

PROPOSED RULEMAKING

DEPARTMENT OF TRANSPORTATION

[67 PA. CODE CH. 88]

Ignition Interlock

The Department of Transportation (Department), under 75 Pa.C.S. §§ 3805 and 6103 (relating to ignition interlock; and promulgation of rules and regulations by department), proposes to amend Chapter 88 (relating to ignition interlock—statement of policy) to read as set forth in Annex A.

Purpose

The purpose of this proposed rulemaking is to provide standards and procedures for compliance with 75 Pa.C.S. § 3805 regarding the installation of ignition interlock systems on vehicles as a condition for the restoration of the driving privilege after serving suspension for DUI convictions.

Significant Provisions of this Proposed Rulemaking

Section 88.102 (relating to installation of ignition interlock system) provides that a person subject to 75 Pa.C.S. § 3805 shall engage a provider to install the ignition interlock systems and identify all vehicles owned by or registered to the person. The provider is required to verify the information, install an interlock system on all vehicles owned by or registered to the person and certify to the Department that the installation has been completed. This section also describes the circumstances under which installation of an ignition interlock system is not required. The section also establishes requirements for securing a financial hardship exemption to permit installation of the ignition interlock system on only one vehicle.

Section 88.103 (relating to maintenance of ignition interlock system) requires that vehicles in which an ignition interlock system has been installed be made available for regularly scheduled maintenance and requires the provider to verify that the person has not acquired additional vehicles and that the person remains in compliance with 75 Pa.C.S. § 3805 and Chapter 88.

Section 88.104 (relating to removal of ignition interlock system) outlines when an ignition interlock system may be removed from a vehicle. Section 88.105 (relating to recall and reissuance of ignition interlock restricted license) provides that, upon notification of a person's noncompliance, the Department may recall the person's ignition interlock restricted license. Section 88.106 (relating to issuance of unrestricted license) provides the parameters for the issuance of an unrestricted license following the completion of the ignition interlock restricted license period, and the cancellation of that unrestricted license for subsequent violation.

Sections 88.107 and 88.108 (relating to issuance of license to a person restricted by another state; and ignition interlock for nonresidents) provide for the administration of the ignition interlock provisions with regard to out-of-State drivers and nonresidents.

Persons and Entities Affected

This proposed rulemaking affects drivers required to install an ignition interlock system on one or more of their vehicles under 75 Pa.C.S. § 3805.

Fiscal Impact

This proposed rulemaking will not require the expenditure of any significant additional funds by the Commonwealth. Providers of ignition interlock systems may incur additional costs in the maintenance of the systems and in monitoring and reporting driver compliance with the proposed rulemaking. These costs will be recouped in the installation and maintenance fee charged to the individual vehicle owners or lessees on whose vehicles an ignition interlock system is installed.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 24, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Transportation Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Sunset Date

The Department is not establishing a sunset date for this proposed rulemaking since it is needed to administer provisions required by 75 Pa.C.S. (relating to the Vehicle Code). The Department, however, will continue to closely monitor the regulations for effectiveness.

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Rebecca L. Bickley, Director, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104 within 30 days of publication of this notice in the *Pennsylvania Bulletin*.

Contact Person

The contact person for this proposed rulemaking is Anne P. Titler, Acting Manager, Driver Safety Division, Bureau of Driver Licensing, 4th Floor, Riverfront Office Center, 1101 S. Front Street, Harrisburg, PA 17104, (717) 783-4737.

ALLEN D. BIEHLER, P. E.,
Secretary

Fiscal Note: 18-395. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 67. TRANSPORTATION

PART I. DEPARTMENT OF TRANSPORTATION

Subpart A. VEHICLE CODE PROVISIONS

ARTICLE IV. LICENSING

CHAPTER 88. IGNITION INTERLOCK [—STATEMENT OF POLICY]

(Editor's Note: As part of this proposed rulemaking, the Department is proposing to delete the text of §§ 88.1—

88.8 (relating to ignition interlock—statement of policy), which appears at 67 Pa. Code pages 88-1—88-4, serial pages (302679) to (302682).)

§§ 88.1—88.8. (Reserved).

§ 88.101. Definitions.

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

Department—The Department of Transportation of the Commonwealth.

Provider—A vendor or person who installs and monitors ignition interlock equipment and who has the authority to verify vehicle ownership through access to the Department's vehicle records system.

Unrestricted license—A replacement license issued under 75 Pa.C.S. § 1951(d) (relating to driver's license and learner's permit) that does not contain the ignition interlock restriction.

§ 88.102. Installation of ignition interlock system.

(a) *General rule.* A person subject to 75 Pa.C.S. § 3805 (relating to ignition interlock) who seeks a restoration of operating privileges shall engage a provider, at the person's own expense, to install the ignition interlock systems required under 75 Pa.C.S. § 3805, and otherwise ensure compliance with this chapter.

(b) *Identification of owned vehicles.* The person seeking a restoration of operating privilege under 75 Pa.C.S. § 3805 shall submit to the provider a certification, on a form provided by the Department, that identifies each motor vehicle owned by the person or registered to the person. A vehicle is considered registered to a person under this chapter if Department records reflect that the vehicle is registered to a person or the person is otherwise designated as the registrant of the vehicle or named as the lessee of the vehicle under 75 Pa.C.S. § 1305 (relating to application for registration). The provider shall verify the accuracy of the facts in the person's certification through an inquiry to the Department's motor vehicle records system.

(c) *Installation and certification.* The provider shall install an ignition interlock system on each motor vehicle owned by the person or registered to the person and shall certify to the Department that the installation has been completed.

(d) *Installation not required.* Installation of an ignition interlock system is not required in the following situations:

(1) *No motor vehicles owned or registered.* If the person certifies to the provider, on a form provided by the Department, that there are no motor vehicles owned by the person or registered to the person, installation is not required on any motor vehicle.

(2) *Inoperable vehicles.* If the person certifies to the provider, on a form provided by the Department, that a motor vehicle owned or registered to the person is inoperable, installation is not required on the inoperable vehicle.

(e) *Verification.* The provider shall verify the accuracy of a certification submitted under subsection (d)(1) and (2) through an inquiry to the Department's motor vehicle records system and shall certify to the Department that the person is in compliance with this subsection.

(f) *Economic hardship exemption.* A person will be exempt from the requirement to install an ignition inter-

lock system on each of the person's motor vehicles if the person demonstrates that the requirement will result in undue financial hardship.

(1) Undue financial hardship must be demonstrated only by one of the following:

(i) Evidence on the person's most recently filed Federal Income Tax return showing an adjusted gross income below 200% of the poverty guidelines issued for that tax year by the United States Department of Health and Human Services for the person's family size.

(ii) Documentation of participation in a governmental assistance program included on a list of applicable programs published by the Department in the *Pennsylvania Bulletin*.

(2) The person shall submit to the provider an application for a hardship exemption on a form provided by the Department along with the required documentation.

(3) The provider shall review the required documentation to confirm that it meets the requirements of paragraph (1).

(4) The provider shall then install an ignition interlock system on only one vehicle owned by the person or registered to the person, forward the application to the Department and certify to the Department that the person has complied with this section.

§ 88.103. Maintenance of ignition interlock system.

(a) *General rule.* The person shall make any vehicles on which an ignition interlock system is installed available for regularly scheduled maintenance by the provider.

(b) *Additional vehicles.* As part of each regularly scheduled maintenance check of the ignition interlock system, the provider shall, through an inquiry to the Department's motor vehicle record's system, verify that no additional vehicles are owned by or registered to the person. Unless the person has been granted an economic hardship exemption under § 88.102(e) (relating to installation of ignition interlock system), if any additional vehicles are owned by or registered to the person, the provider shall, at the person's expense, install and maintain an ignition interlock system on the vehicles.

(c) *Notification of noncompliance.* If the person fails to comply with any provision of this section, the provider shall notify the Department of the person's noncompliance.

§ 88.104. Removal of ignition interlock system.

(a) *General rule.* An ignition interlock system installed in a motor vehicle under this chapter may not be removed from the vehicle unless one of the following occurs:

(1) The motor vehicle is no longer owned by or registered to the person who engaged the provider to install the ignition interlock system.

(2) The person has been issued an unrestricted license by the Department under 75 Pa.C.S. § 3805(c) (relating to ignition interlock).

(3) The provider has certified compliance with § 88.102(e) (relating to installation of ignition interlock system) to the Department and the provider has installed an ignition interlock system on another motor vehicle owned by the person or registered to the person.

(4) The person is no longer a resident of this Commonwealth and has been issued a valid license from the state of current residency.

(b) *Unauthorized removal.* If a person removes an ignition interlock system, or directs a provider to remove an ignition interlock system, under circumstances not provided for in this section, the provider shall notify the Department of the person's noncompliance.

§ 88.105. Recall and reissuance of ignition interlock restricted license.

(a) *Recall.* Upon receipt of notification from a provider of a person's noncompliance with any provision of this chapter, the Department may recall the person's ignition interlock restricted license.

(b) *Reissuance.* After receiving a new certification from a provider of compliance with this chapter by the person, the Department may reissue an ignition interlock restricted license to the person, and the person shall complete the balance of the ignition interlock restricted license period previously imposed before an unrestricted license will be issued.

§ 88.106. Issuance of unrestricted license.

(a) *General rule.* Upon completion of the ignition interlock restricted license period, a person who has been issued an ignition interlock restricted license may apply to the Department for issuance of an unrestricted license on a form provided by the Department.

(b) *Pending charges.* A person applying for an unrestricted license shall notify the Department on the application of any convictions and pending charges of illegally operating a motor vehicle not equipped with an ignition interlock, including all convictions and charges of tampering with an ignition interlock system, in violation of 75 Pa.C.S. § 3808 (relating to illegally operating a motor vehicle not equipped with ignition interlock), for a violation within the preceding 12 months. If the person notifies the Department of a pending charge, or of a conviction that has not yet been reported to and processed by the Department, the Department will deny the application.

(c) *Cancellation of unrestricted license.* If the Department receives or processes a record of a person's first conviction of violating 75 Pa.C.S. § 3808 after issuing an unrestricted license to the person, the Department will cancel the person's unrestricted license and will issue an ignition interlock restricted license to the person after receiving a new certification from a provider of the person's compliance with this chapter.

§ 88.107. Issuance of license to a person restricted by another state.

A person who has been issued a license with an ignition interlock restriction by another state, and who is otherwise eligible for issuance of a license under 75 Pa.C.S. § 1508(b) (relating to examination of applicant for driver's license), may apply for an ignition interlock restricted license from the Department in accordance with this chapter. The person shall become eligible for issuance of an unrestricted license only after serving an ignition interlock restricted license period of 1 year. If the person can provide documentation from the state that initially imposed the ignition interlock restriction satisfactory to the Department showing the amount of time that the person has been subject to the ignition interlock restriction, the person will be given credit against the ignition interlock restricted license period imposed with the Pennsylvania license.

§ 88.108. Ignition interlock for nonresidents.

A person who is required to comply with 75 Pa.C.S. § 3805 (relating to ignition interlock), but is not a

resident of this Commonwealth at the time when the person seeks a restoration of operating privileges, shall submit an affidavit and supporting documents to the Department indicating the person's state of residence. If the Department determines that the person is not a resident of this Commonwealth and the person has met all other restoration requirements, the person's driving privilege may be restored. If, however, the person should become a resident of this Commonwealth during the ignition interlock restricted license period, the person will not be issued an unrestricted license until the person complies with 75 Pa.C.S. § 3805 and this chapter.

[Pa.B. Doc. No. 04-1633. Filed for public inspection September 3, 2004, 9:00 a.m.]

FISH AND BOAT COMMISSION

[Correction]

[58 PA. CODE CHS. 91 AND 111]

Boating; General Provisions and Special Regulations Counties

An error occurred in the proposed rulemakings which appeared at 34 Pa.B. 4151–4153 (August 7, 2004). The e-mail address for comments on these proposed rulemakings is ra-pfbcregs@state.pa.us.

[Pa.B. Doc. No. 04-1441 and 04-1442. Filed for public inspection August 6, 2004, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 17]

Licensure of Medical Doctors

The State Board of Medicine (Board) proposes to amend §§ 17.1, 17.2 and 17.5 (relating to license without restriction; license without restriction—endorsement; and graduate license) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

Section 8 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.8) authorizes the Board to promulgate standards for licensing consistent with sections 27, 28 and 29 of the act (63 P. S. §§ 422.27, 422.28 and 422.29).

C. *Background and Purpose*

The Board has determined that its regulations pertaining to eligibility for a license to practice medicine of graduates of foreign medical schools and applicants for a license by endorsement are, in view of currently available alternatives, unduly restrictive and costly. The Board therefore intends to amend §§ 17.1(b) and 17.5(c)(2) to delete the requirements that graduates of foreign medical schools demonstrate 32 months and 4,000 hours of in-

struction and 72 weeks of clinical instruction. The Board's experience indicates that these requirements have become unduly restrictive to qualified applicants to the practice of medicine in this Commonwealth. Further, the Board has determined that the time and expense involved with verifying each credit hour and each clinical rotation exceeds the relative benefit. This is especially significant given fact that the Educational Commission for Foreign Medical Graduates (ECFMG), the Nationally recognized certifying and examining body, obtains original source verification of medical education prior to certifying foreign medical graduates. Additionally, few, if any, other jurisdictions have comparable requirements. Thus, the Commonwealth is placed at a competitive disadvantage in attracting qualified applicants.

The Board will continue the requirements in §§ 17.1(a)(3) and 17.5(c)(1) that graduates of foreign medical colleges obtain certification from the ECFMG to be eligible for licensing. ECFMG certification is the Nationally recognized standard for assessing the qualifications of graduates of foreign medical schools. It has long been a requirement of the Board and is a requirement for license in most, if not all, jurisdictions in the United States.

Prior to granting certification, the ECFMG verifies that the physician has obtained a diploma from a medical school recognized by the country in which the school is situated; that the school is listed in the International Medical Education Directory, that the curriculum requirement is a minimum of 4 academic years and that the physician has passed steps 1 and 2 of the United States Medical Licensing Examination (USMLE), has passed the Clinical Skills Assessment Examination and has passed the Test of English as a Foreign Language. Additionally, the ECFMG verifies the validity of primary source documentation such as diploma, transcript and documentation of other credentials, as well as any name change documentation.

Accordingly, the Board is satisfied that a physician who graduates from a foreign medical school and obtains ECFMG certification should be eligible for a graduate training license. Once the remaining current requirements of graduate medical training and passage of step 3 of the USMLE are met, the physician should be eligible for an unrestricted license.

The Board intends to amend § 17.2(c), pertaining to license by endorsement, to delete the examination as a mandatory requirement. The deletion of the mandatory requirement will provide the Board with greater discretion in assessing the qualifications for license by endorsement of physicians who have extensive practice experience. In enforcing this section, the Board has reviewed applications from eminently qualified physicians of high professional reputation. The Board has come to recognize that requiring these practitioners to take general licensing examinations poses an undue restriction to licensing these qualified practitioners. Accordingly, the Board intends to strike the examination as a mandatory requirement when reviewing applications for license by endorsement.

The current language in § 17.2(d) describes criteria that the Board viewed as equivalent to ECFMG certification for physicians licensed prior to March 25, 1958. These regulations are no longer necessary because they would be applicable to individuals who would now be approximately 74 years of age. ECFMG certification has included steps 1 and 2 of the USMLE since June and September 1992, respectively. Prior certification by the

ECFMG required the passage of one of several alternative examinations. At this point individuals who have prior ECFMG certification should also possess over 10 years of experience. Accordingly, the Board believes it appropriate for endorsement purposes to treat individuals with ECFMG certification as possessing the equivalent of passing scores on steps 1 and 2 of the USMLE. Accordingly, § 17.2(d) will be amended to recognize this equivalency.

The Board identified the criteria it has considered when reviewing applications for license by endorsement from individuals who otherwise are qualified to practice medicine but who have not taken a licensing examination recognized by the Board. This proposed rulemaking will codify those criteria. Under the proposed rulemaking, the Board may consider years of experience, professional and academic achievement and credentials, and certification by a Board recognized specialty certification body in lieu of the examination provided for in § 17.2(c).

The Board also intends to accept the Federation of State Medical Board's Credentials Verification Service (FCVS) as an optional mechanism for applicants to document completion of education, training and examination requirements. The FCVS serves as a depository and as a clearinghouse for applicants. Applicants who are seeking licensure shall submit documentation demonstrating completion of medical education and clinical training. Applicants applying in more than one jurisdiction will have the option of submitting credentialing documents to the FCVS, which will verify the authenticity and accuracy of those documents. Applicants who utilize the FCVS may save time and expense because their credentials will be verified once rather than multiple times.

D. *Description of the Proposed Rulemaking*

The proposed amendments to §§ 17.1(b) and 17.5(c)(2) delete the requirements that graduates of foreign medical schools demonstrate 32 months and 4,000 hours of instruction and 72 weeks of clinical instruction. Section 17.1(b) is further amended to indicate that applicants may use the FCVS to verify their credentials.

Section 17.2(c), pertaining to license by endorsement, will be amended to delete the examination requirement as mandatory. Section 17.2(d) will be amended to accept ECFMG certification as the equivalent of passing scores on steps 1 and 2 of the USMLE.

Section 17.2(e) will be amended to identify the criteria the Board will consider in lieu of examination when reviewing applications for license by endorsement.

E. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector.

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Joanne Troutman, Health Licensing Division, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication for the proposed rulemaking in the *Pennsylvania Bulletin*.

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

Fiscal Note: 16A-4917. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 17. STATE BOARD OF MEDICINE—MEDICAL DOCTORS

Subchapter A. LICENSURE OF MEDICAL DOCTORS

§ 17.1. License without restriction.

(a) Except as provided in [subsection (b) and] § 17.2 (relating to license without restriction—endorsement), to secure a license without restriction an applicant shall:

* * * * *

(b) [An applicant who is a graduate of an unaccredited medical college, who files an application for a license after December 31, 1988—the application is not considered filed with the Board until it is complete—shall, in addition to satisfying the requirements in subsection (a), have completed:

(1) Four academic years totaling at least 32 months and 4,000 hours of instruction in medical curriculum. Regular attendance shall be verified. Credit will not be given toward this requirement for instruction obtained in other than an accredited or unaccredited medical college, except for clinical rotations assigned under the auspices of the medical college in which the applicant was enrolled while participating in the clinical rotations.

(2) Seventy-two weeks of clinical rotations in an institution which has a graduate medical training program in the clinical area for which credit is sought, or, if the institution is not within the United States, is either a part of a medical college or has a formal affiliation with a medical college.] Applicants may use the Federation’s Credentials Verification Service (FCVS) to verify their credentials to the Board.

§ 17.2. License without restriction—endorsement.

* * * * *

(c) *License examination.* In evaluating the qualifications of an applicant who seeks a license without restriction on the basis of endorsement, the Board will accept [no substitute for] a passing score on a licensing examination acceptable to the Board. [See § 17.1(a)(1).] If the examination was not taken in English, but is otherwise acceptable, and a passing score was secured, the Board will accept the examination result if the applicant has also secured a passing score [of 550] on the Test of English as a Foreign Language (TOEFL) [or ECFMG certification].

(d) *ECFMG certification.* [The ECFMG established a certification mechanism which became effective on March 25, 1958. In part, the ECFMG certification process is designed to test whether a graduate of an unaccredited medical college has acquired sufficient medical knowledge to participate in graduate medical training in United States hospitals, and whether a person who has graduated from an unaccredited medical college and whose principal language is not English has mastered the English language so that the person has achieved the communication skills necessary to participate in graduate medical training in United States hospitals. The Board recognizes that many medical doctors who graduated from unaccredited medical colleges prior to the establishment of the ECFMG certification process and who have not received ECFMG certification have, nevertheless, been licensed as medical doctors prior to March 25, 1958, in this Commonwealth and in other states, territories and possessions of the United States. If, prior to March 25, 1958, a graduate of an unaccredited medical college secured a license to practice medicine and surgery without restriction in any of the states, territories or possessions of the United States, and has successfully completed 3 years of graduate medical training, the Board will endorse these qualifications as equivalent to the ECFMG certification. Additionally, the Board will endorse the combination of the successful completion of a fifth pathway program and an ECFMG certification examination as equivalent to the ECFMG certification.] For purposes of endorsement, a graduate from an unaccredited medical school who has obtained certification by the ECFMG shall be deemed to have the equivalent of a passing score on steps 1 and 2 of the USMLE.

(e) The Board may consider years of experience, professional and academic achievement and credentials, and certification by a Board recognized specialty certification body in lieu of the examination requirement provided in subsection (c).

§ 17.5. Graduate license.

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(c) Additional requirements for securing a graduate license are that the applicant shall satisfy the following:

* * * * *

(2) [Have completed, if the applicant is a graduate of an unaccredited medical college or satisfies the requirements of subsection (b)(2), and files an application for a graduate license after December

31, 1988—the application is not considered filed with the Board until it is complete—the following:

(i) Four academic years totaling at least 32 months and 4,000 hours of instruction in medical curriculum. Regular attendance shall be verified. Credit will not be given towards this requirement for instruction which was obtained in other than an accredited or unaccredited medical college, except for clinical rotations assigned under the auspices of the medical college in which the applicant was enrolled while he participated in the clinical rotations.

(ii) Seventy-two weeks of clinical rotations in an institution which has a graduate medical training program in the clinical area for which credit is sought, or, if the institution is not within the United States, is either a formal part of a medical college or has a formal affiliation with a medical college.

(3)] Satisfy the requirements in § 16.12 (relating to general qualifications for licenses and certificates).

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[Pa.B. Doc. No. 04-1634. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Certified Registered Nurse Practitioner Program Approval

The State Board of Nursing (Board) proposes to add §§ 21.361—21.377 (relating to approval of certified registered nurse practitioner programs).

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 6.1 and 8.1 of the Professional Nursing Law (act) (63 P. S. §§ 216.1 and 218.1).

Background and Need for the Proposed Rulemaking

In 1974, the General Assembly, in amendments to the act and the Medical Practice Act of 1974, authorized the Board and the State Board of Medical Education and Licensure (now the State Board of Medicine) to jointly promulgate regulations which would authorize qualified nurses to perform acts of medical diagnosis and prescribe medical, therapeutic or corrective measures.

In 1997, the Board and the State Board of Medicine jointly promulgated regulations granting certified registered nurse practitioner (CRNP) status to certain professional nurses (RNs). Section 21.271(b) (relating to currently licensed; course of study and experience; continuing education) and § 18.41(b) (relating to currently licensed; course of study and experience; continuing education) of the State Board of Medicine's regulations provide that "[t]he applicant [for certification] shall have successfully completed a course of study consisting

of at least 1 academic year in a program administered by nursing in an institution of higher education as approved by the Boards."

The act of December 9, 2002 (P. L. 1567, No. 206) (Act 206) amended section 2.1 of the act (63 P. S. § 212.1) to give the Board exclusive jurisdiction over CRNPs, including CRNP education. Prior to the enactment of Act 206, these regulations were approved for publication as proposed rulemaking by both the Board and the State Board of Medicine. Section 6.1 of the act authorizes the Board to establish standards for the operation and approval of nursing education programs for RNs. Section 8.1(b)(1)(i), added by Act 206, requires the Board to approve CRNP education programs.

Description of Proposed Rulemaking

In developing the proposed rulemaking, the Board utilized the regulatory scheme developed for approving schools of nursing for RNs. The following is a section by section analysis of the proposed additions pertaining to CRNP education.

§ 21.361. Approval of programs.

Section 21.361 provides that the Board will approve CRNP programs that require a bachelor's degree for admission and that culminate in a master's degree in nursing or postmaster's certificate. The requirement of a bachelor's degree for admission is consistent with criteria established by the National League of Nursing (League), the organization that provides standardized guidelines for nursing education throughout the United States. This requirement is also consistent with section 8.1(b) of the act, added by section 3 of Act 206, which provides for a 2-year period before all approved programs must culminate in a master's or postmaster's degree. Section 21.361 also provides that the Board will approve RN to MSN (master of science in nursing) and RN to ND (doctorate degree in nursing) and other experimental or accelerated programs that culminate with at least a master's degree. This provision serves to permit nontraditional CRNP programs for RNs who obtained their education through an associate degree or diploma program to become approved for CRNP education. Finally, § 21.361 provides that the goal of approved programs is to prepare the RN to function as a nurse practitioner.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

Section 21.362 sets forth the requirements that approved programs complete an annual report and conduct a compliance review triennially. This requirement is consistent with the requirements imposed by the Board on other nursing education programs. See § 21.31 (relating to surveys; list of approved schools). In response to the information provided in the compliance review sent to the Board, the Board will send each program a written report of recommendations or requirements. Finally, § 21.362 provides that the Board will annually publish a list of approved programs. The same procedures are already established for other nursing education programs. See § 21.31.

§ 21.363. Approval process.

Section 21.363 details the two types of approval status granted to nursing education programs. Approved programs are initially placed on full approval status. A program may be placed on provisional approval if it is not in compliance with the Board's regulations. The same procedures are already established for other nursing education programs. See § 21.33 (relating to types of approval).

§ 21.364. Removal from approved list; discontinuance of CRNP program.

Section 21.364 details the procedure the Board will follow if it determines that a program should be placed on provisional approval or disapproved. The procedure includes a right to a hearing and the right to cure the program's deficiencies. These same procedures are already established for other nursing education programs. See § 21.34 (relating to removal from approved list).

§ 21.365. Establishment.

Section 21.365 provides the criteria under which a program must be established, and the information proposed programs must submit to the Board to become approved programs. The program must be developed and maintained under a regionally or Nationally accredited university or college; must be under the direction of a CRNP with a current Pennsylvania license and an earned doctorate degree (or plan to complete doctoral preparation); may be under the school's nurse educational program; and must submit information to the Board about the program's administration. These provisions are consistent with the criteria imposed on other nursing education programs. See § 21.51 (relating to establishment).

§ 21.366. Organizational requirements.

Section 21.366 sets forth the organizational requirements for programs that are seeking Board approval. The program must be a definable entity within the institution with adequate funding. The college or university under which the program operates shall make resources available to the program and interact with the program and the program's faculty in accordance with university policies. These organizational requirements are consistent with the organizational requirements for other nursing education programs. See §§ 21.61 and 21.62 (relating to baccalaureate and associate degree programs: organizational requirements; and diploma programs: organizational requirements).

§ 21.367. Faculty requirements for certified registered nurse practitioner programs.

This section sets forth the requirements for faculty in the program and the program's clinical courses. Faculty shall demonstrate expertise and maintain expertise in the subject area they are teaching; clinical faculty shall have at least 2 years of nurse practitioner experience and shall maintain clinical competency through ongoing clinical practice. These requirements are consistent with the League guidelines for CRNP programs and requirements for other nursing programs. See §§ 21.71 and 21.74 (relating to faculty and staff requirements for baccalaureate and associate degree programs; and faculty and staff requirements for diploma programs).

§ 21.368. Faculty policies.

Section 21.368 relates the faculty policies and provides that faculty shall be employed by and responsible to the college or university, that CRNP faculty shall be governed by college- or university-wide policies, that faculty duties shall be defined in writing and that CRNP faculty hours must be consistent with the faculty hours in other college or university programs. These requirements are consistent with those imposed on other nursing education programs. See §§ 21.72 and 21.75 (relating to faculty policies).

§ 21.369. General curriculum requirements.

Section 21.369 relates to the general curriculum requirements for CRNP programs. The curriculum must be

developed, implemented and evaluated by the program's faculty to include the knowledge, attitudes, skills and abilities necessary to practice as a CRNP. The curriculum must include both theoretical and clinical experiences, and instructional strategies must be appropriate to the program. The curriculum must include both general nursing courses and advanced nursing practice courses, including pharmacology. Section 21.369(c)(3) details requirements for clinical courses, including that students complete a minimum of 500 clinical hours. Section 21.369(c)(4) details requirements for advanced pharmacology courses. This section also provides that the program's clinical facilities must provide students with a variety of clinical experiences. Finally, the curriculum must prepare graduates for CRNP practice. These requirements are consistent with League guidelines for the education of CRNPs and Board requirements for other nursing programs. See § 21.81 (relating to general curriculum requirements).

§ 21.370. Evaluation.

Section 21.370 sets forth the requirements for the annual evaluation of the CRNP program conducted by the program and submitted to the Board under § 21.361(a). The evaluation must be conducted by faculty, administrators and students and include teacher effectiveness and curriculum. In addition, outcomes must be measured 1 and 3 years postgraduation. These requirements are consistent with those imposed on other nursing education programs. See § 21.82 (relating to curriculum evaluation).

§ 21.371. Curriculum changes requiring Board approval.

Section 21.371 provides that the Board approve curriculum changes that are substantial changes in program objectives, course content or instruction that affect the integration of material into the total curriculum and changes that confer a new or different certification specialty. Because Act 206 provides that, in 2 years, nurse practitioner certification may only be granted to nurses who hold certification from a Board-recognized National certification organization which required passing of a National certifying examination in the particular clinical specialty area, the Board anticipates that many programs will reorganize under Nationally-recognized certification specialties. These requirements are consistent with those imposed on other nursing education programs. See § 21.83 (relating to curriculum changes requiring Board approval).

§ 21.372. CRNP program philosophy; purposes and objectives.

Section 21.372 relates to the CRNP program philosophy. The section provides that the program must adopt a clear statement of the program's philosophy and purposes, and that the philosophy and purposes must be developed and reviewed by the faculty and consistent with the acceptable social, educational and CRNP standards. These requirements are consistent with the League guidelines and Board regulations for other nursing education programs. See §§ 21.84, 21.86 and 21.88 (relating to baccalaureate curriculum philosophy; purposes and objectives; associate degree curriculum philosophy; purposes and objectives; and diploma curriculum philosophy; purposes and objectives).

§ 21.373. Facility and resource requirements.

Section 21.373 provides that the support of the college or university must be adequate to meet the CRNP program's needs for physical plant, library resources and clinical areas. These requirements are consistent with

financial and resource requirements placed on other schools of nursing. See § 21.91 (relating to facility and resource requirements).

§ 21.374. Selection and admission standards.

Section 21.374 relates to the selection and admission standards for CRNP programs. Programs may admit currently licensed RNs holding a baccalaureate degree, or its equivalent, who meet the admissions requirements to the college or university's graduate program. The Board regulates the admission standards of other nursing programs. See §§ 21.101 and 21.102 (relating to selection and admission standards; and admission of classes). The League guidelines require a baccalaureate degree for admission to a CRNP program.

§ 21.375. Advanced standing.

This section provides that a CRNP program must have a written policy, consistent with that of the college or university, regarding granting advanced standing. This requirement is consistent with the requirement placed on other nursing schools. See § 21.103 (relating to transfer of students or advanced standing).

§ 21.376. Program records.

Section 21.376 details the requirements for keeping the program's records. Student records must be maintained in locked files on forms specifically designed for the program, and must be kept for 50 years. Faculty records must include the Pennsylvania display license and certification, educational records and documentation of continuing education. Administrative records must include affiliation agreements, minutes of meetings, annual reports, follow-up studies of graduates, budgets and written policies. Finally, the school bulletin must be comprehensive and current, include refund policies and policies related to admission, promotion, retention, transfer, advanced placement and dismissal. These requirements are consistent with the requirements applied to other nursing education programs. See §§ 21.121–21.125 (relating to records).

§ 21.377. Custody of records.

This section relates to the custody of records and provides for transfer of records to the college or university if the program closes. If the college or university closes, the Board must be provided with information as to where the records are to be kept. This section is consistent with § 21.125 (relating to custody of records), which applies to other nursing programs.

The Board sent this proposed rulemaking to numerous nursing associations and hospital systems. These organizations were: American Association of Neuroscience Nurses; Emergency Nurses Association; GPC—Oncology Nursing Society; The Hospital and Healthsystem Association of Pennsylvania; Intravenous Nurse Society; Licensed Practical Nurses Association of Pennsylvania; Pennsylvania Association of Home Health Agencies; Pennsylvania Association of Private School Administrators; Pennsylvania Association of Non-Profit Homes for the Aging; Pennsylvania Association of Nurse Anesthetists; Pennsylvania Association of Practical Nursing Program Administrators; Pennsylvania Coalition of Nurse Practitioners; Pennsylvania College of Associate Degree Nursing; Pennsylvania Council of Operating Room Nurses; Pennsylvania Department of Health-Bureau of CH Systems; Pennsylvania Health Care Association; Pennsylvania Higher Education Nursing Schools Association; Pennsylvania League for Nursing, Inc.; Pennsylvania Organization of Nurse Leaders; Pennsylvania Society of Gastroenterology Nurses and Associates; Pennsylvania State Nurses Association; School

Nurse Section, Southwestern Pennsylvania Organization for Nurse Leaders; Pennsylvania Medical Society; Nurses of Pennsylvania; Pennsylvania Association of School Nurses and Practitioners; Pennsylvania Nurses Association; and Professional Nursing Resources, Inc. In addition, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. In this case, the fees for approval of CRNP programs will be identical to the fees charged for approval of RN programs. The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth or political subdivisions. CRNP educational programs will be required to submit documentation regarding their programs for the Board's review. In addition, these programs will be required to submit a brief annual report and more comprehensive triennial report to the Board, as is currently required of RN education programs.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

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

JANET SHIELDS, CRNP,
Chairperson

Fiscal Note: 16A-5119. No fiscal impact; (8) recommends adoption.

Annex

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

APPROVAL OF CERTIFIED REGISTERED NURSE PRACTITIONER PROGRAMS

§ 21.361. Approval of programs.

(a) The Board will consider for approval CRNP programs which require, at a minimum, a baccalaureate degree in nursing for admission and which culminate with a master's degree in nursing or postmaster's certificate.

(b) The Board will consider for approval Registered Nurse (RN) to MSN (Master of Science in Nursing), RN to N.D. (Nursing Doctorate), experimental or accelerated programs that culminate with at least a master's degree in nursing.

(c) The Board will consider for approval those programs with a primary goal to prepare the RN to function as a nurse practitioner in an expanded role in a particular specialty area and perform acts of medical diagnosis, prescription of medical therapeutic or corrective measures in collaboration with a physician licensed to practice medicine in this Commonwealth.

§ 21.362. Annual reports and compliance reviews; list of approved programs.

(a) Approved programs must complete an annual report to the Board on a form provided by the Board. The annual report must update information regarding the program's administration, faculty, curriculum and student enrollment.

(b) Approved programs must conduct a compliance review of CRNP programs at least once every 3 years. The compliance review must be submitted to the Board on a form provided by the Board. The compliance review must include information regarding accreditation, administration, clinical sites, faculty, curriculum, testing, educational resources and student body of the program.

(c) The Board will send a written report of recommendations or requirements, or both, based on the CRNP program's compliance review, to the CRNP program. The Board will conduct an announced or unannounced site compliance visit at its discretion.

(d) Lists of approved CRNP programs will be compiled and published annually (the approved list) and will be made available for distribution. The approved list will consist of programs on full approval status and programs on provisional approval status.

§ 21.363. Approval process.

(a) A program that meets the requirements of §§ 21.361, 21.365—21.369 and 21.372—21.375 will be granted full approval status.

(b) The Board will place a CRNP program on provisional approval status if, as evidenced by the compliance review or other information, the program is not in compliance with the Board's regulations. The Board will require progress reports or other information deemed

necessary for the evaluation of a program on provisional approval status. Two years will be the maximum time allowed for the correction of the deficiencies that resulted in the program being placed on provisional approval status. If the program on provisional approval status is not in compliance within this designated time, the CRNP program will be removed from the approved list.

(c) The Board may return a CRNP program on provisional approval status to full approval status if the program attains and maintains the acceptable standards in §§ 21.365—21.378, and adheres to the policies and regulations of the Board.

§ 21.364. Removal from approved list; discontinuance of CRNP program.

(a) The Board will give at least 30 days notice of intent to remove a CRNP program from full approval status to provisional approval status or from provisional approval status to removal from the approved list and will provide an opportunity for the program's officials to present documentation, within 10 days of notification of intent to remove, to show why approval should not be withdrawn. The Board will hold a hearing, within 30 days of the submission of documentation, at which the program official may appear and present additional evidence to show cause as to why approval should not be withdrawn. The 30-day period for holding a hearing may be waived by consent of the parties. Failure to hold a hearing within 30 days will not be cause to withdraw the notice of intent to remove.

(b) Programs wishing to discontinue must follow the procedures in § 21.41 (relating to discontinuance of a program of nursing).

§ 21.365. Establishment.

(a) A CRNP program must be developed and maintained under the authority of a regionally or Nationally accredited university or college.

(b) A CRNP program must be under the direction of a faculty member who holds an active certification as a Pennsylvania CRNP and an earned doctorate degree or a specific plan for completing doctoral preparation. The length of appointment of temporary and acting directors of CRNP programs may not exceed 1 year.

(c) A university or college may conduct CRNP programs within the graduate program of the university or college where it resides, if the college or university has a professional nurse program and the philosophy of the parent institution encompasses dual programs of education. A college or university desiring to establish a program of nursing is required to:

(1) Submit a proposal to the Board, at least 12 months prior to the first intended admission of students, which includes the following:

(i) Sufficient statistical data to support the need for a certified registered nurse practitioner program within the community and to assure availability of an adequate number of interested candidates.

(ii) Letters of intent from the cooperating agencies indicating positive commitment to the CRNP program and the availability of sufficient clinical resources to meet the educational requirements of the CRNP program.

(iii) The projected cost of the CRNP program including costs for faculty, clinical teaching resources, educational supplies, office supplies, and the like, and sufficient evidence of stable financial support.

(2) Employ the director of the CRNP program prior to the intended admission date of students.

(d) The planned CRNP educational program proposal must include:

(1) A statement of the organization and administrative policies of the college or university.

(2) A statement of the administrative structure and functions of the nursing school.

(3) A statement of the educational preparation and nursing experience of faculty members employed.

(4) A statement of the philosophy, purposes and objectives of the program, which are congruent with the philosophy of the university or college.

(5) A statement of the curriculum, based on sound educational concepts, and including detailed course descriptions, objectives, and descriptions of the relevant clinical practice related to the specialty area.

(6) A statement of admissions policies.

(7) A statement identifying the National educational standards and guidelines used in the development of the nursing practitioner program.

(8) Statements of financial viability for 5 years.

(9) A description of the clinical facilities.

(e) Following the review of the CRNP program proposal and before final Board action is taken to grant permission to recruit students, an initial facility survey may be made by the designee of the Board.

§ 21.366. Organizational requirements.

(a) The CRNP program must be a definable entity distinguishable from other educational programs and services within the institution.

(b) Relationships with central administrative officers, interrelationships among other disciplines and services of the college or university, and representation on college or university councils and committees for faculty in a CRNP program must be consistent with the interaction and responsibilities accorded to other faculty members of the college or university.

(c) Adequate funds must be allocated and properly budgeted for the sound and effective operation of the CRNP program.

(d) Policies in effect for faculty members of the CRNP program must be those in effect for faculty members throughout the college or university.

(e) The resources, facilities and services of the college or university must be available to and used by the CRNP program and be adequate to meet the needs of the faculty and students.

§ 21.367. Faculty requirements for certified nurse practitioner programs.

(a) The minimum faculty requirements submitted under § 21.365(d)(3) (relating to establishment) for the program are:

(1) Qualified faculty members teaching in their areas of specialized practice encompassed within the curriculum.

(2) Additional faculty members as needed to insure an educationally effective student-faculty ratio.

(b) Faculty qualifications for clinical courses in the CRNP program are as follows:

(1) Faculty members shall provide evidence of expertise in their subject areas, and when appropriate, be currently licensed and certified in this Commonwealth and hold and maintain National certification. Faculty members already employed in a CRNP program who do not hold National certification in their area of specialization shall obtain National certification, if available, by _____ (*Editor's Note: The blank refers to a date 2 years after adoption of this proposal.*).

(2) Faculty members shall have at least 2 years of clinical nurse practitioner experience.

(3) Faculty members shall give evidence of maintaining expertise in their clinical or functional areas of specialization.

(4) Faculty members shall maintain currency in clinical practice through ongoing clinical practice.

(5) Faculty members shall meet specialty requirements for continuing competency in accordance with their educational program responsibilities.

§ 21.368. Faculty policies.

(a) The faculty shall be employed by and be responsible to the college or university.

(b) Policies, including personnel policies in effect for CRNP program faculty, must be those in effect for faculty members throughout the college or university.

(c) Functions and responsibilities of each faculty member must be defined in writing.

(d) Teaching hours of CRNP faculty must be consistent with the policies of the college or university.

§ 21.369. General curriculum requirements.

(a) The curriculum must be developed, implemented and evaluated by the faculty and be based on the philosophy and objectives of the school.

(b) The curriculum must be organized and developed to include the knowledge, attitudes, skills and abilities necessary for practice as a CRNP and in accordance with this chapter as related to CRNP practice.

(c) The curriculum must provide for both clinical and theoretical experiences. The curriculum must have the following components incorporated into each CRNP program:

(1) *Graduate nursing core.* The graduate nursing core must include the following content:

(i) Research.

(ii) Health care policy and organization.

(iii) Ethics.

(iv) Professional role development.

(v) Theoretical foundations of nursing practice.

(vi) Human diversity and social issues.

(vii) Health promotion and disease prevention.

(2) *Advanced nursing practice core.* The advanced nursing practice core must include the following content:

(i) Advanced health/physical assessment.

(ii) Advanced Physiology and Pathophysiology.

(iii) Advanced pharmacology.

(3) *Specialty content.* The CRNP student shall receive sufficient clinical experience to provide depth and breadth in a given specialty or with designated populations, geared to nurse practitioner practice. Clinical hours must

meet at least National certification requirements with a minimum of 500. Additional hours must be provided for specialties that provide care to multiple age groups (for example, family CRNPs) or for those who will practice in multiple care settings. When defining additional clinical hours, the complexity of the specialty content, as well as the need for clinical experience to enhance retention and skills, shall be considered. The expected graduate competencies must be the key determinant of the clinical component.

(4) *Advanced pharmacology.*

(i) CRNP program graduates shall have a well-grounded understanding of pharmacologic principles, which includes the cellular response level. This area of core content must also include both pharmacotherapeutics and pharmacokinetics of broad categories of pharmacologic agents. Advanced pharmacology must be taught in a separate or dedicated 3-credit or 45-hour course. Pharmacology content must also be integrated into the other content areas identified in the advanced practice nursing core. Additional application of this content must also be presented within the specialty course content and clinical experiences of the program to prepare the CRNP to practice within a specialty scope of practice.

(ii) The purpose of this content is to provide the graduate with the knowledge and skills to assess, diagnose and manage (including the prescription of pharmacologic agents) a patient's common health problems in a safe, high quality, manner.

(iii) The course work must provide graduates with the knowledge and skills to:

(A) Comprehend the pharmacotherapeutics of broad categories of drugs.

(B) Analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

(C) Understand the pharmacokinetics and pharmacodynamics of broad categories of drugs.

(D) Understand the motivations of clients in seeking prescriptions and the willingness to adhere to prescribed regimens.

(E) Safely and appropriately select pharmacologic agents for the management of client health problems based on client variations, the problem being managed, and cost effectiveness.

(F) Provide comprehensive and appropriate client education in relation to prescribed pharmacologic agents.

(G) Analyze the effects of single and multiple drug regimens on the client's health and functioning.

(H) Understand the variety of State legal requirements for CRNP prescriptive authority.

(I) Fulfill legal requirements for writing prescriptions as a CRNP in this Commonwealth in accordance with §§ 21.283—21.287 (relating to CRNP practice).

(5) *Professional role content.* The course work must provide graduates with curriculum in:

(i) Management of client health/illness status.

(ii) The nurse-client relationship.

(iii) The teaching-mentoring function.

(iv) Professional role.

(v) Managing and negotiating health care delivery systems.

(vi) Monitoring and ensuring the quality of health care practice.

(d) The instructional strategies must be appropriate and consistent with the program's philosophy, mission and objectives.

(e) The clinical facilities of the CRNP program must provide a variety of experiences with sufficient quality and quantity. Clinical experiences must be consistent with the scope of practice.

(f) CRNP courses and curriculum must be organized to continue the development of values, understandings, knowledge and skills needed in all aspects of practice as a CRNP and emphasize specialty areas.

(g) The ratio of students to faculty must insure optimal learning opportunities in clinical laboratory sessions and must be consistent with the objectives of the CRNP courses.

(h) The curriculum for CRNP programs must give evidence of providing learning experiences which will prepare graduates for CRNP practice. The standards of practice are defined and delineated by the profession and §§ 21.18 and 21.284 (relating to standards of nursing conduct; and prescribing and dispensing parameters).

(i) Course syllabi that identify all aspects of each course must be developed and readily available.

§ 21.370. Evaluation.

(a) As part of the CRNP program approval process, the CRNP program must submit an outline of, and appropriate time line for, its planned evaluative process. The evaluative process must include, at a minimum, the following:

(1) A self-evaluation process completed by faculty, administrators and students of the CRNP program evidencing input into the CRNP program by faculty, administrators and students. The self-evaluative process must include:

(i) Peer evaluation of teacher effectiveness.

(ii) Student evaluation of teaching and program effectiveness.

(iii) Periodic evaluation of the program by faculty, students and graduates of the program.

(iv) Periodic evaluation of the program's human and fiscal resources, program policies, facilities and services.

(2) Provisions for the program's curriculum evaluation process, completed by faculty, students, and graduates of the program. The curriculum must:

(i) Assess the program's effectiveness relative to current standards of practice.

(ii) Assess the program's effectiveness relative to current trends in education and health care.

(iii) Assess the program's effectiveness in attaining program objectives

(iv) Demonstrate that curriculum changes have been evaluated by the CRNP program faculty and are consistent with core competencies in the CRNP specialties.

(3) Provision for ongoing student evaluative process that assesses the student's progress toward and ultimate achievement of program objectives. The student evaluative process must:

(i) Be evident in the course outlines provided to students at the beginning of each course.

(ii) Include documentation of faculty-supervised performance evaluation of students.

(iii) Utilize evaluation tools that reflect nurse practitioner National competencies in the specialty areas.

(iv) Include student evaluation of the quality of clinical experiences.

(b) Programs must measure outcomes of graduates at 1-year and 3-year intervals postgraduation.

§ 21.371. Curriculum changes requiring Board approval.

Curriculum changes that require Board approval include changes in:

(1) Program objectives, course content or instruction that affect the integration of material into the total curriculum.

(2) An approved program which deem a new or different certification specialty title for graduates of that program require approval as a new CRNP education program.

§ 21.372. CRNP program philosophy; purposes and objectives.

(a) A clear statement of philosophy and purposes of the CRNP program, consistent with the philosophy and purposes of the college or university, must be formulated and adopted.

(b) The philosophy, purposes and objectives of the CRNP program must be developed and clearly stated by the faculty and be reviewed and revised at stated time intervals by this group.

(c) The philosophy and purposes of the CRNP program must be consistent with currently accepted social, educational and CRNP standards.

§ 21.373. Facility and resource requirements.

(a) The support of the college or university must be adequate to meet CRNP program needs and include the following:

- (1) Faculty and staff offices.
- (2) Classrooms, conference rooms and laboratories.
- (3) Administrative and secretarial support.
- (4) Interactive information systems (computer/technical support) sufficient to develop, manage and evaluate the program.

(b) There must be current, appropriate, adequate and available learning resources to include audio/visual equipment, computers and library materials.

(c) The CRNP program must provide appropriate clinical resources and experience for students, including:

- (1) Space for faculty's and students' needs.
- (2) Exposure of appropriate duration to a patient population sufficient in number to insure that the student can meet program goals.
- (3) Faculty to provide adequate supervision and evaluation.
 - (i) Supervision of all students in the clinical areas is the responsibility of the CRNP program faculty.
 - (ii) One program faculty member shall supervise no more than 6 students in a clinical course. If faculty are providing onsite preceptorship, the maximum ratio is two

students per faculty member. If faculty are managing their own caseload of patients, the maximum ratio is one student per faculty member.

(iii) Onsite clinical preceptors may include: advanced practice nurses who are currently licensed, physicians who are currently licensed and CRNPs who are currently licensed and certified. One preceptor may supervise no more than one student at any one time.

§ 21.374. Selection and admission standards.

(a) Policies and procedures related to the selection and admission of students are the responsibility of the individual program. Consideration must be given to scholastic aptitude, academic achievement, personal qualities and physical and emotional health necessary to fulfill the objectives of the program.

(b) Students admitted to CRNP programs shall meet the requirements for admission to the university or college for a master's degree in nursing programs and additional requirements that may be established for the CRNP program.

(c) Students admitted to CRNP programs shall have successfully completed the equivalent of a baccalaureate degree in nursing from an accredited institution of higher learning in a nursing program.

(d) Students admitted to CRNP programs shall be currently licensed as a registered nurse (RN) or, if enrolled in an RN to Master of Science in Nursing (MSN) or RN to Nursing Doctorate (ND) program shall complete all competencies for undergraduate requirements prior to taking graduate courses.

§ 21.375. Advanced standing.

The school must have a written policy consistent with its philosophy and objectives concerning criteria for granting advanced standing. The policy of master's degree programs must be consistent with that of the college or university.

§ 21.376. Program records.

(a) The program must employ a record system that ensures the operation of the program. Records must be maintained in locked files which assure their safe-keeping.

(b) Each nursing faculty shall select record forms specifically for the CRNP program that include the following:

(1) Student records, including the permanent record, containing both clinical and theoretical experience and achievement, must be kept for 50 years.

(2) Faculty records, including the following:

(i) "Display portion" of current Pennsylvania nursing licenses and CRNP certification.

(ii) Records of preparation and experience, including official college transcripts.

(iii) Current record of continuing education activities.

(iv) Record of National certification, if applicable.

(3) Administrative records, including the following:

(i) Affiliation agreements with cooperating agencies.

(ii) Minutes of meetings.

(iii) Annual reports.

(iv) Follow-up studies of graduates.

(v) Budgets.

(vi) Current written policies.

- (4) School bulletin, including the following:
- (i) Comprehensive and current information.
 - (ii) Clearly defined refund policies governing fees and tuition paid by the students.
 - (iii) Clearly defined policies relating to admission, promotion, retention, transfer, advanced placement and dismissal.

§ 21.377. Custody of records.

- (a) When a program closes, the college or university is responsible for the safekeeping of the records of students for at least 50 years after graduation of the last class.
- (b) If the college or university also closes, advice should be obtained from the Board concerning the permanent safekeeping and availability of the records of the school of nursing.
- (c) The Board shall be informed in writing concerning the permanent placement of these records.

[Pa.B. Doc. No. 04-1635. Filed for public inspection September 3, 2004, 9:00 a.m.]

[49 PA. CODE CH. 21]
Temporary Practice Permits

The State Board of Nursing (Board) proposes to add §§ 21.7 and 21.149 (relating to temporary practice permits) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 2.1(k) and 4.1 of the Professional Nursing Law (act) (63 P. S. §§ 212.1(k) and 214.1) and sections 3.1 and 17.6 of the Practical Nurse Law (63 P. S. §§ 653.1 and 667.6).

Background and Need for the Proposed Rulemaking

Over the past 2 years, the Board has experienced a great increase in the number of applications for temporary practice permit (TPP) extensions, specifically among individuals seeking extensions to TPPs for currently-licensed nurses. Section 14.1 of the act and section 17.6 of the Practical Nurse Law authorize the Board to issue a TPP to a person who holds a current license issued by another state, territory or possession of the United States.

Qualifications for licensure vary from state to state. In this Commonwealth, individuals who have graduated from a school of nursing that is not approved by the Board (that is, a nursing education program outside this Commonwealth) shall have their educational program evaluated to determine if it is equivalent to the education required for licensure in this Commonwealth. In addition, an individual shall have passed the licensure examination (NCLEX-RN for professional nurses or NCLEX-PN for practical nurses). See section 7 of the act (63 P. S. § 217) and section 16 of the Practical Nurse Law (63 P. S. § 656).

In reviewing the applications for extension, the Board discovered that the vast majority of applicants have not timely completed their applications for licensure. The statute requires that an applicant file an application for

licensure at the same time as the application for a TPP. Submission of an application for licensure triggers the review of the applicant's nursing education program for equivalency, because one of the supporting documents submitted is a transcript of the individual's course work in his nursing education program. Upon review of the requests for extension of TPPs, the Board has discovered that applicants fail to provide the Board with required supporting documents in their license applications. The Board has identified this failure to provide supporting documentation as the reason these nurses experience delays in obtaining licensure. This proposed rulemaking sets forth time limits by which an applicant shall request supporting documentation for licensure. These time limits should dramatically reduce the requests for extensions to TPPs.

The Board seeks to reduce multiple or lengthy extensions to TPPs for several reasons. First, until an applicant has completed the application for licensure, the Board has not reviewed the applicant's qualifications to practice nursing. Therefore, it is possible that some applicants for licensure may practice in this Commonwealth for a period of time before the Board has determined whether the individual meets the statutory qualifications, which may in turn pose a threat to public health and safety. Second, the statute does not provide a mechanism by which the Board can discipline an individual who holds a TPP for misconduct. The Board can demand the return of the TPP and, if the person does apply for licensure, any misconduct while holding a TPP may provide sufficient grounds to deny licensure. However, the Board cannot require that the TPP holder participate in educational programs or place the TPP on probation.

Section 21.7 and 21.149 are virtually identical except that § 21.7 applies to professional nurses and § 21.149 applies to practical nurses. Therefore, the Board will describe only § 21.7. Subsection (a) applies to TPPs for graduate nurses and subsection (b) applies to TPPs for currently licensed nurses.

Description of the Proposed Rulemaking

Section 21.7(a)(1) mirrors section 4.1 of the act in requiring an individual who has graduated from an approved nursing program who wishes to practice as a graduate nurse prior to taking the licensing examination to apply for a TPP. In addition, § 21.7(a)(1) mirrors the statutory restriction that a TPP is valid for up to 1 year and expires if the TPP holder fails the licensing examination.

Section 21.7(a)(2) requires that the TPP holder submit an application for licensure by examination to the Board and register with the professional testing organization at least 90 days prior to the expiration date of the TPP. This provision is based on the 90-day validity period of the "authorization to test." In other words, once an applicant has been approved to take the licensing examination, that approval is valid for 90 days.

Section 21.7(a)(3) provides that a TPP holder who wishes to apply for an extension of the TPP shall apply for the extension at least 60 days prior to the date the TPP is set to expire. In addition, the applicant for extension shall provide the Board with a detailed explanation of the need for the extension. Finally, § 21.7(a)(3) notifies these applicants that the Board will only grant an extension in cases of illness or extreme hardship. The 60-day time period allows the Board sufficient time to process and consider a request for an extension at a meeting of the Board.

Section 21.7(a)(4) provides that an extension will not be granted to an individual who has failed to comply with the 90-day and 60-day deadlines in § 21.7(a)(2) and (3). This provision is necessary to relieve the Board from considering extension applications from applicants who have not taken the steps necessary to timely obtain permanent licensure from the Board.

Section 21.7(b) applies to TPPs for currently-licensed professional nurses. Section 21.7(b)(1) mirrors section 4.1 of the act by providing that an individual who is currently licensed and wishes to practice in this Commonwealth during the 1-year period from the date of application for licensure until the Board makes a determination on the application may apply for a TPP. The Board specifies that the applicant need only submit Form 1 of the application for licensure, because the other forms are essentially verifications of education and licensure from the other state and must be submitted directly from the individual's educational institution and the other state. Moreover, once all the forms are completed, the Board will consider the application for licensure and a TPP would not be necessary.

Section 21.7(b)(2) provides that the individual applying for a TPP as a currently-licensed nurse shall demonstrate proficiency in English. This is necessary to ensure that the nurse can pass the licensure examination and can take and execute orders in the course of the nurse's practice. Currently, all licensed nurses for whom English is a second language who apply for licensure through the Commission on Graduates of Foreign Nursing Schools (CGFNS) are required to pass an English proficiency examination. The Board's experience with the CGFNS strongly suggests that requiring this examination actually speeds the licensure process and helps to ensure public safety. The nurse may demonstrate English proficiency by submitting proof that the nursing education program was conducted in English or by passing an English proficiency examination. The nurse shall submit proof of English proficiency with Form 1 of the application. This provision is designed to ensure that a nurse who will be granted a TPP is sufficiently knowledgeable in English to communicate with patients, other nurses and doctors from whom the nurse will take orders. The provision ensures that the nurse will not be hindered from safe practice by an inability to understand English.

Section 21.7(b)(3) requires the TPP holder to submit Form 2 of the application for licensure within 45 days of the date the TPP is granted. Form 2 includes the application for verification of licensure from the foreign jurisdiction, request of certification of the individual's nursing education program, including a copy of the individual's transcript translated into English, if necessary, and verification that the applicant has submitted an application to the CGFNS. Section 5 of the act (63 P. S. § 215) and § 21.28(c) (relating to licensure by endorsement) mandate verification of a foreign-educated applicant's educational qualifications by the CGFNS. The Board's review of the date that applicants who were seeking TPP extensions had applied for verification of their foreign nursing license, certification of their nursing education program and verification of their nursing program through the CGFNS demonstrated that the applicants were not applying for these verifications until approximately 1 to 2 months prior to the expiration date of the TPP. The CGFNS verification procedure alone takes approximately 9 months, depending on the availability of documentation from a particular country.

Prompt application for verifications will alleviate most of the need for applicants to apply for an extension of their TPP.

Section 21.7(b)(4) provides that each TPP applicant shall ensure that the Board has received all supporting documentation for an application for licensure at least 90 days prior to the expiration of the TPP. The Board will notify applicants at this 90-day point if their applications are incomplete. Section 21.7(b)(4) requires the applicant to submit a written explanation of the efforts made to timely secure the required documentation.

Section 21.7(b)(5) authorizes an individual who holds a TPP to apply for an extension of the TPP if the applicant has complied with this regulation and submitted an extension application, remitted the application fee, submitted a written explanation of the reasons for the extension request and provided proof of compliance with § 21.7(b)(3). Finally, § 21.7(b)(5) requires that the individual seeking an extension request the extension at least 60 days prior to the expiration date of the TPP. It has been the common practice of TPP holders to request an extension on the last day the TPP is valid. The Board may not meet for 3 or more weeks after the date the TPP expires and the individual continues to practice without benefit of licensure or a TPP. This paragraph should insure that nurses have no gap in their authority to practice, and insure the public safety because these nurses are not covered by insurance and an injured patient could be left without recourse.

Section 21.7(b)(6) reiterates that an individual who fails to meet the requirements of subsection (b) will not be granted an extension of the TPP expiration date.

Section 21.149 is very similar to § 21.7, but in reference to TPPs for practical nurses.

The Board requested input in drafting of the proposed rulemaking from nursing associations and hospital systems. These organizations were as follows: American Association of Neuroscience Nurses, Emergency Nurses Association, GPC—Oncology Nursing Society, The Hospital and Healthsystem Association of Pennsylvania, Intravenous Nurse Society, Licensed Practical Nurses Association of Pennsylvania, Pennsylvania Association of Home Health Agencies, Pennsylvania Association of Private School Administrators, Pennsylvania Association of Non-Profit Homes for the Aging, Pennsylvania Association of Nurse Anesthetists, Pennsylvania Association of Practical Nursing Program Administrators, Pennsylvania Coalition of Nurse Practitioners, Pennsylvania College of Associate Degree Nursing, Pennsylvania Council of Operating Room Nurses, Pennsylvania Department of Health-Bureau of CH Systems, Pennsylvania Health Care Association, Pennsylvania Higher Education Nursing Schools Association, Pennsylvania League for Nursing, Inc., Pennsylvania Organization of Nurse Leaders, Pennsylvania Society of Gastroenterology Nurses and Associates, Pennsylvania State Nurses Association, School Nurse Section, Southwestern Pennsylvania Organization for Nurse Leaders, Pennsylvania Medical Society, Nurses of Pennsylvania, Pennsylvania Association of School Nurses and Practitioners, Pennsylvania Nurses Association, and Professional Nursing Resources, Inc., Grane Healthcare and the North Philadelphia Health System. The Board did not receive any comments on the exposure draft.

Also, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

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

JANET HUNTER SHIELDS, MSN, CRNP, CNS,
Chairperson

Fiscal Note: 16A-5121. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL LICENSURE AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.7. Temporary practice permits.

(a) The Board may grant a temporary practice permit to a graduate registered nurse as follows:

(1) An individual who wishes to practice as a graduate registered nurse during the period from the date of completion of a Board-approved educational program and notification of the results of the licensing examination shall submit an application for a temporary practice permit for a graduate registered nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted

under this section is valid for up to 1 year from the date of issuance and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate registered nurse shall:

(i) Submit an application for licensure by examination as a registered nurse.

(ii) Remit the fee specified in § 21.5.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate registered nurse who wishes to extend the expiration date of the temporary practice permit because of illness or extreme hardship shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(iii) Provide a detailed, written explanation of the reason the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board may grant a temporary practice permit to a currently-licensed registered nurse as follows:

(1) An individual who holds a current registered nurse license issued by any other state, territory or possession of the United States or Canada and who wishes to practice professional nursing during the period from the date of submission of Form 1 of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed registered nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed registered nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. A list of Board-approved English proficiency examinations is available upon request to the Board. This information must be submitted with Form 1 of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall submit Form 2 of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of the submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The appli-

cant shall retain documentation of the submission of the request to provide to the Board upon request.

(iii) Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in §§ 21.23(c) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall ensure that all documentation in support of the application for licensure is received by the Board no later than 90 days prior to the expiration date of the temporary practice permit. Any individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed registered nurse and who has complied with paragraphs (2)—(4) may request an extension of the temporary practice permit by:

(i) Submitting a temporary practice permit extension application provided by the Board.

(ii) Remitting the fee specified in § 21.5.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension must be submitted to the Board at least 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(5).

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.149. Temporary practice permits.

(a) The Board may grant a temporary practice permit to a graduate practical nurse as follows:

(1) An individual who wishes to practice as a graduate practical nurse during the period from the date of completion of a Board-approved educational program and notification of the results of the licensing examination shall submit an application for temporary practice permit for a graduate practical nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance and immediately expires if the applicant fails the licensing examination.

(2) At least 90 days prior to the expiration date of the temporary practice permit, the graduate practical nurse shall:

(i) Submit an application for licensure by examination as a practical nurse.

(ii) Remit the fee specified in § 21.5.

(iii) Submit the licensure examination registration form and fee required to the professional testing organization.

(3) At least 60 days prior to the expiration date of the temporary practice permit, the graduate practical nurse who wishes to extend the expiration date of the temporary practice permit shall:

(i) Submit an application for temporary practice permit extension on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(iii) Provide a detailed, written explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's physician.

(4) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2) and (3).

(b) The Board will grant a temporary practice permit for a currently-licensed practical nurse as follows:

(1) An individual who holds a current practical nurse license issued by any other state, territory or possession of the United States or Canada and who wishes to practice practical nursing during the period from the date of submission of Form 1 of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed practical nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed practical nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. A list of Board-approved English proficiency examinations is available upon request to the Board. This information shall be submitted with Form 1 of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall submit Form 2 of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of submission of the request to submit to the Board upon request.

(iii) Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in § 21.155(d)

(relating to licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.

(iv) If the applicant is required to take the licensure examination, submit the licensure examination registration form and fee required to the professional testing organization and retain documentation of the submission of the application to take the examination to provide to the Board upon request.

(4) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall ensure that all documentation in support of the application for licensure is received by the Board at least 90 days prior to the expiration date of the temporary practice permit. An individual whose supporting documentation has not been received by the Board at least 90 days prior to the expiration date of the temporary practice permit shall submit, within 10 days of receiving notice of the deficiency from the Board, a detailed written explanation of why the supporting documentation has not been supplied to the Board in a timely manner.

(5) An individual who has been granted a temporary practice permit for a currently-licensed practical nurse and who has complied with paragraphs (2)—(4) may request an extension of the temporary practice permit because of illness or extreme hardship by:

(i) Submitting a temporary practice permit extension application on a form provided by the Board.

(ii) Remitting the fee specified in § 21.5.

(iii) Submitting a written, detailed explanation of the reasons the extension is requested. If requesting an extension due to illness, the applicant shall provide certification of the illness from the applicant's treating physician.

(iv) Providing proof of the timely request for verification of licensure referenced in paragraph (3)(i).

(6) The request for temporary practice permit extension must be submitted to the Board at least 60 days prior to the expiration date of the temporary practice permit.

(7) The Board will not grant an extension to an individual who fails to meet the requirements of paragraphs (2)—(5).

[Pa.B. Doc. No. 04-1636. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Examination Fees

The State Board of Pharmacy (Board) proposes to amend § 27.91 (relating to schedule of fees) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This proposed rulemaking is authorized under sections 6(k)(1) and (9) and 8.2(a) of the Pharmacy Act (act) (63 P. S. §§ 390-6(k)(1) and (9) and 390-8.2(a)) and section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a).

Background and Purpose

The proposed amendment to § 27.91 deletes references to the fees for the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE). These fees are set by the administrators of the examinations, not by the Board. To avoid the necessity of amending the regulation whenever the examination administrator changes the fees, the Board proposes to delete references to the fees.

Description of Proposed Rulemaking

The Board proposes to amend § 27.91 to delete references to the fees for the NAPLEX and the MPJE examinations. The fees are set by the test administrators.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no fiscal impact on the Board or its licensees. The proposed rulemaking should have no fiscal impact on the private sector, the general public or political subdivisions. The proposed rulemaking will avoid preparation of new regulations each time an examination fee is changed and should not create additional paperwork for the private sector.

Sunset Date

The Board reviews the effectiveness of its regulations on an ongoing basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

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

MICHAEL J. ROMANO, R.Ph.,
Chairperson

Fiscal Note: 16A-5413. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 27. STATE BOARD OF PHARMACY

FEES

§ 27.91. Schedule of fees.

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

* * * * *

[North American Pharmacist Licensure Examination (NAPLEX)..... \$250

Multistate Pharmacy Jurisprudence Examination (MPJE)..... \$85]

* * * * *

[Pa.B. Doc. No. 04-1637. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PODIARTY

[49 PA. CODE CH. 29]

Professional Liability Insurance

The State Board of Podiatry (Board) proposes to amend §§ 29.51—29.54 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

This rulemaking is proposed under section 15 of the Podiatry Practice Act (63 P. S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910).

Background and Purpose

The Health Care Services Malpractice Act (40 P. S. §§ 1303.101—1303.901), in particular provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, have been repealed and replaced by the MCARE Act. This proposed rulemaking would amend the current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act.

Description of Proposed Rulemaking

Section 303 of the MCARE Act (40 P. S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P. S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) would be amended to require an applicant for licensure to inform

the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) would be amended to require applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, to furnish satisfactory proof to the Board that they are complying with the MCARE Act. The proposed rulemaking would also delete references to amounts of liability insurance that were required by the repealed Health Care Services Malpractice Act.

Section 29.53 (relating to original license) would require podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance.

Section 29.54 (relating to penalty) would provide the podiatrist with notice that failure to comply with the MCARE Act may result in a suspension or revocation of the podiatrist's license after a formal hearing before the Board.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Roberta L. Silver, Counsel, State Board of Podiatry, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the Pennsylvania Bulletin.

JEFFREY S. GERLAND, D.P.M., Chairperson

Fiscal Note: 16A-447. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1— [50%] 20% _____ [51%]
21% or more _____

(If the answer to question (1) is 0%, or if practicing only as a Federal [employe] employee, (2) and (3) need not be answered.)

* * * * *

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or [licenses] licensees applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with [the provisions of] the [Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006)] Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910), in that the applicant, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges. [as set forth therein:

(1) Proof of coverage of 100,000/300,000, if more than 50% of his practice is conducted in this Commonwealth, and proof that his insurance company has paid the required surcharge into the Medical Professional Liability Loss Fund or that he has paid the \$50 fee to the office of the Administrator for Arbitration Panels for Health Care, should be furnished.

(2) Basic coverage insurance in the amount of 200,000/600,000 or an approved self-insurance plan is required if 50% or less of his practice is in this Commonwealth. The licensee is not required to pay the required surcharge nor is the licensee entitled to participate in the Medical Professional Liability Catastrophe Loss Fund. The licensee is required to pay the \$50 fee to the Administrator for Arbitration Panels for Health Care.

(3) (b) Licensees practicing solely as Federal [employes] employees are not required to participate in the professional liability insurance program, nor are they required to comply with [the provisions of] the [Health Care Services Malpractice] MCARE Act.

(4) (c) Licensees who have no practice in this Commonwealth are not required to [pay the arbitration

fees or] comply with the [provisional insurance requirements of the Health Care Services Malpractice] MCARE Act.

§ 29.53. Original license.

A podiatrist applying for his original license[,] to practice podiatry shall, within 90 days after receipt of [his] the podiatrist's original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance[, the payment of the \$50 fee to the Administrator for Arbitration Panels for Health Care, and payment of the surcharge to the Medical Professional Liability Catastrophe Loss Fund].

§ 29.54. Penalty.

Failure to comply with [the requirements of] the [Health Care Services Malpractice Act (40 P. S. §§ 1301.101—1301.1006)] MCARE Act (40 P. S. §§ 1303.101—1303.910), the regulations issued thereunder, and this subchapter shall result in a suspension or revocation of [his] the licensee's license after a formal hearing before the Board.

[Pa.B. Doc. No. 04-1638. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF PSYCHOLOGY

[49 PA. CODE CH. 41]

Education Requirements

The State Board of Psychology (Board) proposes to amend §§ 41.1 and 41.31 (relating to definitions; and qualifications for taking licensure examination) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will be effective for applicants for licensure who first enrolled in a psychology or psychology related educational program at least 2 academic years from the publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Applicants who are currently enrolled in a doctoral degree program on the date prior to publication of final-form rulemaking would qualify under existing language and would have 5 years from the effective date of the final-form rulemaking to obtain the requisite education to become eligible to sit for the license examination. Applicants who do not obtain the requisite education within the 5 years would be required to comply with the requirements set forth in this proposed rulemaking.

B. Statutory Authority

This proposed rulemaking is made under sections 3.2(1) and 6(a)(2) of the Professional Psychologists Practice Act (act) (63 P. S. §§ 1203.2(1) and 1206(a)(2)).

C. Purpose and Background

Section 6(a)(2) of the act mandates that applicants for licensure have a doctoral degree in psychology or a field related to psychology. The Board has defined "doctoral degree in psychology" and "doctoral degree in a field related to psychology" in § 41.1.

Currently, a doctoral degree must be accredited by the American Psychological Association (APA) or designated by the Association of State and Provincial Psychology Boards/National Register Designation Committee (ASPPB/National Register). Applicants who graduate from doctoral degree programs which are neither accredited or designated are reviewed on a case-by-basis under criteria in subsection (c).

In 1991, when this provision was amended, many psychology programs were either not accredited or designated. However, today the vast majority of programs are either accredited or designated. A list of those programs can be found on the APA's website: www.apa.org and on the National Register's website: www.nationalregister.org.

Programs accredited by the APA or Canadian Psychological Association (CPA) or designated by the ASPPB/National Register undergo a rigorous review process. Following a self-study and the completion of a comprehensive application, each program is subject to a several-day site visit by a trained team of reviewers who meet with the institution's administration, department and program faculty and students and review the entire curriculum being taught in the program as well as the self-study report. Doctoral and internship programs and postdoctoral residencies are reviewed annually by written report and undergo periodic review involving additional self-studies and site visits. The process also requires programs to correct deficiencies detected in the evaluation.

Since 1991, the Board has also reviewed numerous doctoral degree programs that are neither accredited nor designated. The Board has found that the standards at these programs vary significantly and that most do not meet the APA or the ASPPB/National Register standards. In addition, because the Board is not capable of conducting site visits at these programs, the Board has been forced to rely on the documentary evidence provided.

The Board believes that to protect the citizens of this Commonwealth who receive psychological services, psychologists must receive uniform quality education. In the Board's view, this can only be accomplished if all doctoral degree programs are held to the same standards. Therefore, the Board proposes that to obtain a license as a psychologist, the applicant must have earned a doctoral degree from a program that is either accredited by the APA or the CPA or designated by the ASPPB/National Register.

Recognizing that there are no foreign equivalents to these reviewing bodies, but to ensure that qualified applicants from these programs are not prohibited from obtaining a Pennsylvania license, under this proposed rulemaking, applicants from colleges and universities which are not located in the United States, Canada or the United States' territories must comply with standards identical to those required for ASPPB/National Register designation.

D. Description of Proposed Rulemaking:

1. Proposed § 41.1. Definition of "doctoral degree in a field related to psychology."

The Board proposes to amend subparagraphs (i) and (ii) of the definition to limit its application to a degree awarded by a program accredited by the APA or the CPA or designated by the ASPPB/National Register. The proposed rulemaking will limit its application to programs in foreign colleges or universities.

Currently, the definition requires that the foreign college or university be accredited. To avoid confusion as to

the required accreditation body, the Board proposes amending this subparagraph to indicate that a recognized accrediting body in the jurisdiction where the college or university is located must accredit the college or university.

Currently the definition requires that the program be comprised of an integrated, organized sequence of study. The Board proposes to amend this provision by adding the specific requirements necessary for an integrated, organized sequence of study: the breadth or foundations of scientific psychology; scientific, methodological and theoretical foundations of practice; diagnosing or defining problems; and supervised practicum and required specialty courses.

Currently the definition requires at least 60 graduate semester hours in the listed categories of educational subjects. Recognizing current educational requirements at APA or CPA accredited and ASPPB/National Register designated programs, the Board also proposes to require licensees to complete 3 full-time academic years of graduate study plus a dissertation prior to being awarded a doctoral degree. Two of the 3 academic years would have to be completed at the institution granting the degree.

Lastly, the Board proposes to clarify the residency requirement in the current definition. Applicants for licensure routinely and repeatedly question the Board about the length and contacts necessary to satisfy the residency requirement. The Board has consistently advised applicants that the program must require residency for a minimum of 2 academic semesters and that the program must provide opportunities for interaction between faculty and students in addition to instruction time to enhance the student's understanding of scholarship and provide socialization to the science and practice of psychology. Applicants have attempted to demonstrate that this requirement has been met by showing that students and faculty members meet 1 weekend per month for a set number of months. The Board has found that absent other substantive contacts, these monthly meetings are insufficient to meet the residency requirement. Because applicants have sought additional information about this residency requirement, the Board proposes amending the definition by clarifying that the residency must extend for "2 consecutive academic semesters as a full-time student physically present at a degree granting institution" and must "enhance understanding of scholarship and professional activities and provide socialization to the science and practice of psychology."

2. Proposed § 41.1. Definition of "doctoral degree in psychology."

The Board proposes to duplicate the amendments to the definition of a "doctoral degree in a field related to psychology" in the definition. The definition would be amended to also clarify that the degree must be from a program accredited by the APA or the CPA or designated by the ASPPB/National Register and would be amended to clarify that this provision only applies to foreign colleges or universities.

3. Proposed § 41.31. Qualifications for taking licensing examination.

The Board proposes to consolidate the requirements in subsection (b)(1), for applicants with doctoral degree in psychology, and subsection (b)(2), for applicants with doctoral degrees in fields related to psychology, as the qualification requirements for taking the examination would be the same for both degrees.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth. Board members would no longer be required to review transcripts, courses, residencies and internships for applicants who attended non-APA and non-ASPPB programs in the United States, Canada and United States territories, and Board staff would simply confirm that the doctoral degree program was accredited by the APA or the CPA or designated by the ASPPB/National Register. However, there were no costs associated with Board member review as that review was conducted at the end of the monthly Board meetings. Therefore, the change should not result in any discernible fiscal impact on the Board or the Commonwealth. The Board would continue to conduct its review for applicants with doctoral degrees from foreign colleges and universities.

The proposed rulemaking would decrease paperwork requirements for applicants from programs in the United States, Canada and United States territories. These applicants would only be required to submit a Verification of Doctoral Program Approval Status completed by the program's director of clinical training reflecting accreditation by the APA or the CPA or designation by the ASPPB and an official transcript from the registrar. Applicants from foreign colleges and universities would continue to submit an evaluation from a foreign education credential evaluator acceptable to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1.

F. Sunset Date

The Commission reviews the effectiveness of its regulations on an ongoing basis. 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 August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

H. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Judith Pachter Schulder, Counsel, State Board of Psychology, Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

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

Fiscal Note: 16A-6313. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 41. STATE BOARD OF PSYCHOLOGY

GENERAL

§ 41.1. Definitions.

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

* * * * *

Doctoral degree in a field related to psychology—A degree awarded upon successful completion of a program which meets **one of the following [criteria or which is approved by the Board under § 41.31(b)(3) (relating to qualifications for taking licensing examination)]**:

(i) Is accredited by the American Psychological Association (APA) or the Canadian Psychological Association (CPA).

(ii) Is designated by the Joint Designation Committee of the Association of State and Provincial Psychology Boards (ASPPB).

(iii) Is offered by a foreign college or university which:

[(i)] (A) Offers training in [an accredited] a college or university accredited by a recognized accrediting body in the jurisdiction where the college or university is located.

[(ii)] (B) * * *

[(iii)] (C) * * *

[(iv)] (D) Comprises an integrated, organized sequence of study[.] that enables all students to acquire and demonstrate substantial understanding of and competence in the following areas:

[(v) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area) biological:]

(I) The breadth or foundations of scientific psychology as exemplified by study in each of the following domains for a minimum of 3 graduate semester hours:

(-a) Biological bases of behavior—for example, physiological psychology, comparative psychology, neuropsychology, sensation and perception, **and psychopharmacology[; cognitive]**.

(-b) Cognitive-affective bases of behavior—for example, learning, thinking, motivation[,] **and emotion[; social]**.

(-c-) **Social** bases of behavior—for example, social psychology, group processes[,] and organizational and systems theory[; **individual**].

(-d-) **History and systems of psychology.**

(-e-) **Psychological measurement.**

(-f-) **Research methodology.**

(-g-) **Techniques of data analysis.**

(II) **Scientific, methodological and theoretical foundations of the practice in the substantive domains of professional psychology by study in each of the following domains for a minimum of 3 graduate semester hours:**

(-a-) **Individual differences in behavior**[—for example, **human**].

(-b-) **Human development**[, **personality theory, abnormal psychology**].

(-c-) **Dysfunctional behavior or psychopathology.**

(-d-) **Professional standards and ethics.**

(III) **Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies by study in each of the following domains for a minimum of 3 graduate semester hours:**

(-a-) **Theories and methods of assessment and diagnosis.**

(-b-) **Effective interventions.**

(-c-) **Consultation and supervision.**

(-d-) **Evaluating the efficacy of interventions.**

[(vi)] (IV) [**Includes supervised**] **Supervised** practicum, internship, field or laboratory training **appropriate to the practice of psychology.**

[(vii) **Includes course requirements**] **Required** courses in a specialty [**areas**] area of psychology.

[(viii) **Ensures that instruction, supervision and training in the areas enumerated in subparagraphs (v)—(vii) are appropriate to the practice of psychology. Considerations pertinent to this requirement are the psychological content and focus of courses and training, irrespective of title, and the psychological qualifications of the instructor—for example, professional identification, membership in professional organizations, licensure status.**

(ix)] (E) **Requires** degree candidates to complete a combined total of at least [**60**] **3 full-time academic years of graduate study (or the equivalent thereof), for example, 90 graduate semester hours or its equivalent** in the areas described in [**subparagraphs (v)—(vii)**] **subparagraph (iii)(D), and a dissertation prior to awarding the doctoral degree. At least 2 of the 3 academic years or the equivalent thereof must be at the institution from which the doctoral degree is granted.**

[(x)] (F) **Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a [**matriculated**] full-time student physically present at the institution granting the degree which requires interaction with faculty and other students, other than in regular academic classes, that enhances understanding of scholarship**

and professional activities and provides socialization to the science and practice of psychology.

Doctoral degree in psychology—A degree awarded upon successful completion of a program in psychology which [**is accredited**] **meets one of the following criteria:**

(i) **Is accredited** by the [**American Psychological Association (] APA[)**] or the CPA.

(ii) [**which is designated**] **Is designated** by [**the American Association of State Psychology Boards (] ASPPB[)**] or by other designating groups acceptable to the Board; which is approved by the Board under § 41.31(b)(3); or which meets the following criteria] .

(iii) **Is offered by a foreign college or university which:**

[(i)] (A) **Offers training in [**an accredited**] a college or university accredited by a recognized accrediting body in the jurisdiction where the college or university is located.**

[(ii)] (B) * * *

[(iii)] (C) * * *

[(iv)] (D) **Clearly demonstrates authority and primary responsibility for the required core program [**(see subparagraph (viii))**] and specialty areas [**(see subparagraph (x))**], and for the admission, evaluation and recommendation of students for degrees, whether or not the degree program cuts across administrative lines.**

[(v)] (E) **Comprises an integrated, organized sequence of study[.] that enables all students to acquire and demonstrate substantial understanding of and competence in the following areas:**

(I) **The breadth or foundations of scientific psychology as exemplified by study in each of the following domains for a minimum of 3 graduate semester hours:**

(-a-) **Biological bases of behavior, including physiological psychology, comparative psychology, neuropsychology, sensation and perception and psychopharmacology.**

(-b-) **Cognitive-affective bases of behavior, including learning, thinking, motivation and emotion.**

(-c-) **Social bases of behavior, including social psychology and organizational and systems theory.**

(-d-) **History and systems of psychology.**

(-e-) **Psychological measurement.**

(-f-) **Research methodology.**

(-g-) **Techniques of data analysis.**

(II) **Scientific, methodological and theoretical foundations of the practice in the substantive domains of professional psychology by study in each of the following domains for a minimum of 3 graduate semester hours:**

(-a-) **Individual differences in behavior.**

(-b-) **Human development.**

(-c-) **Dysfunctional behavior or psychopathology.**

(-d-) **Professional standards and ethics.**

(III) Diagnosing or defining problems through psychological assessment and measurement and formulating and implementing intervention strategies by study in each of the following domains for a minimum of 3 graduate semester hours:

- (-a-) Theories and methods of assessment and diagnosis.
- (-b-) Effective interventions.
- (-c-) Consultation and supervision.
- (-d-) Evaluating the efficacy of interventions.

(IV) Required courses in a specialty of psychology.

(V) Supervised practicum and internship appropriate to the practice of psychology.

[(vi)] (F) * * *

[(vii)] (G) * * *

[(viii) Provides in its core program required instruction in ethics as they relate to scientific methods and professional standards, research design and methodology, statistics and psychometrics. In addition, requires students to demonstrate competence in each of the following four substantive content areas (this criterion will typically be met by requiring a minimum of three graduate semester hours in each area): biological bases of behavior—for example, physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology; cognitive-affective bases of behavior—for example, learning, thinking, motivation, emotion; social bases of behavior—for example, social psychology, group processes, organizational and systems theory; individual differences—for example, human development, personality theory, abnormal psychology.

(ix) Includes supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

(x) Includes course requirements in specialty areas of psychology.

(xi) (H) Requires degree candidates to complete a combined total of at least [60] 3 full-time academic years of graduate study (or the equivalent thereof) for example, 90 graduate semester hours (or the equivalent) in the areas described in [subparagraphs (viii)—(x)] clause (E) and a dissertation prior to awarding the doctoral degree. At least 2 of the 3 academic years (or the equivalent thereof) must be at the institution from which the doctoral degree is granted.

[(xii)] (I) Has a residency requirement that each degree candidate complete a minimum of two consecutive academic semesters as a [matriculated] full-time student physically present at the institution granting the degree which requires interaction with faculty and other students, other than in regular academic classes, that enhances understanding of scholarship and professional activities and provides socialization to the science and practice of psychology.

* * * * *

§ 41.31. Qualifications for taking licensing examination.

* * * * *

(b) Education. Before an applicant seeking licensure under section 6 of the act (63 P.S. § 1206) shall be permitted to take the licensing examination, the Board must be satisfied that the applicant has complied with the [education] requirements [of that section] for a doctoral degree in psychology or a field related to psychology as defined in § 41.1 (relating to definitions). The [Board will apply the] following [criteria to determine whether] documentation evidences compliance [occurred]:

(1) [The applicant has been awarded a doctoral] For degree [in psychology as defined in § 41.1 (relating to definitions)] holders from a program in the United States, Canada or United States territories [The applicant's official transcript or other documents provided by the degree-granting institution shall demonstrate the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program], a Verification of Doctoral Program Approval Status completed by the program's Director of Clinical Training reflecting accreditation by the American Psychological Association (APA) or Canadian Psychological Association (CPA) or designation by the Association of State and Provincial Psychological Boards (ASPPB) and an official transcript from the Registrar.

[(2) The applicant has been awarded a doctoral degree in a field related to psychology as defined in § 41.1. The applicant's official transcript or other documents provided by the degree-granting institution shall demonstrate the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program.

(3) The applicant is a graduate of] (2) For degree holders from a foreign college or university [who has successfully completed a program equivalent to a program acceptable under paragraph (1) or (2). A determination of equivalency shall be made by an agency], an evaluation from a foreign education credential evaluator acceptable to the Board evidencing compliance with the educational requirements for degree holders from foreign colleges or universities in § 41.1 (relating to definitions). [Final review of the applicant's satisfactory completion of the core, specialty and practicum, internship, field or laboratory training requirements of the program will be made by the] The Board will make a determination regarding the applicant's compliance based upon the evaluation.

[(4) Notwithstanding the criteria in paragraphs (1)—(3), applicants] (3) Applicants who do not meet the criteria in paragraphs (1) and (2) shall be permitted to cure [the following] educational deficiencies [through postdoctoral study:

(i) A deficiency in no more than one of the four required instructional areas within the core program.

(ii) A deficiency in no more than one of the four substantive content areas within the core program.

(iii) Deficiencies beyond those specified in subparagraphs (i) and (ii) only in exceptional circum-

stances and with the approval of the Board. The applicant shall specify the exceptional circumstances in a written request to the Board. The Board will evaluate each request and each applicant's situation on a case-by-case basis. The granting of the request shall be at the Board's discretion] by completing a respecialization program accredited by the APA or the CPA or designated by ASPPB.

[(5)] (4) First-time applicants who were enrolled in a doctoral degree program prior to [**March 23, 1991**] _____ (*Editor's Note: The blank refers to a date 2 years after the effective date of adoption of this proposal rulemaking.*), will [have their education credentials] be evaluated under regulations in effect [at that time] on _____. (*Editor's Note: The blank refers to a date the effective date of the adoption of this proposed rulemaking.*) Reapplicants under subsection (a)(1) or § 41.42(b) (relating to reexamination) will be evaluated under regulations in effect at the time of reapplication.

* * * * *

[Pa.B. Doc. No. 04-1639. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

[49 PA. CODE CHS. 47—49]

Sexual Misconduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to adopt regulations regarding sexual misconduct committed by licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors by adding §§ 47.61—47.66, 48.21—48.26 and 49.21—49.26 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Board is authorized to adopt regulations necessary for the administration of its enabling statute under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

Background and Purpose

This proposed rulemaking was developed as a result of increasing complaints of sexual misconduct against health care professionals who are licensed by the Department of State, Bureau of Professional and Occupational Affairs. In this proposal, the Board addresses issues concerning

sexual misconduct in the context of the provision of social work, clinical social work, marriage and family therapy and professional counseling services.

The proposed rulemaking seeks to better protect consumers of social work, marriage and family therapy and professional counseling services and to provide guidance to the licensees by defining terms such as "client/patient," "immediate family member", "professional relationship" and "sexual intimacies." The proposed rulemaking guides licensees by informing them that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client or patient is prohibited. The proposed rulemaking guides social workers, clinical social workers, marriage and family therapists and professional counselors by informing them that their professional relationship with a client/patient exists for a time period beginning with the first professional contact or consultation and ends upon the last date of a professional service. The proposed rulemaking notifies social workers, clinical social workers, marriage and family therapists and professional counselors that the consent of an individual to engage in sexual intimacies cannot be a defense in a disciplinary proceeding before the Board and that a social worker, clinical social worker, marriage and family therapist and professional counselor who engages in conduct prohibited by the amendments will not be eligible for placement into an impaired professional program under the act.

Prior to drafting this proposed rulemaking, the Board invited interested associations, colleges and universities and individuals to comment on a preliminary draft. The Board reviewed and considered all comments and suggestions received by interested parties during the regulatory development process. The interested associations, colleges and universities, and individuals included the following: National Association of Social Workers, Association of Social Work Boards, Pennsylvania Alliance of Counseling Professionals, Council on Social Work Education, Pennsylvania Society for Clinical Social Work, University of Scranton, University of Southern Maine, American Association of State Counseling Boards, American Association of Marriage and Family Therapy, Pennsylvania Social Work Coalition, Pennsylvania Catholic Conference, California University of Pennsylvania, Indiana University of Pennsylvania, Millersville University of Pennsylvania, Shippensburg University of Pennsylvania, Slippery Rock University of Pennsylvania, West Chester University of Pennsylvania, Pennsylvania State University, University of Pittsburgh, Drexel University, University of Pennsylvania, Beaver College, Bucknell University, Eastern College, Gwynedd-Mercy College, Immaculata College, Lehigh University, Marywood University, Philadelphia College of Bible, Philadelphia University, University of Scranton, Villanova University, Westminster College, Duquesne University and Society for Social Work Leadership in Health Care.

Description of Proposed Rulemaking

Sections 47.61, 48.21 and 49.21 (relating to definitions) define "client/patient," "immediate family member," "professional relationship" and "sexual intimacies."

The term "client/patient" is defined to mean a person, group or family for whom a social worker, clinical social worker, marriage and family therapist or professional counselor provides professional services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian is the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually re-

ceiving the service is the client/patient for issues specifically reserved to the individual such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual such as sexual or other exploitive dual relationships.

The term "immediate family member" is defined to mean a parent or guardian, child, sibling, spouse or other family member with whom the client/patient lives.

The term "professional relationship" is defined as a therapeutic relationship which is deemed to exist for a period of time beginning with the first professional contact or consultations between a social worker, clinical social worker, marriage and family therapist or professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a social worker, clinical social worker, marriage and family therapist or professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker, clinical social worker, marriage and family therapist or professional counselor provides a professional service to the client/patient.

The term "sexual intimacies" is defined as any behavior of a romantic, sexually suggestive, sexually demeaning or erotic nature. Examples of this behavior include: sexual intercourse, nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature; sexual invitations; soliciting a date from a client/patient, masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker, clinical social worker, marriage and family therapist and professional counselor); or exposure, kissing or hugging, touching, physical contact or self-disclosure of a sexual or erotic nature. In drafting this definition, the Board seeks to insure that nonsexual hugging, touching, physical contact or self-disclosure are excluded from the definition. The Board notes that authorities agree that nonsexual physical conduct or self-disclosure may be appropriate. That conduct can be healing and supportive to many clients/patients and some nonerotic self-disclosure may create trust and facilitate a therapeutic alliance particularly with children, the physically and mentally disabled and the elderly. Through this definition, the Board is only intending to prohibit kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

Sections 47.62, 48.22 and 49.22 (relating to prohibited conduct) state the general principle that sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

Sections 47.63, 48.23 and 49.23 (relating to former sexual partners as client/patients) state the proposition that social workers, clinical social workers, marriage and family therapists and professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

Sections 47.64(a), 48.24(a) and 49.24(a) (relating to sexual intimacies with a former client/patient or an immediate family member of a former client/patient) would prohibit sexual intimacies between a social worker, clinical social worker, marriage and family therapist or professional counselor and a former client/patient, or an immediate family member of a former client/patient, for at least 7 years following the termination of the profes-

sional relationship and then only if certain conditions are precedent. In determining that 7 years should be the threshold period in which to bar sexual intimacies, the Board reviewed codes of ethics of many professional associations. In particular, the Commission on Rehabilitation Counseling Certification prohibits sexual intimacies for 5 years, the National Association of Social Workers prohibits sexual intimacies indefinitely, the Pennsylvania Certification Board prohibits sexual intimacies indefinitely and the American Association of Marriage and Family Therapy prohibits it for 2 years. The Board believes that 7 years should be the threshold to bar sexual intimacies based on its view that a substantial period of time is required before the bonds of the therapeutic relationship are actually broken. The 7-year period is viewed by the Board as a compromise between a 5-year prohibition and an indefinite prohibition.

Sections 47.64(b), 48.24(b) and 49.24(b) define the criteria to determine if a personal relationship is exploitive of the therapeutic relationship. These criteria/factors include: the amount of time that has passed since the professional relationship terminated; the nature and duration of the therapy; the circumstances of termination; the client/patient's personal history or vulnerabilities; the client/patient's current mental status; statements or actions made by the social worker, clinical social worker, marriage and family therapist or professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

Sections 47.65, 48.25 and 49.25 (relating to disciplinary proceedings) address disciplinary matters before the Board which involve sexual intimacies. Subsection (a) would put all licensees on notice that the consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies shall not be a defense in any disciplinary action brought under §§ 47.62—47.64, §§ 48.22—48.24 or §§ 49.22—49.24. Subsection (b) would put all licensees on notice that neither evidence of specific instances, opinion evidence nor reputation evidence of past sexual conduct of a former client/patient or immediate family member of a former client/patient is admissible in proceedings alleging conduct which constitutes a sexual impropriety or violation. Subsection (c) would put all licensees on notice that in a disciplinary proceeding brought for sexual impropriety, the social worker, clinical social worker, marriage and family therapist and professional counselor has the burden of proving that there has been no exploitation of the client/patient in light of all of the factors enumerated under §§ 47.64 (b)(1)—(7), §§ 48.24(b)(1)—(7) or §§ 49.24(b)(1)—(7).

Sections 47.66, 48.26 and 49.26 (relating to impaired professional program) would inform licensees that a licensee subject to disciplinary action for a sexual impropriety or violation will not be eligible for an impaired professional program under the act.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Beth Sender Michlovitz, Counsel, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-691) Sexual Misconduct when submitting comments.

RONALD E. HAYS,
Chairperson

Fiscal Note: 16A-691. No fiscal impact; (8) recommends adoption.

Annex A**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS****PART I. DEPARTMENT OF STATE****Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS****CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS
SEXUAL MISCONDUCT****§ 47.61. Definitions.**

The following words and terms, when used in this section and §§ 47.62—47.66, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a social worker or clinical social worker provides social work services or clinical social work services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a social worker or clinical social worker and a client/patient and continuing thereafter until the last date of a professional service. If a social worker or clinical social worker sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the social worker or clinical social worker provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the social worker or clinical social worker).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 47.62. Prohibited conduct.

Sexual intimacies between a social worker or clinical social worker and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 47.63. Former sexual partners as client/patients.

Social workers and clinical social workers may not accept as clients/patients persons with whom they have engaged in sexual intimacies.

§ 47.64. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a social worker or clinical social worker and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, social workers and clinical social workers who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history—for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the social worker or clinical social worker during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 47.65. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of the former client/patient to engage in sexual intimacies with the social worker or clinical social worker may not be a defense in any disciplinary action brought under §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former, client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient, may be admissible in a disciplinary action brought under §§ 47.62—47.64.

(c) In a disciplinary proceeding brought under §§ 47.62—47.64, the social worker or clinical social worker shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 47.64(b)(1)—(7).

§ 47.66. Impaired professional program.

When the Board takes disciplinary or corrective action against a social worker or clinical social worker under section 11(a) of the act (63 P.S. § 1911(a)) for conduct prohibited by §§ 47.62—47.64 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the social worker or clinical social worker will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

**CHAPTER 48. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF MARRIAGE AND FAMILY THERAPISTS
SEXUAL MISCONDUCT**

§ 48.21. Definitions

The following words and terms, when used in this section and §§ 48.22—48.26, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a marriage and family therapist provides marriage and family therapy services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a marriage and family therapist and a client/patient and continuing thereafter until the last date of a professional service. If a marriage and family therapist sees a client/patient on an intermittent basis,

the professional relationship shall be deemed to start anew on each date that the marriage and family therapist provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the marriage and family therapist).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 48.22. Prohibited conduct.

Sexual intimacies between a marriage and family therapist and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 48.23. Former sexual partners as client/patients.

Marriage and family therapists may not accept as client/patients persons with whom they have engaged in sexual intimacies.

§ 48.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a marriage and family therapist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, marriage and family therapists who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the marriage and family therapist during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.

(7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 48.25. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the marriage and family therapist may not be a defense in any disciplinary action brought under §§ 48.22—48.24 (relating to prohibited conduct;

former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of a former client/patient, may be admissible in a disciplinary action brought under §§ 48.22—48.24.

(c) In a disciplinary proceeding brought under §§ 48.22—48.24, the marriage and family therapist shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 48.24(b)(1)—(7).

§ 48.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a marriage and family therapist under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 48.22—48.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the marriage and family therapist will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—LICENSURE OF PROFESSIONAL COUNSELORS

SEXUAL MISCONDUCT

§ 49.21. Definitions

The following words and terms, when used in this section and §§ 49.22—49.26, have the following meanings, unless the context clearly indicates otherwise:

Client/patient—A person, group or family for whom a professional counselor provides professional counseling services. In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitive dual relationships.

Immediate family member—A parent/guardian, child, sibling, spouse or other family member with whom the client/patient lives.

Professional relationship—A therapeutic relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a professional counselor and a client/patient and continuing thereafter until the last date of a professional service. If a professional counselor sees a client/patient on an intermittent basis, the professional relationship shall be deemed to start anew on each date that the professional counselor provides a professional service to the client/patient.

Sexual intimacies—Romantic, sexually suggestive, sexually demeaning or erotic behavior. Examples of this behavior include the following:

- (i) Sexual intercourse.
- (ii) Nontherapeutic verbal communication or inappropriate nonverbal communication of a sexual or romantic nature.
- (iii) Sexual invitations.
- (iv) Soliciting a date from a client/patient.
- (v) Masturbating in the presence of a client/patient (or encouraging a client/patient to masturbate in the presence of the professional counselor).
- (vi) Exposure, kissing, hugging, touching, physical contact or self-disclosure of a sexual or erotic nature.

§ 49.22. Prohibited conduct.

Sexual intimacies between a professional counselor and a current client/patient, or an immediate family member of a current client/patient, are prohibited.

§ 49.23. Former sexual partners as client/patients.

Professional counselors may not accept as client/patients persons with whom they have engaged in sexual intimacies.

§ 49.24. Sexual intimacies with a former client/patient or an immediate family member of a former client/patient.

(a) Sexual intimacies between a professional counselor and a former client/patient, or an immediate family member of a former client/patient, are prohibited for at least 7 years following the termination of the professional relationship, and then only under very limited circumstances.

(b) Following the passage of the 7-year period, professional counselors who engage in sexual intimacies with a former client/patient, or an immediate family member of a former client/patient, shall have the burden of demonstrating that there has been no exploitation of the client/patient in light of all relevant factors, including:

- (1) The amount of time that has passed since the professional relationship terminated.
- (2) The nature and duration of the therapy.
- (3) The circumstances of termination.
- (4) The client/patient's personal history, for example, unique vulnerabilities.
- (5) The client/patient's current mental status.
- (6) Statements or actions made by the professional counselor during the course of therapy suggesting or inviting the possibility of a posttermination sexual or romantic relationship with the client/patient.
- (7) The likelihood of adverse impact on the client/patient and immediate family members of the client/patient.

§ 49.25. Disciplinary proceedings.

(a) The consent of a former client/patient or immediate family member of a former client/patient to engage in sexual intimacies with the professional counselor may not be a defense in any disciplinary action brought under §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as client/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient).

(b) With the exception of information contained in a professional record, neither opinion evidence, reputation evidence nor specific instances of the past sexual conduct of a former client/patient, or immediate family member of

a former client/patient, may be admissible in a disciplinary action brought under §§ 49.22—49.24.

(c) In a disciplinary proceeding brought under §§ 49.22—49.24, the professional counselor shall have the burden of proving that there has been no exploitation of the client/patient in light of all of the relevant factors enumerated under § 49.24(b)(1)—(7).

§ 49.26. Impaired professional program.

When the Board takes disciplinary or corrective action against a professional counselor under section 11(a) of the act (63 P. S. § 1911(a)) for conduct prohibited by §§ 49.22—49.24 (relating to prohibited conduct; former sexual partners as clients/patients; and sexual intimacies with a former client/patient or an immediate family member of a former client/patient), the professional counselor will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective action.

[Pa.B. Doc. No. 04-1640. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Reciprocal License

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

This rulemaking is proposed under the authority of sections 201, 501, 601, 602 and 604 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.201, 455.501, 455.601, 455.602 and 455.604).

C. Background and Purpose

This proposal implements the act of December 30, 2003 (P. L. 418, No. 58) (Act 58), which amended the RELRA to provide for requirements for the issuance of a reciprocal license. Act 58 authorizes the Commission to issue and adopt regulations concerning reciprocal licenses to licensees of other states whose standards are substantially comparable to those in this Commonwealth and who agree to afford an opportunity to licensees from this Commonwealth. In addition, Act 58 authorized the Commission to enter into reciprocal agreements.

Act 58 requires that:

- Licensees whose principal place of business is outside of this Commonwealth be classified as “reciprocal licensees” and all other licensees in this Commonwealth be classified as “standard licensees.”
- Reciprocal licensees obtain standard licenses when their principal place of business moves to this Commonwealth or when their licenses in their principal places of business are no longer current.

- Reciprocal licensees maintain current licensure in another state to renew.

- Reciprocal licensees either maintain an office in this Commonwealth or in the state where the licensee holds the equivalent of a standard license.

- Both reciprocal and standard licensees other than brokers be employed and supervised by brokers.

- Applicants for reciprocal licenses be licensed in a state that has standards which are substantially comparable to those in this Commonwealth and that agrees to afford this opportunity to licensees of this Commonwealth.

- Applicants for reciprocal licenses verify that:

- (1) To the applicant’s knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another jurisdiction.

- (2) The applicant has reviewed and is familiar with the RELRA and the regulations and agrees to be bound by the RELRA and regulations.

- (3) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any jurisdiction in which the applicant is or has been licensed.

- (4) The applicant consents to service of process as described in § 35.221(3) (related to general requirements).

- The state where the applicant holds the equivalent of a standard license:

- (1) Certifies that the license is active and in good standing.

- (2) Describes any past disciplinary action taken by the licensing authority against the applicant.

- (3) Lists the applicant’s office address and the name of the applicant’s employing broker.

- The Commission publish a list of states with which the Commission has signed reciprocal agreements.

- Reciprocal licensees pay the same fees and have the same rights and responsibilities as standard licensees.

D. Description of Proposed Rulemaking

§ 35.201. Definitions.

The Commission is proposing to amend the definitions of “broker,” “builder-owner salesperson,” “campground membership salesperson,” “cemetery broker,” “cemetery salesperson,” “licensee” and “salesperson” in § 35.201 to include both standard and reciprocal licenses in accordance with section 602(a) of the RELRA.

The Commission is also proposing to add definitions for “branch office,” “main office” and “principal place of business.” Currently, the Commission registers and inspects main and branch offices. Both are tied to the fixed location of the broker of record or broker who is a sole proprietor. The definition for “main office” addresses the office requirements in §§ 35.241, 35.242 and 35.244—35.246. The definition for “branch office” addresses the licensure, supervision and operation and inspection of branch office requirements in §§ 35.243—35.246.

The definition of “principal place of business” addresses the requirement in section 602(a) of the RELRA that the reciprocal licensee’s principal place of business must be outside of this Commonwealth. For licensing purposes, the main office of a reciprocal broker would be that

broker's principal place of business. Each of the reciprocal broker's offices in this Commonwealth would be classified as branch offices.

The Commission also proposes adding a definition for "reciprocal license" in accordance with section 602(a) of the RELRA. Current licensees who also hold the equivalent of standard licenses in other states will have the option to convert their standard licenses to reciprocal licenses or maintain their current standard licenses. If they convert their licenses to reciprocal licenses, they will not have to complete the continuing education requirement in § 35.382 (relating to requirement) but they will not be able to have their principal place of business in this Commonwealth.

§ 35.203. Fees.

Section 602(c)(4) of the RELRA mandates that the licensure fees for reciprocal licenses be the same as those for standard licenses. Accordingly, § 35.203 has been amended to reflect that the fees apply equally to standard and reciprocal licenses.

§ 35.221. General requirements.

Section 604(c) of the RELRA sets out the general requirements for licensure: complete an application, pay the licensure fee, provide details of criminal convictions and consent to service of process. The Commission proposes to amend § 35.321 to clarify that these requirements apply to standard and reciprocal licensure applicants.

§ 35.222. Licensure as a broker.

§ 35.223. Licensure as salesperson.

§ 35.224. Licensure as cemetery broker.

§ 35.225. Licensure as cemetery salesperson.

§ 35.226. Licensure as builder-owner salesperson.

§ 35.227. Licensure as rental listing referral agent.

§ 35.228. Licensure as campground membership salesperson.

§ 35.229. Licensure as time-share salesperson.

Each of the previously mentioned sections currently refers to obtaining a license in this Commonwealth. Act 58 removes the reference to a Pennsylvania license and replaces it with standard and reciprocal license. The Commission is proposing to make that same change to each of these provisions.

For standard license applicants, the Commission is also proposing amending the examination requirement to reflect current practice. Applicants shall pass the entire licensure examination unless the applicant has been actively practicing as a broker in another state within the last 5 years. In that instance, the applicant need only pass the State portion of the examination.

As for a reciprocal license applicants, the Commission is proposing tracking the language of section 602(d) and (e) of the RELRA to indicate that where a broker applicant holds a current license issued by a state that recognizes a Pennsylvania standard license without further requirement, the broker may obtain a reciprocal license without further requirements. However, when the applicant applies from a state which would require a standard license applicant to complete additional education, experience or examination requirements, or both, the applicant shall complete equivalent requirements.

The Commission also proposes adding the requirement for a verified statement enumerated in section 602(c) of

the RELRA for each of the reciprocal classifications. When the applicant will be acting as a salesperson, builder-owner salesperson or associate broker, the Commission proposes adding a sworn statement from the broker attesting to the applicant's good reputation and certifying that the applicant will be actively supervised and trained by the broker, as is required for standard license applicants. When the applicant will be acting as a time-share salesperson or a campground membership salesperson, the Commission proposes adding a sworn statement from the broker certifying that he actively supervised and trained the applicant, as required for standard license applicants.

§ 35.241. General office requirement.

Current § 35.241 contains the requirement that a broker maintain a fixed office in this Commonwealth unless the broker maintains a fixed office in another state. The Commission proposes replacing the word "fixed" with "main" to correspond to the remaining office provisions which refer to "main" offices. Also, the Commission proposes clarifying that the out-of-State main office must be in the state which has a reciprocal agreement with the Commission and where the reciprocal licensee holds the equivalent of a standard license.

§ 35.242. Office of a broker or cemetery broker.

§ 35.244. Supervision and operation of office.

§ 35.245. Display of licenses in offices.

§ 35.246. Inspection of office.

Current §§ 35.242, 35.244, 35.245 and 35.246 delineate main and branch office requirements. To clarify that the Commission is only statutorily authorized to impose requirements on offices in this Commonwealth and because the main offices of reciprocal license holders are outside of this Commonwealth, the Commission proposes to amend these sections to specify that the requirements only apply to the main offices of standard license holders and to the branch offices of both standard and reciprocal license holders.

Further, current § 35.244 requires that main and branch offices be under the supervision of a broker or associate broker. Similarly, cemetery main and branch offices must be under the supervision of a cemetery broker or associate broker and rental listing referral offices must be under the direction and supervision of a rental listing referral agent. The Commission proposes amending § 35.244 to clarify that the brokers/associate brokers/cemetery brokers/associate cemetery brokers/rental listing referral agents may hold either a standard or reciprocal license. Additionally, the Commission proposes clarifying that associate brokers, salespersons, cemetery salespersons, campground membership salespersons and time-share salespersons may practice in affiliation with a broker holding either a standard or reciprocal license.

§ 35.255. Reciprocal licenses.

The Commission proposes adding § 35.255 to address renewal, reactivation and conversion requirements for reciprocal licensees. Subsection (a) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA (63 P. S. § 455.404a). To renew reciprocal licensees, in addition to completing the application and paying the renewal fee, shall provide the Commission with a certification from the state where the licensee holds the equivalent of a standard license that the license is current and in good standing.

Subsection (b) tracks new section 602(h)(2) of the RELRA which exempts reciprocal licensees from the reactivation requirements in section 501(b) of the RELRA. Unlike standard licensees, a reciprocal licensee who fails to renew a reciprocal license, even after 5 years, may reactivate the license without being re-examined so long as the licensee holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

Subsection (c) tracks new section 602(g) of the RELRA which requires a reciprocal licensee to obtain a standard license if the reciprocal licensee changes his principal place of business to a location within this Commonwealth. The Commission proposes clarifying that when the reciprocal licensee changes this principal place of business or when the reciprocal licensee fails to hold the equivalent of a current standard in the state where the licensee has his principal place of business, the reciprocal licensee is required to: (1) notify the Commission within 90 days of the change; and (2) pass the State portion of the licensing examination. Once the license has been converted, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

§ 35.271. Examination for broker's license.

§ 35.272. Examination for salesperson's license.

§ 35.273. Examination for cemetery broker's license.

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

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

Similar to the proposed revisions in §§ 35.222—35.229, the Commission proposes to replace the reference to "Pennsylvania" license to "standard" license in conformity with Act 58. Additionally, new provisions, tracking section 602(g) of the RELRA, have been added for each licensure classification clarifying that when the holder of a reciprocal license converts to a standard license, the education, experience and examination requirements do not apply. Rather, the licensee is only required to pass the State portion of the examination. These provisions are consistent with the requirements for standard licensee applicants who hold a current license in another state.

§ 35.305. Business name on advertisements.

On November 18, 2000, the Commission amended subsection (b) to permit licensees to advertise a nickname provided the name was registered with the Commission. Despite providing the example of Jack v. John and Margaret v. Peggy, the Commission has received numerous inquiries from licensees questioning whether they could use a nickname for their last name. As such, the Commission proposes amending subsection (b) to clarify that the nickname may only be for the licensee's first name.

§ 35.325. Escrow account.

Current subsection (b) authorizes the employing broker or the broker of record to give an employee the written authority to deposit money into an escrow account and a licensed employee the authority to withdraw funds. In an attempt to clarify that the Commission is referring to a sole proprietor when it uses the terms "employing broker," the Commission proposes amending subsection (b) by substituting "sole proprietor" for "employing broker."

§ 35.382. Requirement.

§ 35.383. Waiver of continuing education requirement.

§ 35.384. Qualifying courses; required and elective topics.

New section 602(h)(2) of the RELRA exempts reciprocal licensees from the continuing education requirements in section 404.1 of the RELRA. Accordingly, the Commission proposes amending §§ 35.382—35.384 by substituting "standard license holders" or "holding a standard license" for "licensees" throughout.

The Commission extended an invitation to the following boards and associations to preliminarily review and comment on the Commission's draft regulatory proposal: Pennsylvania Association of Realtors; Realtors Educational Institute; Institute of Real Estate Studies; Polley Associates; Pennsylvania Cemetery & Funeral Association; Pennsylvania Bar Association; Allegheny Highland Association; Greater Allegheny-Kiski Area Board; Allegheny Valley Board; Beaver County Association; Bradford-Sullivan County Association; Bucks County Board; Butler County Association; Cambria-Somerset Association; Carbon County Association; Carlisle Association; Central Montgomery County Association; Central Susquehanna Valley Board; Central Westmoreland Board; Centre County Association; Chester County Association; Clearfield-Jefferson Association; Delaware Valley Realtors Association; East Montgomery County Association; Elk-Cameron County Board; Greater Erie Board; Fayette County Board; Franklin County Association; Greenville Area Board; Hanover-Adams County Association; Greater Harrisburg Association; Greater Hazleton Association; Huntingdon County Board; Indiana County Board; Lancaster County Association; Lawrence County Board; Lebanon County Association; Lehigh Valley Association; McKean County Association; Greater Meadville Board; Greater Mercer County Board; Mifflin-Juniata County Board; Mon Yough Association; Monongahela Valley Board; Greater Philadelphia Association; North Central Penn Board; Pike/Wayne Association; Pocono Mountains Association; Reading-Berks Association; Realtors Association of Metropolitan Pittsburgh; Schuylkill County Board; Greater Scranton Association; Tri-State Commercial and Industrial Association; Warren County Board; Washington-Greene Association; West Branch Valley Association; Westmoreland West Association; Greater Wilkes-Barre Association; York County Association; The Pennsylvania Federation of Housing Counselors and Agencies; and The Real Estate Consumer Council. The Commission considered comments submitted to it in drafting the proposal.

E. Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth. Reciprocal licensees are required by Act 58 to pay the same licensure fees as standard license holders. As such, the licensure fees will cover all administrative fees.

Additional paperwork requirements for the Commission would be limited to entering into reciprocal agreements with the other states and annually publishing a list of those states who have entered into agreement and others that require the imposition of additional education, experience and examination requirements. Licensees would have no additional paperwork requirements. The proposed rulemaking should not necessitate any legal, accounting or reporting requirements on the regulated community.

F. *Sunset Date*

The Commission reviews the effectiveness of its regulations on an ongoing basis. 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 August 23, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

H. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed amendments to Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking. Reference No. 16A-5610 (Reciprocal Licenses) when submitting comments.

JOSEPH J. MCGETTIGAN,
Chairperson

Fiscal Note: 16A-5610. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

* * * * *

Branch office—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.

Broker—An individual or entity holding either a standard or reciprocal license, unless otherwise specified, that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

* * * * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association

or corporation that holds a broker's license[, or the individual broker or limited broker responsible for the real estate transactions of a partnership, association or corporation that holds a limited broker's license].

Builder-owner salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who is a full-time employee of a builder-owner of single- and multi-family dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

* * * * *

Campground membership salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who, either as an employee or an independent contractor, sells or offers to sell campground memberships[. The individual shall sell campground memberships] under the active supervision of a broker. A licensed broker, salesperson or time-share salesperson does not need to possess a campground membership salesperson's license to sell campground memberships.

* * * * *

Cemetery broker—An individual or entity holding either a standard or reciprocal license, unless otherwise specified, that is engaged as, or carrying on the business or acting in the capacity of, a broker exclusively within the limited field or branch of business that applies to cemetery lots, plots and mausoleum spaces or openings.

* * * * *

Cemetery salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, employed by a broker or cemetery broker exclusively to perform the duties of a cemetery broker.

* * * * *

Licensee—An individual or entity [licensed] holding either a standard or reciprocal license, unless otherwise specified, under the act. For purposes of the consumer notice in § 35.336(a) (relating to disclosure summary for the purchase or sale of residential or commercial real estate or for the lease of residential or commercial real estate when the licensee is working on behalf of the tenant), the term means a broker or salesperson.

* * * * *

Main office—The fixed location of the broker or cemetery broker in this Commonwealth or another state devoted to the transaction of real estate business.

* * * * *

Principal place of business—The fixed location of the broker or cemetery broker in the state where the licensee holds the equivalent of a standard license.

* * * * *

Reciprocal license—A license issued to an individual or entity whose principal place of business for the provision of real estate services is outside of this Commonwealth and who holds a current license to provide real estate services from a state that has executed a reciprocal agreement with the Commission.

* * * * *

Salesperson—An individual holding either a standard or reciprocal license, unless otherwise specified, who is employed by a broker to do one or more of the following:

* * * * *

Standard license—A license issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.

* * * * *

§ 35.203. Fees.

The following fees are charged by the Commission:

* * * * *

Application for **standard or reciprocal** licensure of:

* * * * *

Initial **standard or reciprocal** licensure for broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation:

* * * * *

Initial **standard or reciprocal** registration of cemetery company or initial **standard or reciprocal** licensure for associate broker, salesperson, cemetery associate broker, builder-owner salesperson, time-share salesperson or campground membership salesperson:

* * * * *

Biennial renewal of **standard or reciprocal** license of broker, cemetery broker, branch office, rental listing referral agent, or broker of record, partner or officer for a partnership, association or corporation..... \$84

Biennial renewal of cemetery company registration or **standard or reciprocal** license of associate broker, salesperson, cemetery associate broker, cemetery salesperson or campground membership salesperson..... \$64

* * * * *

Certification of current status of **standard or reciprocal** licensure, registration or approval \$15

Certification of history of **standard or reciprocal** licensure, registration or approval..... \$40

Duplicate **standard or reciprocal** license \$5

Late renewal of **standard or reciprocal** license.....In addition to the prescribed renewal fee, \$5 for each month or part of the month beyond the renewal date

* * * * *

**Subchapter C. LICENSURE
LICENSURE REQUIREMENTS**

§ 35.221. General requirements.

In addition to meeting the other requirements of this subchapter pertaining to the specific license sought, an applicant for a [Pennsylvania] **standard or reciprocal** real estate license shall submit the following to the Commission with the license application:

* * * * *

§ 35.222. Licensure as a broker.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] **standard** broker's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the broker's licensing examination within 3 years prior to submission of a properly completed license application **except that an applicant who has been actively licensed as a broker by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination.** See § 35.271 (relating to examination for broker's license).

(2) Comply with §§ 35.241 and 35.242 (relating to general office requirement; and office of broker or [limited] cemetery broker).

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a **current standard or reciprocal license issued by the Commission.**

* * * * *

(b) An individual [holding a broker's license issued by another jurisdiction] who wants to obtain a [Pennsylvania] **reciprocal** broker's license [either] shall comply with [subsection (a) or shall] § 35.221 and:

(1) Possess a **current** broker's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) [Have scored a passing grade on the Pennsylvania portion of the broker's examination within 3 years prior to the submission of a properly completed license application. See § 35.271.

(3)] Comply with §§ 35.241 and 35.242.

[(4)](3) Submit a completed license application to the Commission with a **verified statement that:**

(i) **To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.**

(ii) **The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.**

(iii) **The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.**

(iv) **The applicant consents to service of process as described in § 35.221(3).**

(4) If the applicant will be acting as an associate broker, submit a sworn statement from the broker with whom the applicant desires to be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other [jurisdiction containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) Whether the [Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's [employer] employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard or reciprocal broker's license shall:

(1) Ensure that each member of the partnership or association, or each officer of the corporation, who intends to engage in the real estate business [is licensed] holds either a current standard or reciprocal license issued by the Commission as a salesperson or broker.

* * * * *

§ 35.223. Licensure as salesperson.

(a) [Except as provided in subsection (b), an] An individual who wants to obtain a [Pennsylvania] standard salesperson's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker or a salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.272 (relating to examination for salesperson's license).

* * * * *

(b) An individual [holding a broker's or salesperson's license issued by another jurisdiction] who wants to obtain a [Pennsylvania] reciprocal salesperson's license [shall comply with subsection (a) or] shall comply with § 35.221 and:

(1) Possess a current broker's or salesperson's license issued by another [jurisdiction that has been active within 5 years prior to the submission of a properly completed license application] state that agrees to issue a license to a standard Pennsylvania licensee

without further requirement. When an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) [Have scored a passing grade on the Pennsylvania portion of the salesperson's examination within 3 years prior to the submission of a properly completed license application. See § 35.272.] Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(3) Submit [a completed license application to the Commission with] a certification from the real estate licensing authority of the other [jurisdiction containing the following information] state:

(i) [The applicant's license number, the date of issuance of the license and confirmation that the applicant obtained initial licensure by written examination.

(ii) An indication of whether [Confirming that the applicant's license [has been] is active [within the last 5 years] and in good standing.

[(iii) A description of] (ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

[(iv) The] (iii) Listing the applicant's office address and the name of the applicant's [employer] employing broker.

(4) Submit a sworn statement from a standard or reciprocal broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.224. Licensure as cemetery broker.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery broker's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a cemetery broker by another state

within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.273 (relating to examination for cemetery broker's license).

* * * * *

(3) Submit a completed [license] application to the Commission with recommendations attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence from:

(i) One real estate broker [licensed] holding either a current standard or reciprocal license issued by the Commission.

* * * * *

(b) An individual who wants to obtain a reciprocal cemetery broker's license shall comply with § 35.221 and:

(1) Possess a current cemetery broker's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Comply with §§ 35.241 and 35.242.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) If the applicant will be acting as an associate cemetery broker, submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

(5) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard cemetery broker's license shall:

(1) Ensure that each member of the partnership, association[,] or each officer of the corporation, who intends to engage in the real estate business [is licensed by the Commission] possesses a standard license as a broker or cemetery broker issued by the Commission.

* * * * *

(d) A partnership, association or corporation that wants to obtain a reciprocal cemetery broker's license shall:

(1) Ensure that each member of the partnership, association or each officer of the corporation, who intends to engage in the real estate business possesses a standard or reciprocal license as a broker or cemetery broker issued by the Commission.

(2) Designate a broker or cemetery broker holding a standard or reciprocal license to serve as broker of record.

(3) Comply with §§ 35.241 and 35.242.

(4) Submit a complete license application to the Commission.

§ 35.225. Licensure as cemetery salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard cemetery salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who wants to obtain a reciprocal cemetery salesperson's license shall comply with § 35.221 and:

(1) Possess a current cemetery salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant will be actively supervised and trained by the broker.

§ 35.226. Licensure as builder-owner salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard builder-owner salesperson's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's licensing examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or builder-owner salesperson by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.274 (relating to examination for builder-owner salesperson's license).

* * * * *

(b) An individual who wants to obtain a reciprocal license as a builder-owner salesperson shall comply with § 35.221 and:

(1) Possess a current builder-owner salesperson license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the builder-owner with whom the applicant will be affiliated:

(i) Attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence.

(ii) Certifying that the applicant is a builder-owner of single or multifamily dwellings and employs the applicant.

§ 35.227. Licensure as rental listing referral agent.

(a) An individual who wants to obtain a [Pennsylvania] standard rental listing referral agent's license shall comply with § 35.221 (relating to general requirements) and:

(1) Have scored a passing grade on each part of the salesperson's examination within 3 years prior to the submission of a properly completed license application except that an applicant who has been actively licensed as a broker, salesperson or rental listing referral agent by another state within the last 5 years shall take and pass only the Pennsylvania portion of the examination. See § 35.275 (relating to examination for rental listing referral agent's license).

* * * * *

(b) An individual who wants to obtain a reciprocal rental listing referral agent's license shall comply with § 35.221 and:

(1) Possess a current rental listing referral agent's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Comply with § 35.241 (relating to general office requirement).

(c) A partnership, association or corporation that wants to obtain a [Pennsylvania] standard or reciprocal rental listing referral agent's license shall:

(1) Designate an individual who is licensed by the Commission as either a current standard or reciprocal as a rental listing referral agent issued by the Commission to serve as manager of record.

* * * * *

§ 35.228. Licensure as campground membership salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard campground membership salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who [sells campground memberships without a license may be subject to disciplinary action by the Commission for unlicensed practice as a campground membership salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal campground membership salesperson's license shall comply with § 35.221 and:

(1) Possess a current campground membership salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either the Commonwealth or another state.

(ii) The applicant has reviewed, is familiar with and agrees to be bound by the act and this chapter.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that the broker actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

§ 35.229. Licensure as time-share salesperson.

(a) An individual who wants to obtain a [Pennsylvania] standard time-share salesperson's license shall comply with § 35.221 (relating to general requirements) and:

* * * * *

(b) An individual who [sells time shares without a license may be subject to disciplinary action by the Commission for unlicensed practice as a time-share salesperson under section 301 of the act (63 P. S. § 455.301).] wants to obtain a reciprocal time-share salesperson's license shall comply with § 35.221 and:

(1) Possess a current time-share salesperson's license issued by a state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. When an applicant applies from a state that would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete equivalent requirements.

(2) Submit a certification from the real estate licensing authority of the other state:

(i) Confirming that the applicant's license is active and in good standing.

(ii) Describing any past disciplinary action taken by the licensing authority against the applicant.

(iii) Listing the applicant's office address and the name of the applicant's employing broker.

(3) Submit a completed license application to the Commission with a verified statement that:

(i) To the applicant's knowledge, the applicant is not the subject of discipline or a current investigation or proceeding alleging misconduct under a licensing law or criminal law of either this Commonwealth or another state.

(ii) The applicant has reviewed and is familiar with the act and the regulations and agrees to be bound by the act and regulations.

(iii) The applicant agrees to permit the disclosure of the record in any disciplinary proceeding involving alleged misconduct by the applicant from any state in which the applicant is or has been licensed.

(iv) The applicant consents to service of process as described in § 35.221(3).

(4) Submit a sworn statement from the broker from whom the applicant received his onsite training certifying that he actively trained and supervised the applicant and providing other information regarding the onsite training the Commission may require.

OFFICES

§ 35.241. General office requirement.

(a) A broker, cemetery broker, or rental listing referral agent shall maintain a [fixed] main office in this Commonwealth unless he maintains a [fixed] main office in another [jurisdiction] state where he [is licensed] holds the equivalent of a standard license.

* * * * *

§ 35.242. Office of broker or cemetery broker.

(a) The office of a broker or cemetery broker in this Commonwealth shall be devoted to the transaction of real estate business and be arranged to permit business to be conducted in privacy.

(b) If the office of a broker or cemetery broker **in this Commonwealth** is located in a private residence, the entrance to the office shall be separate from the entrance to the residence.

(c) The business name of the broker or cemetery broker, as designated on the license, shall be displayed prominently and in permanent fashion outside the office **in this Commonwealth**.

(d) A branch office operated by a broker or cemetery broker **in this Commonwealth** shall be in compliance with this section.

§ 35.244. Supervision and operation of office.

(a) The main or branch office **in this Commonwealth** of a broker shall be under the direction and supervision of a broker or associate broker **holding either a standard or reciprocal license**.

(b) The main or branch office **in this Commonwealth** of a cemetery broker shall be under the direction and supervision of a broker, cemetery broker, associate broker or **associate cemetery broker holding either a standard or reciprocal license**.

(c) **An associate broker, salesperson, cemetery salesperson, campground membership salesperson or time-share salesperson shall practice in affiliation with a broker holding either a reciprocal or standard license issued by the Commission.**

(d) A branch office **in this Commonwealth** may not be operated in a manner that permits, or is intended to permit, an [**employe**] **employee** to carry on the business of the office for the [**employe's**] **employee's** sole benefit.

[**(d)**] (e) The office **in this Commonwealth** of a rental listing referral agent shall be under the direction and supervision of a rental listing referral agent **holding either a standard or reciprocal license issued by the Commission**. A rental listing referral agent may not supervise more than one office.

§ 35.245. Display of licenses in office.

(a) The current license of a broker, cemetery broker or rental listing referral agent **holding a standard license and those licensees employed by that broker, cemetery broker or rental listing referral agent** shall be displayed in a conspicuous place at the main office.

(b) The current license of [**an associate broker, salesperson, associate cemetery broker or cemetery salesperson**] **a broker, cemetery broker or rental listing referral agent holding a reciprocal license and those licensees employed by that broker, cemetery broker or rental listing referral agent** shall be displayed in a conspicuous place at the **branch** office out of which the [**licensee**] **broker, cemetery broker or rental listing referral agent** works.

* * * * *

(d) A broker or cemetery broker **holding a standard license** shall maintain at the main office a list of licensed [**employees**] **employees** and the branch office out of which each licensed [**employee**] **employee** works.

(e) **A broker or cemetery holding a reciprocal license shall maintain at the branch office a list of employees licensed in this Commonwealth and the branch office out of which each licensed employee works.**

§ 35.246. Inspection of office.

(a) *Routine inspections.* No more than four times a year during regular business hours, the Commission or its authorized representatives may conduct a routine inspection of the main office **of a broker, cemetery broker or rental listing referral agent holding a standard license or a branch office of a broker, cemetery broker or rental listing referral agent holding either a standard or reciprocal license** for the purpose of determining whether the office is being operated in compliance with the act and this chapter.

(b) *Special inspections.* In addition to the routine inspections authorized by subsection (a), the Commission or its authorized representatives may conduct a special inspection of a main office **of a standard license holder or a branch office of a standard or reciprocal license holder**:

* * * * *

STATUS OF LICENSURE

§ 35.255. Reciprocal licenses.

(a) *Renewal.* In addition to completing the application and paying the fee, the licensee shall provide the Commission with a certification that the license is current and in good standing from the state where the licensee has his principal place of business.

(b) *Reactivation.* A licensee who fails to renew a reciprocal license may reactivate the license without being reexamined provided that he holds the equivalent of a current standard license in the state where the licensee has his principal place of business.

(c) *Conversion to standard license.* A reciprocal licensee who designates his principal place of business as in this Commonwealth or who fails to maintain a current standard license in the state of his principal place of business shall notify the Commission within 90 days of the change. To continue to practice in this Commonwealth at the end of the renewal period, the reciprocal licensee shall obtain a standard license in accordance with the applicable requirements of this chapter. Thereafter, the standard licensee shall comply with the requirements for a standard license, including completion of the continuing education requirement.

Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

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

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

* * * * *

(2) [**Except as provided in paragraph (6), 2**] **Two** of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in a Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the

Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

* * * * *

[(6) Two credits will be allowed for each year of active practice the candidate has had a licensed broker in another jurisdiction during the 10-year period immediately preceding the submission of the examination application.]

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.272. Examination for salesperson's license.

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

* * * * *

(c) A licensee who is converting that license to a standard salesperson's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

§ 35.273. Examination for cemetery broker's license.

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

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirements of subsection (a)(3):

* * * * *

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.

(c) A reciprocal licensee who is converting that license to a standard cemetery broker's license is exempt from subsection (a) and is only required to pass the State portion of the examination.

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

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

* * * * *

(b) A reciprocal licensee who is converting that license to a standard builder-owner salesperson's license is only required to pass the State portion of the examination.

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

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

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the requirements of subsection (a)(2):

* * * * *

(4) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination except for applicants who are converting a reciprocal license to a standard license or hold a current license in another state.

(c) A reciprocal licensee who is converting that license to a standard rental listing referral agent's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

Subchapter E. STANDARDS OF CONDUCT AND PRACTICE

ADVERTISING AND SOLICITATION

§ 35.305. Business name on advertisements.

* * * * *

(b) [Individual brokers of record, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons and rental listing referral agents] Licensees who wish to use and advertise [nicknames (for example, Jack v. John or Margaret v. Peggy)] a nickname for their first names shall include the [names] nickname on their licensure applications or biennial renewal applications.

* * * * *

ESCROW REQUIREMENTS

§ 35.325. Escrow account.

* * * * *

(b) [The employing] A broker who is a sole proprietor or broker of record [of a partnership, association or corporation] may give an [employe] employee written authority to deposit money into an escrow account and may give a licensed [employe] employee written authority to withdraw funds from the escrow account for payments that are properly chargeable to the account.

* * * * *

Subchapter H. CONTINUING EDUCATION

§ 35.382. Requirement.

(a) Condition precedent to renewal of current standard license. [Beginning with the 1994-1996 biennial license period and continuing with each biennial license period thereafter, a] A broker or salesperson holding a standard license who desires to renew a current license shall, as a condition precedent to renewal, complete 14 hours of Commission-approved continuing education during the preceding license period.

(b) Condition precedent to reactivation and renewal of noncurrent standard license. [Effective March 1, 1994, a] A broker or salesperson holding a standard license who desires to reactivate and renew a noncurrent license shall, as a condition precedent to reactivation and renewal, complete 14 hours of Commission-approved continuing education during the 2-year period preceding the date of submission of the reactivation application. A

broker or salesperson **holding a standard license** may not use the same continuing education coursework to satisfy the requirements of this subsection and subsection (a).

(c) *Exception.* The continuing education requirement does not apply to **reciprocal license holders or cemetery brokers, cemetery salespersons, builder-owner salespersons, timeshare salespersons, campground membership salespersons and rental listing referral agents who hold standard licenses.**

§ 35.383. Waiver of continuing education requirement.

(a) The Commission may waive all or part of the continuing education requirement of § 35.382 (relating to requirement) upon proof that the **[licensee] standard license holder** seeking the waiver is unable to fulfill the requirement because of illness, emergency or hardship. Subsections (b)—(d) are examples of situations in which hardship waivers will be granted. Hardship waivers will be granted in other situations for good cause shown.

(b) A **[licensee] standard license holder** who seeks to renew a current license that was initially issued within 6 months of the biennial license period for which renewal is sought will be deemed eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

(c) A **[licensee] standard license holder** who seeks to renew a current license that was reactivated from noncurrent status within 6 months of the biennial license period for which renewal is sought will be deemed

eligible, on the basis of hardship, for a full waiver of the continuing education requirement.

(d) A **[licensee] standard license holder** who is a qualified continuing education instructor will be deemed eligible, on the basis of hardship, for the waiver of 1 hour of continuing education for each hour of actual classroom instruction in an approved continuing education topic that the instructor is qualified to teach. Duplicate hours of instruction in the same topic during the same biennial license period will not be considered for waiver purposes.

§ 35.384. Qualifying courses[; required and elective topics].

(a) **[Qualifying courses.]** A **[licensee may] standard license holder shall** satisfy the continuing education requirement by doing one of the following:

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(b) **[Required topics. A minimum of 5 and a maximum of 8 hours shall be in required topics. A minimum of 2 hours shall be in the act and this chapter and a minimum of 3 hours shall be in fair housing laws and practices.]** The Commission may, for a given biennial license period and with adequate notice to **[licensees] standard license holders**, require up to 3 hours in a topic that addresses a critical issue of current relevance to licensees.

(c) **[Elective topics.] * * ***

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