) Upon application for review by any party or upon the Board's own notice, the Board will review the hearing examiner's decision.

(2) The Board will review the entire record and, if it deems it advisable, may hear additional testimony from persons already deposed or from new witnesses as well as arguments of counsel to make a Board decision.

(3) Additional testimony will be taken as soon as practicable.

(4) The Board will issue its final decision, along with its findings of fact and conclusions of law, which will be sent by mail to the parties involved.

(b) Unless otherwise ordered by the Board, neither the filing of an application for review nor the Board's own notice of intent to review will stay the hearing examiner's decision.



**§ 16.58. Appeal from the Board decision.**

The respondent may, within 30 days from the date of the decision of the Board, appeal to the Commonwealth Court if the appeal is based on allegations of certain errors of law under terms and conditions as cover appeals and actions involving State agencies under 2 Pa.C.S. § 702 (relating to appeals).

[Pa.B. Doc. No. 04-609. Filed for public inspection April 9, 2004, 9:00 a.m.]

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