

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF LANDSCAPE ARCHITECTS [49 PA. CODE CH. 15] Deletion of Examination Fees

The State Board of Landscape Architects (Board) amends §§ 15.1, 15.11, 15.12, 15.51, 15.53, 15.56 and 15.57 to read as set forth in Annex A.

#### A. *Effective Date*

The final-form rulemaking takes effect upon publication in the *Pennsylvania Bulletin*.

#### B. *Statutory Authority*

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

#### C. *Background and Purpose*

The final-form rulemaking deletes references to the fees for the licensing examination and makes clear the fees are set by the professional testing organizations. The final-form rulemaking also clarifies that examination applicants should apply directly to the professional testing organization and not to the Board. It also deletes Board testing protocols and recordkeeping practices that are obsolete.

In addition, the final-form rulemaking has been amended to include a definition of "examination" in § 15.1 (relating to definitions) and §§ 15.56 and 15.57 (relating to registration without examination; and registration by endorsement) have been amended to delete references to the specific title of the examination currently in use.

#### D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 33 Pa.B. 5740 (November 22, 2003). Publication was followed by a 30-day public comment period during which the Board received no comments.

The Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not make any objections, comments or recommendations.

#### E. *Fiscal Impact and Paperwork Requirements*

This final-form rulemaking has no fiscal impact on the Board or its licensees. The final-form rulemaking has no fiscal impact on the private sector, the general public or political subdivisions. The final-form rulemaking avoids preparation of new regulations each time that an examination fee is changed and will not create additional paperwork for the private sector.

The final-form rulemaking will not impose any legal, accounting or reporting requirements on the regulated community.

#### F. *Sunset Date*

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Therefore, no sunset date has been assigned.

#### G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 22, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 5740, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 9, 2004, the final-form rulemaking was approved by the HPLC. On June 14, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

#### H. *Contact Person*

Further information can be obtained by contacting Shirley Klinger, Administrative Assistant, State Board of Landscape Architects, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1389.

#### I. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and no comments were received.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 5740.

(4) The final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

#### J. *Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 15, are amended by amending §§ 15.1, 15.11, 15.12, 15.51, 15.53, 15.56 and 15.57 and by deleting § 15.52 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

DANIEL J. DAHLKEMPER,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 16A-617 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 15. STATE BOARD OF LANDSCAPE ARCHITECTS**

**GENERAL PROVISIONS**

**§ 15.1. Definitions.**

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

*Act*—The Landscape Architects' Registration Law (63 P. S. §§ 901—913).

*Approved institution or college*—An institution accredited by the American Society of Landscape Architects' published list of accredited programs.

*Board*—The State Board of Landscape Architects.

*CLARB*—Council of Landscape Architects Registration Boards.

*Comprehensive work sample*—A work sample which the applicant submits to meet the experience requirements of the act. Work includes site and development plans, specifications and drawings, grading and drainage plans, layout plans, planting plans, stormwater management, plans and calculations, details and specifications and photographs of completed projects, cost estimating and supervision of construction.

*Design professional*—A landscape architect, a land surveyor, an architect or an engineer licensed by the Commonwealth.

*Examination*—The examination given by CLARB.

*Grade and character satisfactory to the Board*—A varied and increased level of experience and responsibility evidenced by a comprehensive work sample, technical knowledge and professional experience.

*Responsible charge*—Under section 2(5) of the act (63 P. S. § 902(5)), for experience to be satisfactory to the Board, it shall be progressive and of an increasing standard of quality and responsibility.

**APPLICATION PROCEDURES**

**§ 15.11. Filing procedures.**

(a) An application for registration shall be submitted to the State Board of Landscape Architects, Box 2649, Harrisburg, Pennsylvania 17105-2649.

(b) An application shall be submitted on forms provided by the Board along with the appropriate fee.

(c) An application for examination shall be submitted directly to the professional testing organization along

with the fee in accordance with the deadline provided by the professional testing organization.

(d) The Board may credit an applicant's experience requirements 4 months in advance of the administration of the examination, if the applicant submits satisfactory certification to the Board that the applicant has attained the required experience during the interim period between the date of application and the date of examination.

**§ 15.12. Fees.**

Following is the schedule of fees charged by the Board:

Application for licensure under § 15.54(b)(1), (2) and (3) or § 15.56(a)(3).....	\$60
Application for licensure and Board interview under § 15.54(b)(4) and 15.56(a)(1) or (2).....	\$350
Application for licensure by endorsement .....	\$45
Application for temporary permit .....	\$45
Verification of licensure .....	\$15
Certification of licensure or scores.....	\$25
Duplicate certificate fee .....	\$5
Biennial registration fee.....	\$125
Provider application for continuing education course approval under § 15.74 (relating to approval of continuing education courses).....	\$125
Licensee application for continuing education course approval under § 15.77 (relating to licensee application for approval of continuing education courses) .....	\$ 40 (per clock hour)

**EXAMINATIONS**

**§ 15.51. Eligibility.**

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

(1) *Examination.* The examination will be given on dates selected by the professional testing organization.

(2) *Examination sites.* The examination will be given at locations as may be determined by the professional testing organization.

(3) *Due notice.* An applicant eligible to take the examination will be given notice of the date, time and place of examination and will be given specific preexamination instructions. An applicant shall immediately advise the professional testing organization specified on the preexamination instructions as to intent to sit or not to sit for the examination, once declared eligible.

(4) *Forfeiture.* An applicant who fails to sit for the examination, or any part of the examination, forfeits the examination fee and shall submit a new application fee.

**§ 15.52. (Reserved).**

**§ 15.53. Grading.**

(a) Test results will be recorded by the Board in a permanent record of the applicant.

(b) To qualify for registration, an applicant shall receive a passing grade on each part or division of the examination. An applicant will have unlimited opportunities to retake portions of the examination which were failed.

**§ 15.56. Registration without examination.**

(a) *Requirements.* An applicant who meets one or more of the following requirements is eligible for registration without examination:

(1) An individual who possesses 10 years of practical experience in landscape architecture, of a grade and character satisfactory to the Board, and who has graduated from an approved institution.

(2) An individual who possesses 15 years of practical experience in landscape architecture of a grade and character satisfactory to the Board.

(3) An individual who has passed the examination in another state with a score required by the Board and who has met the education experience requirements of the act.

(b) *Procedure.*

(1) Prior to issuing a license without examination, the Board will review the applicant's qualifications, and by a majority vote approve or disapprove the application.

(2) If an application has been disapproved, the Board may vote to allow the applicant to take the written examination.

**§ 15.57. Registration by endorsement.**

(a) *General requirements.* An applicant who has passed the examination, holds an unexpired license from another state or foreign country, has a graduate or undergraduate degree in landscape architecture from an approved institution or college and possesses 2 years of practical experience in landscape architecture of a grade or character satisfactory to the Board, may be granted registration by endorsement following the filing of an application and a Board review of the applicant's comprehensive work sample.

(b) *Endorsement.*

(1) An applicant who requests registration by endorsement shall submit with the application an official certification of registration in the applicant's home state, territory or country from the secretary of the examining or registration board or other certifying official, stating on what basis registration was granted, whether by oral or written examination or exemption, and whether the registration is in good standing at the time of the application for registration in this Commonwealth.

(2) An applicant who requests registration by endorsement shall submit with the application complete information relative to training, education and experience as may be required by the Board.

(c) *Exception.* An applicant who received a license from another jurisdiction, without having passed the examination, is not entitled to registration by endorsement.

[Pa.B. Doc. No. 04-1586. Filed for public inspection August 27, 2004, 9:00 a.m.]

STATE BOARD OF MEDICINE  
[49 PA. CODE CH. 16]  
Continuing Medical Education

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

A. *Effective Date*

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

B. *Statutory Authority*

Under section 910 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. § 1303.910), the Board is required to establish requirements for continuing medical education for physicians as a condition for renewal of their licenses.

C. *Background and Purpose*

The final-form rulemaking implements section 910 of the act, which requires completion of continuing medical education as a condition of biennial license renewal of physician licenses by the Board.

D. *Description of the Final-Form Rulemaking*

Section 16.1 is amended to include new definitions that relate to the continuing medical education requirement. Acronyms for the Accreditation Council for Continuing Medical Education (ACCME), the American Medical Association (AMA) and the American Medical Association Physician's Recognition Award (AMA PRA) have been included. The ACCME is the national oversight body for continuing medical education. The AMA PRA is the Nationally recognized standard for continuing medical education. Continuing medical education activities that adhere to the published standards of the AMA PRA are eligible for continuing medical education credit.

Because continuing medical education activities are much broader than typical didactic course work and may include activities such as rounds, research, independent study, teaching, and the like, the final-form rulemaking changes the definition of "approved course" to "approved activity." This definition also has been amended to more accurately reflect that in the field of continuing medical education activities are accepted for credit in a decentralized process by organizations designated by the ACCME. Definitions have also been added to identify that continuing medical education activities are delineated under the AMA PRA standard into Category 1 activities and Category 2 activities. "Category 1" and "Category 2" are terms of art in the continuing medical education field and are well understood by the physician and continuing medical education communities, accordingly, further defining these terms is unnecessary and likely to generate confusion rather than clarity.

Section 16.19 has been amended in final rulemaking in several respects. Because of the short time period remaining between publication of this final-form rulemaking and the January 1, 2005, deadline for renewal of license, the Board has determined to significantly reduce the continuing education requirement for this renewal period. However, the Board has determined that it is important to implement at least a minimum continuing education requirement. Accordingly, § 16.19 has been amended in the final-form rulemaking so that the licensure renewal period beginning January 1, 2005, proof of completion of 25 credit hours of continuing medical education in the preceding biennial period running January 1, 2003, through December 31, 2004, will be required. The 25 credit hours for the January 1, 2005, license renewal period may be completed in either AMA PRA Category 1 or AMA PRA Category 2 and must include 3 hours of patient safety and risk management.

Full implementation of the continuing education requirement has been delayed until the licensure renewal period beginning January 1, 2007. At that time, proof of

completion of 100 credit hours of continuing medical education in the preceding biennial period running January 1, 2005, through December 31, 2006, will be required for licensure renewal for medical doctors.

Under § 16.19(a), once full implementation occurs, at least 20 credit hours of the 100 will be required to be completed in AMA PRA Category 1 approved activities. Further, at least 12 credit hours of the 100 will be required to be completed in AMA PRA Category 1 or Category 2 activities related to the area of patient safety and risk management. Approved activities in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. Credit will not be granted for courses in office management or practice building.

Under § 16.19(b), physicians are required to retain documentation of participation for 2 years after renewal and shall certify they completed continuing medical education activities on a form provided by the Board for that purpose. Documentation proving completion of continuing medical education must be produced, upon Board demand, under random audits of reported credit hours. Electronic submission of documentation is permissible to prove compliance. Noncompliance may result in disciplinary proceedings under section 41(6) of the Medical Practice Act of 1985 (63 P. S. 422.41(6)). Section 16.19(b)(2) and (3) identifies acceptable forms of documentation evidencing completion of continuing medical activities.

Section 16.19(c) provides for exemption from the continuing medical education requirement for a physician who is applying for licensure in this Commonwealth for the first time; holds a current training license; is a retired physician providing care only to immediate family members or is on inactive status, except that a physician seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium. Section 16.19(d) provides that a physician suspended for disciplinary reasons is not exempt from the requirements of this section.

Section 16.19(e) authorizes the Board to grant discretionary waivers of the continuing medical education requirements in cases of serious illness, military service or other good cause provided that the granting of the waiver will not jeopardize the public's safety and welfare.

#### E. Public Comment

Proposed rulemaking was published at 34 Pa. B. 56 (January 3, 2004). In drafting and promulgating the final-form rulemaking, the Board solicited input and suggestions from the regulated community and other parties who have identified themselves as interested in the Board's regulatory agenda.

The Board entertained public comment for 30 days during which time the Board received comments from individuals and organizations including the Hospital and Healthsystem Association of Pennsylvania (HAP), several hospitals and the Pennsylvania Medical Society. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. The following is a summary of the comments and the Board's responses.

The comments were in the main supportive of the proposed rulemaking but expressed concern regarding the amount of time remaining in the renewal period and whether it would be practicable to fully implement the continuing medical education requirement for the January 1, 2005, renewal. The HPLC and IRRC echoed this concern. The Board agrees that full implementation is not practicable at this point in time and has amended the final-form rulemaking to delay full implementation until January 1, 2007. However, the Board has provided for a minimum continuing medical education requirement for the upcoming renewal.

The HAP also requested that the final-form rulemaking clarify that the existing Nationally recognized AMA PRA Category 1 and Category 2 system of accepting continuing medical education would continue. The Board agrees that the proposed rulemaking was not clear in this intent and has made the suggested amendments to the final-form rulemaking.

The HPLC and IRRC pointed out that the proposed rulemaking appeared in error in regard to the counting of patient safety and risk management activities in relation to the full 100-hour requirement. The Board corrected the final-form rulemaking to clarify that patient safety and risk management was part of the over 100 hours of required continuing medical education. The Board increased the number of required hours in patient safety and risk management from 10 to 12 in keeping with the Governor's Plan For Medical Malpractice Liability Reform of June 9, 2003.

#### F. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector. Citizens of this Commonwealth will benefit in that this final-form rulemaking promotes patient safety and welfare as a consequence of maintaining physician participation in continuing medical education activities.

#### G. Sunset Date

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

#### H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 3, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 56, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 30, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

#### I. Contact Person

Further information may be obtained by contacting Gerald S. Smith, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, gerasmith@state.pa.us.

J. Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa.B. 56.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

K. Order

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.1 and by adding § 16.19 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

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

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

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

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

**Fiscal Note:** Fiscal Note 16A-4914 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS**

**Subchapter A. BASIC DEFINITIONS AND INFORMATION**

**§ 16.1 Definitions.**

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

*ACCME*—The Accreditation Council for Continuing Medical Education.

*AMA*—American Medical Association.

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

\* \* \* \* \*

*Approved activity*—A continuing medical education activity accepted for AMA PRA credit.

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*Category 1 activities*—Continuing medical education activities approved for AMA PRA Category 1 credit.

*Category 2 activities*—Continuing medical education activities approved for AMA PRA Category 2 credit.

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

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**Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS**

**§ 16.19 Continuing medical education.**

(a) Beginning with the licensure renewal period commencing January 1, 2005, proof of completion of 25 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for medical doctors. The 25 credit hours for the January 1, 2005, license renewal period may be completed in either AMA PRA Category 1 or AMA PRA Category 2 activities, and must include 3 hours in patient safety and risk management.

(b) Beginning with the licensure renewal period commencing January 1, 2007, proof of completion of 100 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for medical doctors.

(1) At least 20 credit hours shall be completed in AMA PRA category 1 approved activities. At least 12 credit hours shall be completed in AMA PRA Category 1 or AMA PRA Category 2 approved activities in the area of patient safety and risk management. Approved activities in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The remaining credit hours shall be completed in AMA PRA Category 1 or AMA PRA Category 2 approved activities. Credit will not be granted for courses in office management or practice building.

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

(i) Acceptable documentation for Category 1 activities are:

(A) AMA PRA certificates.

(B) Certificate of completion of a Category 1 activity sponsored by an organization accredited by ACCME or designee of the ACCME.

(C) Certificates from a medical professional society or specialty certification by a member organization of the American Board of Medical Specialties.

- (D) Healthcare system credential certification.
- (E) Third party payor credentialing certification.
- (F) Certification by a CME organization whose standards meet or exceed those established by AMA PRA.
- (ii) Acceptable documentation for Category 2 activities are:
  - (A) Documentation from sources acceptable for Category 1 activities.
  - (B) Documentation maintained by the physician contemporaneous to the CME activity such as personal log books, diaries, journal notes or applications for credentialing or certification by an organization recognized by the ACCME or designee of the ACCME. The documentation shall identify the activity and the amount of time spent in the activity.
- (3) The following exemptions apply for certain physicians:
  - (i) A physician applying for licensure in this Commonwealth for the first time shall be exempt from the continuing medical education requirement for the biennial renewal period following initial licensure.
  - (ii) A physician holding a current temporary training license shall be exempt from the continuing medical education requirement.
  - (iii) A retired physician who provides care only to immediate family members shall be exempt from the continuing medical education requirement.
  - (iv) A physician who is on inactive status shall be exempt from the continuing medical education requirement, except that a physician who is seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium.
- (4) A physician suspended for disciplinary reasons is not exempt from the requirements of this section.
- (5) Waiver of the CME requirements may be permitted, as follows:

- (i) The Board may grant a hardship waiver of all or a part of the continuing medical education requirement in cases of serious illness, military service or other good cause provided that the public's safety and welfare will not be jeopardized by the granting of the waiver.
- (ii) A request for waiver must be made in writing, with appropriate documentation, and include a description of circumstances sufficient to show why compliance is impossible.
- (iii) Waiver requests will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

[Pa.B. Doc. No. 04-1587. Filed for public inspection August 27, 2004, 9:00 a.m.]

**STATE BOARD OF VEHICLE MANUFACTURERS,  
DEALERS AND SALESPERSONS**  
[49 PA. CODE CH. 19]  
**Branch Lots**

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) adds § 19.17a (relating to branch lots) to read as set forth in Annex A.

*Description and Need for Rulemaking*

The final-form rulemaking adds § 19.17a to set forth the general rule that any location where a dealer has placed vehicles must be licensed and to set forth standards for determining whether a location where a dealer has placed vehicles is a storage lot or an advertisement, as opposed to the offering for sale of those vehicles, and need not be licensed.

*Summary of Comments and Responses to Proposed Rulemaking*

The Board published notice of proposed rulemaking at 33 Pa.B. 1124 (March 1, 2003) with a 30-day public comment period. The Board received comments from the Pennsylvania Automotive Association (PAA). The Board also received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of their review of the proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of the proposed rulemaking under the Regulatory Review Act.

The PAA commented that it “is in agreement with the proposed regulations as presented.”

The HPLC and IRRC both suggested that the final-form rulemaking should be included under the heading of “dealership license” because it specifically addresses dealers, rather than under “general provisions.” The Board agrees and has renumbered the regulation as § 19.17a.

IRRC commented that the language used in subsection (b)(3), (4), (6) and (7) to distinguish a storage lot from a sales lot expresses the negative in the actor, although the negative should be with the action. The Board has revised these portions of the final-form rulemaking in accordance with this comment.

IRRC also commented that subsection (b)(8) should clarify that the dealer may not provide a telephone or other means for a customer to contact the dealer from the unlicensed location. The Board agrees and has revised subsection (b)(8) to preclude the dealer from providing potential customers at the unlicensed location with any means to communicate with the dealer about the vehicles stored there. Additionally, the Board has revised this subsection to express the negative with the action, as discussed in the previous comment.

The HPLC questioned the Board's authority to promulgate subsection (c). Subsection (c)(1) states that certain actions will not be considered to be “buying, selling or exchanging” vehicles, as defined in section 2 of the Board of Vehicles Act (act) (63 P. S. § 818.2). Because the definition of “buying, selling or exchanging” includes advertising and all sales activity is to occur at the licensed dealership facility, the HPLC questioned whether the Board has authority to create an exemption. In drafting subsections (b) and (c), the Board intended to create a safe harbor for dealers to know on what terms the display of a vehicle will be considered to be storage or merely advertising, respectively, (and may be done away from a licensed facility) and not the offering for sale (that must be done only at a licensed facility). The Board considers the display of a vehicle under subsection (c) to be merely a three-dimensional “billboard” that may be placed anywhere for public view of the advertising.

Both the HPLC and IRRC suggested that subsection (c) include a requirement that the dealer post a sign with the single vehicle display stating that the vehicle is for display only and that no sales transaction may occur at the display site. The Board has revised the final-form rulemaking to incorporate this suggestion.

Subsection (c)(1)(v) prohibits a single vehicle display from having "sales agreement forms or other documents routinely used in vehicle sales transactions." IRRC commented that the Board should identify these other documents. In response, the Board has revised this subsection to read "There are no sales forms present at the location." IRRC also commented that subsection (c)(1)(vi) should make clear that it is the dealer's responsibility to ensure that the vehicle is locked and that the public is unable to gain entry. The Board agrees that this is the dealer's responsibility and, in response to this comment, has revised subsection (c)(1)(vi) to read "The dealer has secured the vehicle so that it is not capable of being operated . . . ."

Finally, IRRC questioned why subsection (c)(2) explicitly excluded the display of recreational vehicles, mobile homes or manufactured housing from a regulation that is not applicable to these types of vehicles. Subsection (c)(2) was drafted to clearly demarcate those segments of the vehicle sales industry that are subject to this final-form rulemaking from those that are not.

#### *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *Effective Date*

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

#### *Statutory Authority*

The final-form rulemaking is promulgated under section 2 and sections 4(4) and (9) and 5(e) of the act (63 P. S. §§ 818.4(4), 818.4(9) and 818.5(e)).

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 1, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1124, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 15, 2004, the final-form rulemaking was approved by the HPLC. On July 14, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

#### *Additional Information*

Persons who require additional information about the final-form rulemaking should submit inquiries to Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1697, st-vehicle@state.pa.us.

#### *Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

(4) The final-form rulemaking does not enlarge the scope of proposed rulemaking published at 33 Pa.B. 1124.

#### *Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 19, are amended by adding § 19.17a to read as set forth in Annex A.

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

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

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

EDWIN K. GALBREATH, Jr.,  
Chairperson

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 16A-605 remains valid for the final adoption of the subject regulation.

#### **Annex A**

### **TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

#### **PART I. DEPARTMENT OF STATE**

#### **Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

#### **CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

#### **DEALERSHIP LICENSE**

#### **§ 19.17a. Branch lots.**

(a) *Facility.* Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).

(b) *Storage of vehicles.* The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

- (1) The lot is used solely for the storage of vehicles.
- (2) The lot is identified by a sign with the dealership name and a designation that the lot is for "storage only." The area may not otherwise be identified.
- (3) A salesperson is present at the lot only as necessary to repair, recondition, inspect or move any of the vehicles.
- (4) A salesperson present at the unlicensed location does not engage in any demonstration or discussion of product features of the vehicles and does not discuss any terms of sale.
- (5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).
- (6) A sign or other marking at the lot or on any of the vehicles at the lot (except for a Federally-mandated manufacturer's price sticker) does not indicate that any of the vehicles at the lot are available for sale at any other location.
- (7) Literature, such as business cards or brochures, is not available for potential customers to remove from the lot.
- (8) The dealer has provided a potential customer at the lot with no means, such as telephone, e-mail or Internet website, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

- (1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P. S. § 818.2), if:
  - (i) The placement is by a vehicle dealer licensed in this Commonwealth.
  - (ii) No more than one vehicle is placed at the location.
  - (iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.
  - (iv) There is no sales office at the location.
  - (v) There are no sales forms present at the location.
  - (vi) The dealer has secured the vehicle so that it is not capable of being entered or operated by potential customers or others (other than by criminal acts).
  - (vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.
  - (viii) A sign is posted that identifies the vehicle as for display only and not for sale at that location.
- (2) This subsection applies to the placement of automobiles, light trucks and motorcycles, but does not apply to the placement of recreational vehicles, mobile homes, manufactured housing, and other vehicles not identified in this paragraph.

[Pa.B. Doc. No. 04-1588. Filed for public inspection August 27, 2004, 9:00 a.m.]

**STATE BOARD OF VEHICLE MANUFACTURERS,  
DEALERS AND SALESPERSONS**

**[49 PA. CODE CH. 19]**

**Consignment Sales**

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) adds § 19.18a (relating to consignment sales) to read as set forth in Annex A.

*Description and Need for Rulemaking*

The final-form rulemaking adds § 19.18a to establish requirements for licensed vehicle dealers who wish to sell vehicles on a consignment basis without holding a vehicle auction license, as authorized by section 5(f)(3) of the Board of Vehicles Act (act) (63 P. S. § 818.5(f)(3)). Previously, the Board had not adopted any regulations in this area. By the act of April 19, 1996 (P. L. 104, No. 27), the General Assembly made substantial amendments to the act. Among the changes, the General Assembly eliminated licensure for brokers and created a new class of licensure for public or retail auctions and wholesale auctions. In addition, the activities of brokering—selling at auction and selling on consignment—were divided between dealers and the new auction licensees. Specifically, section 5(f)(3) of the act now provides that a "dealer licensed under this act without possessing a wholesale auction or public or retail auction license shall be permitted to sell vehicles on consignment." The General Assembly did not specify consumer protection provisions that would apply to the new class of licensure.

Dealers did not previously sell vehicles on consignment. Thus, consumers may be unaware that a dealer does not own the consigned vehicles on display at the dealer's lot and that these vehicles do not have the same protections in title and warranty as vehicles owned by the dealer. The final-form rulemaking is necessary to address important consumer protection issues. The final-form rulemaking will require an exchange of information between a dealer and a consignor, which in turn will require an exchange of information between the dealer and a potential buyer, obviating title and warranty problems after purchase. Additionally, the final-form rulemaking will require that delivery of the vehicle will not occur until after execution of the title and other paperwork.

*Summary of Comments and Responses to Proposed Rulemaking*

The Board published notice of proposed rulemaking at 32 Pa.B. 6134 (December 14, 2002) with a 30-day public comment period. The Board received comments from Pennsylvania Automotive Association (PAA) and Pennsylvania Independent Automobile Dealers Association (PIADA), but not from any other members of the public. The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act.

The HPLC and IRRC recommended that the Board adopt minimum size and clarity specifications for the written disclosure required by § 19.18a(d) that the vehicle is held on consignment and is not owned by the dealer to ensure proper notice to potential buyers. Because the Board finds this to be a reasonable require-



ment, the Board has revised the final-form rulemaking to require that the notice be in at least 20-point bold type.

The PIADA objected to the requirement of § 19.18a(b)(1), which requires a separate written consignment agreement to be maintained for each vehicle that is consigned, rather than permitting a dealer to include multiple vehicles on a single consignment agreement with a given consignor. The Board has not revised the final-form rulemaking in response to this comment. A separate consignment agreement permits simplified handling of the paperwork for each vehicle, as well as dealing with potential buyers, without any effect from the sale of, or failure to sell, any other vehicle from the same consignor. The Board believes that this benefit outweighs any benefit of the reduced number of consignment agreements that may result from including additional vehicles from the same consignor on a single consignment agreement.

The PIADA also commented on the requirement of § 19.18a(b)(1)(vii), which requires the consignment agreement to include an account number for each lien holder, objecting that this may violate the privacy of the consignor. The Board has not revised its regulation in response to this comment. This information is required to protect the dealer (and by extension, the buyer) by providing a readily verifiable means to confirm the existence and extent of any lien. The dealer is not obligated to provide this information to every potential buyer.

The PIADA commented on § 19.18a(b)(1)(viii), which requires the consignment agreement to include any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure, objecting that this would impose upon the dealer strict liability to know the entire accident history of the vehicle. The PIADA suggested that the Board revise its final-form regulation to require disclosure of accident history and vehicle condition only if the dealer offers a warranty. By promulgating this rulemaking, the Board does not intend to prohibit any "as-is" sale by consignment or to make the dealer strictly liable for the condition of any vehicle sold on consignment. The Board included this requirement to provide a source of information to a potential buyer where the consigning seller is not involved in showing the vehicle or directly available to answer questions. The Board included this requirement also to provide additional information to the dealer because § 19.18a(c) requires that the dealer must, at least temporarily, become the owner of the vehicle prior to making the final sale. Accordingly, the Board has not revised its final-form rulemaking in response to this comment, other than to specify that the accident history to be disclosed is that history known to the consignment seller.

The PAA commented that Federal law does not permit the dealer to sign on behalf of the consigning seller on the back of the title, such as by the power of attorney required by § 19.18a(b)(3), as well as buyer, which results from the compliance with § 19.18a(c), which requires the dealer to have title assigned to the dealer prior to applying for title in the buyer's name. Accordingly, the Board has revised the final-form rulemaking to delete § 19.18a(b)(3) as previously proposed.

The PAA and the PIADA suggested that the Board remove from § 19.18a(b)(4) any requirement for a dealer to hold the title to a vehicle held on consignment. In proposing this rulemaking, the Board sought to protect a buyer from a consignor (or dealer) failing to provide the title by the time of sale. As the PAA has indicated, the requirement that the dealer notify potential buyers that the vehicle is being sold on consignment, rather than out

of the dealer's inventory, puts the buyer on notice that the sales process is different and may be slowed by involving a seller other than the dealer and the resultant need to delay the sales transaction until the seller has produced the title (or appropriate substitute) to the dealer. Accordingly, the Board has revised the final-form regulation to omit any requirement that the dealer must hold the unexecuted title. As part of making this revision, the Board has removed from § 19.18a(b)(2) the alternative of holding a copy of the title and instead, placed into § 19.18(b)(3) the requirement that the dealer hold a copy of the title or a printout of the electronic lien verification. Compliance with this requirement will establish the owner's identity and alert the dealer to any title brands or lien holders. Additionally, the Board has revised the final-form rulemaking to remove all requirements for lien satisfaction documentation, because compliance with § 19.18a(c) will result in satisfaction of all liens by the consignor.

Finally, the Board added to the final-form rulemaking a prohibition that a dealer may not deliver a vehicle sold on consignment until the paperwork associated with that transaction has been completed. Delaying the sale until title and other documents are provided will also serve the purpose of protecting the buyer from a consignor (or dealer) who is unable to provide the title. Because the vehicle cannot be delivered prior to providing the title, there is no need to require a dealer who fails to provide a title to the purchaser to accept return of the vehicle and refund the entire purchase price, less actual depreciation, as suggested by the PIADA. Moreover, the Board does not have the authority, under the act, to order a licensee to make restitution or otherwise provide a remedy.

#### *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking has no adverse fiscal impact on the Commonwealth or its political subdivisions and imposes no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *Effective Date*

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

#### *Statutory Authority*

The final-form rulemaking is promulgated under section 4(9) of the act (63 P. S. § 818.4(9)) and section 5(f)(3) of the act.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 14, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 6134, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 15, 2004, the final-form rulemaking was approved by the HPLC. On July 14, 2004, the final-form rulemaking was deemed approved by

the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

*Additional Information*

Persons who require additional information about the final-form rulemaking should contact Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1697, st-vehicle@state.pa.us.

*Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the rulemaking promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

(4) The final-form rulemaking does not enlarge the scope of proposed rulemaking published at 32 Pa.B. 6134.

*Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 19, are amended by adding § 19.18a to read as set forth in Annex A.

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

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

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

EDWIN K. GALBREATH, Jr.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 16A-607 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

**DEALERSHIP LICENSE**

**§ 19.18a. Consignment sales.**

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction, as defined in

section 2 of the act (63 P. S. § 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle. The written consignment agreement shall contain the following information:

(i) The name and signature of the consignor.

(ii) The make, model, year, vehicle identification number, and license plate number of the vehicle.

(iii) The length of the consignment period.

(iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.

(v) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.

(vi) The express identification of any warranties extended by the consignor.

(vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.

(viii) Any material facts relative to the vehicle, including accident history known to the seller, vehicle condition and odometer disclosure.

(2) A copy of the current registration card.

(3) A Copy of the title or a print-out of an electronic lien verification.

(c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing in at least 20-point bold type on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

(e) A dealer may not deliver a vehicle on consignment sale without having all title, lien and registration documents signed by the buyer or consignor, or both, as appropriate.

[Pa.B. Doc. No. 04-1589. Filed for public inspection August 27, 2004, 9:00 a.m.]

**STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

**[49 PA. CODE CH. 19]**

**Vehicle Auction License**

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) adds §§ 19.19 and 19.20 (relating to standards of licensure for retail or public auction; and standards of licensure for wholesale auction) to read as set forth in Annex A.

*Description and Need for Rulemaking*

The final-form rulemaking adds §§ 19.19 and 19.20 to set forth standards of licensure and operation of retail or public auctions and wholesale auctions, respectively.

*Summary of Comments and Responses to Proposed Rule-making*

The Board published a notice of proposed rulemaking at 32 Pa.B. 5418 (November 2, 2002) with a 30-day public comment period. The Board received public comment from a representative of a public auction and a wholesale auction that auctions salvage vehicles. The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The public commentator and IRRC questioned whether §§ 19.19(a)(2) and 19.20(a)(2), which prohibit an auction from conducting auction activities from other than its established place of business, prohibit an auction from receiving bids by telephone or the Internet. In response, the Board has revised the subsections to make clear that an auction may receive bids by telephone, Internet or other electronic means. However, to protect purchasers, both retail and wholesale, from the possibility of phantom vehicles being offered for auction, the Board also will require an auction to have each vehicle physically present at the auction's established place of business.

Because §§ 19.19(b)(1) and 19.20(b)(1) require the established place of business of an auction to include a permanent enclosed building for use as an auction facility, both the public commentator and IRRC questioned whether the proposed rulemaking permitted the auction sale to be conducted outside of the permanent enclosed building. In response, the Board has revised these subsections to state that "[their provisions do] not require that all auction activities be conducted within the permanent enclosed building."

The public commentator and IRRC also commented on the Board's reference in §§ 19.19(b)(5) and 19.20(b)(5) to the act of April 27, 1927 (P. L. 465, No. 299) (35 P. S. §§ 1221—1235), known as the Fire and Panic Act. Because the pertinent sections of the Fire and Panic Act were repealed by enactment of the Pennsylvania Construction Code Act (act) (35 P. S. §§ 7210.101—7210.1103), both suggested that the final-form rulemaking be updated to reference the act. Accordingly, the Board has revised these subsections to refer only to the act.

Section 19.19(b)(8) sets forth the requirement that a public or retail auction have a display area where potential buyers are permitted to inspect vehicles for auction. Because § 19.18(a)(3)(ii) requires that the display area of a dealership be properly graded and surfaced, the HPLC and IRRC questioned whether this requirement should also be applied to a public or retail auction. The Board believes that the display area of a public or retail auction should be properly graded and surfaced to ensure public protection and safety. The Board has revised § 19.19(b)(8) to set forth this requirement.

Finally, the public commentator noted that the act of December 9, 2002 (P. L. 1278, No. 152) (Act 152) amended 75 Pa.C.S. (relating to the Vehicle Code), including provisions regarding salvage sales, and suggested that the Board review the proposed rulemaking for consistency with Act 152. The Board has reviewed Act 152 and has found no need to further revise the final-form rulemaking.

*Fiscal Impact and Paperwork Requirements*

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

*Effective Date*

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

*Statutory Authority*

The final-form rulemaking is promulgated under sections 2 and 4(9) of the Board of Vehicles Act (63 P. S. §§ 818.2 and 818.4(9)).

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 2, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5418, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 15, 2004, the final-form rulemaking was approved by the HPLC. On July 14, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 15, 2004, and approved the final-form rulemaking.

*Additional Information*

Persons who require additional information about the final-form rulemaking should submit inquiries to Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-1697, st-vehicle@state.pa.us.

*Findings*

The Board finds that:

(1) Public notice of the intention to adopt this final-form rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Board of Vehicles Act.

(4) The final form regulations do not enlarge the scope of proposed rulemaking published at 32 Pa.B. 5418.

*Order*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 19, are amended by adding §§ 19.19 and 19.20 to read as set forth in Annex A.

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

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

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

EDWIN K. GALBREATH, Jr.,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 16A-603 remains valid for the final adoption of the subject regulations.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 19. STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS**

**AUCTION LICENSE**

**§ 19.19. Standards of licensure for retail or public auction.**

(a) *Auction activities.*

(1) Every public or retail auction shall have a business identity separate from other businesses owned or operated by the public or retail auction.

(2) A public or retail auction may not conduct auction activities other than from its established place of business. A retail or public auction may auction only those vehicles that are physically located at the established place of business of the public or retail auction. A retail or public auction may accept bids by telephone, Internet or other remote means.

(3) An auction license does not permit a public or retail auction to broker, other than the auctioning of vehicles.

(b) *Established place of business.*

(1) The established place of business for a public or retail auction must include a permanent enclosed building for use as an auction facility within this Commonwealth. This paragraph does not require that all auctioning of vehicles be conducted within the permanent enclosed building.

(2) The established place of business must include a private office, located within the permanent enclosed building, separate from display areas and auctioning areas, that has space for the storage of books and records.

(3) The established place of business must have a single business line telephone, located within the permanent enclosed building, that is used for the public or retail auction. The telephone number must be listed under the public or retail auction's licensed name.

(4) The established place of business must be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(5) A public or retail auction shall possess a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(6) A public or retail auction shall post a sign indicating the days and hours that the public may attend for either inspection or auctioning of vehicles.

(7) A public or retail auction shall exhibit a sign, either permanently affixed to the building or erected outdoors in the display area, that shows the licensed name of the auction and that is visible to the public.

(8) A public or retail auction shall have a display area where potential buyers are permitted and invited in the regular course of business to inspect or test drive the vehicles that are being offered for sale by the auction. The display area must be at or adjacent to the auction's established place of business. The display area may be indoors, outdoors or partly indoors and partly outdoors. The outdoor portions of a display area must be properly graded and surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material.

**§ 19.20. Standards of licensure for wholesale auction.**

(a) *Auction activities.*

(1) Every wholesale auction shall have a business identity separate from other businesses owned or operated by the wholesale auction.

(2) A wholesale auction may not conduct auction activities other than from its established place of business. A wholesale auction may auction only those vehicles that are physically located at the established place of business of the wholesale auction. A wholesale auction may accept bids by telephone, Internet or other remote means.

(3) An auction license does not permit a wholesale auction to broker, other than the auctioning of vehicles.

(b) *Established place of business.*

(1) The established place of business for a wholesale auction must include a permanent enclosed building for use as an auction facility within this Commonwealth. This paragraph does not require that all auctioning be conducted within the permanent enclosed building.

(2) The established place of business must include a private office, located within the permanent enclosed building, separate from display areas and auctioning areas, that has space for the storage of books and records.

(3) The established place of business must have a single business line telephone, located within the permanent enclosed building, that is used for the wholesale auction. The telephone number must be listed under the wholesale auction's licensed name.

(4) The established place of business shall be in full compliance with applicable building codes, zoning ordinances and other land-use ordinances.

(5) A wholesale auction shall possess a certificate of occupancy issued by a building code official in accordance with the Pennsylvania Construction Code Act (35 P. S. §§ 7210.101—7210.1103).

(6) A wholesale auction shall post a sign indicating the auction's licensed name and that the auction is not open to the general public.

[Pa.B. Doc. No. 04-1590. Filed for public inspection August 27, 2004, 9:00 a.m.]

**STATE BOARD OF EXAMINERS OF NURSING  
HOME ADMINISTRATORS**

**[49 PA. CODE CH. 39]**

**Deletion and Correction of Fees**

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

*A. Effective Date*

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

*B. Statutory Authority*

The final-form rulemaking is authorized under section 812.1 of The Administrative Code of 1929 (71 P.S. § 279.3a) and section 7.1(a) of the Nursing Home Administrators License Act (act) (63 P.S. § 1107.1(a)).

*C. Background and Purpose*

The final-form rulemaking deletes the examination fees in § 39.72 for the National Association of Board of Examiners of Long-Term Care Administrators examination, the State rules and regulations examination and the combined examination, as these fees are set by the testing organization which develops and administers the examinations, not by the Board. To avoid the necessity of amending its regulations whenever the testing organization might change the fees, the Board proposes to delete references to the examination fees. The final-form rulemaking also corrects two fees regarding continuing education program applications, which were erroneously omitted or reduced by a regulation package concerning continuing education.

*D. Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 34 Pa.B. 55 (January 3, 2004). Publication was followed by a 30-day public comment period. The Board did not receive comments from the general public. Following the close of the public comment period, the House Professional Licensure Committee (HPLC) notified the Board that it was taking no formal action on the regulation as proposed, while the Independent Regulatory Review Commission (IRRC) notified the Board that it had no objection, comments or recommendations to offer on the proposed rulemaking.

*E. Fiscal Impact and Paperwork Requirements*

The final-form rulemaking regarding the deletion of examination fees will have no adverse fiscal impact on the Board or its licensees. The final-form rulemaking regarding continuing education fees will have fiscal impact on the Board and its licensees, but only insofar as it will reinstate the proper fees and permit the Board to charge the fees for continuing education approval which it has continuing authority to charge. The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, its 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 May 26, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 55, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on June 9, 2004, the final-form rulemaking was approved by the HPLC and deemed approved by the SCP/PLC on June 15, 2004. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC, effective July 14, 2004.

*H. Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by contacting Christina Stuckey, Board Administrator, State Board of Examiners of Nursing Home Administrators, Post Office Box 2649, Harrisburg, PA 17105-2649.

*I. Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in Part B of this preamble.

*J. Order*

The Board, acting under its authorizing statutes, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 39, are amended by amending § 39.72 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

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

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

BARRY S. RAMPER, II, NHA,  
*Chairperson*

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4082 (July 31, 2004).)*

**Fiscal Note:** Fiscal Note 16A-628 remains valid for the final adoption of the subject regulation.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 39. STATE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS**

**RENEWAL**

**§ 39.72. Fees.**

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

Biennial renewal of nursing home administrators license .....	\$108
License application fee .....	\$40
Temporary permit fee .....	\$145
Certification of examination scores .....	\$25
Verification of licensure or temporary permit.....	\$15
Continuing education provider application fee.....	\$40
Continuing education program application fee per clock hour .....	\$15
Continuing education individual program application fee .....	\$20

[Pa.B. Doc. No. 04-1591. Filed for public inspection August 27, 2004, 9:00 a.m.]

**STATE BOARD OF PHYSICAL THERAPY**

**[49 PA. CODE CH. 40]**

**General Provisions**

The State Board of Physical Therapy (Board) amends Chapter 40 to read as set forth in Annex A.

*A. Effective Date*

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

*B. Statutory Authority*

The final-form rulemaking is adopted by the Board under the authority of section 3(a) of the Physical Therapy Practice Act (act) (63 P. S. § 1303(a)) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a).

*C. Background and Purpose*

The final-form rulemaking was proposed because the regulations had not been amended since the mid-1980s. As a result, many of the Board's current provisions are either unnecessary or require clarification. Also, the educational requirements for physical therapists (PT) need to be updated to conform to National standards. The Board also recognizes the need to refine and clarify activities the performance of which may not be delegated to a PT assistant or to supportive personnel.

*D. Summary of Comments and Responses on Proposed Rulemaking*

Notice of the proposed rulemaking was published at 33 Pa.B. 1715 (April 5, 2003). The Board received public comments from 128 individuals, the Pennsylvania Physical Therapy Association, the Pennsylvania Affiliate Spe-

cial Interest Group (PASIG) Officers, the Pennsylvania Chiropractic Association (PCA), Chambersburg Hospital, Allied Services and the Pennsylvania Association of Rehabilitation Facilities (PARF). The Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee submitted comments under the Regulatory Review Act (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment. Responses to these comments are organized by subject as follows.

*§ 40.11. License by examination; requirements for examination.*

IRRC identified an inconsistency in paragraph (1) in that the first sentence required applicants for licensure by examination to complete "an accredited physical therapy course approved by the American Physical Therapy Association . . ." and the second sentence required an applicant to graduate from a Commission on Accreditation in Physical Therapy Education (CAPTE) accredited program. IRRC suggested that the Board revise the first sentence to reflect the CAPTE accreditation requirement. The Board agreed with this suggestion and deleted the first sentence of paragraph (1). Also, because all physical therapy programs are currently accredited by the CAPTE, the Board deleted the 6-month effective date and will require compliance immediately. IRRC also suggested that paragraph (2) be deleted since the requirement of completion of an accredited program is already required under paragraph (1). The Board also deleted a reference to 120 semester hours because, as the HPLC pointed out in its comments, all CAPTE accredited programs are at least 120 semester hour programs.

*§ 40.17. Foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience.*

The Board has reworked this section in final-form rulemaking. In particular, the Board looked to a later revision of the Coursework Evaluation Tool for Foreign Educated Physical Therapists (tool) published by the Federation of State Boards of Physical Therapy (FSBPT) in January 2003. The tool reflects the content included in the first professional degree required of a CAPTE accredited program and required of a PT who wish to pursue licensure to practice in the United States. The FSBPT recommends that a foreign-educated applicant have a minimum of 120 semester credit hours with a minimum of 42 semester credit hours in general education courses and a minimum of 69 semester credit hours in professional education courses. The FSBPT also suggests that specific coursework or content be required to satisfy the minimum credit hour requirement in areas of general and professional education. The Board's revisions reflect the FSBPT recommendations as set forth in the tool.

In final-rulemaking, the Board also deleted specific references to the passing score requirements of the College Level Examination Program (CLEP) general examination subjects and CLEP subject examination subjects because the CLEP sets the passing scores and can change them at any time.

*§ 40.32. Functions of supportive personnel.*

A commentator suggested that paragraph (6) be revised to make it clear that supportive personnel are performing a clerical function of recording information rather than inferring that supportive personnel are engaged in the treatment of patients. The Board agreed with this comment and amended the language accordingly.

*§ 40.51. Administration of electromyography (EMG) and nerve conduction velocity (NCV) tests.*

*§ 40.51a. Transdermal administration of drugs.*

In the proposed rulemaking, the Board had combined the administration of EMG and NCV tests and transdermal administration of drugs into one section. Upon further review, the Board has determined that these procedures should be separated into two sections.

With respect to EMG and NVC tests, some commentators questioned the use of the word "administer" in proposed subsection (a). In reviewing this section, the Board decided to retain current subsection (a).

With respect to transdermal administration of drugs, the HPLC questioned why the storage requirement is included in the regulation if the drugs are to be disposed of or returned to the patient. IRRC also addressed this concern and commented that it is their understanding that the disposal provision is intended to allow the PT to store the medication between treatment sessions and also require the PT to return the medication or dispose of it after the patient is discharged from treatment. IRRC suggested that the handling of medication should be clarified in the final-form rulemaking. The Board took this advice and explained that between treatment sessions, drugs must be properly stored in a manner consistent with pharmaceutical practice and that after the patient is discharged, the remaining drugs must be disposed of by the PT or returned to the patient.

*§ 40.52. Unprofessional conduct; physical therapists.*

The Board received comments on proposed § 40.52(12) requiring that patient records include a discharge plan including results of intervention and sufficient information to identify the patient. The commentators expressed a concern that physical therapy services are provided in a variety of settings and documentation standards are site-specific and driven by the setting. Discharge summaries may not be feasible in some settings due to the quick pace of discharges from the facility, such as in acute care settings. In those settings, to be in compliance, the PT would have to retrieve medical records solely to write discharge notes. This would be unduly burdensome and unnecessary. The Board agrees with this concern and has agreed to delete the requirement that patient records include a discharge plan including results of intervention.

*§ 40.53. Nondelegable activities; accountability.*

IRRC, the PCA and others commented that the definition of "mobilization" in subsection (b)(7) is inconsistent with the statutory definition in section 2 of the act (63 P.S. § 1302). The Board agrees with this comment and has amended the definition to be consistent with section 2 of the act.

Many commentators also objected to the Board's proposal to prohibit delegating mobilization to physical therapist assistants (PTAs). They stated that many PTAs receive formal training in mobilization as part of their educational requirements and that those who do not receive training are offered the opportunity to develop these skills by attending continuing education courses. Others commented that, although it would be appropriate to permit experienced and skilled PTAs to perform mobilization, entry level PTAs should not be permitted to perform mobilization. The Board, in considering these comments, recognizes that the performance of mobilization requires significant skill, training and education. The Board believes it is in the interest of public safety to limit the performance of mobilization to PTs. As explained in

the proposed rulemaking, a PT may still delegate to a PTA gross passive movement throughout normal planes of joint motions. The Board notes that its regulation will not prohibit a PT from delegating to a PTA the performance of range of motion or the performance of exercises to restore the functional motion of the joint.

IRRC and the HPLC pointed out that the services included in proposed subsection (e) are duplicative of some of the services in subsection (b) and suggested that the Board consider deleting subsection (e) and including a comprehensive list of services in subsection (b). The Board has agreed with these suggestions and has deleted subsection (e) and added "the performance of consultations" to subsection (b).

Many commentators objected to the requirement in subsection (d) that when PTAs are providing patient-care services, PTs reevaluate and adjust the patient plan of care at intervals not to exceed 14 days. These commentators wrote that the 14-day period was overly restrictive. They stated that there are many instances where a patient may be progressing steadily and on course with the timeframes and plan of care established and to require a formal reevaluation realistically will limit time spent providing patient treatment and negatively impact a patient's progression. Commentators noted in other instances, particularly in outpatient settings, patients may be receiving care one time a week under physician orders and to reevaluate formally would be unwarranted and excessive after only two treatment sessions. The Board agrees with this sentiment. Accordingly, the Board has amended this provision to require a PT to document reevaluations and adjustments to a patient plan of care and goals at least every 30 calendar days or when there is a significant change in patient status warranting an earlier patient evaluation.

The PARF commented that subsection (f) would unduly restrict a qualified and competent PTA and would limit accessibility to care. However, the Board has determined that the procedures outlined in subsection (f) pertaining to screening require the skill and knowledge of a PT to evaluate the need for further intervention by a PT. For this reason, the Board believes that a PT cannot delegate the evaluation of a patient to a PTA or supportive personnel.

*Miscellaneous issues*

IRRC referred to the HPLC question as to why the word "district" was being deleted in § 40.16(a)(1) (relating to licensure by endorsement) when the same section previously refers to the "District of Columbia." The Board deleted this in error and has rectified it in the final-form rulemaking.

IRRC questioned whether the reference in § 40.16(a)(2) to section 6(d)(2) of the act (63 P.S. § 1306(d)(2)) is necessary since section (d) has been deleted. The Board does not believe the reference is necessary and has deleted it.

IRRC questioned the necessity of the word "in" in § 40.22(b) (relating to temporary license) which appears after "or" and before "6 months." The Board has agreed to delete it.

The PASIG Officers expressed its objection to the use of the definition of "direct on-premises supervision" in § 40.1 (relating to definitions) and to the reference to that term at all. It asked to have the requirement of "direct on-premises supervision" deleted from home health care and school based therapy services. In addition, Allied Services asked the Board to redefine the term to clarify

whether it means that a PT must be in the same room as the PTA. The Board notes that section 9.1(c) of the act (63 P.S. § 1309.1(c)) requires a PTA to work under the “direct on-premises supervision” of a licensed PT. Section 9.1(c) of the act also defines the term “direct on-premises supervision.” Section 40.1 reflects the statutory definition of the term.

IRRC noted that § 40.16(b)(1) requires an applicant for licensure by endorsement to submit “evidence” of authorization to practice without limitation in the country where the professional education occurred. Also, IRRC noted that § 40.17(1)—(4) requires a foreign educated PT applying to take the licensure examination to submit “evidence” or “written proof” of meeting certain conditions. IRRC asked that the Board specify what constitutes acceptable “evidence” in § 40.17(1)—(4). The Board has clarified this by requiring that the applicant submit written documentation to meet these requirements.

The Board recognizes a need to have PTs, PTAs and supportive personnel who provide care to patients identify themselves to the patient. Accordingly, the Board has added §§ 40.31a, 40.55 and 40.161(d) (relating to identification of supportive personnel; identification of physical therapists; and registration of physical therapist assistants; practice; exceptions) to provide for identification of supportive personnel, PTs and PTAs to the patient.

IRRC notes in its comments that the Board considered precluding delegation of wound care to PTAs, but decided this is a properly delegable service. The HPLC requested an explanation of the education and training of PTAs regarding wound care. In particular, IRRC and the HPLC requested information on the type of wound care activities PTAs are qualified to perform, whether there are aspects of wound care that only PTs are authorized to perform and if there are elements of wound care that a PT cannot delegate to a PTA.

In determining that wound care is a properly delegable function, the Board looked to the Evaluative Criteria for Accreditation of Education Programs for the Preparation of Physical Therapist Assistants (Evaluative Criteria) published by the Commission of Accreditation in Physical Therapy Education (CAPTE). The role of the CAPTE is to assure that accreditation criteria for judging education programs incorporate the education and training necessary for graduates to be effective as contemporary practitioners. The Evaluative Criteria, for purposes of accreditation, requires that the PTA comprehensive curriculum include many elements of wound care procedures. These elements include infection control procedures such as isolation techniques and sterile techniques. The curriculum must also include physical agents and mechanical agents including hydrotherapy (that is, whirlpools which are often used to cleanse and debride a wound) and superficial and deep thermal agents. Wound management including the application and removal of dressing or agents and the identification of precautions for dressing removal is also required. The PTA program curriculum must include data collection skills essential for carrying out the plan of care. In terms of integumentary integrity (that is, skin), the data collection skills include the following: recognizing absent or altered sensation; recognizing normal and abnormal integumentary changes; recognizing activities, positioning and postures that aggravate or relieve pain or altered sensations or that can produce associated skin trauma; and recognizing viable versus nonviable tissue. In consideration of the requirements for curricula for accreditation of PTA education and training programs, the Board believes that a PTA is

adequately trained and educated to perform wound care services delegated by a PT and performed under the direct on-premise supervision of the PT.

*E. Fiscal Impact and Paperwork Requirements*

There should be no adverse fiscal impact or additional paperwork requirements incurred by the Board, political divisions 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 April 5, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1715, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on May 26, 2004, the final-form rulemaking was approved by the HPLC. On July 28, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 29, 2004, and approved the final-form rulemaking.

*H. Contact Person*

Interested persons can obtain information regarding the final-form rulemaking by writing to Robert Kline, Board Administrator, State Board of Physical Therapy, P.O. Box 2649, 2601 North 3rd Street, Harrisburg, PA 17105-2649.

*I. Findings.*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 33 Pa.B. 1715.

(4) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

*J. Order.*

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 40, are amended by amending §§ 40.1, 40.4, 40.11, 40.14—40.17, 40.22, 40.32, 40.52, 40.53, 40.161, 40.163 and 40.164; by adding §§ 40.31a, 40.51a and 40.55; and by deleting §§ 40.18, 40.21, 40.23 and 40.24 to read as set forth in Annex A.



(*Editor's Note:* The proposal to amend § 40.51, included in the proposal at 33 Pa.B. 1715, has been withdrawn by the Board.)

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

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

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

JAMES J. IRRGANG,  
*Chairperson*

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 34 Pa.B. 4528 (August 14, 2004).)

**Fiscal Note:** Fiscal Note 16A-659 remains valid for the final adoption of the subject regulations.

#### Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

#### Subchapter A. PHYSICAL THERAPISTS

#### GENERAL PROVISIONS

##### § 40.1. Definitions.

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

*Act*—The Physical Therapy Practice Act (63 P. S. §§ 1301–1313).

*Board*—The State Board of Physical Therapy.

*Direct on-premise supervision*—The physical presence of a physical therapist on the premises where the physical therapist assistant or the supportive personnel is providing patient-care services, so that the physical therapist is immediately available to provide supervision, direction and control.

*Physical therapist*—A person licensed under the act and this chapter to provide physical therapy services without restriction in this Commonwealth.

*Supportive personnel*—Persons other than physical therapist assistants who aid and assist a physical therapist but whose activities do not require the formal education or knowledge of a physical therapist or physical therapist assistant. The term does not include secretarial, administrative and other personnel who are not involved in direct patient care.

##### § 40.4. Admission to practice of physical therapy.

Admission to the practice of physical therapy in this Commonwealth will be granted by the Board as follows:

(1) By the issuance of a license to an applicant who meets the requirements for licensure as set forth in sections 5 and 6 of the act (63 P. S. §§ 1305 and 1306).

(2) By the issuance of a license by endorsement to an applicant who is educated in another state or territory of the United States and who meets the licensing require-

ments in section 6 of the act (63 P. S. § 1306) and who holds a valid license by examination in another state or territory of the United States, providing the requirements were, at the time of receiving the license, substantially equal to the requirements as set forth in the act.

(3) By the issuance of a temporary license to an applicant who meets the licensing requirements as set forth in section 6 of the act.

(4) By the issuance of a license to an applicant educated in a jurisdiction other than a state or territory of the United States who meets the licensing requirements as set forth in sections 5 and 6(f) of the act.

(5) By the issuance of a license by endorsement to an applicant who is educated in a foreign country and who is authorized to practice as a physical therapist without limitations in the country where the professional education occurred and who holds a valid license by examination in another state or territory of the United States providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements as set forth in the act.

#### LICENSURE

##### § 40.11. License by examination; requirements for examination.

An applicant for license by examination shall have graduated from a physical therapy program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) which has provided adequate instruction in basic sciences, clinical science and physical therapy theory and procedures.

##### § 40.14. Examination; failure; reexamination.

(a) Applicants shall successfully pass, to the satisfaction of the Board, the examination approved by the Board. In cases of failure at the first examination, the applicant shall have, after the expiration of 6 months and within 2 years from the date of the first failure, the privilege of a second examination, with the payment of an additional examination fee charged by the vendor.

(b) After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall make a new application within the meaning of section 5 of the act (63 P. S. § 1305) within 6 months from the date of the last failure. However, prior to filing a new application for examination, the Board may require evidence of additional training. If the Board determines that the applicant will be permitted to take a third or successive examination, the Board may authorize in connection with a written examination an oral or practical examination, or both, to test the knowledge and competence of the applicant.

(c) The granting of permission by the Board to take a third or successive examination is at all times subject to the applicant otherwise qualifying under the requirements in force at the time permission to take the examination is sought.

##### § 40.15. Examinations.

(a) An application for licensure by examination may be obtained from the State Board of Physical Therapy, Post Office Box 2649, Harrisburg, Pennsylvania, 17105-2649.

(b) An applicant may not be admitted to examination who is unable to present, at the time of application, the required credentials of professional education from an approved institution.

**§ 40.16. Licensure by endorsement.**

(a) An applicant for licensure by endorsement who is educated in another state or territory of the United States is required to submit the professional credentials in § 40.11 (relating to license by examination; requirements for examination), and comply with the following:

(1) Submit a written application on forms provided by the Board, together with evidence satisfactory to the Board that the applicant is licensed or otherwise registered as a physical therapist in another state or territory of the United States, or in the District of Columbia, if the requirements for licensure or registration in the state, territory or district were, at the date of licensure or registration, substantially equal to the requirements for licensure or registration in this Commonwealth under the act.

(2) A fee prescribed in § 40.5 (relating to fees) must accompany each application for licensure by endorsement.

(b) An applicant for licensure by endorsement who received education in a country outside of the United States is required to meet the educational requirements as set forth in § 40.17(5) and (6) (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience) and comply with the following:

(1) The applicant shall submit documentary evidence that the applicant is authorized to practice as a physical therapist without limitation in the country where the professional education occurred.

(2) The applicant shall hold a valid license by examination in another state or territory of the United States providing the requirements were, at the time of receiving the license, substantially equivalent to the requirements as set forth in the act.

**§ 40.17. Foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience.**

To be eligible to take the examination for licensure, foreign-educated applicants for licensure shall comply with the following conditions:

(1) The applicant shall submit evidence, satisfactory to the Board, indicating that the applicant has met the requirements stated in § 40.12(a)(1)—(3) (relating to application for licensure).

(2) The applicant shall provide written documentation that the school of physical therapy is recognized by the authorizing agency or entity of the jurisdiction in which the school is situated.

(3) The applicant shall provide written documentation of authorization to practice as a physical therapist without limitations in the country where the professional education took place.

(4) The applicant shall provide documentation of legal authorization to seek employment in the United States or its territories.

(5) The applicant shall meet educational requirements by securing a credentials evaluation from a recognized and accredited evaluation agency approved by the Board. The credentials evaluation must demonstrate that the applicant has met the requirement of at least 120 semester credit hours of which at least 42 credit hours must be in general education subjects and 69 credit hours must be in professional education subjects. If an applicant has deficiencies in general education or professional education, the applicant can correct the deficiencies as follows:

(i) *General education.* A minimum of one semester course must be successfully completed in each of the following areas of general education unless otherwise noted:

- (A) Humanities.
- (B) Physical science (two courses each in chemistry and physics including laboratory sessions).
- (C) Biological science.
- (D) Social science.
- (E) Behavioral science.
- (F) Mathematics.

(ii) *Professional education.* The applicant shall complete 69 credit hours of professional education the content of which includes:

- (A) Basic health science including:
  - (I) Human anatomy (specific to physical therapy).
  - (II) Human physiology (specific to physical therapy).
  - (III) Neuroscience.
  - (IV) Kinesiology or functional anatomy.
  - (V) Pathology.

(B) Medical and clinical science coursework including the following:

(I) Clinical medicine pertinent to physical therapy including:

- (-a-) Neurology.
- (-b-) Orthopedics.
- (-c-) Pediatrics.
- (-d-) Geriatrics.
- (-e-) Cardiopulmonary.
- (-f-) Pharmacology.

(II) Physical therapist coursework must include:

- (-a-) Examination, evaluation and intervention pertaining to the integumentary system.
- (-b-) Examination, evaluation and intervention pertaining to the musculoskeletal system.
- (-c-) Examination, evaluation and intervention pertaining to the neuromuscular system.
- (-d-) Examination, evaluation and intervention pertaining to the cardiopulmonary system.

(iii) *Clinical education.* Clinical education must include physical therapist-supervised application of physical therapy theory, examination, evaluation and intervention. The applicant shall have a minimum of two full-time clinical internships of at least 800 hours total, which are supervised by a physical therapist. The maximum number of full-time clinical education credits is 23.

(iv) *Related professional coursework.* Content is required in the following nine areas:

- (A) Professional behaviors.
- (B) Administration.
- (C) Community health.
- (D) Research and clinical decision making.
- (E) Educational techniques.
- (F) Medical terminology.
- (G) Communication (related to client/patient care).

(H) Legal and ethical aspects of physical therapy practice.

(I) Psychosocial aspects in physical therapy practice.

(6) *General educational deficiencies.* The applicant may correct general educational deficiencies in the areas specified in paragraph (5)(i) by either:

(A) Pursuing studies in an accredited college or university. Upon completion of studies, the applicant shall submit an official transcript to the Board.

(B) Attaining college credit through successful completion of the following examinations offered by the College Level Examination Program (CLEP). No more than 30 credits may be obtained through CLEP.

(I) The CLEP General Examination may be used to satisfy the requirements in paragraph (5)(i) for credit hours if passing scores are received in the following subjects:

<i>General Examination</i>	<i>College Level Credit</i>
English Composition with Essay	6
Mathematics	3
Humanities	6
Natural Sciences	
Biological Sciences (subscore)	3
Physical Sciences (subscore)	3
Social Sciences	6

(II) The CLEP Subject Examination may be used to satisfy the requirements in paragraph (5) for credit hours if passing scores are received in the following subjects:

<i>Subject Examination</i>	<i>College Level Credit</i>
Analysis and Interpretation of Literature	3
College Algebra	3
English Literature	3
Foreign Language	
French—Levels I and II	6
German—Levels I and II	6
Spanish—Levels I and II	6
Freshman English	3
English Composition	4
General Biology	3
General Chemistry	3
General Psychology	2
Human Growth & Development	2
Introduction to Management	2
Introduction to Sociology	2
Statistics	2
Trigonometry	2
Western Civilization	3

(III) The applicant is responsible for directing that CLEP report his examination scores to the Board.

(7) *Clinical experience.* The applicant shall complete, at the Board's discretion, up to 1 year of supervised clinical experience in the United States, as approved by the Board.

(i) To apply for approved supervised clinical experience the applicant shall:

(A) Submit a notarized application signed by the sponsoring physical therapist who will supervise the applicant in the institution in which the applicant will be pursuing the clinical experience.

(B) Arrange for and have a personal interview with a member of the Board and have the application forms signed and approved by the Board member.

(C) Submit a passport-size photograph for the purpose of identification. The applicant and a sponsor shall both sign either the photograph or the paper on which the photograph is mounted.

(ii) The applicant may obtain the required clinical experience while pursuing studies to correct educational deficiencies in the areas specified in paragraph (5).

(iii) The applicant shall submit a letter from the supervising physical therapist in the institution where the supervised clinical experience was completed, certifying the applicant's clinical competence.

**§ 40.18. (Reserved).**

#### TEMPORARY LICENSES

**§ 40.21. (Reserved).**

**§ 40.22. Temporary license.**

(a) An applicant for temporary license under section 6(g) of the act (63 P. S. § 1306(g)) shall apply to the Board on forms provided by the Board and meet the following requirements:

(1) Fulfill to the satisfaction of the Board the requirements set forth under section 6(a) of the act.

(2) Have made application to take the examination set forth in section 6(b) of the act or have taken the examination and be awaiting the results of the examination.

(3) Received the temporary license from the Board, work only under the direct on premises supervision of a licensed physical therapist with at least 2 years of experience.

(b) A temporary license issued under 6(g) of the act must be surrendered to the Board immediately upon the failure of the first examination or 6 months after the date of issuance, whichever occurs first.

**§ 40.23. (Reserved).**

**§ 40.24. (Reserved).**

#### SUPPORTIVE PERSONNEL

**§ 40.31a. Identification of supportive personnel.**

Supportive personnel shall identify themselves to patients as supportive personnel.

**§ 40.32. Functions of supportive personnel.**

(a) The physical therapist may only allow supportive personnel to perform patient-related activities which do not require the formal education or training and the skill and knowledge of a physical therapist or physical therapist assistant, and only while the supportive personnel are under the direct on-premise supervision of a physical therapist.

(b) The physical therapist may not permit supportive personnel to provide physical therapy services. The physical therapist may permit supportive personnel to perform the following:

(1) Patient assistance in preparation for treatment, as necessary during treatment and at the conclusion of treatment.

(2) Application of superficial heat or cold as an adjunct to the treatment program.

(3) Assembly, disassembly and maintenance of equipment and accessories.

(4) Transportation of patients.

(5) Assistance to patients with nontreatment aspects of activities and attending the personal needs of patients.

(6) Recording information through the use of flow sheets and checklists which identify activities performed by the patient.

(c) The physical therapist may not permit supportive personnel to interpret referrals, perform evaluation procedures, conduct tests, initiate or adjust treatment programs, assume responsibility for patient care or document physical therapy treatment.

**SCOPE OF PRACTICE**

**§ 40.51a. Transdermal administration of drugs.**

A physical therapist may perform transdermal administration of drugs through the use of modalities such as ultrasound and electrical stimulation. If a prescriptive medication is used, the medication must be prescribed by the referring physician and dispensed in the name of the patient by the referring physician or pharmacist. Between treatment sessions, drugs must be properly stored in a manner consistent with pharmaceutical practice. After the patient is discharged, the remaining drugs must be disposed of by the physical therapist or returned to the patient.

**§ 40.52. Unprofessional conduct; physical therapists.**

A physical therapist who engages in unprofessional conduct is subject to disciplinary action under section 11(a)(6) of the act (63 P. S. § 1311(a)(6)). Unprofessional conduct includes the following:

- (1) Harassing, abusing or intimidating a patient.
- (2) Revealing information obtained as a result of the therapist-patient relationship to a third party who is not involved in the patient's care, without the prior written consent of the patient, except as authorized or required by statute.
- (3) Failing to exercise appropriate supervision over a person who is authorized to render services only under the supervision of the physical therapist.
- (4) Accepting a patient for treatment or continuing treatment if benefit cannot reasonably be expected to accrue to the patient, or misleading a patient as to the benefits to be derived from physical therapy.
- (5) Unconditionally guaranteeing the results of physical therapy treatment.
- (6) Practicing physical therapy while the ability to practice is impaired by alcohol, drugs or a physical or mental disability.
- (7) Charging a patient or a third-party payor for a physical therapy service which is not performed.
- (8) Receiving a fee for referring a patient to a third person.
- (9) Advertising physical therapy services in a false, misleading or deceptive manner.
- (10) Assigning or delegating to physical therapist assistants or supportive personnel activities prohibited from assignment or delegation under §§ 40.32, 40.53 and 40.171 (relating to functions of supportive personnel; nondelegable activities; accountability; and functions of physical therapist assistants).
- (11) Violating a provision of the act or this chapter which establishes a standard of conduct.

(12) Failure to maintain adequate patient records. Adequate patient records include at a minimum sufficient information to identify the patient, a summary of the findings of the examination, an evaluation, a diagnosis, the plan of care including desired outcomes, and the treatment record.

**§ 40.53. Nondelegable activities; accountability.**

(a) A physical therapist may delegate to a physical therapist assistant or supportive personnel that which he is educated to perform subject to the limitations in this section.

(b) A physical therapist may not assign or delegate to physical therapist assistants or supportive personnel functions which require the formal education or training and the skill and knowledge of a licensed physical therapist, including the following functions:

- (1) Interpretation of referrals.
- (2) Initial evaluation or reevaluation.
- (3) Determination or modification of a patient plan of care.
- (4) Final discharge assessment/evaluation or establishment of discharge plan.
- (5) Therapeutic techniques and procedures beyond the skill and knowledge of the physical therapist assistant.
- (6) Duties, the delegation of which is inconsistent with minimum standards of acceptable physical therapy practice embraced by the physical therapy community in this Commonwealth.

(7) Mobilization. Mobilization is defined as a group of techniques comprising a continuum of skilled passive movements to the joints or related soft tissues, or both, throughout the normal physiological range of motion that are applied at varying speeds and amplitudes, without limitation.

(8) The performance of consultations.

(c) A physical therapist may not assign or delegate to supportive personnel activities which require the formal education or training and skill and knowledge of a licensed physical therapist or registered physical therapist assistant.

(d) When patient-care services are provided by the physical therapist assistant, the physical therapist shall document reevaluations and adjustments to a patient plan of care and goals at least every 30 calendar days or when there is a significant change in patient status warranting an earlier patient evaluation.

(e) A physical therapist may not assign or delegate to a physical therapist assistant or supportive personnel screenings to determine the need for the following:

- (1) Primary, secondary or tertiary services.
- (2) Further examination or intervention.
- (3) Consultation by a physical therapist.
- (4) Referral to another health care practitioner.

(f) For purposes of this section, screening is defined as determining the need for further examination or intervention, or both, by a physical therapist or for referral to another health professional.

**§ 40.55. Identification of physical therapists.**

Physical therapists shall identify themselves to patients as physical therapists.

**Subchapter C. PHYSICAL THERAPIST ASSISTANTS**

**REGISTRATION**

**§ 40.161. Registration of physical therapist assistants; practice; exceptions.**

(a) A person may not perform or hold himself out as being able to perform as a physical therapist assistant in this Commonwealth unless the person is registered by the Board under section 9.1 of the act (63 P. S. § 1309.1) and this subchapter or exempted under this section.

(b) A person or business entity may not use in connection with a business name or activity the words "physical therapist assistant," the letters "P.T.A." or similar words and related abbreviations to imply that physical therapist assistant services are being provided, unless the services are provided by a physical therapist assistant registered under the act and this subchapter.

(c) This subchapter does not prohibit physical therapist assistant students from assisting a physical therapist licensed to practice without restriction in this Commonwealth under the direct on-premises supervision of the physical therapist as is incidental to their course of study in a program which has been approved for the education and training for physical therapist assistants by the Commission on Accreditation in Physical Therapy Education (CAPTE).

(d) Physical therapist assistants shall identify themselves to patients as physical therapist assistants.

**§ 40.163. Requirements for registration.**

(a) Under section 9.1(a) of the act (63 P. S. § 1309.1(a)), an applicant for registration by examination shall submit evidence of the following:

(1) Graduation from a physical therapist assistant program which has been approved for the education and training for physical therapist assistants by the Commission on Accreditation in Physical Therapy Education (CAPTE).

(2) A passing grade on the physical therapist assistant registration examination.

(b) Under section 6(d.1) of the act (63 P. S. § 1306(d.1)), an applicant for reciprocal registration shall submit evidence of a valid license, certificate or registration as a physical therapist assistant issued by another state,

territory or the District of Columbia, where the requirements for licensure, certification or registration were on the date of issuance substantially the same as those required by this Commonwealth, and which accords similar privileges to persons registered as physical therapist assistants in this Commonwealth.

**§ 40.164. Physical therapist assistant registration examination.**

(a) *Application procedure.* An applicant applying for registration by examination shall take the physical therapist assistant registration examination. The applicant who is taking the examination within this Commonwealth shall comply with the following:

(1) The applicant shall complete application forms for admission to the examination obtained from the Board and return the completed form with a check or money order for the appropriate fee.

(2) The applicant shall present the required credentials of professional education at the time of application.

(b) *Failure and reexamination.* In the case of failure of examination, the following apply:

(1) After failing the first examination, the applicant has, after the expiration of 6 months and within 2 years of the date of the first failure, the privilege of a second examination upon the filing of a new application under subsection (a) and upon payment of the appropriate fee.

(2) After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall file a new application. The Board may require evidence of additional training prior to allowing a candidate to take a third or successive examination.

(3) The granting of permission to take a third or successive examination is subject to:

(i) Authorization by the Board at its discretion to include an oral or practical examination, or both, in connection with the written examination to further test the knowledge, skills and competence of the applicant.

(ii) The applicant otherwise qualifying under requirements in force at the time that permission to take the examination is sought.

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