

PROPOSED RULEMAKING

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Unprofessional Conduct

The State Board of Funeral Directors (Board) proposes to amend § 13.202 (relating to unprofessional conduct) 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 11(a)(5) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.11(a)(5) and 479.16(a)).

Background, Need and Description of the Proposed Amendment

Section 11(a)(5) of the act authorizes the Board to discipline licensees for "misconduct in the carrying on of the profession" of funeral director. Although the act does not define the term "misconduct," the Board in its disciplinary actions has applied prior court interpretation of the term. See, for example, *Toms v. State Board of Funeral Directors*, 800 A.2d 342, 349 (Pa. Cmwlth. 2002) (misconduct is a breach of the generally accepted canons of ethics and propriety governing the reverential and respectful burial of the dead). Acting under its statutory authority, the Board has listed in § 13.202 various acts that the Board considers to be misconduct. Recent disciplinary cases before the Board concerning professional misconduct have inspired the Board to expand that list. Including acts of misconduct in the regulation serves to put licensees on notice of what the Board considers to be misconduct.

A funeral director might come into possession of funds of a decedent or intended for a decedent, even if the funeral director does not provide funeral goods or services for that decedent. Proposed § 13.202(13) would prohibit a funeral director from retaining funds for goods or services that the funeral director has not provided or that exceed the value of funeral goods and services that the funeral director has provided. This provision would permit the funeral director a reasonable amount of time to ascertain that any person to whom the funeral director would transfer the funds is entitled to receive them.

Section 8 of the act (63 P. S. § 479.8) sets forth various forms of organization that may engage in the practice of funeral directing, including as sole proprietor or partnership and certain corporations. Anyone practicing funeral directing in any of these forms must be licensed by the Board. Proposed § 13.202(14) would prohibit a funeral director from performing funeral director services on behalf of an establishment that the funeral director knows, or should know, is not properly licensed to engage in funeral directing.

A funeral director shall release a decedent's remains upon request of the family. Section 13.201(5) (relating to professional responsibilities) provides that the professional responsibility of a funeral director includes releasing remains to the funeral director chosen by the family if

the remains were removed prior to contacting the family. A funeral director may not refuse to release a decedent's remains as a means to enforce payment for services or merchandise. See *Toms* at 349. Proposed § 13.202(15) would codify this prohibition. Enforcement of a payment obligation must be through other means, such as subsequent billing or legal process.

Because it is the last opportunity to do so, proposed § 13.202(16) would prohibit a funeral director from refusing a reasonable request of a member of the decedent's immediate family to pay final respects. The immediate family would include the decedent's spouse, parents, grandparents, siblings, children and grandchildren. The provision does not require the funeral director to permit any of these persons to participate in a funeral service. Instead, upon request, the funeral director shall make available a reasonable opportunity to pay final respects, regardless of any instructions from the funeral director's customer who is paying for the funeral director's services.

Section 13(c) of the act (63 P. S. § 479.13(c)) prohibits a person who is not licensed as a funeral director, either directly or through an agent, from entering into a contract with a person then living to provide funeral services at the time of the person's subsequent death. This provision prohibits any unlicensed person from engaging in preneed sales, even on behalf of a funeral director. See *Ferguson v. State Board of Funeral Directors*, 566 A.2d 670 (Pa. Cmwlth. 2001), appeal denied, 566 Pa. 670, 782 A.2d 549. Proposed § 13.202(17) would prohibit a funeral director from aiding any person or entity that the funeral director has reason to believe is attempting through unlicensed persons or entities to engage in preneed sales.

Additionally, the Board proposes to amend § 13.202(11) concerning the requirement that a funeral director obtain permission from the family prior to furnishing embalming or other services or merchandise. A funeral director might be unable to locate family members, despite making reasonable good-faith attempts to locate them. However, there may be very good reasons why certain services must be provided at that time. The proposed amendment would permit the funeral director to provide these necessary services, so long as the funeral director has no reason to think the family would refuse. This proposed amendment is consistent with the Federal Trade Commission's Amended Funeral Rule (15 CFR 453.5), which provides that it is an unfair or deceptive trade practice for a provider of funeral services to embalm a deceased human body for a fee unless the law requires embalming, the family has given prior approval or the provider is unable to contact an appropriate person to give approval for embalming after exercising due diligence, has no reason to believe the family does not want embalming and obtains subsequent approval for embalming already performed. In general, the proposed amendment to § 13.202(11) would permit a funeral director to charge for funeral services provided prior to obtaining permission by obtaining that permission after the fact. However, the proposed amendment to § 13.202(11) would not permit a funeral director to charge for embalming provided prior to obtaining permission, unless the embalming is necessary and appropriate for other services, such as public viewing, selected by the person paying for the overall funeral goods and services.

Impact of the Proposed Rulemaking

The Board solicited input from and provided an exposure draft of this proposed amendment to funeral directors and organizations. In addition, the Board considered the impact the amendment would have on the regulated community and on public health, safety and welfare. The Board finds that the proposed amendment 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 February 2, 2005, 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 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 Michelle Smey, Administrator, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4814 (Unprofessional conduct) when submitting comments.

JOSEPH A. FLUEHR, III, FD,
Chairperson

Fiscal Note: 16A-4814. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

STANDARDS OF PRACTICE AND CONDUCT

§ 13.202. Unprofessional conduct.

Unprofessional conduct includes the following:

* * * * *

(11) Furnishing embalming, other services or merchandise without having obtained written permission from a family member or other person authorized by law to make funeral arrangements for the deceased. Oral permission to embalm, followed by a confirmatory e-mail, fax, telex, telegram, mailgram or other written confirmation will be acceptable.

(i) A funeral director who has made reasonable attempts, without success, to locate family members or other persons authorized by law to make funeral arrangements for a deceased may provide embalming or other services without having obtained permission when there is a legitimate need to provide that service at that time and no facts known to the funeral director suggest that any authorized person, if requested, would refuse to give permission.

(ii) A funeral director who has provided funeral service without obtaining prior permission may not charge for the service unless:

(A) The provision of services without prior permission is authorized by this paragraph.

(B) The person paying for funeral goods and services agrees to pay for the previously unauthorized service.

(iii) A funeral director who has embalmed without obtaining prior permission may not charge or accept payment for the embalming unless:

(A) The embalming without prior permission is authorized by this paragraph.

(B) Embalming is necessary and appropriate for other services, such as a public viewing, subsequently selected by the person paying for funeral goods and services.

* * * * *

(13) Retaining funds intended to pay for funeral goods and services when the funeral director and establishment have not provided any funeral goods and services or when the amount of funds retained is in excess of the value of funeral goods and services actually provided by the funeral director or establishment. A funeral director may preserve the funds for a reasonable amount of time for a person to demonstrate a legal entitlement to receive the funds or to receive payment of funds owed to the decedent.

(14) Performing funeral services on behalf of a funeral entity that the funeral director knew, or should have known, was not in compliance with section 8 of the act (63 P. S. § 479.8), regarding conduct of business.

(15) Refusing to release remains until consideration, whether earned or not, has been paid.

(16) Refusing the reasonable request of any known member of a decedent's immediate family the opportunity to pay final respects, regardless of who is paying for funeral services or merchandise. For purposes of this paragraph, the immediate family includes spouse, sibling, parent, grandparent, child and grandchild.

(17) Aiding any person or entity that the funeral director has reason to believe is attempting

through unlicensed persons or entities to engage in the sale of funeral services for a person then living.

[Pa.B. Doc. No. 05-278. Filed for public inspection February 11, 2005, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CHS. 16 AND 18]

Registration and Practice of Acupuncturists

The State Board of Medicine (Board) proposes to amend §§ 16.11, 16.13, 18.11—18.17 and 18.19 regarding the registration and practice of acupuncturists to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The statutory authority for this proposal is the act of May 16, 2002 (P. L. 326, No. 49) (Act 49) which amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806). Section 3 of the act (63 P. S. § 1803) authorizes the Board to promulgate regulations as necessary to regulate the practice of acupuncture.

C. *Background and Purpose*

The proposed rulemaking would amend the Board's existing regulations so that they comport with the Act 49 amendments to the act.

D. *Description of Amendments*

Sections 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) would be amended to delete references to acupuncture supervisor and fees for acupuncture supervisor registration. Section 18.11 (relating to definitions) would be amended to include the statutorily expanded definition of "acupuncture" to include the use of supplemental techniques, the statutorily established definition of an "acupuncture educational program" and the statutorily established definition of "supplemental techniques." Section 18.11 would also be amended to delete definitions rendered unnecessary by Act 49. Specifically, the definition of "acupuncture program" would be deleted as superseded by the term "acupuncture educational program." Definitions regarding supervision of acupuncturists would also be deleted because Act 49 eliminated the supervisory requirement in regard to the practice of acupuncture. Section 18.11 would also be amended to reflect the name change of the National Commission for the Certification of Acupuncturists and Oriental Medicine.

Sections 18.12—18.15 would be amended and §§ 18.16 and 18.17 (relating to responsibilities of acupuncturist supervisor; and notice responsibilities) would be deleted

to delete references to acupuncturist supervisor and provisions pertaining to the supervision of the practice of acupuncture.

Section 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor) would be amended to incorporate statutorily established requirements that the acupuncturist ensure that prior to the application of acupuncture treatments the patient obtain a written referral from a licensed physician, that the patient has undergone a medical diagnostic examination, and that the results of the examination and the referral are maintained in the patient's record. Existing provisions pertaining to the acupuncturist's obligation to consult with the referring physician as necessary would be retained.

Lastly, § 18.19 (relating to registration during transitional period) pertains to outdated registration requirements under the original act and, therefore, would be deleted.

E. *Fiscal Impact and Paperwork Requirements*

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

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2005, 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 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 Department, 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 of this proposed rulemaking in the *Pennsylvania Bulletin*. Refer to Acupuncture Registration when submitting comments.

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

Fiscal Note: 16A-4919. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(c) The following registrations are issued by the Board:

* * * * *

(3) [Registration as an acupuncturist supervisor.

(4)] Biennial registration of a license without restriction.

[(5)] (4) * * *

[(6)] (5) * * *

[(7)] (6) * * *

[(8)] (7) * * *

[(9)] (8) * * *

[(10)] (9) * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(d) Acupuncturist [Registration] registration:

* * * * *

[Registration, acupuncture supervisor \$30]

* * * * *

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter B. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS

§ 18.11. Definitions.

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

Acupuncture—

(i) The stimulation of certain points on or near the surface of the body by the insertion of needles to prevent or alleviate the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body.

(ii) The term also includes the use of supplemental techniques.

Acupuncture educational program—Training and instruction in acupuncture or supplemental acupuncture techniques offered by a degree-granting institution authorized by the Department of Education that leads to a master's degree, master's level certificate or diploma or first professional degree, that meets the relevant and appropriate require-

ments of 22 Pa. Code (relating to education) and 24 Pa.C.S. Chapter 65 (relating to private colleges, universities and seminaries) and that meets or exceeds the standards required for acupuncture or oriental medicine programs established by an accrediting agency recognized by the United States Department of Education.

Acupuncture examination—An examination offered or recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture to qualify for the privilege of practicing as an acupuncturist. The Board recognizes the combination of the [NCCA] NCCAOM examinations in acupuncture and sterilization procedures as an acupuncture examination.

* * * * *

[Acupuncture program—An academic and clinical program of study in acupuncture which has been approved by the Board or by an accrediting body recognized by the Board.]

* * * * *

[Acupuncturist supervisor—A medical doctor registered with the Board as a supervisor of acupuncturists.

General supervision—An acupuncturist supervisor doing the following in supervising an acupuncturist:

(i) Performing a medical diagnostic examination or reviewing the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture prior to the treatment.

(ii) Being personally available to the acupuncturist for consultation on the premises or being available by telephone contact, chart review or other means approved by the Board.

(iii) Placing conditions and restrictions on the course of treatment if that action is required as a matter of sound medical practice.

NCCA—The National Commission for the Certification of Acupuncturists.]

NCAAOM—The National Certification Commission for Acupuncture and Oriental Medicine.

Supplemental techniques—The use of traditional and modern oriental therapeutics, heat therapy, moxibustion, electrical and low level laser stimulation, acupressure and other forms of massage, herbal therapy and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

§ 18.12. Registration as an acupuncturist [and as an acupuncturist supervisor].

[(a)] A medical doctor who intends to practice acupuncture and any other individual who intends to practice acupuncture [at the direction and under the supervision of a medical doctor] shall register with the Board as an acupuncturist.

[(b)] Only a medical doctor registered as an acupuncturist supervisor may delegate the performance of acupuncture services to an acupuncturist. An acupuncturist who is not a medical doctor may only perform acupuncture services under the direc-

tion and supervision of an acupuncturist supervisor, unless otherwise authorized by statute.

(c) An acupuncturist supervisor may not delegate the performance of acupuncture services to an osteopathic doctor, dentist, podiatrist or a veterinary doctor who is approved by his respective licensing board to practice acupuncture, unless that person is also registered as an acupuncturist with the Board.]

§ 18.13. Requirements for registration as an acupuncturist [and an acupuncturist supervisor].

(a) The Board will register as an acupuncturist a person who satisfies the following requirements:

(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

[(i) If the acupuncture education program is taken within the United States, the applicant shall complete 2 academic years of acupuncture training and shall complete 2 academic years of a college level educational program.

(ii) If the educational program is taken outside of the United States, an applicant shall graduate from a college with a program of study including Oriental medicine and document 300 class hours of study in acupuncture training.]

(2) Has obtained a passing grade on an acupuncture examination or has been certified by [NCAA during 1985-1986 via credential review. The Board accepts the passing grade on the certifying examination of the NCCA as determined by the NCCA, and accepts a passing grade on any state's acupuncture examination taken prior to January 1, 1987 as determined by the licensing or registering authority in the other state] NCCAOM. 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 score of 550 on the test of English as a Foreign Language (TOEFL).

* * * * *

[(d) The Board will register as an acupuncturist supervisor a medical doctor who satisfies the following requirements:

(1) Possesses a license without restriction.

(2) Submits an application to register as an acupuncturist supervisor accompanied by the required. For the fee amount, see § 16.13.]

§ 18.14. Biennial registration requirements.

* * * * *

[(d) There is no biennial registration requirement for an acupuncturist supervisor.]

§ 18.15. Practice responsibilities of acupuncturist who is not a medical doctor.

(a) Responsibilities to patient. In relation to the acupuncture patient, the acupuncturist shall comply with the following:

(1) [Received, in writing, from the acupuncturist supervisor, approval to initiate acupuncture treat-

ment.] Ensure that the patient has secured a written referral for treatment by acupuncture from a licensed physician.

(2) Comply strictly with conditions or restrictions that may be placed on the course of acupuncture treatment by the [acupuncturist supervisor] referring physician.

(3) Ensure that the patient has undergone a medical diagnostic examination or has had the results of a recently performed medical diagnostic examination reviewed by a licensed physician.

(4) Keep a copy of the referral and the results of the medical diagnostic examination in the patient's file.

(5) Not diagnose a physical or mental ailment or condition or prescribe or dispense a drug.

[(4)] (6) * * *

(b) Responsibility to [acupuncturist supervisor] referring physician. In relation to the [acupuncturist supervisor] referring physician, the acupuncturist shall comply with the following:

(1) Consult promptly with the [acupuncturist supervisor] referring physician regarding a new ailment or condition or a worsened ailment or condition of an acupuncture patient.

(2) Consult with the [acupuncturist supervisor] referring physician upon request of either the [acupuncturist supervisor] referring physician or the acupuncture patient.

[(3) Practice acupuncture only under the general supervision of an acupuncturist supervisor.]

(c) [Scope of acupuncturist's responsibility.

(1) An acupuncturist is responsible solely for acupuncture evaluation and acupuncture treatment. The medical diagnosis is the responsibility of the acupuncturist supervisor.

(2) An acupuncturist is not required to practice acupuncture in the physical presence of the acupuncturist supervisor or at the location where the acupuncturist supervisor provides medical services. Where the acupuncturist may provide acupuncture services, and whether the acupuncturist may provide acupuncture services without the acupuncturist supervisor being physically present, shall be determined by the acupuncture supervisor.

(d) Identification of acupuncturist. An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing his name and the title "acupuncturist." The use of the word doctor on this tag or badge is prohibited.

§ 18.16. [Responsibilities of acupuncturist supervisor] (Reserved).

[(a) Responsibility to acupuncture patient. In relation to the acupuncture patient, the acupuncturist supervisor shall comply with the following:

(1) Perform or review the results of a recently performed medical diagnostic examination with respect to an ailment or condition to be treated by acupuncture before the treatment.

(2) Advise the patient of the results of the medical diagnostic examination and the treatment alternatives.

(3) Place conditions or restrictions on the course of treatment in acupuncture to be provided by the acupuncturist, if conditions or restrictions are required as a matter of sound medical practice.

(4) Advise the patient in writing that he is available at reasonable times for consultation by appointment or by telephone. The written notice shall contain an address and telephone number at which the acupuncture supervisor can be reached.

(5) If he is not an acupuncturist, advise the patient in writing that he is not an acupuncturist, that he is not qualified to direct the course of acupuncture treatment and that he does not have responsibility for the course of acupuncture treatment.

(6) Monitor the patient's progress under acupuncture treatment and comply with normal responsibilities to a patient if the patient does not respond to treatment within the anticipated time.

(b) *Responsibility to acupuncturist.* In relation to the supervised acupuncturist, the acupuncturist supervisor shall satisfy the following:

(1) Advise the acupuncturist of the results of the medical diagnostic examination that are relevant to acupuncture treatment and of conditions or restrictions that are to be placed on the course of acupuncture treatment.

(2) Not delegate to the acupuncturist the right to prescribe or dispense drugs or the responsibility for diagnosing a physical or mental ailment or condition.

(3) Confer promptly with the acupuncturist in the event of the following:

(i) The acupuncturist supervisor decides to impose conditions or restrictions on the course of acupuncture treatment.

(ii) The patient has requested further consultation with the acupuncturist supervisor.

(iii) The patient's condition is not improving or the patient requires emergency medical treatment.

(4) Designate an alternative acupuncturist supervisor to provide general supervision of the acupuncturist during periods in which the acupuncturist supervisor is unable to provide general supervision, if the substitute acupuncturist supervisor agrees to accept the responsibility set forth in this section.

(c) *Scope of acupuncturist supervisor's responsibility.*

(1) In providing general supervision to the acupuncturist, the acupuncturist supervisor maintains the diagnostic responsibility and the medical doctor-patient relationship. It is the responsibility of the acupuncturist and not of the acupuncturist supervisor to conduct an acupuncture evaluation and to perform acupuncture treatment.

(2) An acupuncturist supervisor may not provide general supervision to more than two acupuncturists without applying for and receiving specific approval from the Board.]

§ 18.17. [Notice responsibilities] (Reserved).

[(a) The nonmedical doctor acupuncturist and the acupuncturist supervisor shall provide written notice to the Board prior to the date when the acupuncturist supervisor is to begin general supervision of the acupuncturist. The written notice shall comply with the following:

(1) Be filled out on a form supplied by the Board.

(2) Provide the name of the acupuncturist supervisor and the acupuncturist and a current address and the telephone number at which each can be reached.

(3) Contain an acknowledgement by the acupuncturist supervisor that he understands and agrees to accept his responsibilities to the supervised acupuncturist and the acupuncture patient as set forth in this subchapter.

(4) Contain an acknowledgement by the acupuncturist that he understands and accepts his responsibility to the acupuncturist supervisor and the acupuncture patient as set forth in this subchapter.

(5) Contain the verified signatures of the acupuncturist supervisor and the supervised acupuncturist.

(b) Written notice of termination of an arrangement between an acupuncturist supervisor and an acupuncturist shall be given to the Board by both individuals within 10 days following termination of the relationship. Notice may be provided by both through one document or by each through separate documents.]

§ 18.19. [Registration during transitional period] (Reserved).

[Acceptance of applications to register as acupuncturists and acupuncturist supervisors will begin on January 3, 1987. After July 1, 1987, no person may serve as an acupuncturist or as an acupuncturist supervisor unless registered as such with the Board.]

[Pa.B. Doc. No. 05-279. Filed for public inspection February 11, 2005, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Dietitian-Nutritionists

The State Board of Nursing (Board) proposes to add Subchapter G (relating to dietitian-nutritionists) 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 implements the act of June 29, 2002 (P.L. 651, No. 99) (Act 99), which grants the Board authority to regulate the practice of dietetics and nutrition and licensing of dietitian-nutritionists in this

Commonwealth. The proposed rulemaking is authorized under section 2.1(k) of the Professional Nursing Law (act) (63 P.S. § 212.1(k)), which authorizes the Board to establish regulations for the practice of dietetics-nutrition.

Background and Need for the Proposed Rulemaking

Act 99 became effective on September 29, 2002. Until September 27, 2003, persons registered by the American Dietetic Association (ADA) as registered dietitians (RD) were eligible for licensure under the grandfathering provision of section 5(e) of the act (63 P.S. § 215(e)) without evidence of examination. In addition, until September 27, 2003, persons who met the requirements of section 6 of the act (63 P.S. § 216) who had been engaged in the practice for 5 of the preceding 7 years were eligible for licensure without examination. The Board proposes to add Subchapter G to establish procedures for issuance and biennial renewal of dietitian-nutritionist licenses and for the establishment of standards of professional conduct of licensed dietitian-nutritionists (LDNs).

Description of Proposed Amendments

The following is a summary of the sections of Subchapter G and, when appropriate, an explanation of the Board's rationale for the regulations.

Proposed General Provisions

Section 21.701 (relating to definitions) provides definitions for key terms used throughout the proposed rulemaking that are not defined in the act. Section 21.702 (relating to scope) provides a general statement of the scope of subchapter G. Subchapter G is limited to LDN licensees and applicants.

Section 21.703 (relating to applicability of general rules) provides for the applicability of the general rules of administrative practice and procedure to the activities of and proceedings before the Board regarding Subchapter G. This section is included to direct applicants and licensees to the procedural provisions that govern the Board's actions.

Section 21.704 (relating to matters related to allegations of sexual impropriety or violation) provides for specific procedural rules relevant in cases involving allegations of sexual impropriety or violation. These rules regarding defenses and presentation of opinion or reputation evidence protect alleged victims of sexual impropriety or violation and are consistent with the procedural rules applied in those cases involving a professional or practical nurse.

Section 21.705(a) (relating to fees) provides for fees related to the Board's administration of licensing and disciplining LDNs. These fees are consistent with the fees charged to professional nurses, who have similar educational levels and levels of practice as LDNs. The fees for certification and verification of licensure are established by the Bureau of Professional and Occupational Affairs fees. Section 21.705(b) and (c) provides instructions to applicants regarding the two examinations approved by the Board under section 6(b)(4) of the act.

Proposed Sections Regarding Responsibilities of LDNs

Section 21.711 (relating to professional conduct) provides rules of professional conduct for LDNs. Generally, the rules of professional conduct provide for the provision of information to clients, the objectivity of the LDN, the use of the title LDN and recordkeeping. The regulation prohibits: aiding the violation of law or Board regulation; discrimination in providing services; knowingly permit-

ting another to use the licensee's license; misappropriating from an employer or patient; soliciting, borrowing or misappropriating from a patient or patient's family; leaving an assignment without proper notification; falsifying records; sexual improprieties or violations; misleading or false advertising; practicing while affected by a drug, emotional or mental disability that could affect practice; accepting or treating a client or patient unnecessarily; and accepting or receiving compensation for referrals. The rules of professional conduct are consistent with the professional conduct guidelines of the ADA and represent the acceptable and prevailing standards of conduct for LDNs Nationwide. Some representatives of the profession suggested that the Board adopt the guidelines of the ADA. Because the Board has no control over how the ADA might alter its guidelines, the Board has proposed setting forth standards of professional practice in its regulations.

Proposed Licensure Requirements

Sections 21.721—21.723 and 21.725 concern education and the examination for licensure, inactive status, renewal of licensure and continuing education. Sections 5(b) and (c) and 6(b)(2) of the act require the Board to approve educational programs in dietetics-nutrition. Section 6(b)(4) of the act requires the Board to approve an examination for licensure. In § 21.721 (relating to education and examination of applicants), the Board adopts as approved educational programs those educational programs approved by the Commission on Accreditation for Dietetics Education or the American College of Nutrition.

Section 6(b)(4) of the act requires the Board to approve an examination for licensure as an LDN. Section 21.721 adopts the Registration Examination for Registered Dietitians (RD examination) and the Examination of the Certification Board for Nutrition Specialists (CBNS examination) as the examinations approved by the Board for licensure. These examinations are widely accepted. The RD examination is taken by persons with an undergraduate degree in nutrition, whereas the CBNS examination is taken by persons with a graduate degree in nutrition.

Section 21.722 (relating to license renewal) sets forth the requirements for biennial license renewal. LDN licenses will expire September 30 of even numbered years. This date was chosen based on the renewal cycles of the Board's approximately 250,000 nurse licensees to enable LDNs to have their license renewal applications processed in a timely and efficient manner and to give LDNs a maximum period of initial licensure prior to biennial renewal. The requirements for license renewal are consistent with the act and the regulations governing nurses. See §§ 21.29 and 21.156 (relating to expiration and renewal of license; and renewal of license).

Section 21.723 (relating to continuing education) sets forth the Board's requirements for continuing education. Section 21.723(a) provides that one credit will be given for each 50-minute clock hour of continuing education activity because a 50-minute clock hour is the standard time period for 1 hour of academic instruction in American universities. Thirty hours of continuing education biennially is the licensure renewal requirement set forth in section 11(c) of the act (63 P.S. § 221(c)). Section 11(c) of the act provides for Board approval of continuing education for LDNs. Section 21.723(b) sets forth the requirements that continuing education courses must meet to be accepted by the Board for licensure renewal.

During the development of the proposed rulemaking, several representatives of the dietetic profession ex-

pressed concern about the continuing education requirements in the act and this proposed rulemaking. First, concerns were raised because the requirement of 30 hours of continuing education for biennial renewal is not identical to the continuing education requirement for current registration by the Commission on Dietetic Registration (CDR) for RDs. Both RDs and certified nutrition specialists shall complete 75 hours of continuing education every 5 years. The Board explained to these commentators that it does not have the authority to alter the statutory requirement.

Second, a question was raised as to why all continuing education courses that would meet the requirement for maintaining current RD registration were not Board-approved. The Board approved only the continuing education courses which are substantive learning experiences relating to the field of nutrition and dietetics including case presentations, patient case studies, certain certificate programs or individual study programs, interactive workshops, lectures and seminars, and postbaccalaureate residency and fellowship programs. The Board specifically did not approve certain types and subjects of continuing education that are approved for maintenance of the RD including courses on office management or computer skills, experiential skill development, journal clubs, poster presentations, professional leadership positions or courses and professional reading. The Board's determination was based on its evaluation of the types and subject matter of continuing education that offer substantive learning experiences related directly to the practice of dietetics-nutrition.

Section 21.723(c) requires licensees to retain documentation evidencing their completion of Board-approved continuing education for at least 5 years and to submit this documentation to the Board upon request. The dietitian commentators informed the Board that all continuing education courses for RDs issue certificates of completion, as these certificates are required for RD renewal. In addition, all CNSs shall submit documentation of their attendance certificates to the CBNS when applying for recertification. Therefore, the Board anticipates no difficulties in licensees being able to comply with this provision.

Subsection 21.723(d) permits an LDN to request a waiver of all or part of the continuing education requirement in cases of verified hardship. The Board acknowledges that there is no specific statutory section that provides that the Board may grant a waiver of the continuing education requirement. The CDR and the CBNS do not grant waivers of the continuing education requirement for renewal of the RD or CNS; however, the continuing education requirements for these bodies must be fulfilled over a period of 5 years. The Board is generally granted discretion in matters involving licensure. When a continuing education requirement must be completed in 2 years, and given individual circumstances such as illness, pregnancy or military service, the Board believes it should exercise discretion in granting a waiver of the continuing education requirement. Only in rare cases of extreme hardship would a waiver encompass elimination of the continuing education requirement; it is more likely the Board would grant an extension of time in which to complete the requirement. Continuing education provides an important safeguard to the citizens of this Commonwealth. The Board believes that it should exercise its statutory discretion in licensure matters in considering requests for waivers when balanced against protection of the citizens of this Commonwealth accorded in the continuing education requirement.

Section 21.724 is left open for future use by the Board.

Section 21.725 (relating to inactive status) sets forth the rules related to a licensee placing his license on inactive status and later returning the license to active status. A license that has been on inactive status cannot be renewed unless the licensee submits proof of completing the continuing education requirement during the biennial period preceding reactivation. Consistent with the requirements for nurses, licensees who have had their licenses on inactive status for 5 consecutive years are required to retake the licensure examination or demonstrate they have held an active license in another state for at least 2 out of the last 5 years. These provisions ensure licensees will possess current knowledge, thereby protecting the citizens of this Commonwealth.

The Board sent these proposed regulations to numerous nursing and dietetics associations and individuals and hospital systems. These organizations were: Pennsylvania Dietetic Association, 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. The draft regulations were also sent to individuals who expressed an interest in commenting on the regulations. In addition, the Board considered the impact the regulations would have on the regulated community and on public safety and welfare. The Board finds that the proposed regulations address 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 Board is self-supporting. The Board will experience an increase in paperwork due to processing applications and renewals and pursuing disciplinary actions. However, the cost of providing these services will be borne by the licensees and applicants.

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 February 2, 2005, 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 Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JANET HUNTER SHIELDS, MSN, CRNP, CS,
Chairperson

Fiscal Note: 16A-5120. 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 21. STATE BOARD OF NURSING

Subchapter G. DIETITIAN-NUTRITIONISTS

GENERAL PROVISIONS

Sec.	
21.701.	Definitions.
21.702.	Scope.
21.703.	Applicability of general rules.
21.704.	Matters related to allegations of sexual impropriety or violation.
21.705.	Fees.

RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST

21.711.	Professional conduct.
---------	-----------------------

LICENSURE REQUIREMENTS

21.721.	Education and examination of applicants.
21.722.	License renewal.
21.723.	Continuing education.
21.725.	Inactive status.

GENERAL PROVISIONS

§ 21.701. Definitions.

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

ADA—American Dietetic Association.

ACN—American College of Nutrition.

Act—The Professional Nursing Law (63 P. S. §§ 211—225), which provides for the licensing of Licensed Dietitian-Nutritionists.

Approved—Approved by the Board.

Approved program—Those educational programs accredited by the Commission on Accreditation for Dietetics Education or the American Council on Education for dietetics-nutrition education.

Board—The State Board of Nursing of the Commonwealth.

CADE—Commission on Accreditation for Dietetics Education—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

CBNS—Certification Board for Nutrition Specialists—The certification body of the American College of Nutrition (ACN).

CDR—Commission on Dietetic Registration—The credentialing agency for the American Dietetic Association.

CNS—Certified Nutrition Specialist—The title given to individuals who meet the requirements of the CBNS.

CPE—Continuing professional education, required by the act for biennial license renewal.

LDN—Licensed dietitian-nutritionist—A person holding a current license under this subchapter to practice dietetics-nutrition in this Commonwealth.

Patient—A person upon whom or with whom an LDN is practicing dietetics-nutrition.

RD—Registered Dietitian—The title given to an individual who meets the requirements set forth by CDR.

Registration Examination for Registered Dietitians—A written academic examination developed, prepared, administered and scored by CDR.

Sexual impropriety—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Exposing unnecessarily a patient's body or watching a patient dress or undress, unless the patient specifically requests assistance.

(iii) Examining or touching genitals or breasts of a patient.

(iv) Discussing or commenting on a patient's potential sexual history or preferences during consultation, except when the consultation is pertinent to the issue of sexual function or dysfunction or reproductive healthcare. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

(i) Engaging in sexual intercourse with a patient during the professional relationship.

(ii) Engaging in genital to genital contact with a patient during the professional relationship.

(iii) Engaging in oral to genital contact with a patient during the professional relationship.

(iv) Encouraging the patient to masturbate in the presence of the dietitian-nutritionist or masturbating while a patient is present.

(v) Providing or offering to provide drugs, herbs, nutritional supplements or treatment in exchange for sexual favors.

(vi) Using or causing the use of any herb, nutritional supplement or drug affecting consciousness for the purpose of engaging in conduct that would constitute a sexual impropriety or sexual violation.

§ 21.702. Scope.

In this subchapter the Board:

- (1) Provides for licensure of dietitian-nutritionists who meet the qualifications set forth in the act.
- (2) Administers the act by providing rules and regulations for the practice of dietetics-nutrition.
- (3) Provides rules and regulations for the conduct of licensees.
- (4) Regulates the practice of LDNs.

§ 21.703. Applicability of general rules.

The provisions of 1 Pa. Code § 31.1 (relating to scope of part) and 1 Pa. Code Part II (relating to the general rules of administrative practice and procedure) apply to the activities of and proceedings before the Board.

§ 21.704. Matters related to allegations of sexual impropriety or violation.

(a) The consent of the patient to any sexual impropriety or violation is not a defense to any disciplinary charge for violation of the act or this subchapter.

(b) Evidence of specific instances, opinion evidence or reputation evidence of a patient's past sexual conduct is not admissible in proceedings brought under § 21.711 (relating to standards of professional conduct). The Board may consider sexual relationships between the dietitian-nutritionist and the patient occurring prior to the professional relationship.

(c) A dietitian-nutritionist who attempts to raise as a defense an argument that conduct prohibited as a sexual violation or sexual impropriety was necessary or appropriate to the treatment of any patient shall be required to demonstrate competency in practice which relates directly to the treatment of sexual function or dysfunction. This competence may be demonstrated through educational training and supervised clinical experience. Appropriate discussions of sexual matters between a dietitian-nutritionist and a patient shall be fully documented in the patient records.

§ 21.705. Fees.

(a) The following fees are charged by the Board:

Application for licensure.....	\$45
Renewal fee	\$45
Reactivation of inactive or lapsed license	\$50
License verification fee	\$15
License certification fee	\$25
Restoration after suspension or revocation.....	\$50

(b) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians will also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 216 West Jackson Blvd., Chicago, Illinois 60606-

6995, www.cdrnet.org, for more information regarding the examination and examination fee.

(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Certification Board for Nutrition Specialists examination for Certified Nutrition Specialists will also pay an additional examination fee. A candidate may contact the Certification Board for Nutrition Specialists, 300 S. Duncan Avenue, Suite 225, Clearwater, Florida 33755, www.cert-nutrition.org, for more information regarding the examination and examination fee.

RESPONSIBILITIES OF THE LICENSED DIETITIAN-NUTRITIONIST

§ 21.711. Professional conduct.

(a) Licensed dietitian-nutritionists shall:

(1) Conduct themselves with honesty, integrity and fairness.

(2) Practice dietetics based on scientific principles and current information.

(3) Present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.

(4) Provide information that will enable clients to make their own informed decisions regarding nutrition and dietetic therapy, including:

(i) The purpose and nature of any evaluation, treatment, educational or training procedure.

(ii) The estimated cost of each stage of a procedure or of the entire treatment.

(iii) The reasonable expectations of the professional relationship.

(iv) The right to withdraw from treatment at any time.

(5) Safeguard the patient's dignity, the right to privacy and the confidentiality of patient information and make full disclosure about any limitations on the LDN's abilities to guarantee full confidentiality. This standard does not prohibit or affect reporting responsibilities under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services law), the Older Adults Protective Services Act (35 P. S. §§ 10211—10224) and other statutes which may mandate reporting of this information.

(6) Provide professional services with objectivity and with respect for the unique needs and values of individuals.

(7) Be alert to situations that might cause a conflict of interest or have the appearance of a conflict. The LDN shall provide full disclosure when a real or potential conflict of interest arises.

(8) Permit the use of their names for the purpose of certifying that dietetic services have been rendered only if they provided or supervised the provision of those services.

(9) Accurately present professional qualifications and credentials.

(i) Dietitian-nutritionists may use the title "Licensed Dietitian-Nutritionist" or abbreviation LDN only when they hold a current license issued by the Board.

(ii) LDNs are subject to disciplinary action for aiding another person in violating any Board requirement or aiding another person in representing himself as a Licensed Dietitian Nutritionist or LDN when that person is not currently licensed.

(10) Document and maintain accurate records in accordance with the acceptable and prevailing standard of recordkeeping.

(b) The licensed dietitian-nutritionist may not:

(1) Knowingly aid, abet or assist another person to violate or circumvent a law or Board regulation.

(2) Discriminate, while providing dietitian-nutritionist services, on the basis of age, marital status, gender, sexual preference, race, ethnicity, religion, diagnosis, socioeconomic status or disability.

(3) Knowingly permit another individual to use his license for any purpose.

(4) Misappropriate equipment, materials, property, drugs or money from an employer or patient.

(5) Solicit, borrow or misappropriate money, materials or property from a client or the client's family.

(6) Leave an assignment prior to the proper reporting and notification to the appropriate department head or personnel.

(7) Falsify or knowingly make incorrect entries into the patient's record or other related documents.

(8) Engage in conduct defined as a sexual violation or sexual impropriety in the course of a professional relationship.

(9) Advertise in a false or misleading manner. Statements which qualify as false or misleading include the following:

(i) Statements containing a misrepresentation of facts.

(ii) Statements likely to mislead or deceive because in context the statement makes only a partial disclosure of the relevant facts.

(iii) Statements intended to, or likely to, create false or unjustified expectations of favorable results.

(iv) Statements relating to fees without reasonable disclosure of all relevant variables so that the statement would be misunderstood or would be deceptive to a layperson.

(v) Statements conveying the impression that the LDN could influence improperly any public body, official, corporation or any person on behalf of the patient.

(vi) Statements containing a representation or implication that is likely to cause a reasonable person to misunderstand or to be deceived, or fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive.

(vii) Statements containing representations that the LDN is willing to perform any procedure that is illegal under the laws or regulations of the Commonwealth or the United States.

(10) Practice when:

(i) The LDN has engaged in any substance abuse that could affect his practice.

(ii) The LDN has been adjudged by a court to be mentally incompetent.

(iii) The LDN has an emotional or mental disability that affects his practice in a manner that could harm the client or others.

(11) Accept a client or patient for treatment or continue treatment unnecessarily, if benefit cannot reasonably be expected to accrue.

(12) Accept or receive, or both, remuneration for making or accepting referrals.

LICENSURE REQUIREMENTS

§ 21.721. Education and examination of applicants.

The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P. S. § 216(b)(2)) that are approved by CADE or the ACN. The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

§ 21.722. License renewal.

(a) A license issued under section 5(e) of the act (63 P. S. § 215(e)) or under this subchapter will be valid from the date of issuance through September 30, 2006, following the issuance of the license. Each subsequent license renewal will be valid for 2 years from October 1 through September 30.

(b) A dietitian-nutritionist license issued under the act will be renewed if the licensee applying for the renewal:

(1) Completes the renewal application, including disclosing a license to practice dietetics-nutrition in any other state, territory, possession or country.

(2) Pays the required fee as set forth in § 21.705 (relating to fees).

(3) Submits proof to the Board that he has satisfactorily completed a minimum of 30 hours of CPE approved by the Board in accordance with § 21.723 (relating to continuing education) during the 2 calendar years immediately preceding the application for renewal.

(4) Discloses any discipline imposed by any state licensing board in the previous biennial period or any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period.

§ 21.723. Continuing education.

(a) *Prior to renewal.* One hour of CPE credit will be given for each 50-minute clock hour of CPE activity. Each LDN shall complete 30 CPE credits during the 2 calendar years immediately preceding the application for license renewal. If an activity overlaps two renewal periods, the date of completion of the activity determines the date in which the activity can be reported.

(b) *Board-approved continuing professional education.* The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2), relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the ADA, the ACN, by individual state dietetic associations, if the association is a member of the ADA or ACN, by approved college or dietetic programs where a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

(1) In addition to lecture-based CPE courses, the Board will accept documentation of the following:

(i) Case presentations, such as grand rounds or patient case studies.

(ii) Academic coursework and research studies approved by an institutional review board.

(iii) Interactive workshops.

(iv) Lectures and seminars.

(v) Residency and Fellowship programs which are at the postbaccalaureate level, and are sponsored by a United States regionally accredited college or university, or an institution accredited/approved by the Joint Committee on Accreditation of Healthcare Organizations (JCAHO) or the National Committee for Quality Assurance (NCQA).

(2) The Board will not accept for completion of the CPE requirement the following:

(i) Academic coursework or programs on office management skills, or entrepreneurship, strategic business planning, computer skills, except courses directly related to the practice of dietetics-nutrition such as accessing nutrient analysis databases.

(ii) Attendance at exhibits manned by detail personnel.

(iii) Journal clubs.

(iv) Professional leadership, such as holding an elective office in a dietetics or dietetics-related organization.

(v) Professional reading for which there is no evaluative test submitted and no certificate of completion or CPE unit awarded.

(c) *Documentation.* The licensee shall retain documentation of completion of Board-approved continuing education (as set forth in subsection (b)) for at least 5 years and shall submit this documentation upon request of the Board.

(d) *Waiver.* An LDN who can demonstrate to the Board a verified hardship may request a waiver of CPE requirements for a single biennial period. It shall be the duty of each licensee seeking waiver to notify the Board in writing and request the waiver, at least 60 days prior to the end of the biennial renewal period, which will be granted, denied or granted in part.

§ 21.725. Inactive status.

An LDN may request that his license be placed on inactive status. The licensee will not be required to remit the biennial renewal fee during the period when the license is on inactive status. To return to active status, the licensee shall submit proof of completion of a minimum of 30 hours of approved CPE in the biennial period preceding the request for reactivation and pay any applicable fees. A person who requests an active status license who has been on inactive status for 5 consecutive years shall satisfy the requirements of section 6(b)(4) of the act (63 P. S. § 216(b)(4)), unless the person demonstrates that he has held an active license to practice in another state, an RD registration, or a CNS certification for at least 2 out of the last 5 years.

[Pa.B. Doc. No. 05-280. Filed for public inspection February 11, 2005, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27] Biennial Renewal 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. The proposed rulemaking would increase the biennial license renewal fee for pharmacists from \$120 to \$150 and the pharmacy permit biennial renewal fee from \$75 to \$100.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The new fees will take effect for the pharmacist biennial period beginning October 1, 2006.

Statutory Authority

The proposed rulemaking is authorized under section 8.2(a) of the Pharmacy Act (act) (63 P. S. § 390-8.2(a)). In addition, section 8.2(b) of the act requires the Board to increase fees by regulation in an amount adequate to meet the minimum enforcement efforts required by the act.

Background and Need for Amendment

The Board is required by law to support its operations from revenue it generates from fees, fines and civil penalties. In accordance with section 8.2 of the act, if the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board raises virtually all of its operating revenue through fees. The biennial license renewal fees are the most substantial revenue generating fees of all the fees charged by the Board. The Board's current biennial license renewal fees were established by regulation in 1998.

At its February 17, 2004, Board meeting and again at its April 20, 2004, Board meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Board's revenues and expenses for Fiscal Years (FY) 2001-2002 and 2002-2003 and projected revenues and expenses for FY 2003-2004 through FY 2010-2011. The summary, presented in the following table, demonstrated that the Board must raise fees to meet or exceed projected expenditures to comply with section 8.2(b) of the act.

2001-2002 beginning balance	\$1,047,957.15
FY 01-02 revenue	456,056.98
Prior year returned funds	153,857.90
FY 01-02 expenses	1,207,000.00
Remaining balance	450,872.03
2002-2003 beginning balance	450,872.03
FY 02-03 revenue	2,093,691.14
FY 02-03 expenses	1,270,000.00
Remaining balance	1,274,563.17
2003-2004 beginning balance	1,274,563.17
FY 03-04 projected revenue	478,000.00
FY 03-04 projected expenses	1,495,000.00
Prior year expenses	169,515.61
Remaining balance	88,047.56
2004-2005 beginning balance	88,047.56
FY 04-05 projected revenue	2,094,000.00
FY 04-05 projected expenses	1,540,000.00
Remaining balance	642,047.56

2005-2006 beginning balance	\$ 642,047.56
FY 05-06 projected revenue	500,000.00
FY 05-06 projected expenses	1,586,000.00
Remaining balance	(443,952.44)
2006-2007 beginning balance	(443,952.44)
FY 06-07 projected revenue	2,094,000.00
FY 06-07 projected expenses	1,634,000.00
Remaining balance	16,047.56
2007-2008 beginning balance	16,047.56
FY 07-08 projected revenue	500,000.00
FY 07-08 projected expenses	1,683,000.00
Remaining balance	(1,166,952.44)
2008-2009 beginning balance	(1,166,952.44)
FY 08-09 projected revenue	2,094,000.00
FY 08-09 projected expenses	1,733,000.00
Remaining balance	(805,952.44)
2009-2010 beginning balance	(805,952.44)
FY 09-10 projected revenue	500,000.00
FY 09-10 projected expenses	1,733,000.00
Remaining balance	(2,038,952.44)
2010-2011 beginning balance	(2,038,952.44)
FY 10-11 projected revenue	2,094,000.00
FY 10-11 projected expenses	1,785,000.00
Remaining balance	(1,729,952.44)

As the foregoing indicates, at the close of FY 2005-2006, the Board's expenses will exceed its revenues by \$443,952.44. While the pharmacist renewal will bring the Board's account back to a positive balance in FY 2006-2007, the BFO estimates that in FY 2007-2008, the deficit will increase to \$1,166,952.44 if fees are not increased. The BFO anticipates that the proposed new fees will enable the Board to recapture the FY 2005-2006 deficit and meet its estimated expenditures for the FY 2006-2007 biennial cycle. The Board would operate at a slight deficit in the FY 2007-2008 pharmacy permit biennial renewal period, but that would be recaptured in the FY 2008-2009 pharmacist license biennial renewal period and the projections out to FY 2010-2011 show the Board carrying a positive balance forward.

The increases in the Board's biennial expenses occurred primarily in law enforcement costs and legal office costs. Law enforcement (the Bureau of Enforcement and Investigation) expenditures increased from approximately \$507,412 in FY 2002-2003 to approximately \$713,280 in FY 2003-2004. The legal office (division of the Bureau of Professional and Occupational Affairs) expenditures increased from approximately \$288,247 in FY 2002-2003 to approximately \$362,304 in FY 2003-2004.

The legal office saw an increase in the number of cases closed in calendar years 1998 through 2003. Beginning in 1998 the number of disciplinary sanctions imposed increased markedly. From 1994 through 1997 the number of disciplinary sanctions imposed never reached 100, 95 sanctions being the highest in 1995. However, from 1998 through 2003 the number of sanctions imposed never dipped below 125. Furthermore, the Board has undertaken several regulatory initiatives. Two large regulation packages, Technology and Automation and the regulations required under the act of June 28, 2002 (P. L. 673, No. 102), have been proposed, as well as other regulation packages the Board has undertaken to revise and update its regulations.

The Board carefully reviewed several options in fee increases to ensure the lowest fee increase possible while keeping the Board out of a long run deficit. In addition to increasing fees, the Board is looking at ways to stream-

line procedures to cut costs, but the fee increases are still necessary to maintain a positive balance in the Board account in the long run. Finally, in developing the proposed rulemaking, the Board reviewed fees of other states. It found that the proposed fees are comparable to the renewal fees charged in surrounding states and should cause no competitive disadvantage in this Commonwealth.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 27.91 to increase the fee for biennial renewal of licenses for pharmacists from \$120 to \$150 and increase the biennial fee for pharmacy permits from \$75 to \$100. By this increase, the Board will recoup the FY 2005-2006 projected deficit in FY 2006-2007. A smaller deficit in FY 2007-2008 is projected. However, by FY 2008-2009, the Board's account should continue to carry a positive balance.

Fiscal Impact

The proposed rulemaking will increase the biennial renewal fee for pharmacists and pharmacies. A pharmacist will pay an additional \$30 for biennial renewal. A pharmacy will pay an additional \$25 for biennial renewal. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and expenses on a fiscal year and biennial 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 February 2, 2005, 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, recommendations or objections regarding this proposed rulemaking to Melanie Zimmerman, Executive Secretary, 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-5414. 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:

* * * * *

Registered pharmacist biennial renewal . . . [\$120] \$150

* * * * *

Biennial renewal of pharmacy permit [\$75] \$100

* * * * *

[Pa.B. Doc. No. 05-281. Filed for public inspection February 11, 2005, 9:00 a.m.]

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

[49 PA. CODE CHS. 47—49]

Supervised Clinical Experience

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to amend §§ 47.12c, 48.13 and 49.13 (relating to licensed clinical social worker; licensed MFT; and licensed professional counselor) to read as set forth in Annex A. The proposed rulemaking would exclude group supervisory sessions within educational, institutional and agency settings from the requirement that supervisors supervise no more than six supervisees at the same time.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized 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

Section 7(d)(3), (e)(3) and (f)(3) of the act (63 P.S. § 1907(d)(3), (e)(3) and (f)(3)) requires an applicant for licensure as a clinical social worker, marriage and family therapist and professional counselor to, among other things, complete hours of supervised clinical experience. Sections 47.12c(b)(6), 48.13(b)(6) and 49.13(b)(6) concerning supervised clinical experience for licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors currently prohibit a supervisor from supervising more than six supervisees at the same time. However, the Board recognizes that group supervision often occurs within educational, institutional and agency settings. In these settings, the Board recognizes that the prohibition of more than six supervisees is overly restrictive and enforcement would result in the exclusion of these sessions from qualifying as supervised clinical experience for purposes of licensure qualification. Accordingly, the Board believes that an exception should be made for these types of group supervisory settings.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no fiscal impact and impose no additional paperwork requirements on the Board or its licensees.

The proposed rulemaking should not impose any legal, accounting or reporting requirements on the regulated community.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 2, 2005, 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 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 the proposed rulemaking to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-698, Supervised Clinical Experience, when submitting comments.

RONALD HAYS,
Chairperson

Fiscal Note: 16A-698. 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

LICENSURE

§ 47.12c. Licensed clinical social worker.

* * * * *

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of clinical social work consistent with the applicant's education and training.

* * * * *

(6) A supervisor shall supervise no more than [6] six supervisees at the same time.

(i) **This paragraph does not apply to supervised experience obtained in group sessions within an educational, institutional or agency setting.**

(ii) If this provision creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this provision. The request [shall] must state, in writing, the reasons why this provision creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this provision. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

* * * * *

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

LICENSURE

§ 48.13. Licensed MFT.

* * * * *

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of marriage and family therapy consistent with the applicant's education and training.

* * * * *

(6) A supervisor shall supervise no more than [6] six supervisees at the same time.

(i) **This paragraph does not apply to supervised experience obtained in group sessions within an educational, institutional or agency setting.**

(ii) If this paragraph creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this paragraph. The request [shall] must state, in writing, the reasons why this paragraph creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this paragraph. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

* * * * *

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

LICENSURE

§ 49.13. Licensed professional counselor.

* * * * *

(b) *Supervised clinical experience.* Experience acceptable to the Board means experience as a supervisee in a setting that is organized to prepare the applicant for the practice of counseling consistent with the applicant's education and training.

* * * * *

(6) A supervisor shall supervise no more than [6] six supervisees at the same time.

(i) **This subparagraph does not apply to supervised experience obtained in group sessions within an educational, institutional or agency setting.**

(ii) If this paragraph creates an undue hardship on a supervisee, the supervisor and supervisee may request an exception to this paragraph. The request [shall] must state, in writing, the reasons why this paragraph creates a hardship on the supervisee and why the supervisee is not able to obtain a supervisor who meets the requirements of this paragraph. Before making a determination, the Board may require a personal appearance by the supervisee and supervisor.

* * * * *

[Pa.B. Doc. No. 05-282. Filed for public inspection February 11, 2005, 9:00 a.m.]