

PROPOSED RULEMAKING

DELAWARE RIVER BASIN COMMISSION

[25 PA. CODE CH. 901]

Proposed Temporary Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Extend the Designation of the Lower Delaware River as a Special Protection Water

The Delaware River Basin Commission (Commission) will hold a public hearing to receive comments on a proposed amendment to the Commission's Water Quality Regulations, Water Code, and Comprehensive Plan to extend through May 15, 2008, the temporary classification of the Lower Delaware River as Significant Resource Waters (SRW). Permanent classification is anticipated following an additional notice and comment rulemaking that is expected to begin by September. Extending the temporary classification will help to protect the exceptional scenic, recreational and water quality values of the Lower Delaware from degradation pending completion of that process.

Dates

The public hearing will take place at 1:30 p.m. on Wednesday, September 26, 2007, during the Commission's regular business meeting, which will be held at the Commission's office building, 25 State Police Drive, West Trenton, NJ. Driving directions are available on the Commission's website, www.drbc.net. Persons wishing to testify are asked to register in advance with the Commission Secretary, (609) 883-9500, Ext. 203. Written comments will be accepted through the close of the public hearing; however earlier submittals would be appreciated.

Supplementary Information

The Lower Delaware extends from the southern boundary of the Delaware Water Gap National Recreation Area at River Mile (RM) 209.4 to the head of tide at Trenton, NJ, RM 144.4. The effect of temporary classification of the Lower Delaware as SRW has been to make this portion of the main stem Delaware River and its drainage area subject to all applicable provisions of the Commission's Special Protection Waters regulations, Section 3.10.3 A.2 of the Commission's Water Quality Regulations, except those that depend for implementation upon the use of numeric values for existing water quality.

Key provisions of the Special Protection Waters Regulations that will continue to apply within the drainage area to the Lower Delaware River if the proposed extension of the SRW classification is approved include the following: Section 3.10.3 A.2.c.1—3, in part requiring that no new or expanded wastewater discharges may be permitted in waters classified as Special Protection Waters until all nondischarge-load reduction alternatives have been fully evaluated and rejected because of technical or financial infeasibility; Section 3.10.3 A.2.d.1—7, setting forth requirements for wastewater treatment facilities; and Section 3.10.3 A.2.e.1 and 2, conditioning project approval on the existence of an approved Non-Point Source Pollution Control Plan for the project area and requiring that

approval of a new or expanded withdrawal and/or wastewater discharge project be subject to the condition that new connections to the project system be limited to service areas regulated by a non-point source pollution control plan approved by the Commission.

Temporary SRW classification of the Lower Delaware was enacted by Commission Resolution No. 2005-2 on January 19, 2005, and initially was due to expire on September 30, 2005. By Resolution No. 2005-15 approved on September 26, 2005, the temporary classification was extended through September 30, 2006, to allow time for the Commission to evaluate implementation options and establish numeric values for existing water quality. By Resolution No. 2006-22 on September 27, 2006, the Commission extended temporary designation a second time, through September 30, 2007, because it had not completely resolved implementation issues. The Commission has nearly resolved the remaining issues with respect to implementation, but to allow time to complete this process and conduct notice and comment rulemaking on permanent designation of the Lower Delaware as Special Protection Waters, the Commission is proposing to extend the temporary classification for 6 months more. If approved, the classification would expire on May 15, 2008, unless the Commission should either permanently classify the Lower Delaware River or once again extend the temporary classification by rule amendment prior to that date.

Previous register notices concerning designation of the Lower Delaware River as Special Protection Waters include notices published in the *Federal Register* at 69 FR 57008 (September 23, 2004) (proposed Special Protection Waters designation), 70 FR 48923 (August 22, 2005) (proposed extension through September 30, 2006) and 71 FR 48497 (August 21, 2006) (proposed extension through September 30, 2007); and in the *Pennsylvania Bulletin* at 34 Pa.B. 5557 (October 9, 2004) (proposed designation), 35 Pa.B. 5005 and 5013 (September 10, 2005) (temporary amendment and proposed extension) and 36 Pa.B. 4726 (August 26, 2006) (proposed extension). The proposed and final versions of the initial designation, approved by Resolution No. 2005-2, and the subsequent extensions approved by Resolutions Nos. 2005-15 (extension through September 30, 2006) and 2006-22 (extension through September 30, 2007) were also published on the Commission's website, www.drbc.net. The final rules have been filed in accordance with Section 14.2(a) of the *Delaware River Basin Compact*, Pa. Acts of 1961, Act No. 268.

Further Information, Contacts:

Resolution No. 2005-2, temporarily amending the Water Quality Regulations, Water Code and Comprehensive Plan of the Commission by designating the Lower Delaware River a Special Protection Water, and Resolutions Nos. 2005-15 and 2006-22, extending the temporary amendment approved by Resolution No. 2005-2, are available on the Commission's website at www.drbc.net or upon request from the Delaware River Basin Commission, P. O. Box 7360, West Trenton, NJ 08628-0360. Maps depicting the designated area are also available on the website. For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, (609) 883-9500, Ext. 203.

It is proposed to amend Section 3.10.3.A.2.g.6. of the *Water Quality Regulations* and *Water Code* by replacing the last paragraph of that section with the following:

Sections 3.10.3.A.2.g.2).(b) and 3.10.3.A.2.g.6). shall expire on May 15, 2008, unless extended by amendment to this rule.

PAMELA M. BUSH,
Secretary

(*Editor's Note:* For a final-form rulemaking relating to this document, see 37 Pa.B. 4620 (August 25, 2007).)

Fiscal Note: 68-49. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART V. DELAWARE RIVER BASIN COMMISSION

CHAPTER 901. GENERAL PROVISIONS

§ 901.2. Comprehensive Plan and water quality.

The Comprehensive Plan regulations as set forth in 18 CFR Part 401, Subpart A (2007) and the Water Code and Water Quality Standards as set forth in 18 CFR Part 410 (2007) are hereby incorporated by reference and made a part of this title.

[Pa.B. Doc. No. 07-1545. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE ARCHITECTS LICENSURE BOARD

[49 PA. CODE CH. 9]

Requirements for Examination Eligibility

The State Architects Licensure Board (Board) proposes to amend §§ 9.27, 9.41a, 9.46, 9.50 and 9.52 to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

The proposed rulemaking is authorized under section 6(a) and (d) of the Architects Licensure Law (63 P. S. § 34.6(a) and (d)).

C. *Background and Need For Amendments*

Currently, § 9.46(b) (relating to requirements for examination eligibility) states that “[a]n architectural degree candidate applying for first time licensure is required to pass the entire professional licensure examination of the Board within 5 years of the date of eligibility to take the examination.” Passing the entire examination requires that each candidate must pass all nine divisions of the examination within 5 years of the date of eligibility to take the examination. Under this provision, if a candidate passes eight divisions within the 5-year period, but still has one more division to complete and the eligibility period ends, that candidate would lose all eight divisions of the examination that had been passed and would be required to take the entire examination all over again.

However, on January 1, 2006, the National Council of Architecture Registration Boards (NCARB) implemented a National “rolling clock” standard for examination eligibility. Prior to this time, NCARB had no standard time limit for completion of the exam, instead leaving that determination to individual State boards. NCARB’s Committee on Procedures and Documents, in a statement of support prior to NCARB’s 2004 annual meeting, explained that “[r]equiring that all divisions be passed within a reasonable period will better assure that the ARE [Architecture Registration Exam] remains a valid measure of the level of competency necessary to independently practice architecture. While some changes may occur within any 5 year period, there is a lower likelihood that applicants will be tested under different forms of administration and methodologies than is the case currently with applicants having unlimited time in which to pass all divisions.”

According to NCARB’s rolling clock guidelines, exam candidates who have passed all divisions of the Architecture Registration Exam (ARE) by January 1, 2006, regardless of the time taken, will have passed the ARE. Exam candidates who have passed one or more but not all divisions of the ARE by January 1, 2006, will have 5 years to pass all remaining divisions. A passing grade for a remaining division will be valid for 5 years, after which time the division must be retaken if the remaining divisions have not been passed. NCARB’s guidelines further specify that divisions taken before January 1, 2006, will not have to be retaken.

The Board proposes to adopt NCARB’s guidelines with respect to the “rolling clock” with one exception. The Board’s proposed rulemaking differs from NCARB’s guidelines in that candidates who had passed at least one division of the ARE by January 1, 2006, and are, therefore, already in the system, will have a total of 5 years to complete the entire examination. If the candidate does not complete the entire examination within 5 years, a division that the candidate has passed that is older than 5 years will drop off and the candidate will be required to retake the “stale” division of the examination. Thus, the candidate will not lose the entire examination, as the current regulation requires, only those divisions that are older than 5 years.

D. *Description of Amendments*

The Board proposes to amend § 9.27 (relating to inactive records) by deleting language pertaining to an examination candidate completing the entire examination within 5 years.

The Board further proposes to amend § 9.41a(b) (relating to adoption of National Board Examinations) by adding language specifying that examination candidates shall comply with NCARB’s examination procedures, conduct standards and standards pertaining to eligibility and passing of the ARE, unless otherwise stated in the Board’s regulations.

In § 9.46(b), the Board proposes to delete the requirement that examination candidates complete the entire examination within 5 years of the date of eligibility to take the examination. Instead, the Board proposes new language that specifies that the Board will consider only divisions of the examination passed within the 5-year period since the first passed division was administered. If a division is more than 5 years old, the candidate will be required to retake that division of the examination and will automatically be given a new 5-year period beginning from the date of the administration of the next oldest

passed division without the need to reapply. This would implement the new "rolling clock" standard for the Board.

The Board proposes to amend § 9.50 (relating to reapplications) to delete the cross-reference to § 9.46(3) because reapplication will no longer be necessary under the rolling clock requirement. The Board also proposes to add a cross reference to § 9.41a(b). The Board further proposes to amend § 9.52 (relating to grading compilation) to add cross-references to §§ 9.41a(b) and 9.46(b) with regard to the opportunity to retake portions of the examination which were failed or which expired under the 5-year rolling clock.

E. *Fiscal Impact*

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

F. *Paperwork Requirements*

The proposed rulemaking will not create additional paperwork for the Board.

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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.

I. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Penny Walker, Administrator, State Architects Licensure Board, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649, pewalker@state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-419 (Licensure By Examination) when submitting comments.

DENNIS R. CONNELL, RA,
President

Fiscal Note: 16A-419. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 9. STATE ARCHITECTS LICENSURE BOARD

FUNCTIONS OF THE BOARD

§ 9.27. Inactive records.

Records of candidates for licensure that are inactive for 5 years will be destroyed. A record will be considered inactive if a candidate does not correct a deficiency in an application [, or pass the entire examination] within 5 years of notice from the Board of the deficiency [or eligibility to take the examination].

LICENSURE BY EXAMINATION

§ 9.41a. Adoption of National Board Examinations.

* * * * *

(b) Candidates shall comply with examination procedures [and], conduct standards, and standards pertaining to eligibility and passing of the ARE as established by the NCARB, unless otherwise stated in this chapter.

§ 9.46. Requirements for examination eligibility.

(a) **General requirements.** A candidate for the examination shall have:

* * * * *

(b) [An architectural degree candidate applying for first time licensure is required to pass the entire professional licensure examination of the Board within 5 years of the date of eligibility to take the examination.] **"Rolling clock" requirement.** An applicant for licensure shall have 5 years from the date that the first passed division of the examination was administered to pass all remaining divisions. If an applicant for licensure fails to pass all remaining divisions within the 5-year period, the applicant will automatically be given a new 5-year period measured from the date of administration of the next oldest passed division ("rolling clock") to pass all divisions of the examination and this rolling clock period will continue to automatically renew until all divisions of the examination are passed, without the need to reapply to the Board. Applicants will have the benefit of the rolling clock but the Board will only consider the divisions of the examination passed within the 5-year time period immediately preceding the date of the latest administered division passed by the applicant. The Board may waive this requirement upon proof of medical hardship or other extraordinary circumstances.

§ 9.50. Reapplications.

Candidates required to file new applications under §§ 9.27 and [9.46(3)] 9.41a(b) (relating to inactive records; and [requirements for examination eligibility] adoption of National Board Examinations) shall meet the requirements of the act and regulations in effect at the time the new application is filed.

GRADING AND REVIEW

§ 9.52. Grading compilation.

To qualify for licensure, a candidate shall receive a passing grade on each part or division of the examination. Grades received in individual parts or divisions will not be averaged. A candidate will have opportunities, subject to [§ 9.46(3)] §§ 9.41a(b) and 9.46(b) (relating to adoption of National Board Examinations; and requirements for examination eligibility), to retake those portions of the examination which were failed and those portions which expire under the 5-year rolling clock requirement.

[Pa.B. Doc. No. 07-1546. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE CH. 5]

Reactivation of Lapsed License

The State Board of Chiropractic (Board) proposes to amend § 5.17 (relating to biennial registration; unregistered status and inactive status; failure to renew; address of record) 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 302(3) and 501(b) of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3) and 625.501(b)).

Background and Need for the Proposed Rulemaking

Under section 501(b) of the act, a chiropractor's license must be renewed biennially and a licensee "who has failed to renew his license for a period of longer than five years shall be required to apply for a license in accordance with subsection (a) if he desires to resume practicing chiropractic." Currently, § 5.17(m) requires a licensee whose license has been inactive for more than 5 years to apply for licensure in accordance with § 5.12 or § 5.13 (relating to licensure by examination; and licensure by reciprocity). However, each of these two bases for reactivation has significant administrative limitations or drawbacks that make it inadequate.

Since 1997, the Board has required applicants for licensure by examination to successfully complete all four parts of the National board examination of the National Board of Chiropractic Examiners (NBCE). An inactive licensee who had not previously taken all parts of the exam was required to take the missing parts to reactivate the licensee's license. However, as it has now been more than 5 years since the end of the first renewal period during which applicants were first required to successfully complete all parts of the examination, some applicants who have been inactive for more than 5 years have already completed all four parts of the examination. Thus, there are no "missing parts" of the examination for those inactive licensees to take to demonstrate current competence.

Additionally, a common reason for a licensee to have been inactive for more than 5 years is that the licensee has been practicing in another state. However, reciprocity under § 5.13 is not available to licensees from every state. The Board has attempted to make reactivation administratively simple in this proposed rulemaking, while assuring that a licensee is competent to practice chiropractic after a period of inactivity.

Description of the Proposed Rulemaking

The proposed rulemaking would replace § 5.17(m). A licensee whose license has been inactive for more than 5 years would be permitted to demonstrate competence to resume practice on any of four bases. First, as it is the standard for licensure by examination, a licensee who has successfully completed all parts of the required examination within the year prior to applying for reactivation would be permitted to reactivate. Second, the Board would continue permitting reactivation by qualifying for licensure by reciprocity in accordance with § 5.13. Third, because a licensee who left this Commonwealth and has practiced in another jurisdiction should be as qualified to practice chiropractic today as a licensee who has remained in this Commonwealth, the Board would permit reactivation upon a showing of at least 5 years of continuous licensed practice of chiropractic in another jurisdiction immediately preceding application for reactivation. Finally, successful completion, within 6 months prior to applying for reactivation, of the special purpose examination in chiropractic, which is also offered by the NBCE and often used to demonstrate competence to practice, would be a basis to qualify for reactivation.

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 not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

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 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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 Deborah L. Smith, Administrator, State Board of Chiropractic, P. O. Box 2649, Harrisburg, PA

17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4314 (Reactivation of Lapsed License) when submitting comments.

JONATHAN W. MCCULLOUGH, D.C.,
Chairperson

Fiscal Note: 16A-4314. 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 5. STATE BOARD OF CHIROPRACTIC

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.17. Biennial registration; unregistered status and inactive status; failure to renew; address of record.

* * * * *

(m) [If a licensee's license has been placed on inactive status for longer than 5 years, in addition to the statutory requirements of section 501(a) of the act (63 P. S. § 625.501(a)), the Board will require that a personal interview be conducted to ascertain the licensee's ability to practice with reasonable skill and safety to patients and the licensee's knowledge of the requirements of the act, this chapter and other pertinent health laws of this Commonwealth. If the licensee's license has been placed on inactive status for more than 5 years, the licensee shall apply for licensure in accordance with § 5.12 or § 5.13 (relating to licensure by examination; and licensure by reciprocity).] To reactivate a license that has been inactive for more than 5 years, the licensee shall establish current competence to practice by at least one of the following:

(1) Successful completion of the examinations required by § 5.15(a) (relating to licensure examinations) within 1 year prior to application for reactivation.

(2) Compliance with § 5.13 (relating to licensure by reciprocity).

(3) Proof of continuous licensed practice of chiropractic in one or more other jurisdictions of the United States or Canada for at least 5 years immediately preceding application for reactivation.

(4) Successful completion of the following examinations within 6 months prior to application for reactivation:

(i) The examination required by § 5.15(a)(2).

(ii) The Special Purpose Examination in Chiropractic administered by the National Board of Chiropractic Examiners.

[Pa.B. Doc. No. 07-1547. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF COSMETOLOGY

[49 PA. CODE CH. 7]

General Revisions

The State Board of Cosmetology (Board) proposes to amend Chapter 7 (relating to State Board of Cosmetology) to read as set forth in Annex A. The proposed rulemaking would implement changes made to the act of May 3, 1933 (P. L. 242, No. 86) (Act 86) by the act of July 7, 2006 (P. L. 704, No. 99) (Act 99), as well as to generally update the regulations to strengthen safety and sanitation requirements and to reflect current processes and practices utilized by the Board.

A. Effective Date

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

B. Statutory Authority

Section 11 of Act 86 (63 P. S. § 517) authorizes the Board to promulgate regulations generally for the conduct of persons, copartnerships, associations or corporations affected by Act 86. Section 16 of Act 99 (63 P. S. § 522) requires the Board to promulgate regulations to implement Act 99 within 18 months of its effective date. The effective date of Act 99 was September 5, 2006.

C. Background and Need for Proposed Rulemaking

Act 99 made substantial changes to Act 86 by adding a limited license classification—the natural hair braider license; by making changes to terminology in Act 86; by making other changes within Act 86 to implement the new natural hair braider license; and by extending to all limited license classes: (1) the ability to practice outside of a licensed salon in a client's residence under specified circumstances; (2) the ability to practice on a temporary license; and (3) the prohibition on booth rental within a licensed salon. These changes require corresponding changes and additions to Chapter 7. Act 99 requires the Board to promulgate regulations to make those changes within 18 months of its effective date.

Because the Board needed to make wholesale changes to Chapter 7 to implement Act 99, the Board also took the opportunity to propose a number of other changes to the regulations. Although piecemeal changes have been made to the regulations over the years, generally in response to legislative changes to Act 86, the Board had not undertaken an overall review and update since 1975. In the intervening period, some of the Board's regulatory provisions have become obsolete, terms of art have changed, standards of sanitation have evolved, some of the Board's licensing and examination processes have changed and deficiencies or errors in the regulations have become apparent. Accordingly, in this proposed rulemaking the Board is making changes, in addition to those required by Act 99, that the Board finds necessary to update the regulations and to address the way the profession and the Board have changed since 1975.

D. Description of Proposed Amendments

Terminology and Definitions in General

Act 99 replaced a number of terms in Act 86 with updated terminology. This proposed rulemaking would

replace the following old terms and their definitions throughout the regulations to reflect the updated terminology:

<i>Old Term</i>	<i>New Term</i>
Cosmetician	Esthetician
Manicuring	Nail technology
Manicurist	Nail technician
Shop	Salon

Additionally, this proposed rulemaking would add the following new terms and their definitions to the regulations where applicable, based on Act 99's addition of them to the cosmetology lexicon: "braiding," "esthetics," "limited license," "natural hair braider" and "natural hair braiding."

Because Act 99 added a definition of "limited license" that encompasses the nail technician, esthetician and natural hair braider licenses, the term "limited license" has been substituted throughout the regulations, when appropriate, to reduce the number of times that all three limited license classifications are enumerated.

Finally, throughout the existing regulations, the possessive nouns "cosmetologist's," "teacher's," "barber's," "student's" and "school's" were used to modify another term such as "license," "examination" or "uniform." However, Act 99's additions to Act 86 refer to the "esthetician license," the "nail technician license" and the "natural hair braider license," using the terms as adjectives to modify another term instead of using the possessive forms. Therefore, to remain consistent throughout Act 86 and the regulations, this proposed rulemaking would replace the possessive nouns with the unit modifier.

§ 7.1. Definitions.

Section 7.1 is amended by amending the existing definitions of "Board," "booth space" and "Bureau" to comport with the definitions in Act 86. The proposed rulemaking would delete the obsolete definition of "manicuring" and add the statutory definitions of "braiding," "cosmetologist," "cosmetology," "Department," "esthetics," "esthetician," "limited license," "nail technician," "nail technology," "natural hair braider," "natural hair braiding," "school of cosmetology" and "tanning units."

In addition, the Board proposes adding definitions in § 7.1 of "limited practice salon" and "limited practice teacher" and to use the defined terms throughout the proposed rulemaking to refer to salons licensed by the Board for the provision of esthetician services, nail technology services or natural hair braiding services only, and to those teachers licensed by the Board to provide instruction in the area of esthetics, nail technology or natural hair braiding only. Finally, because the Board recently had several salon applications and variance requests in which questions arose as to the definition of "lavatory," which is used elsewhere in the regulations, but which is not defined, the Board added a definition of "lavatory."

§ 7.2. Fees.

In § 7.2, the proposed rulemaking would add the natural hair braider license to the list of fees charged by the Board related to individual licenses, making the charges for initial licensure (\$10) and for biennial renewal (\$35) the same as current fees for the other individual license classes. Similarly, the proposed rulemaking adds the limited practice teacher license fee and the limited practice salon license fee so that the fees for limited practice teachers (\$10 for initial licensure and \$55 for biennial renewal) and limited practice salons (\$55 for

initial licensure and \$60 for biennial renewal) are the same as existing fees for cosmetology teachers and for cosmetology salons. Similar changes would be made to the provisions establishing the fees for a change in or reinspection of a salon (\$55 if a change is made that requires an inspection, \$15 if a change is made requiring no inspection and \$40 for reinspection after failing an inspection).

The Board did not previously have fees established for making changes in a cosmetology school. However, making changes, whether they require an inspection or not, requires some amount of clerical activity and time for processing. Because the fees are intended to recoup the costs associated with the processing of changes, the Board determined that fees are needed for changes in a school that require an inspection and for changes in a school that do not require an inspection, and established the fees in this proposed rulemaking. The fee for a change in a school that requires an inspection would be set at \$110 and the fee for a change that does not require an inspection would be set at \$35. The Board established these fees by taking the existing parallel fees regarding salons and increasing them according to the percentage by which the fee for a school license exceeds the fee for a salon license, believing that the amount of work involved would increase by the same proportion because of the additional paperwork and inspection time required with regard to a school.

§ 7.11. Types of individual licenses.

The Board proposes to amend § 7.11 by distinguishing between the cosmetology teacher license and the limited practice teacher license, by replacing the cosmetician and manicurist licenses with esthetician and nail technician licenses and adding the natural hair braider license.

§ 7.12. Scope of teacher's license.

§ 7.12a. Scope of limited practice teacher license.

The Board proposes to amend § 7.12 to clarify that this section applies only to cosmetology teachers and to add § 7.12a to define the scope of practice of limited practice teachers in esthetics, nail technology and natural hair braiding.

§ 7.14. Scope of cosmetologist's license.

§ 7.14a. Scope of cosmetician's license.

§ 7.15. Scope of manicurist's license.

§ 7.17. Scope of natural hair braider license.

The Board proposes to amend §§ 7.14, 7.14a and 7.15 and to add § 7.17 to define the scope of practice of the various individual licenses.

§ 7.31. Examination prerequisite for licensure; exception.

The Board proposes to amend § 7.31 to incorporate the new terminology of Act 99, and to add a grandfather clause for existing natural hair braiders provided in section 6 of Act 99 (63 P. S. § 512). As required by Act 99, for 1 year after the effective date of adoption of this proposed rulemaking, the Board will issue a natural hair braider license to an applicant who submits the application adopted by the Board, pays the required licensing fee and provides proof that the applicant has practiced natural hair braiding for 3 consecutive years immediately prior to the date of the application for licensure.

§ 7.31a. Examination dates and locations.

§ 7.32. Deadline for examination applications.

§ 7.32a. Contents of examination application.

The proposed rulemaking would amend existing provisions pertaining to the examinations to reflect current

processes. The Board's processes regarding the examinations have changed over the years since the regulations were initially promulgated because the functions regarding exam administration rest with the contracted exam provider, which means the exam administrator makes the day-to-day administration decisions, although it does so in accordance with the statutory requirements as the broad framework within which it operates.

Therefore, because the exam provider now administers the examinations on more frequent occasions than was the case previously, § 7.31a would be amended to delete the specific days and months on which the exams are given, to delete locations that are not always available and to permit additional locations to be established. Also, because the exams are given more frequently, § 7.32 would be amended to delete the specific exam deadlines, which are no longer in use, and to simply specify that the deadline is a month prior to the testing date for the specific location where the applicant intends to take the exam, a date to be established by the exam administrator.

Additionally, proposed § 7.32(c) requires that a first-time examinee complete and pass both the theoretical and the practical portions of the exam within 1 year of each other. The Board finds it desirable to institute this requirement because it is concerned that if applicants wait too long between taking one portion and the other, the knowledge they have learned in school will begin to become cloudy, lessening their chances of passing the second portion of the exam and their entrance into the profession will be delayed to the point that their skills will not be as sharp as they otherwise might have been. Proposed subsection (c) would also give the Board discretion to grant exceptions to the 1-year requirement to facilitate the transition from one exam provider to another. This is based on the Board's recent experience in changing from one contracted exam administrator to another, which created delays between some candidates' taking the two portions of the exam.

§ 7.32b. Requirements for teacher's examination.

The changes made by Act 99 allow an individual with a limited license to obtain a limited practice teacher license when previously, to teach an area of cosmetology, an individual could obtain a teacher license only if the individual was licensed as a cosmetologist. Accordingly, § 7.32b would be amended by addressing the requirements for the cosmetology teacher examination in subsection (a) and by providing the requirements for an individual with a limited license to obtain a limited practice teacher license in subsection (b). Subsection (c) would be added to specify that an applicant who already holds a teacher license for one limited practice field (esthetics, nail technology or natural hair braiding) may obtain a teacher license in an additional limited practice field if the applicant meets the teacher license requirements for the additional practice field and successfully completes the practical portion of the teacher exam for the additional practice field.

§ 7.32d. Requirements for cosmetologist's examination.

Proposed § 7.32d(c) would allow limited license holders who wish to obtain cosmetology licenses to receive educational credit toward the cosmetology education credits required for cosmetology licensure from the credits the applicants received when obtaining their education in their limited practice field. The new provision specifies the number of hours each limited licensee may be credited toward the total 1,250 hours that comprise the full cosmetology training program. The Board arrived at the

credited number of hours for each limited license by totaling the number of hours recommended in § 7.129(d) and (e) (relating to curriculum requirements) that relate to training for the actual techniques that the limited licensee needs to know. Thus, the esthetician curriculum recommendation is for 100 hours of training in facial treatments, 10 hours of training in temporary hair removal and 50 hours of training in makeup, for a total of 160 hours of training in the actual techniques of esthetics, which is the number that proposed subsection (c) would credit a licensed esthetician with if that licensee wished to train for the cosmetology license. The credited hours for the nail technician were calculated the same way, as were the credited hours for a natural hair braider, with these last being based on the technique hours that the Board would establish in the proposed § 7.129(f). Finally, subsection (d) would be added to require that the total 1,250 hours, including those already completed in a limited practice field program, must be completed within 4 consecutive years.

§ 7.32e. Requirements for cosmetician's examination.

§ 7.32f. Requirements for manicurist's examination.

§ 7.32h. Requirements for natural hair braider examination.

Act 99 amended Act 86 to specify the qualifications for licensure that limited license applicants must meet. Act 86 previously was silent as to the qualifications for limited license applicants. While the existing regulations stated the number of hours that an applicant for the cosmetician or manicurist exam had to have completed to be eligible for the applicable exam, no other qualifications were set forth. Accordingly, §§ 7.32e and 7.32f would be amended to set forth the requirements that applicants for esthetician and nail technician licenses must meet. Additionally, proposed § 7.32h sets forth the requirements that an applicant for the natural hair braider examination must meet to qualify for the examination and licensure after successful completion of the examination. This provision enumerates the qualifications specified by Act 99.

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

Act 99 also amended Act 86 to allow the Board to issue temporary licenses to limited license applicants, rather than just to cosmetologist and manicurist applicants. Therefore, § 7.32g would be amended to extend its temporary license provisions to applicants for limited licenses. This includes establishing the requirement, set forth in Act 99, that holders of temporary limited licenses may practice under the supervision of a holder of a corresponding limited license, as well as under the supervision of a licensed teacher or licensed cosmetologist.

Also, subsection (b) would be amended by deleting the last clause. The existing regulation makes a temporary license valid for 9 months "or until the next examination, whichever comes first." Because of changes in the Board's processes regarding the exam being given more frequently than just four times per year, retaining the "or until the next examination, whichever comes first" provision would mean some temporary licenses could be good for less than a month in certain instances. The Board believes it is more equitable to make temporary licenses valid for 9 months, particularly in light of section 21.1 of Act 86 (63 P. S. § 518.1), which provides that "[t]emporary licenses are granted for a nine-month period."

§ 7.34. Models for practical portion of examination.

The proposed rulemaking would amend § 7.34, which requires an examinee taking the practical portion of an examination to bring a model to the exam. Under current practice, determined by the exam administrator, only individuals taking the esthetics practical are required to provide their own models. Accordingly, this amendment would bring the regulation into harmony with the current practice.

§ 7.35. Failure of examination.

Section 7.35 would be amended by adding a clause that requires license applicants who fail a portion of the exam to retake and pass the failed portion within 1 year of the date the examinee takes and successfully passes the other portion of the exam. This would make § 7.35 consistent with proposed § 7.32(c) (relating to deadline for examination applicants). The rationale is the same. The Board finds it desirable to institute this requirement because it is concerned that if applicants wait too long between taking one portion and the other, the knowledge they have acquired in school will begin to become cloudy, lessening their chances of passing the second portion of the exam, and their entrance into the profession will be delayed to the point that their skills will not be as sharp as they otherwise might have been.

§ 7.41. Display of licenses and permits.

The proposed rulemaking would amend § 7.41 by slightly modifying the rule pertaining to display of licenses. First, "or permit" would be deleted because the Board does not issue permits of any kind so the words are meaningless. Additionally, the section would be broken down into two subsections, one regarding salon licenses and one regarding individual licenses. Subsection (a) would require the salon license to be displayed in a conspicuous place with the salon's business premises, while subsection (b) would be added to require that individual licenses should be readily available for inspection at the place of business or employment of the individual holding the license. The Board would make this change because of the recent growth of and concerns about identify theft. If an individual's license is posted in the open in a salon, it is there for all to see, thus making the individual susceptible to identity theft of the information that the license contains, including the license number. However, if the license is not out in the open but is readily available for inspection, the public still has access to license information, but the individual will know who has had access to it and might have copied something from it, thus limiting the exposure to and possible theft of personal information. In practice, the Board has permitted this for some time and many salons now keep the individual licenses in a book under the counter that is readily available for view by anyone who would ask for it. The amendment would make the practice and the regulation consistent, while protecting the licensee from identity theft and still making the license information available to the public.

§ 7.43. Expiration and renewal of licenses.

Section 7.43(a) would be amended to change "application" to "notice" in relation to the license renewal. This would align the language of the regulation with current practice, in that, due to the advent of online renewals of licenses, the Board no longer sends out license renewal applications. Rather, it sends out license renewal notices that notify the licensee that it is time to renew and provides a code by which the licensee may renew online directly at the Board's renewal website. The notice also

permits the licensee to renew by means of the traditional hard copy application by either downloading a renewal application form from the Board's website or by contacting the Board and requesting that a hard copy renewal application form be sent via regular mail to the licensee to complete the renewal process.

Additionally, the Board proposes to add subsection (c), which sets forth the requirement that, as a condition of biennial renewal for the first biennial renewal after initial licensure, an individual initially licensed as a natural hair braider without examination under § 7.31(c) (relating to examination prerequisite for licensure; exception) must provide to the Board proof that the licensee has completed 150 hours of education in specified subject matter areas, within 2 years of the date the license was initially issued. This implements the statutory provision from Act 99. Subsection (c) further enumerates the numbers of hours required in each of the subject matter areas specified by Act 99. The Board proposes to require 75 hours in scalp care, 50 hours in hygiene and 25 hours in occupational safety, the provisions of Act 86 and the regulations of the Board, for the statutorily-required total of 150. The Board made this distribution of hours based on its ranking of the importance of and amount of material required for adequate training in each of the subject matter areas.

§ 7.62. Management of cosmetology shop.

The proposed rulemaking would amend § 7.62 by adding a provision to establish who may be the designated person in charge for a natural hair braiding salon. This provision permits either a licensed cosmetologist or a licensed natural hair braider to be the designated person in charge, paralleling the provisions regarding esthetics and nail technology salons, which allow the holder of an applicable limited license or a licensed cosmetologist to be the designated person in charge.

§ 7.71. Equipment and supplies for a cosmetology shop.

§ 7.71a. Equipment and supplies for a cosmetician shop.

§ 7.71b. Equipment and supplies for a manicuring shop.

§ 7.71c. Equipment and supplies for a natural hair braiding salon.

The Board proposes to amend §§ 7.71, 7.71a and 7.71b and to add § 7.71c.

The existing regulations in §§ 7.71, 7.71a and 7.71b contain outdated terminology, require equipment or supplies the Board now views as optional or unnecessary and do not require some items the Board now believes to be essential for safety and sanitation reasons. Accordingly, in these three sections, the terminology is updated so that "styling station" or "work station" replaces the outdated term "dresserette" and "sanitizer" supplants "sterilizer." Also, in § 7.71, the Board would delete the requirement that a cosmetology salon have one container for hair pins or clips and one neck strip dispenser, because those are not necessary for a cosmetology salon to operate effectively, safely or in a sanitary fashion. A salon may still have them, but they are no longer required.

Each of these sections would also be amended by deleting the language requiring one dry sterilizer, an outdated requirement, and replacing it with the requirement that each salon have a closed container for sanitized implements. Also, to update the requirements and make salons safer and more sanitary, the Board would add the requirement that all salons have a labeled first aid kit containing nine specifically-enumerated items that the Board views as the minimum first aid equipment re-

quired to respond to an emergency in the salon. The Board has always required a first aid kit for salons but believed that, in this day and age when universal precautions for blood spills are taught and practiced in almost every workplace, and when the average salon deals with chemicals of many different kinds, the equipment in a first aid kit must include protective gloves, a blood spill kit, a hazardous waste bag, an eyewash and burn ointment. The other items enumerated are typically found in a basic first aid kit and make sense for the minor daily mishaps of daily work. To complete its update of the safety and sanitation requirements, the Board would amend these three sections to require a minimum of 12 sanitary towels for each styling or work station; at least 1 sink with hot and cold running water that is readily accessible to each styling or work station in the work area of the salon; and one multipurpose fire extinguisher suitable for use on Class A, B and C fires. Again, given the fact that salons now deal with all kinds of chemicals, some of them flammable, the Board believes the last requirement is something no salon should be without if it is going to provide the best in safety precautions to its clients.

Section 7.71c would also be added to establish the minimum equipment and supplies required for a natural hair braiding salon to operate. This provision parallels §§ 7.71, 7.71a and 7.71b, which impose similar equipment and supply requirements on cosmetology, esthetician and nail technology salons. These requirements list the minimum equipment that the Board believes a one-person natural hair braider salon needs to be able to provide both adequate service and a safe, sanitary environment to its clients.

§ 7.78. Sign.

Section 7.78 would be amended by adding "or limited practice salon" to extend the regulation's sign display requirement to all types of salons, rather than just to cosmetology salons.

§ 7.79. Lavatories.

The proposed rulemaking would amend § 7.79 by adding a second sentence defining "on the premises." The Board has seen many salon license applications in which the lavatory is not located inside the licensed premises of the salon, although it may be within the building of which the salon is a part. Consequently, there have been many requests for variances from this provision, or situations in which the applicant questions what the Board's regulation means by "on the premises." Accordingly, the second sentence would be added to clarify what is meant by the phrase and the Board's definition is "within the square footage of the salon."

§ 7.81. Rendering of services outside a shop.

§ 7.82. Record of services rendered outside a shop.

§ 7.83. Responsibility of a shop for outside services.

Under Act 86, as it existed previously, only cosmetologists could render services outside of a salon. However, Act 99 extended the authority to render services outside of a salon to all of the limited licensees. Accordingly, § 7.81 would be amended to add language extending its applicability to limited licensees as well as to cosmetologist licensees. It would also be amended to add the requirement that services be rendered by appointment, which is a specific requirement of section 8 of Act 86 (63 P. S. § 514). Similarly, § 7.82 would be amended by changing the limited terms "cosmetologist" and "cosmetology services" to the broader terms "licensee" and "licensed

services," thus making the recordkeeping provision applicable to all licensees who render services outside a licensed salon.

Finally, § 7.83 would be amended. As it reads presently, it makes a salon "that sponsors" services outside the salon responsible for supplying and equipping the cosmetologists who render those services. It would be amended to replace "that sponsors services outside the shop" with "through which appointments are made for the rendering of cosmetology or limited license services outside the salon," thus clarifying the regulation because the phrase "that sponsors services" was vague and open to interpretation. Additionally, the amendment extends this section's applicability to all licensees and all licensed salons, rather than just cosmetologists and cosmetology salons.

§§ 7.91—7.100.

Proposed § 7.91(c) (relating to sanitation and safety generally) requires that sharp implements be stored upright with the points down or in a protective case. This is an update to the general safety requirements that the Board believes licensees must implement to properly protect their clients and themselves.

The proposal would amend § 7.92 (relating to sterilization of equipment) to update the outdated term "sterilization" and replace it with "sanitization." It would also clarify that the provision applies to razors for hair, rather than to razors for the skin.

Additionally, § 7.93 (relating to sanitary use of towels) would be amended by adding "closed" before "towel dispenser." The Board believes requiring a closed towel dispenser for clean towels better protects the sanitary nature of the clean towels than would be the case if they were kept in an open container.

Likewise, the proposal would amend § 7.94(c) (relating to sanitary use of supplies) by adding "or hair" after "skin," thus prohibiting direct contact by a spatula or similar utensil with the hair of a client and helping to prevent the spread of bacteria and the like from one client to another.

Because of a citation to an inapplicable provision of Act 86, § 7.98 (relating to violation of related laws) is amended to correct the erroneous reference to "section 20 of the act" with a reference to section 13 of Act 86 (63 P. S. § 519).

The proposed rulemaking amends § 7.100 (relating to permanent wave operation) by extending the requirement that a client not be left unattended during the heating or processing period of a permanent wave operation to chemical applications, reflecting the Board's recognition that chemicals may be applied to a client in other operations and that, for safety's sake, clients should not be left alone during the heating or processing period of any chemical application.

§§ 7.111—7.129.

The Board would amend § 7.111 (relating to application for a school license) in that the qualifications of the school supervisor would be slightly modified by inserting "work" between "satisfactory" and "experience," and by deleting "as the designated person in charge of a cosmetology shop." This amendment would broaden the range of work experience that the Board finds acceptable in the individual named as a school supervisor in an application for a school license. The Board understands that an individual with a cosmetology teacher license issued by the Board may have a broad range of experience practicing cosmetology in salons, teaching in schools or teaching

apprentices in salons, that would make the individual an acceptable school supervisor regardless of whether the individual had ever been the designated person in charge, and this amendment reflects that understanding.

The Board's proposes to amend §§ 7.114 and 7.115 (relating to school equipment and supplies; and student equipment and supplies) for much the same reasons it would amend the provisions previously discussed regarding salon equipment and also to make the school and student equipment and supply requirements consistent with the salon equipment and supply requirements when the two coincide. The existing regulations contain outdated terminology and lack some items the Board now believes to be essential for safety and sanitation reasons. Accordingly, § 7.114 would amend the school equipment and supply requirements, updating "dry sterilizers" by replacing it with "closed containers for sanitized implements"; updating "sterilizers" by replacing the term with "sanitizers"; and updating "dresserettes" with "styling stations." Section 7.114 would also be amended by adding the requirement that a school enrolling 25 students have at least 2 sanitary towels per student. The equipment and supply requirements for students in § 7.115 would be amended by adding "hair cutting" to modify "razor," thus clarifying that the required razor for cosmetologist students is a hair cutting razor; by deleting the requirement that required tools for nail technology, for both cosmetologist and nail technician students, include nippers or scissors; and by adding the requirement that each cosmetology student have a pair of tweezers.

Additionally, proposed § 7.115(d) sets forth the required supplies and equipment that each natural hair braiding student must possess. This provision is necessary to cover the natural hair braider students who will come about as a result of Act 99's creation of the natural hair braider license.

Section 7.118 (relating to professional staff) would be amended in a minor way by replacing "instructor" or "instructors" with the term "teacher" or "teachers," as appropriate, because there is no other place in Act 86 or in the regulations where the term "instructor" or "instructors" is used.

Also, § 7.120(a) (relating to work done by students on the public) would be amended slightly for clarity. The regulation implemented section 7 of Act 86 (63 P.S. § 513), which prohibits schools from charging "any money whatsoever for treatments done by its students" and permits schools to charge only for "the reasonable cost of materials used in such treatments." However, over the years, it has become apparent that some schools have been calculating into the "reasonable cost of materials used in the treatment" items such as overhead, prorated teacher salaries and wear and tear on equipment. The Board does not believe that those broader expenses were intended to be encompassed in the cost of materials used in the treatment of clients, and therefore would make this amendment to clarify that the charge must be based on the reasonable cost of materials "used on the client" only.

§ 7.129. Curriculum requirements.

This proposal would amend § 7.129 by replacing the outdated term "sterilization" with the current term "disinfection," consistent with other proposed amendments. Additionally, § 7.129(a) would be amended by updating the reference to Act 86, changing "Beauty Culture Law" to "Cosmetology Law" to be consistent with current usage. While there is no actual provision in Act 86 that designates a short title, unlike many other licensing acts, the

common usage in the profession is to refer to Act 86 as the "Cosmetology Law." For example, section 1 of Act 99 (63 P.S. § 507) refers to Act 86 as the "Cosmetology Law." This amendment would adopt that modernization.

Proposed § 7.129(f) sets forth the natural hair braider curriculum that schools shall implement to train candidates for licensure as natural hair braiders. The regulation establishes a curriculum of 300 hours, as mandated by Act 99, and recommends that schools distribute the hours as follows: 50 to professional practices, including sanitation; 125 to sciences, including scalp care and anatomy; and 125 to cognitive and manipulative skills regarding natural hair braiding. This recommended apportionment is similar to the recommended apportionment for the other limited license curricula.

§ 7.132. Apprentice curriculum.

Finally, the Board proposes to amend § 7.132 by adding language to clarify the curriculum for apprentices. The existing regulation states merely that the cosmetology teacher responsible for offering instruction to an apprentice in a cosmetology salon shall teach the same cosmetology curriculum that the Board prescribes for schools of cosmetology in § 7.129. However, because section 4 of Act 86 (63 P.S. § 510) requires that apprentices shall complete 2,000 hours of training to sit for the cosmetology exam, which is 750 hours more than a cosmetology student shall complete who takes a course of training in a licensed school, some confusion has arisen as to how the hours in an apprenticeship program should be apportioned. This proposed rulemaking adds the apportionment of hours for the cosmetology curriculum in § 7.129 and assigns the additional 750 hours to the category of "cosmetology cognitive and manipulative skills." This narrows down the subject matter of the additional hours but leaves the actual content to the discretion of the cosmetology teacher and apprentice. The proposed rulemaking, therefore, gives a cosmetology teacher some guidance but permits leeway as to what else should be taught, thus allowing for differences in interest and in the nature of the services a given salon may actually provide.

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 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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, suggestions or objections regarding the proposed rulemaking to Hilarene Staller, Administrator, State Board of Cosmetology, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

SUSAN E. RINEER,
Chairperson

Fiscal Note: 16A-4514. 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 7. STATE BOARD OF COSMETOLOGY
GENERAL PROVISIONS**

§ 7.1. Definitions.

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

* * * * *

Board—The State Board of Cosmetology [of the Commonwealth].

Booth space—[Any area in a cosmetology shop, cosmetician shop or manicurist shop separated or not separated which is designated to be used by a licensed teacher, cosmetologist, cosmetician or manicurist.] The area of a salon in which a licensed cosmetologist or a holder of a limited license provides to a client a service for which a license is required under the act.

Braiding—Intertwining the hair in a systematic motion to create patterns in a three-dimensional form, inverting the hair against the scalp along part of a straight or curved row of intertwined hair, or twisting the hair in a systematic motion, including extending the hair with natural or synthetic hair fibers.

Bureau—The Bureau of Professional and Occupational Affairs [of the Commonwealth] in the Department of State.

Cosmetologist—A licensed individual who is engaged in the practice of cosmetology.

Cosmetology—

(i) Any or all work done for compensation by any person, which work is generally and usually performed by cosmetologists, which work is for the embellishment, cleanliness and beautification of the human hair, such as arranging, braiding, dressing, curling, waving, permanent waving, cleansing, cutting, singeing, bleaching, coloring, pressing, or similar work thereon and thereabout, and the removal of superfluous hair, and the massaging, cleansing, stimulating, manipulating, exercising, or similar work upon the scalp, face, arms or hands, or the upper part of the body, by the use of

mechanical or electrical apparatus or appliances or cosmetics, preparations, tonics, antiseptics, creams or lotions, or by any other means, and of manicuring the nails, which enumerated practices shall be inclusive of the term cosmetology but not in limitation thereof.

(ii) The term also includes the acts comprising the practice of nail technology, natural hair braiding and esthetics.

Department—The Commissioner of Professional and Occupational Affairs in the Department of State.

Esthetics—The practice of massaging the face, applying cosmetic preparations, antiseptics, tonics, lotions or creams to the face, removing superfluous hair by tweezers, depilatories or waxes and the dyeing of eyelashes and eyebrows.

Esthetician—An individual licensed by the Board to practice esthetics.

Lavatory—A working toilet and a working sink with hot and cold running water that are located in a separate room that affords privacy to the user.

Limited license—A license issued by the Board to an individual which permits that individual to engage in the practice of esthetics, natural hair braiding or nail technology.

Limited practice salon—A salon licensed by the Board for the provision of esthetician services, nail technology services or natural hair braiding services only.

Limited practice teacher—A teacher licensed by the Board for the purpose of providing instruction in the area of esthetics, nail technology or natural hair braiding only.

[**Manicuring**—Work or maintenance done to the nail or cuticle of the hands or the feet for cosmetic purposes including, and limited to, filing, polishing, coating, nipping, shaping, sculpturing and applying artificial tips and other extensions. The term does not include the removal of corns and callouses but does include the removal of thin, dry skin for cosmetic purposes with a pumice stone or similar nonmetal instrument.]

Nail technician—An individual licensed by the Board to engage in the practice of nail technology.

Nail technology—The practice of manicuring the nails of an individual, applying artificial or sculptured nails to an individual, massaging the hands of an individual or massaging the lower arms of an individual up to the individual's elbow, massaging the feet of an individual or the lower legs of an individual up to the individual's knee, or a combination of these acts.

Natural hair braider—An individual licensed by the Board to engage in the practice of natural hair braiding.

Natural hair braiding—

(i) The practice of utilizing techniques that result in tension on hair roots of individuals, such as twisting, wrapping, weaving, extending, locking or braiding of the hair.

(ii) The term does not include the application of dyes, reactive chemicals or other preparations to alter the color or to straighten, curl or alter the structure of hair.

School of cosmetology—Any individual, partnership, association, business corporation, nonprofit corporation, municipal corporation, school district or any group of individuals however organized whose purpose is to provide courses of instruction in cosmetology or the teaching of cosmetology.

Tanning units—Equipment that utilizes ultraviolet light for the purpose of cosmetic tanning.

§ 7.2. Fees.

Fees charged by the Board are as follows:

Licensure of cosmetologist, [manicurist or cosmetician] nail technician, esthetician or natural hair braider	\$10
Licensure of cosmetology teacher or limited practice teacher	\$10
Licensure of cosmetology [shop, manicurist shop or cosmetician shop] salon or limited practice salon	\$55
* * * * *	
Biennial renewal of [manicurist's] nail technician license	\$35
Biennial renewal of [cosmetician's] esthetician license	\$35
Biennial renewal of [cosmetologist's] cosmetologist license	\$35
Biennial renewal of natural hair braider license	\$35
Biennial renewal of cosmetology [teacher's] teacher or limited practice teacher license	\$55
Biennial renewal of cosmetology [shop's] salon or limited practice salon license	\$60
[Biennial renewal of cosmetician or manicurist shop's license	\$60]
Biennial renewal of cosmetology [school's] school license	\$150
* * * * *	
Change in cosmetology [, cosmetician or manicurist shop] salon or limited practice salon (inspection required)	\$55
Change in cosmetology [, cosmetician or manicurist shop] salon or limited practice salon (no inspection required)	\$15
Change in cosmetology school (inspection required)	\$110
Change in cosmetology school (no inspection required)	\$35
Reinspection of cosmetology [, cosmetician or manicurist shop] salon or limited practice salon or cosmetology school	\$40
* * * * *	

INDIVIDUAL LICENSES

§ 7.11. Types of individual licenses.

The following [license] licenses are issued by the Board to qualified individuals under the act:

- (1) [Teacher] Cosmetology teacher.

- (2) Limited practice teacher.
- (3) Cosmetologist.
- [(3) Cosmetician] (4) Esthetician.
- [(4) Manicurist] (5) Nail technician.
- (6) Natural hair braider.

§ 7.12. Scope of [teacher's] cosmetology teacher license.

An individual holding a [teacher's] cosmetology teacher license is qualified, without further licensure, to perform the functions of a teacher, cosmetologist, [cosmetician or manicurist] esthetician, nail technician or natural hair braider.

§ 7.12a. Scope of limited practice teacher license.

(a) An individual holding a limited practice teacher license in esthetics is qualified, without further licensure, to teach esthetics in a licensed school of cosmetology and to perform the functions of an esthetician.

(b) An individual holding a limited practice teacher license in nail technology is qualified, without further licensure, to teach nail technology in a licensed school of cosmetology and to perform the functions of a nail technician.

(c) An individual holding a limited practice teacher license in natural hair braiding is qualified, without further licensure, to teach natural hair braiding in a licensed school of cosmetology and to perform the functions of a natural hair braider.

§ 7.14. Scope of [cosmetologist's] cosmetologist license.

An individual holding a [cosmetologist's] cosmetologist license is qualified, without further licensure, to perform the functions of a cosmetologist, [cosmetician or manicurist] esthetician, nail technician or natural hair braider.

§ 7.14a. Scope of [cosmetician's] esthetician license.

An individual holding [a cosmetician's] an esthetician license is qualified to perform [cosmetician] esthetician services only.

§ 7.15. Scope of [manicurist's] nail technician license.

An individual holding a [manicurist's] nail technician license is qualified to perform [manicuring] nail technology services only.

§ 7.17. Scope of natural hair braider license.

An individual holding a natural hair braider license is qualified to perform natural hair braiding services only.

EXAMINATIONS

§ 7.31. Examination prerequisite for licensure; [exception] exceptions.

- (a) Except as provided in [subsection] subsections
- (b) and (c), an individual who wants to obtain a [teacher's, cosmetologist's, cosmetician's or manicurist's] cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural

hair braider license listed in §§ 7.12—[7.15] 7.17 shall pass the examination required by the Board for that license.

* * * * *

(c) Until _____ (*Editor's Note: The blank refers to a date 1 year after the effective date of adoption of this proposed rulemaking.*), the Board will issue a natural hair braider license to an applicant who does the following:

(1) Submits the application adopted by the Board.

(2) Pays the required licensing fee in § 7.2 (relating to fees).

(3) Provides proof that the applicant has practiced natural hair braiding for 3 consecutive years immediately prior to the date of the application for licensure.

(i) Proof of practice requires that the applicant provide tax records of employment and an affidavit from the applicant and the applicant's immediate supervisor, when applicable, verifying the applicant's practice of natural hair braiding for 3 consecutive years immediately prior to the date of the licensure application.

(ii) The Board will accept the information provided without penalty to the applicant for failure to comply with the licensing provisions prior to September 5, 2006, the effective date of the act of July 7, 2006 (P. L. 704, No. 99).

§ 7.31a. Examination dates and locations.

Licensing examinations are given [on the third Tuesdays of January, April, July and October] monthly in Philadelphia, Pittsburgh, [Wilkes-Barre,] Harrisburg and [Erie] additional locations established by the examination administrator after consultation with the Board.

§ 7.32. Deadline for examination applications.

(a) The [deadlines] deadline for submitting an examination [applications are as follows:

<i>Examination date</i>	<i>Deadline for First-time examinees</i>	<i>Deadline for Reexaminees</i>
3rd Tuesday in January	December 1	December 10
3rd Tuesday in April	March 1	March 10
3rd Tuesday in July	June 1	June 10
3rd Tuesday in October	September 1	September 10]

application is 1 month prior to the testing date for the specific location where the applicant intends to take the exam, a date established by the examination administrator.

* * * * *

(c) A first-time examinee shall complete and pass both the theoretical and practical portions of the exam within 1 year. If the exam provider changes, the Board retains discretion to grant exceptions to

this 1-year requirement to facilitate the transition from one exam provider to another.

§ 7.32a. Contents of examination application.

(a) The application of a first-time examinee [shall] must include the following:

(1) Proof of having met the requirements for the examination applied for as set forth in §§ 7.32b—7.32[f]h.

* * * * *

§ 7.32b. Requirements for [teacher's examination] teacher examinations.

(a) An applicant for the [teacher's] cosmetology teacher examination shall:

* * * * *

(3) Possess a current [cosmetologist's] cosmetologist license.

(4) Have completed 500 hours of instruction in a cosmetology teacher curriculum [in] provided by a licensed school of cosmetology.

(b) An applicant for the limited practice teacher examination in esthetics, nail technology or natural hair braiding shall:

(1) Be 18 years of age or older.

(2) Have completed a 12th grade education or its equivalent.

(3) Possess a current limited license in the relevant limited practice field.

(4) Have completed 500 hours of instruction in a cosmetology teacher or limited practice teacher curriculum provided by a licensed school of cosmetology.

(c) An applicant who has already obtained a limited practice teacher license in one of the limited practice fields and desires to obtain a limited practice teacher license in an additional limited practice field shall:

(1) Meet the requirements in subsection (b) for the additional limited practice field.

(2) Successfully complete the practical portion of the teacher examination for the additional limited practice field in which the applicant desires to become a licensed teacher.

§ 7.32d. Requirements for [cosmetologist's] cosmetologist examination.

(a) An applicant for the [cosmetologist's] cosmetologist examination who holds no limited licenses shall:

* * * * *

(c) An applicant for the cosmetologist examination who holds one or more active limited licenses issued by the Board and who obtained educational credits through a licensed cosmetology school will be given credit for the number of educational hours obtained to qualify for the active limited license or licenses as follows:

(1) An applicant who holds an active esthetician license will be given credit for 160 hours toward the total cosmetology training program of 1,250 hours.

(2) An applicant who holds an active nail technician license will be given credit for 100 hours toward the total cosmetology training program of 1,250 hours.

(3) An applicant who holds an active natural hair braider license will be given credit for 125 hours toward the total cosmetology training program of 1,250 hours.

(d) An applicant seeking credit for educational credits under subsection (c) shall complete the total of 1,250 cosmetology training hours, including those already completed in the limited license practice field for which the applicant is seeking credit, within 4 consecutive years.

§ 7.32e. Requirements for [cosmetician's] esthetician examination.

(a) An applicant for the [cosmetician's] esthetician examination shall [have]:

- (1) Be 16 years of age or older.
- (2) Except as provided in subsection (b), have done one of the following:
 - (i) Completed a 10th grade education or its equivalent.
 - (ii) Received training from or under the auspices of the Bureau of Rehabilitation in the Department of Labor and Industry.

(3) Have completed 300 hours of instruction in skin care in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

- (1) A veteran.
- (2) Thirty-five years of age or older.

§ 7.32f. Requirements for [manicurist's] nail technician examination.

(a) An applicant for the [manicurist's] nail technician examination shall [have]:

- (1) Be 16 years of age or older.
- (2) Except as provided in subsection (b), have done one of the following:
 - (i) Completed a 10th grade education or its equivalent.
 - (ii) Received training from or under the auspices of the Bureau of Rehabilitation in the Department of Labor and Industry.

(3) Have completed 200 hours of instruction in [manicuring] nail technology in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

- (1) A veteran.
- (2) Thirty-five years of age or older.

§ 7.32g. Issuance of temporary licenses to qualified examination applicants.

(a) A temporary license may be issued to an applicant who is eligible for admission to the [cosmetologist's or manicurist's] cosmetologist examination or to any limited license examination and who pays the examination fee set by the professional testing organization and

the license fee prescribed in § 7.2 (relating to fees). The purpose of a temporary license is to allow an otherwise qualified applicant to practice pending the applicant's scoring a passing grade on the examination.

(b) A temporary license is valid for 9 months [or until the next examination, whichever comes first].

(c) The holder of a temporary [cosmetologist's] cosmetologist license shall practice under the supervision of a licensed cosmetology teacher or cosmetologist. The holder of a temporary [manicurist's] limited license shall practice under the supervision of a licensed cosmetology teacher [or], cosmetologist, limited practice teacher in the corresponding limited practice field or holder of a corresponding limited license.

§ 7.32h. Requirements for natural hair braider examination.

(a) An applicant for the natural hair braider examination shall:

- (1) Be 16 years of age or older.
- (2) Except as provided in subsection (b), have done one of the following:
 - (i) Completed a 10th grade education or its equivalent.
 - (ii) Received training from or under the auspices of the Bureau of Rehabilitation in the Department of Labor and Industry.

(3) Have completed 300 hours of Board-approved subjects relating to sanitation, scalp care, anatomy and natural hair braiding in a licensed school of cosmetology.

(b) Subsection (a)(2) does not apply to an applicant who is one of the following:

- (1) A veteran.
- (2) Thirty-five years of age or older.

§ 7.34. Models for practical portion of examination.

An examinee taking the practical part of [an] the esthetics examination shall bring with him a model.

§ 7.35. Failure of examination.

An examinee who fails either the practical or theoretical part of the examination for a cosmetology teacher, limited practice teacher, cosmetologist, [cosmetician or manicurist] esthetician, nail technician or natural hair braider license will be required to retake and pass the failed portion of the examination within 1 year of the date the examinee takes and passes the other portion of the examination.

DISPLAY, LOSS AND RENEWAL OF LICENSES AND PERMITS

§ 7.41. Display of licenses [and permits].

(a) A salon license [or permit] issued by the Board shall be displayed in a conspicuous place within the business premises of the salon.

(b) An individual license shall be readily available for inspection by the public or representatives of the Board at the place of business or employment of the individual holding the license [or permit].

§ 7.43. Expiration and renewal of licenses.

(a) Licenses issued by the Board expire at biennial intervals. A license renewal **[application] notice** is mailed to each licensee approximately 4 weeks before the license expiration date. Renewal of the license is accomplished by submission of the license renewal application and the license renewal fee prescribed in § 7.2 (relating to fees).

* * * * *

(c) **Within 2 years of the initial issuance of a natural hair braider license issued without examination under § 7.31(c) (relating to examination prerequisite for licensure; exceptions), the natural hair braider licensee shall provide to the Board proof that the licensee has completed 150 hours of education from a licensed school of cosmetology as a condition of renewal of the license. The 150 hours of education must include, at a minimum:**

- (1) **75 hours in scalp care.**
- (2) **50 hours in hygiene.**
- (3) **25 hours in occupational safety, the provisions of the act and this chapter.**

§ 7.45. Reexamination if the license is not current for 5 or more years.

The holder of a **[teacher's, cosmetologist's, cosmetician's or manicurist's] cosmetology teacher, limited practice teacher, cosmetologist, esthetician, nail technician or natural hair braider** license that has been expired or in escrow for at least 5 years shall retake and pass the practical part of the examination for that license before submitting a renewal application.

LICENSURE AND MANAGEMENT OF **[SHOPS] SALONS**

§ 7.50. Applicability of requirements.

The requirements of §§ 7.51—7.53, 7.65 and 7.71—7.71b, 7.75—7.78, 7.81 and 7.82, apply equally to cosmetology **[shops, cosmetician shops and manicurist shops] salons, esthetician salons, nail technology salons and natural hair braiding salons**, unless the context indicates otherwise.

§ 7.51. Application for a [shop] salon license.

(a) An owner-applicant for a **[shop] salon** license shall submit a license application to the Board with the following:

- (1) A sketch plan showing the layout of the **[shop] salon**, including the position of the doors, windows, partitions, shampoo basins, lavatories, adjustable chairs and other floor equipment.
- (2) The name and license number of the individual who will be the designated person in charge of the **[shop] salon** in the absence of the owner.

(3) The **[shop] salon** license fee prescribed in § 7.2 (relating to fees).

(b) A license will not be issued until the Board has verified the sworn statements made by the owner-applicant in the application and the **[shop] salon** has been inspected by a Bureau inspector for compliance with the facility requirements of this chapter. If the inspector

determines that the **[shop] salon** meets the facility requirements of the act and this chapter, a license will be issued.

§ 7.52. Change of location or physical dimensions.

(a) A **[shop] salon** license is valid only for the location stated on the license. The owner of a **[shop] salon** who wishes to change its location shall submit an application to the Board for a change of **[shop] salon** location together with the information required in § 7.51 (relating to application for **[shop] salon** license) and the fee for change of **[shop] salon** location prescribed in § 7.2 (relating to fees). The application will be processed in the manner prescribed by § 7.51.

(b) A **[shop] salon** owner shall submit to the Board for its approval a sketch plan of any proposed change in the physical dimensions of the **[shop] salon**.

§ 7.53. Change of ownership.

The owner of a **[shop] salon** shall immediately notify the Board in writing of a change in the controlling ownership of the **[shop] salon**. If a partner or co-owner is being added or deleted, the owner shall submit to the Board an application for change of license and the fee for change of license prescribed in § 7.2 (relating to fees).

§ 7.62. Management of [cosmetology shop] salons.

(a) A cosmetology **[shop] salon** shall be managed by the **[shop] salon** owner or, in the absence of the **[shop] salon** owner, a person in charge designated by the **[shop] salon** owner.

(b) The designated person in charge shall be a licensed cosmetologist[.], **except as follows:**

(1) In the case of **[a cosmetician shop] an esthetician salon**, the designated person in charge may be either a licensed cosmetologist or a licensed **[cosmetician] esthetician**.

(2) In the case of a **[manicurist shop] nail technology salon**, the designated person in charge may be either a licensed cosmetologist or a licensed **[manicurist] nail technician**.

(3) **In the case of a natural hair braiding salon, the designated person in charge may be either a licensed cosmetologist or a licensed natural hair braider.**

(c) Both the owner and the designated person in charge are responsible for posting the name of the owner or designated person in charge in a conspicuous place in the **[shop] salon** as required by section 4.4(b) of the act.

(d) The owner or designated person in charge of the **[shop] salon** shall be readily available in person to Bureau inspectors during regular business hours.

§ 7.64. Responsibilities of [shop] salon owner or designated person in charge.

(a) The primary responsibilities of a **[shop] salon** owner and designated person in charge are the administration of the business and personnel affairs of the **[shop] salon** and to assure compliance within the **[shop] salon** with all laws of the Commonwealth, this chapter and the Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

(b) A [shop] salon owner or designated person in charge will be subject to disciplinary action by the Board for a violation of the act or this chapter committed by a licensed employee of the [shop] salon, if the owner or designated person in charge had knowledge of, or control over, the violation or should have had knowledge or control.

§ 7.65. Rental of booth space.

The rental of booth space within a [shop] salon is prohibited.

§ 7.66. Discrimination.

It is prohibited for any person to refuse, withhold from, or deny to any person because of the person's race, color, religious creed, ancestry or National origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of a cosmetology, [cosmetician or manicuring shop] esthetician, nail technology or natural hair braiding salon.

PHYSICAL REQUIREMENTS OF A [BEAUTY SHOP] SALON

§ 7.71. Equipment and supplies for a cosmetology [shop] salon.

(a) A cosmetology [shop shall] salon must contain the following equipment, which is considered the minimum equipment needed for a [shop] salon with one cosmetologist:

* * * * *

- (2) One [dresserette] styling station with mirror.
- (3) One labeled first-aid kit[.] containing the following items:
 - (i) An antiseptic.
 - (ii) Cotton balls.
 - (iii) Protective plastic or latex gloves.
 - (iv) A blood spill kit.
 - (v) A hazardous waste bag.
 - (vi) Eyewash.
 - (vii) Burn ointment.
 - (viii) Plastic or latex bandage strips of varying sizes and shapes.
 - (ix) Sterile gauze pads.
- (8) [One container for hair pins or clips.
- (9) One neck strip dispenser.
- (10)] A closed storage area for soiled linen.
- [(11)] (9) One timer clock.
- [(12)] (10) One closed towel cabinet for clean linen.
- [(13) One dry sterilizer] (11) A closed container for sanitized implements.
- [(14)] (12) One wet [sterilizer] sanitizer.
- [(15)] (13) A reception desk.

(14) Twelve sanitary towels for each styling station in the salon.

(15) One sink with hot and cold running water that is readily accessible to each styling station in the work area of the salon.

(16) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

* * * * *

§ 7.71a. Equipment and supplies for [a cosmetician shop] an esthetician salon.

(a) [A cosmetician shop shall] An esthetician salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a [shop] salon with one [cosmetician] esthetician:

* * * * *

- (2) One [dresserette] work station with mirror.
- (3) One labeled first-aid kit[.] containing the following items:
 - (i) An antiseptic.
 - (ii) Cotton balls.
 - (iii) Protective plastic or latex gloves.
 - (iv) A blood spill kit.
 - (v) A hazardous waste bag.
 - (vi) Eyewash.
 - (vii) Burn ointment.
 - (viii) Plastic or latex bandage strips of varying sizes and shapes.
 - (ix) Sterile gauze pads.

* * * * *

(8) [One dry sterilizer] A closed container for sanitized implements.

(9) One wet [sterilizer] sanitizer.

* * * * *

(12) Twelve sanitary towels for each work station in the salon.

(13) One sink with hot and cold running water that is readily accessible to each work station in the work area of the salon.

(14) One multipurpose fire extinguisher suitable for use on Class A, B and C fires.

(b) For each additional [cosmetician] esthetician, equipment and supplies shall be increased so that each [cosmetician] esthetician can render services safely and efficiently.

§ 7.71b. Equipment and supplies for a [manicuring shop] nail technology salon.

(a) A [manicuring shop shall] nail technology salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a [shop] salon with one [manicurist] nail technician:

* * * * *

(4) One **labeled** first-aid kit **containing the following items:**

- (i) **An antiseptic.**
- (ii) **Cotton balls.**
- (iii) **Protective plastic or latex gloves.**
- (iv) **A blood spill kit.**
- (v) **A hazardous waste bag.**
- (vi) **Eyewash.**
- (vii) **Burn ointment.**
- (viii) **Plastic or latex bandage strips of varying sizes and shapes.**
- (ix) **Sterile gauze pads.**

* * * * *

(8) **[Clean linen]** Twelve sanitary towels for each work station in the salon.

(9) One wet **[sterilizer]** sanitizer.

(10) **[One dry sterilizer]** A closed container for sanitized implements.

* * * * *

(12) **One sink with hot and cold running water that is readily accessible to each work station in the work area of the salon.**

(13) **One multipurpose fire extinguisher suitable for use on Class A, B and C fires.**

(b) For each additional **[manicurist] nail technician**, equipment and supplies shall be increased so that each **[manicurist] nail technician** can render services safely and efficiently.

§ 7.71c. Equipment and supplies for a natural hair braiding salon.

(a) **A natural hair braiding salon must contain the following equipment and supplies, which is considered the minimum equipment needed for a salon with one natural hair braider:**

- (1) **One adjustable chair.**
- (2) **One styling station with mirror.**
- (3) **One labeled first-aid kit containing the following items:**
 - (i) **An antiseptic.**
 - (ii) **Cotton balls.**
 - (iii) **Protective plastic or latex gloves.**
 - (iv) **A blood spill kit.**
 - (v) **A hazardous waste bag.**
 - (vi) **Eyewash.**
 - (vii) **Burn ointment.**
 - (viii) **Plastic or latex bandage strips of varying sizes and shapes.**
 - (ix) **Sterile gauze pads.**
- (4) **One dryer or blow dryer.**
- (5) **One shampoo tray or basin.**
- (6) **Twelve combs and twelve brushes.**
- (7) **One covered waste container.**

- (8) **A closed storage area for soiled linen.**
- (10) **One closed towel cabinet for clean linen.**
- (11) **A closed container for sanitized implements.**
- (14) **One wet sanitizer.**
- (15) **A reception desk.**

(16) **Twelve sanitary towels for each styling station in the salon.**

(17) **One sink with hot and cold running water that is readily accessible to each styling station in the work area of the salon.**

(18) **One multipurpose fire extinguisher suitable for use on Class A, B and C fires.**

(b) **For each additional natural hair braider, equipment and supplies shall be increased so that each natural hair braider can render services safely and efficiently.**

§ 7.75. Entrances.

The entrance to a **[shop] salon** that is located in a private home **[shall] must** permit clients to enter the **[shop] salon** directly from the public thoroughfare without passing through any part of the home.

§ 7.76. Floor space.

(a) The floor area of a **[shop] salon** operated by one licensee shall have a minimum area of 180 square feet with a minimum width of 10 feet. An additional area of at least 60 square feet is required for each additional licensee in the **[shop] salon**. The Board, upon an applicant's request, may grant a variance from the space requirements concerning a **[shop] salon** which the Board believes is reasonable.

(b) **[Shops] Salons** opened prior to September 15, 1976, which have been operating with one cosmetologist shall have sufficient floor space to properly install the equipment with regard to the health and safety of the patrons of the cosmetology **[shop] salon**. It is suggested that the floor space be a minimum of 10 feet by 12 feet or 120 square feet, with 60 square feet for each additional operator. The Board, after examination of the **[shop's] salon's** layout, may grant variance from the **[shop] salon** space requirements which the Board believes is reasonable.

§ 7.77. Use of **[shop] salon** for other purposes prohibited.

No part of a **[shop] salon**, including lavatories and laundry facilities, may be used for other purposes.

§ 7.78. Sign.

A **[shop shall] salon must** shall display, at or near its main entrance, a sign that is clearly visible indicating to the public that it is a cosmetology **[shop] salon or limited practice salon**.

§ 7.79. Lavatories.

A **[shop] salon** shall have adequate lavatories on the premises. **For the purposes of this section, "on the premises" means within the square footage of the salon.**

ACTIVITIES OUTSIDE A [SHOP] SALON

§ 7.81. Rendering of services outside a **[shop] salon**.

A cosmetologist **or holder of a limited license**, with the permission of the employing **[shop] salon**, may

render by appointment cosmetology or limited license services to persons at their residences and to persons who are confined to institutions due to illness, imprisonment, old age or similar circumstances.

§ 7.82. Record of services rendered outside a [shop] salon.

A [cosmetologist] licensee who renders [cosmetology] licensed services outside the [shop] salon shall maintain at the employing [shop] salon complete records for each service rendered outside the [shop] salon, including the date, time, place and fee charged. The record of outside services shall be considered part of the records of the [shop] salon.

§ 7.83. Responsibility of a [shop] salon for outside services.

A [shop that sponsors] salon through which appointments are made for the rendering of cosmetology or limited license services outside the [shop] salon shall be responsible for ensuring that the [cosmetologists] licensees are fully supplied and equipped when they perform services outside the [shop] salon and that all other requirements of this chapter are complied with.

HEALTH AND SAFETY IN [SHOPS] SALONS

§ 7.90. Applicability of requirements.

The requirements of this section and §§ 7.91—7.98 and 7.100 apply equally to cosmetology [shops, cosmetician shops and manicurist shops] salons, esthetician salons, nail technology salons and natural hair braiding salons, unless the context indicates otherwise.

§ 7.91. Sanitation and safety generally.

(a) A [shop shall] salon must be well lighted and well ventilated.

(b) All areas of the [shop] salon, including the floors and lavatories, shall be maintained in a safe, orderly and sanitary condition.

(c) Sharp implements shall be stored upright with the points down or in a protective case.

§ 7.92. [Sterilization] Sanitization of equipment.

Razors for hair, tweezers, combs, hairbrushes, and other tools, instruments, utensils and appliances that come into contact with a client shall be sanitized immediately after each use and maintained in a sanitary condition at all times.

§ 7.93. Sanitary use of towels.

(a) Only clean cloth towels or disposable paper towels shall be used on clients. Unused cloth towels shall be kept in a closed cabinet. Unused paper towels shall be kept in a closed cabinet or closed towel dispenser. A cloth towel that has been used on a client shall be immediately placed in a closed container for soiled linen. A disposable paper towel that has been used on a client shall be immediately discarded in a covered waste container.

* * * * *

§ 7.94. Sanitary use of supplies.

(a) The use of powder puffs or styptic pencils in a [shop] salon is prohibited.

* * * * *

(c) Creams and other semisolid substances shall be removed from their containers with a sterile spatula or similar utensil. The spatula or similar utensil may not be permitted to come into contact with the skin or hair of a client.

* * * * *

§ 7.95. Individual cleanliness.

Every [shop employe] salon employee who serves the public shall be clean as to person and dress and shall thoroughly cleanse the hands immediately before rendering services to a client and immediately after using the lavatory.

§ 7.98. Violation of related laws.

The license of a licensee who has pled guilty or nolo contendere to, or has been convicted of, a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or a similar State or Federal law, shall be subject to suspension or revocation under section [20] 13 of the act (63 P. S. § 519).

§ 7.100. Permanent wave [operation] operations and chemical applications.

A client may not be left unattended during the heating or processing period of a permanent wave operation or chemical application.

LICENSURE AND ADMINISTRATION OF SCHOOLS OF COSMETOLOGY

§ 7.111. Application for a school license.

(a) An owner-applicant for a school license shall submit a license application to the Board with the following:

* * * * *

(2) The name, signature and license number of the school supervisor, together with proof that the supervisor meets the following qualifications:

(i) Possesses a current [teacher's] cosmetology teacher license issued by the Board.

(ii) Has done one of the following:

* * * * *

(B) Acquired 1,250 hours of satisfactory experience as a cosmetology teacher and 1,800 hours of satisfactory work experience [as the designated person in charge of a cosmetology shop].

* * * * *

§ 7.114. School equipment and supplies.

(a) A school enrolling 25 students or less [shall] must have, at a minimum, the following equipment:

* * * * *

(4) Four [dry sterilizers] closed containers for sanitized implements.

(5) Four wet [sterilizers] sanitizers.

* * * * *

(9) Twelve [dresserettes] styling stations, mirrors and chairs.

* * * * *

(20) Two sanitary towels per student.

* * * * *

§ 7.115. Student equipment and supplies.

(a) A school shall ensure that each cosmetology student possesses and maintains in sanitary condition the following:

* * * * *

(3) One hair cutting razor.

* * * * *

(7) Complete tools for [manicuring] nail technology, including emery boards, [nipper or scissors,] pusher and brush.

* * * * *

(10) One pair of tweezers.

(b) A school shall ensure that each [cosmetician] esthetician student possesses and maintains in sanitary condition the following:

* * * * *

(c) A school shall ensure that each [manicuring] nail technology student possesses and maintains in sanitary condition the following:

* * * * *

(2) Complete tools for [manicuring] nail technology, including emery boards, [nipper or scissors,] pusher and brush.

* * * * *

(4) A basic [manicuring] nail technology textbook.

(d) A school shall ensure that each natural hair braiding student possesses and maintains in sanitary condition the following:

(1) One shampoo cape.

(2) One comb-out cape.

(3) Two brushes.

(4) Six combs.

(5) A minimum of 100 pin curl clips.

(6) A carrying case of sufficient size to accommodate the equipment and supplies used by the student.

(7) A basic natural hair braiding textbook.

§ 7.118. Professional staff.

(a) A school shall employ as [instructors] teachers of courses that are part of the required curriculum persons who possess a current [teacher's] cosmetology teacher or limited practice teacher license issued by the Board, except that a school may employ as [instructors] teachers of business or teaching skills persons who hold a current teacher's certificate issued by the Department of Education.

(b) The [teacher's] license of each [instructor] teacher employed by the school shall be conspicuously displayed in the school.

(c) A school shall employ at least one full-time [instructor] teacher.

(d) The student/teacher ratio of a class taught for credit may not exceed 25 to 1, except if a guest lecture is given by a person who is not regularly employed by the school as an [instructor] teacher.

* * * * *

§ 7.118a. Uniforms.

Teachers and students shall be attired in washable uniforms during school hours. A [teacher's] teacher uniform [shall] must be distinguished from a [student's] student uniform.

§ 7.120. Work done by students on the public.

(a) A school may permit students who have completed at least 300 hours of instruction to work on the public, if the charges for the students' services are based on the reasonable cost of materials used on the client only.

* * * * *

§ 7.123. Duty work.

A school shall require students to keep their stations clean and to assist in general clean-up and other duties that may be required in an operating [shop] salon, except that students may not be required to scrub floors, wash windows or perform janitorial tasks.

§ 7.125. Health and safety in school.

A school shall observe the same health and safety requirements that are prescribed for [shops] salons in §§ 7.91—7.98, 7.100 and 7.101.

§ 7.128. Mandatory offering of cosmetology curriculum.

* * * * *

(b) A school may offer instruction in the curriculum for teachers, [cosmeticians and manicurists] estheticians, nail technicians and natural hair braiders prescribed in § 7.129.

§ 7.129. Curriculum requirements.

(a) Except as provided in subsection (b), a school's cosmetology curriculum, excluding electives, [shall] must comprise [1250] 1,250 hours, and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

BASIC COSMETOLOGY Recommended
CURRICULUM Hours

Professional Practices

Bacteriology, [Sterilization] Disinfection,
Sanitation

* * * * *

PA [Beauty Culture] Cosmetology Law

* * * * *

Cosmetology Skills-Cognitive and Manipulative 1,000

* * * * *

[Manicuring] Nail technology

* * * * *

(d) A school's [cosmetician] esthetics curriculum, excluding electives, [shall] must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subject is recommended:

[COSMETICIAN] ESTHETICS CURRICULUM

* * * * *

(e) A school's [manicurist] nail technology curriculum, excluding electives, [shall] must comprise 200

hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

[MANICURING] NAIL TECHNOLOGY COURSE OUTLINE

* * * * *

(f) A school's natural hair braiding curriculum, excluding electives, must comprise 300 hours and cover the following subjects; the accompanying breakdown of hours by subjects is recommended:

NATURAL HAIR BRAIDING COURSE OUTLINE

	Recommended Hours
Professional practices, including sanitation	50
Sciences, including scalp care and anatomy	125
Cognitive and manipulative skills related to natural hair braiding	125
	Total 300

PREPARATION BY APPRENTICESHIP METHOD

§ 7.131. Introduction.

An individual who chooses to seek eligibility for the [cosmetologist's] cosmetologist examination by apprenticeship shall comply with section 10 of the act (63 P. S. § 516) and the applicable requirements of this subchapter.

§ 7.132. Apprentice curriculum.

The cosmetology teacher responsible for offering instruction to an apprentice in a cosmetology [shop] salon shall teach the same cosmetology curriculum that the Board prescribes for schools of cosmetology in § 7.129 (relating to curriculum requirements)[.], with additional hours included so that the total number of hours adds up to 2,000, as follows:

BASIC COSMETOLOGY APPRENTICE CURRICULUM

Professional Practices	50
Bacteriology, Disinfection, Sanitation	
Professional Attitude	
Business Practices	
PA Cosmetology Law	
Sciences	200
Histology	
Trichology	
Chemistry	
Physiology	
Cosmetic Dermatology	
Electricity	
Cosmetology Skills-Cognitive and Manipulative	1,750
Shampooing	
Hair Shaping	
Hair Styling/Fingerwaving	
Permanent Waving	
Hair Coloring	
Hair Straightening	
Skin Care	
Nail Technology	
Temporary Hair Removal	
Scalp Treatment	
Care of all Hair Types and Textures	
	Total 2,000

§ 7.133. Application for apprentice permit.

To qualify for apprenticeship training in a cosmetology [shop] salon, an individual shall apply to the Board for an apprentice permit.

§ 7.134. Apprentice reports.

The owner of a cosmetology [shop] salon that employs apprentices shall submit to the Board, on a form provided by the Board, a quarterly report of the hours earned by each apprentice. The reports shall be submitted by the following dates: April 15, July 15, October 15 and January 15.

[Pa.B. Doc. No. 07-1548. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Preneed Funeral Arrangements

The State Board of Funeral Directors (Board) proposes to amend §§ 13.1, 13.224, 13.225 and 13.226 and to add §§ 13.227, 13.228 and 13.229 (relating to limitations on preneed funeral contracts; transfer of a preneed funeral contract by customer; and sale or transfer of preneed funeral contracts or preneed funeral funds by funeral director) 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 13(c) and 16(a) of the Funeral Director Law (act) (63 P. S. §§ 479.13(c) and 479.16(a)).

Background and Need for the Amendment

Section 13(c) of the act requires that a funeral director who accepts money under a contract with a living person to render funeral services to that person when needed to forthwith deposit the money in an escrow account or transfer it in trust to a banking institution in this Commonwealth. The money may be withdrawn or disbursed only for the purposes for which it was deposited.

The Board's current regulations regarding preneed funeral arrangements were originally promulgated in 1977 and last amended in 1991. Current § 13.224 (relating to funding and reporting of prepaid burial contracts) requires a funeral director to place the funds received for preneed funeral arrangements into trust or escrow accounts kept separate from the funeral director's personal or business accounts and to make reports to the Board. Under § 13.226 (relating to nature and description of escrow or trust account for prepaid burial contracts), interest or other earnings from preneed funds must be kept together with the principal to assure delivery of the same quality of services and merchandise for which the preneed contract was entered.

The Board determined that the regulations need to be updated to conform to existing practices in the funeral industry and to provide adequate protection to the consumer of preneed services in the instance of changed

circumstances. For example, reports under § 13.224 are time-consuming to prepare and to review. However, the reports provide little value to the Board, the regulated community or the public. Existing regulations do not address the transferability of funds when a funeral director other than the contracting funeral director provides funeral services and merchandise or the ability of a customer to change funeral directors or transfer funds in the event of a change of funeral directors. The regulations do not adequately address the cessation or acquisition of a preneed funeral business.

Description of the Proposed Amendments

In § 13.1 (relating to definitions), definitions of "prepaid burial contract" and "prepaid burial account" would be deleted and replaced with definitions of new terms "preneed funeral contract" and "preneed funds." The proposed definition of "preneed funds" would exclude premiums paid directly to an insurance company to purchase a life insurance policy. However, preneed funds would include amounts to be paid for arrangement fees or additional allowance for other services or merchandise. Preneed funds would also include the assignment of a life insurance policy or other asset received by a funeral director to fund a preneed contract.

Section 13.224 requires a funeral director to deposit in escrow or transfer in trust money received under a prepaid contract. The Board proposes to amend subsection (a) to require the deposit or transfer be made within 10 days of receipt. In addition, the Board proposes to add a provision to prohibit a funeral director or entity from using another person or entity to avoid this requirement. Currently, a funeral director must submit to the Board a written report every time the funeral director enters into a prepaid burial contract or performs under a prepaid contract. Under proposed subsection (b), a funeral director would be required to report to the Board all preneed accounts on a quarterly basis, including activity during that quarter. A funeral director could submit these reports on paper or disk or electronically and must maintain copies of the report for 3 years. A funeral director closing a business would be required to submit a report showing how all funds were distributed. These reports are not public records and will not be available for public review.

The limitations proposed for contract provisions are added in § 13.227. Under the proposed rulemaking, every preneed contract must be in writing. Also, a funeral director performing under a preneed contract would be prohibited from charging or collecting any fee that exceeds the fees set forth in the funeral director's current price list at the time the service or merchandise is provided. In addition, a preneed contract may not incorporate a contract with an unlicensed person or entity.

Proposed § 13.228 would govern customer transfers of preneed funds to another funeral director or funeral entity. Every preneed funeral contract entered into after the effective date of the final-form rulemaking must expressly permit the customer to transfer the preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing that will provide funeral goods and services. The funeral director would be required to forward to the other funeral director the entire amount of preneed funds, including both principal and interest or other earnings, within 30 days of notice from the customer. The proposed rulemaking would prohibit a funeral director from collecting a fee for funeral goods or services that have not been provided or liquidated damages for the cancellation.

Proposed § 13.229 would govern funeral director transfers of preneed contracts or funds. It would require a funeral director or entity that acquires a portion of the preneed business of another to notify each customer and provide each customer with the opportunity to transfer the contract and funds to another funeral director of the customer's choosing. A funeral director ceasing preneed business must notify each customer and provide each customer with the opportunity to transfer the preneed funds to another funeral director of the customer's choosing.

Input from the Regulated Community

The Board solicited input from and provided an exposure draft of this proposed rulemaking to funeral directors and organizations. In addition, the Board considered the impact the rulemaking would have on the regulated community and on public health, safety and welfare.

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 not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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 T. Smey, Administrative Officer, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-4815 (Preneed funeral arrangements) when submitting comments.

ANTHONY SCARANTINO,
Chairperson

Fiscal Note: 16A-4815. No fiscal impact; (8) recommendations adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 13. STATE BOARD OF FUNERAL DIRECTORS

GENERAL PROVISIONS

§ 13.1. Definitions.

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

* * * * *

[*Prepaid burial account*—An account in which moneys are deposited by the funeral director during the lifetime of an individual in accordance with a contract executed between the parties for funeral merchandise and services to be performed and delivered at a future time.

Prepaid burial contract—A contract executed between a consumer and a licensed funeral director which provides that the funeral director will provide funeral merchandise and render services to the consumer upon the consumer's death or the death of another designated individual and for which the consumer pays to the funeral director moneys at the time of the contract or at a time prior to the rendition of these services.]

Preneed funeral contract—An agreement under which a funeral entity promises or agrees to provide funeral merchandise and render services upon the death of a person living at the time the contract is made, whether or not the funeral entity receives preneed funeral funds.

Preneed funeral funds—

(i) Funds provided to a funeral director or funeral entity for the purpose of providing funeral services or merchandise on behalf of a person living at the time of provision of funds, whether or not a contract to provide specified funeral services or merchandise exists.

(ii) The term includes any funds paid, or to be paid, for arrangement fees, or additional allowance for other fees for service or merchandise.

(iii) The term includes the assignment of an insurance policy and any other asset received by a funeral director or funeral entity to fund a preneed funeral contract.

(iv) The term does not include any premiums paid directly to an insurance company.

* * * * *

[PREPAID BURIAL CONTRACTS]
PRENEED FUNERAL ARRANGEMENTS

§ 13.224. [Funding] Depositing and reporting [of prepaid burial contracts] preneed funeral funds.

(a) A funeral director or funeral entity shall deposit in escrow or transfer in trust to a banking institution in this Commonwealth, the entire amount of [monies received by the funeral director under a prepaid

contract for funeral services or merchandise, including additional service fees or arrangement fees] preneed funeral funds within 10 days of receipt. A funeral director or funeral entity may not avoid the requirements of this subsection by creating or controlling or otherwise utilizing a person or entity that is not a funeral entity.

(b) [In regard to prepaid contracts entered into by funeral directors after November 4, 1989, a funeral director shall file a report with the Board within 90 days containing the information specified in subsection (c) with respect to each prepaid contract for funeral services and merchandise. Forms for the reports, including the report required under subsection (d), will be provided by the Board.] Within 30 days of the end of each calendar quarter, every funeral entity shall file with the Board a report containing the information required in subsection (c) of all accounts of preneed funeral funds of the funeral entity during that quarter. The report must include all accounts held by the funeral entity at any time during the reporting period, including those first created during the period and those closed during the period. The rollover of an account shall be treated as the closing of one account and the opening of another account.

(c) [A funeral director shall file a report] Each report required by subsection (b) shall be filed with the Board on a form provided by the Board, certifying as true and correct, the following information with respect to each [prepaid contract for funeral services and merchandise entered into] account containing preneed funeral funds:

(1) The date [of the prepaid contract] preneed funeral funds were first received by the funeral entity and the name and address of the [purchasers under the contract] person for whose benefit the funds were received.

(2) The name and address of the banking institution in which [100% of the money received by the funeral director on account of the contract had been deposited] the account is held.

* * * * *

(4) [In installment contracts, if the entire amount of the contract has not been paid, the report shall expressly indicate the fact that an installment contract is involved, and the total amount of installments received by the funeral director and deposited in escrow or in trust.] The account balance at the beginning of the period, the total principal amounts added, interest or other earnings, disbursements or other transfers out and balance at the end of the period.

(d) [A funeral director shall report within 30 days all fulfilled prepaid contracts, following:

(1) The name of the deceased.

(2) The date of death.

(3) The account number.

(4) The name of the banking institution.] Within 30 days of the sale or other cessation of all or part of its preneed business, a funeral entity shall file

with the Board a report, including all accounts as specified in subsection (b) and all information as specified in subsection (c), to demonstrate how all preneed funeral funds were distributed. Each distribution must identify the recipients and amount of funds, including transfers to other funeral entities and payments to the funeral entity for provision of funeral goods and services.

(e) [The report required in subsection (c) is not a public record] The reports required under subsections (b) and (d) are not public records under the act of June 21, 1957 (P. L. 390, No. 212) (65 P. S. §§ 66.1— [66.4]66.9), known as the Right-to-Know Law. The [report] information contained in the reports will be available to the following:

- (1) Parties privy to the preneed funeral contract.

* * * * *

(f) [Prepaid burial contracts or preneed contracts to be used by a funeral director shall be reviewed and approved by the Board and should reflect whether or not an additional service fee or arrangement fee is charged. Prepaid burial contracts or preneed contracts used by a funeral director may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director.] Reports made under this section may be filed in paper form or on disk or electronically, as permitted by the Board. A funeral entity shall retain a copy of each report required to be filed under this section for 3 years after the report was due or filed, whichever is later.

§ 13.225. Affidavit for [prepaid burial accounts] preneed funeral funds.

* * * * *

§ 13.226. Nature and description of escrow or trust accounts for [prepaid burial contracts] preneed funeral funds.

(a) [Funds received for prepaid burial contracts] Preneed funeral funds shall be placed in an escrow or trust fund account which shall be separate and distinct from the business and personal accounts of the funeral director and funeral entity.

(b) [If funds received by a funeral director for preneed burial contracts are deposited in a banking account which bears interest, or are invested by the trustee bank and produce earnings, the] The interest or earnings of all preneed funeral funds shall be retained in the account with the principal and shall be held, accounted for and transferred in the same manner as the principal amount, to assure delivery of the same quality of service and merchandise for which the contract was made or the funds were provided.

[(c) In the event of a sale or transfer of the business of a funeral director, prepaid burial contracts and prepaid burial accounts shall immediately be transferred to the control of the licensee who will assume responsibility for completion of the prepaid burial contracts. The licensee-transferee shall notify the Board in writing of the licensee's willingness to accept responsibility for completion of the prepaid burial contracts.]

§ 13.227. Limitations on preneed funeral contracts.

(a) A preneed funeral contract must be in writing.

(b) A funeral director or funeral entity may not charge or collect any fees under a preneed funeral contract for funeral goods and services that exceed the fees for the goods and services as set forth on the funeral entity's general price list at the time the goods or services are provided.

(c) A preneed funeral contract may not incorporate a contract for funeral merchandise entered into by a person or entity other than a funeral director.

§ 13.228. Transfer of a preneed funeral contract by customer.

(a) Every preneed funeral contract entered into after _____ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), must expressly permit the customer to transfer the preneed funeral account and funds to another funeral director or funeral entity of the customer's choosing that will provide funeral goods and services.

(b) Within 30 days after written notification of the election to transfer a preneed funeral account and funds as authorized by subsection (a), the funeral director or funeral entity shall forward to the other funeral entity as requested by the customer the entire amount of funds in the prepaid funeral account, including accumulated interest and earnings.

(c) A funeral director or funeral entity may not retain any amount of fees for services that have not been provided or merchandise that has not been delivered to the customer under a preneed funeral contract for which the preneed funeral account or funds have been transferred as authorized by subsection (a).

(d) A funeral director or funeral entity may not collect liquidated damages for the transfer of a preneed funeral account or funds under a preneed funeral contract as authorized by subsection (a).

§ 13.229. Sale or transfer of preneed funeral contracts or preneed funeral funds by funeral director.

(a) In the event of a sale or transfer of any portion of the preneed funeral business of a funeral entity, a funeral entity that assumes an obligation to perform under an existing preneed funeral contract or receives a preneed funeral account or funds shall, within 30 days of the transfer, notify each customer under those contracts or provider of those funds of the transfer and permit each customer who chooses to do so to notify the funeral director within 90 days that the funeral entity is to transfer the preneed funeral account and funds, including all accumulated interest and earnings, to another funeral entity of the customer's choosing as authorized by § 13.228(a) (relating to transfer of a preneed funeral contract by customer).

(b) A funeral entity that is ceasing business or otherwise will not perform under a preneed funeral contract, except as provided in subsection (a), shall notify each preneed customer at least 60 days in advance of the planned cessation and notify each

customer of the customer's right to choose to transfer the preneed funeral account and funds, including all accumulated interest and earnings, to another funeral entity of the customer's choosing as authorized by § 13.228(a).

[Pa.B. Doc. No. 07-1549. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 16]

Expert Witness

The State Board of Medicine (Board) proposes to amend § 16.52 (relating to creation of lists of medical consultants) to read as set forth in Annex A.

A. *Effective Date*

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

B. *Statutory Authority*

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

C. *Background and Purpose*

To enhance the quality of testimony given in disciplinary proceedings before the Board and the hearing examiners who hear matters on behalf of the Board, the Board is proposing to adopt the criteria for qualification as an expert witness established by section 512 of the Medical Care Availability and Reduction of Error (Mcare) Act (Mcare Act) (40 P. S. § 1303.512). The Board has found that expert testimony offered by witnesses who do not possess the same specialty qualifications as the respondent whose conduct is under review has led to the assertion of expert opinions that lack the thoroughness and accuracy that the nature of the proceedings before the Board demands. The Board is of the opinion that a physician is not competent to offer an expert medical opinion in a disciplinary action before the Board alleging medical professional negligence, incompetence or violation of the standard of care unless that physician possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the qualifications as set forth in this proposed rulemaking.

D. *Description of Amendments*

Existing § 16.52 is amended to delete references to the maintenance of lists of expert medical consultants who might serve as expert witnesses and would instead establish qualifications consistent with section 512 of the Mcare Act for experts testifying in proceedings before the Board.

Section 16.52(a) would establish the general rule that a person will not be competent to offer an expert medical opinion in a disciplinary action before the Board unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications set forth in this section, as applicable.

Section 16.52(b) would establish qualifications for an expert to testify on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury. Those qualifications would include: (1) possessing an unrestricted physician's license to practice medicine in any state or the District of Columbia; and (2) being engaged in, or having retired within the previous 5 years from, the active clinical practice or teaching of medicine. The Board may waive these requirements for an expert on a matter other than the standard of care if the Board determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

Section 16.52(c) would establish additional requirements for experts regarding standard of care issues. The expert would need to: (1) be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care; (2) practice in the same specialty and subspecialty as the respondent physician or in a subspecialty that has a substantially similar standard of care for the specific care at issue; and (3) in the event a Board-recognized certifying board certifies the respondent physician, the expert shall also be board certified by the same or a similar approved board.

Under § 16.52(d), the Board may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the Board determines that: (1) the expert is trained in the diagnosis or treatment of the condition, as applicable; and (2) the respondent physician provided care for that condition and that care was not within the Respondent physician's specialty.

Under § 16.52(e), the Board may waive the same specialty, subspecialty and board certification requirements for an expert testifying as to a standard of care if the Board determines that the expert possesses sufficient training, experience and knowledge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous 5-year time period.

Finally, under § 16.52(f), the Board reserves its authority to apply its own expertise in determining the applicable standard of care in disciplinary matters before the Board.

E. *Input from the Regulated Community*

In drafting and promulgating this proposed rulemaking, the Board solicited input and suggestions from the regulated community and other parties who have identified themselves as interested in the Board's regulatory agenda. The Board received comments from the Hospital and Healthsystem Association of Pennsylvania (HAP), the Pennsylvania Medical Society (PMS) and the Pennsylvania Academy of Family Physicians (PAFP). Comments from HAP and PMS were supportive of this proposed rulemaking. PAFP suggested the standards should only apply to experts testifying against the respondent physician and not those testifying on behalf of the respondent physician. The Board disagrees. Improvement in the quality of expert testimony on all sides can only serve to benefit the quality of the entire proceeding. PAFP also believes only licensed physicians from this Commonwealth should be qualified to testify. The Board believes that PAFP's position is not supported by the act, Mcare Act or the Pennsylvania Rules of Evidence (see 225 Pa. Code).

F. *Fiscal Impact and Paperwork Requirements*

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

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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.

I. *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Gerald S. Smith, Senior Counsel in Charge, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Refer to 16A-4923: Expert Witnesses when submitting comments.

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

Fiscal Note: 16A-4923. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter E. MEDICAL DISCIPLINARY PROCESS AND PROCEDURES

HEARING EXAMINERS AND MEDICAL CONSULTANTS

§ 16.52. [Creation of lists of medical consultants] Expert witnesses.

[The Board, through the cooperation of various State and local professional societies, has created lists of licensed physicians and surgeons of varied expertise, specialty and training from which medical consultants can be selected to serve on a part-time basis as resource personnel, with medical expertise required for the individual case.]

To enhance the quality of expert testimony given in disciplinary proceedings before the Board and its hearing examiners, the Board adopts the criteria for qualification as an expert established by section 512 of the Medical Care Availability and Reduction of Error (Mcare) Act (40 P. S. § 1303.512), as follows:

(1) **General rule.** A person will not be competent to offer an expert medical opinion in a disciplinary action before the Board unless that person possesses sufficient education, training, knowledge and experience to provide credible, competent testimony and fulfills the additional qualifications in this section, as applicable.

(2) **Medical testimony.**

(i) An expert testifying on a medical matter, including the standard of care, risks and alternatives, causation and the nature and extent of the injury, shall:

(A) Possess an unrestricted physician's license to practice medicine in any state or the District of Columbia.

(B) Be engaged in, or have retired within the previous 5 years from, active clinical practice or teaching of medicine.

(ii) The Board may waive the requirements of this subsection for an expert on a matter other than the standard of care if the Board determines that the expert is otherwise competent to testify about medical or scientific issues by virtue of education, training or experience.

(c) **Standard of care.** In addition to the requirements in subsections (a) and (b), an expert testifying as to a physician's standard of care shall:

(1) Be substantially familiar with the applicable standard of care for the specific care at issue as of the time of the alleged breach of the standard of care.

(2) Practice in the same specialty and subspecialty as the respondent physician or in a subspecialty that has a substantially similar standard of care for the specific care at issue, except as provided in subsection (d) or (e).

(3) In the event a Board-recognized certifying board certifies the respondent physician, the expert shall also be board certified by the same or a similar approved board, except as provided in subsection (e).

(d) **Care outside specialty.** The Board may waive the same subspecialty requirement for an expert testifying on the standard of care for the diagnosis or treatment of a condition if the Board determines that:

(1) The expert is trained in the diagnosis or treatment of the condition, as applicable.

(2) The respondent physician provided care for that condition and the care was not within the respondent physician's specialty.

(e) **Otherwise adequate training, experience and knowledge.** The Board may waive the same specialty, subspecialty and Board certification requirements for an expert testifying as to a standard of care if the Board determines that the expert possesses sufficient training, experience and knowl-

edge to provide the testimony as a result of active involvement in or full-time teaching of medicine in the applicable subspecialty or a related field of medicine within the previous 5-year time period.

(f) Application of Board's own expertise. Nothing in this subsection shall be construed to preclude the Board from applying its own expertise in determining the applicable standard of care in disciplinary matters before the Board.

[Pa.B. Doc. No. 07-1550. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Faculty Requirements for Nursing Education Programs

The State Board of Nursing (Board) proposes to amend §§ 21.71 and 21.72 (relating to faculty and staff requirements for baccalaureate and associate degree programs; and faculty policies) and to delete § 21.74 (relating to faculty and staff requirements for diploma programs) to read as set forth in Annex A. This proposed rulemaking is intended to remove unnecessary restrictions on appointments of faculty for nursing education programs.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized by section 6.1 of the Professional Nursing Law (63 P. S. § 216.1), which provides that the Board establish standards for the operation and approval of nursing education programs.

Background and Need for the Proposed Rulemaking

The Nursing Education Capacity Working Group, an ad hoc committee of the Pennsylvania Center for Health Careers (Center), suggested that the Board amend its regulations regarding nursing education faculty. Following a series of roundtables held throughout this Commonwealth to discuss the nursing shortage and through research and discussion with experts, the Center concluded that this Commonwealth needs to expand, as quickly as possible, the supply of qualified nurse educators without compromising the quality of nursing education. This suggestion addresses the nursing shortage because one of the impediments to this Commonwealth's goal of an adequate nurse workforce is the inability of nursing schools to meet the demand for enrollment due to faculty shortages. The Board now proposes these amendments to allow nursing education programs greater leeway in hiring qualified faculty to educate nursing students.

Description of Proposed Amendments

The Board proposes to amend § 21.71, which sets forth the faculty and staff requirements for baccalaureate and associate degree nursing education programs, so that it applies to all nursing education programs (baccalaureate and associate degree programs, programs in transition and diploma programs). The Board proposes to delete § 21.74, which currently sets forth the faculty and staff

requirements for diploma nursing education programs. In this proposed rulemaking, the Board has reorganized § 21.71. Proposed subsection (a) provides the general requirement that a nursing education program employ a sufficient number of adequately qualified faculty, faculty assistants and staff to accomplish the program objectives. Proposed subsection (b) sets forth the qualifications for the nurse administrator of the nursing education program. Proposed subsection (c) sets forth the qualifications for faculty, faculty assistants and allied faculty in the nursing education program.

The Board proposes to amend § 21.71(b) to provide that the nurse administrator's credentials shall be submitted for Board approval. This requirement is not new; proposals for new nursing education programs must already include the administrator's credentials for approval. The Board proposes in paragraphs (1) and (2) to permit nursing education programs to employ an administrator with at least one graduate degree in nursing rather than "a master's degree in nursing." The Board anticipates that this change will greatly increase the pool of applicants qualified to serve as nurse administrator.

The Board's current regulations require that nursing faculty hold a master's degree in nursing. The current regulations also allow employment of a faculty assistant, who does not hold a master's degree in nursing, provided the faculty assistant provides evidence of actively pursuing a master's degree in nursing.

This proposed rulemaking would create three categories of nursing faculty: faculty, faculty assistants and allied faculty. Faculty teaching required clinical nursing courses will be required to hold at least one graduate degree in nursing. This requirement is much less restrictive than the current requirement of a master's degree in nursing because it allows individuals with a nursing-related master's degree and a doctoral degree in nursing to teach required clinical nursing courses. For example, under the current regulation, an individual with a bachelor's degree in nursing, a master's degree in public health and a doctoral degree in nursing is precluded from faculty posts until the individual obtains a master's degree in nursing. Under the proposed rulemaking, this individual would be considered fully qualified to teach required clinical nursing courses.

Faculty assistants, that is, individuals who do not hold at least one graduate degree in nursing, will continue to be permitted to teach required clinical nursing courses only if qualified candidates are not available. The Board will retain the requirement that faculty assistants work under the direct guidance of a faculty member fully qualified in the specific teaching area.

The Board has always intended to restrict faculty assistants to a maximum of 5 years as a faculty assistant before obtaining a graduate degree in nursing. However, the current wording has allowed individuals to continue to teach in nursing education programs in this Commonwealth indefinitely without obtaining a graduate degree by moving from school to school in this Commonwealth, or moving out-of-State and then returning to this Commonwealth, at least once every 5 years. The Board proposes to clarify the limitation by providing, in proposed § 21.71(c)(2), that faculty assistants may teach in this Commonwealth for a maximum cumulative period of 5 years without obtaining a graduate degree in nursing. To further advance this objective, the Board proposes to amend § 21.72 by adding subsection (g), which requires faculty assistants to maintain a record of their activities leading to the completion of a graduate degree in nursing

and to submit to the Board, at least annually, a transcript of courses completed toward the degree. As schools of nursing in this Commonwealth are required to obtain and maintain Board approval, a school that employs a faculty assistant who does not submit the required materials to the Board or who fails to complete a graduate degree in nursing within the specified time frame, may be subject to placement on the list of provisionally approved schools.

Under proposed § 21.71(c)(3), a nursing education program will be authorized to employ allied faculty to teach courses in the basic sciences or specialized areas of nursing practice. Allied faculty shall hold at least one graduate degree in a subject area pertinent to the area of teaching. For example, this amendment will permit a nursing education program to employ an individual with a graduate degree in chemistry to teach chemistry courses and will allow a program to employ an individual with a doctoral degree in pharmacy to teach pharmacology.

The Board also proposes to address the use of clinical preceptors by nursing education programs in proposed § 21.71(c)(5). A clinical preceptor is a licensed professional nurse who serves as a clinical instructor and mentor to a very limited number of students placed at a particular practice site where the clinical preceptor is employed. The Board proposes to specifically authorize the use of clinical preceptors and to provide that faculty shall retain responsibility for planning and evaluating student learning experiences and also have input into the selection of preceptors.

The Board is also proposing amendments to § 21.72. The Board proposes to amend § 21.72(f) to require faculty members to maintain records of their participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching. As already explained, the Board also proposes to require faculty assistants to provide the Board with annual progress reports related to their progress toward an appropriate degree.

Input from the Regulated Community

The Board requested input from nursing education programs and other interested parties. 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 not have an adverse fiscal impact on the Commonwealth or its political subdivisions as the Board is self-supporting. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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 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*.

MARY E. BOWEN, R. N., CRNP,
Chairperson

Fiscal Note: 16A-5131. 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 A. REGISTERED NURSES

ADMINISTRATIVE AND INSTRUCTIONAL PERSONNEL

§ 21.71. [**Faculty**] Nurse administrator, faculty and staff requirements [**for baccalaureate and associate degree programs**].

(a) **A nursing education program shall employ a sufficient number of qualified faculty, faculty assistants, allied faculty and staff to accomplish the program objectives.** The minimum faculty and staff requirements [**for each program**] are as follows:

(1) Full-time [**director of the program**] nurse administrator.

(2) Full-time [**qualified**] faculty members in the areas of [**specialized**] practice encompassed within the curriculum.

(3) Additional faculty members as needed [**to insure an educationally effective student-faculty ratio**].

(4) [**A minimum of one full-time secretary and additional secretarial assistance as needed**] Allied faculty members as needed.

(5) **Program support services, including administrative and clerical services.**

(b) [**Faculty**] **The nurse administrator's credentials shall be submitted to the Board for approval. The nurse administrator's qualifications are as follows:**

(1) The [**director**] nurse administrator of a baccalaureate degree nursing education program [**, employed for the first time after January 1, 1986,**] shall hold [**a master's**] at least one graduate degree

in nursing [and]. The nurse administrator shall hold an earned doctoral degree or have a specific plan for completing doctoral preparation within 5 years of appointment. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education [within an institution of higher education] and [educational] administration. [Candidates who have made outstanding contributions to nursing education shall be considered on an individual basis.] A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(2) The [director] nurse administrator of an associate degree or diploma program shall hold [the minimum of a master's] at least one graduate degree in nursing. The [director] nurse administrator shall have experience in [the areas of] nursing practice, nursing education and [educational] administration. A professional nurse who does not hold at least one graduate degree in nursing, but who has experience in nursing practice, nursing education and administration may be considered on an individual basis.

(3) The length of appointment of [temporary and] an interim or acting [heads] nurse administrator of a nursing education [programs] program may not exceed 1 year.

(4) [Nurse faculty members] The nurse administrator shall hold either a temporary practice permit to practice professional nursing or be currently licensed as [nurses] a professional nurse in this Commonwealth.

(c) Faculty qualifications are as follows:

[(5)] (1) Faculty members teaching required clinical nursing education courses shall [have master's degrees] hold at least one graduate degree in nursing, [with graduate preparation relevant to their clinical areas of responsibility;] shall be currently licensed as professional nurses in this Commonwealth, and [they] shall [give evidence of maintaining] have expertise in their [clinical or functional] areas of [specialization] instruction.

[(6)] (2) Faculty members [with less than a master's] without a graduate degree in nursing [may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants] shall be designated faculty assistants. Faculty assistants shall be currently licensed as professional nurses in this Commonwealth. Faculty assistants may teach required clinical nursing education courses only when fully qualified faculty are not available and shall teach under the direct guidance of a faculty member [fully] qualified [in the specific teaching area] as set forth in paragraph (1). [These] Faculty assistants shall have [a minimum of] a baccalaureate degree in nursing[,] and [they] shall give evidence of [actively pursuing a master's] a plan for obtaining a graduate degree in

nursing. [The lack of availability of qualified faculty shall be documented by, among other things, copies of advertisements placed in appropriate professional journals and newspapers, copies of recruitment letters to appropriate institutions of higher learning, and records of job interviews.] A person may teach as a faculty assistant in a nursing education program in this Commonwealth for a maximum cumulative period of 5 years.

(3) Allied faculty members may teach basic sciences or specialized areas of nursing practice. Allied faculty members shall hold at least one graduate degree in a subject area pertinent to their area of teaching.

[(7)] (4) Faculty employed to teach [nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association] dietetics-nutrition shall be currently licensed to practice dietetics-nutrition in this Commonwealth.

(5) A clinical preceptor may be used to enhance faculty-directed clinical learning experiences by guiding selected clinical activities. A clinical preceptor shall hold a current license to practice professional nursing in the state of the clinical experience. Faculty shall retain responsibility for planning and evaluating student learning experiences and shall have input into the selection of preceptors.

§ 21.72. Faculty policies; additional responsibilities of faculty and faculty assistants.

* * * * *

(d) Teaching hours and additional duties of nurse faculty shall be consistent with the policies of the controlling institution. [Seminar, discussion and laboratory contact hours shall be equated. Where additional expectations in terms of research, counseling, committee work or other institutional responsibilities are present, the teaching load shall be decreased accordingly.]

(e) The nurse administrator and nursing faculty shall be afforded the time and opportunity to engage in leadership activities within their profession commensurate with [the responsibilities inherent in the role of institutions of higher education in our society] their responsibilities.

(f) There shall be a planned and active faculty development program designed to meet the [perceived] needs of the faculty. Faculty members shall maintain a record of participation in continuing education, professional self-development and other activities that promote the maintenance of expertise in their respective areas of teaching.

(g) Faculty assistants shall maintain a record of their activities leading to the completion of a graduate degree in nursing and shall submit a current transcript of courses and other activities completed toward the degree to the Board at least annually.

§ 21.74. [Faculty and staff requirements for diploma programs] (Reserved).

[(a) The minimum faculty and staff requirements for each program shall be as follows:

(1) When the responsibility of the director encompasses nursing service as well as responsibility for the school, there shall be a full-time person who is responsible for the operation of the school.

(2) Full-time faculty member for each clinical nursing course.

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

(4) Minimum of one full-time secretary and additional secretarial assistants as needed.

(5) A full-time librarian.

(b) Faculty qualifications are as follows:

(1) The director of the school shall have a master's degree in nursing applicable to directors. School directors appointed after July 1, 1977, shall have a master's degree in nursing and experience in the areas of nursing practice, nursing education and educational administration. Candidates who have made outstanding contributions to nursing education will be considered on an individual basis.

(2) Nurse faculty members shall be currently licensed as nurses in this Commonwealth.

(3) Faculty members appointed after January 1, 1986, shall have master's degrees in nursing with graduate preparation relevant to their clinical, or clinical and functional, areas of responsibility; and they shall give evidence of maintaining expertise in their clinical, or clinical and functional, areas of specialization.

(4) Faculty members with less than a master's degree in nursing may be employed if qualified candidates are not available; they shall function for a maximum of 5 years as assistants under the direct guidance of a faculty member fully qualified in the specific teaching area. Assistants shall have a minimum of a baccalaureate degree in nursing, and they shall give evidence of actively pursuing their academic preparation. The lack of availability of qualified faculty shall be documented.

(5) Faculty members shall give evidence of participation in continuing education and self development as individuals and as a faculty group.

(6) Faculty members employed to teach Nutrition must be registered dietitians (R.D.) and eligible for membership in the American Dietetic Association.]

[Pa.B. Doc. No. 07-1551. Filed for public inspection August 24, 2007, 9:00 a.m.]

STATE BOARD OF PHARMACY

[49 PA. CODE CH. 27]

Sales of Hypodermic Needles and Syringes

The State Board of Pharmacy (Board) proposes to amend § 27.18 (relating to standards of practice) to read as set forth in Annex A. The proposed rulemaking would alter the current requirements regarding the sale of hypodermic needles and syringes in pharmacies. The proposed rulemaking would permit a pharmacist to sell

up to 30 hypodermic needles and syringes to persons 18 years of age or older without a prescription.

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 4(j) and 6(k)(1) and (9) of the Pharmacy Act (act) (63 P. S. §§ 390-4(j) and 390-6(k)(1) and (9)).

Background and Need for Proposed Rulemaking

In February 2005, Pennsylvanians for the Deregulation of Syringe Sales petitioned the Board under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations) to amend § 27.18(s)(2) to eliminate the prescription requirement for the sale of hypodermic needles and syringes. The Board subsequently heard testimony in support of the proposed amendment at its August 16-17, 2005, meeting from Dr. Scott Burris of Pennsylvania Coalition to Save Lives Now; Renee Cox of Prevention Point Pittsburgh; and Janice Kopelman, Director of the Department of Health's Bureau of Communicable Diseases.

Under the current regulation, which has not been amended for a number of years, the sale of hypodermic needles and syringes in pharmacies in this Commonwealth may only occur under the presentation of a prescription. More recently, studies have shown that increased access to clean needles and syringes has been proven to reduce the transmission of hepatitis C and HIV. The evidence also suggests that drug use will not increase if the prescription requirement is removed. See Douglas A. McVay, (ed.). *Drug War Facts 2006*, (citing National Commission on AIDS, *The Twin Epidemics of Substance Abuse and HIV* (Washington, DC: National Commission on AIDS, 1991); General Accounting Office, *Needle Exchange Programs: Research Suggests Promise as an AIDS Prevention Strategy* (Washington, DC: US Government Printing Office, 1993); Lurie, P. & Reingold, A.L., et al., *The Public Health Impact of Needle Exchange Programs in the United States and Abroad* (San Francisco, CA: University of California, 1993); Satcher, David, MD, (Note to Jo Ivey Bouffard), *The Clinton Administration's Internal Reviews of Research on Needle Exchange Programs* (Atlanta, GA: Centers for Disease Control, December 10, 1993); National Research Council and Institute of Medicine, Normand, J., Vlahov, D. & Moses, L. (eds.), *Preventing HIV Transmission: The Role of Sterile Needles and Bleach* (Washington, DC: National Academy Press, 1995); Office of Technology Assessment of the U. S. Congress, *The Effectiveness of AIDS Prevention Efforts* (Springfield, VA: National Technology Information Service, 1995); National Institutes of Health Consensus Panel, *Interventions to Prevent HIV Risk Behaviors* (Kensington, MD: National Institutes of Health Consensus Program Information Center, February 1997).

In 2000, the National Association of Boards of Pharmacy encouraged boards of pharmacy to revise laws and regulations to permit the sale and distribution of sterile needles and syringes. The Commonwealth is one of only four states that still prohibit the sale of hypodermic needles and syringes in pharmacies without a prescription. Through 2004, this Commonwealth was the seventh leading state reporting the highest number of cumulative AIDS cases among residents, with 30,174 cases. See Centers for Disease Control and Prevention, *HIV/AIDS Surveillance Report, 2004*, Vol. 16. Atlanta: United States Department of Health and Human Services, Centers for

Disease Control and Prevention; 2005: page 27. (Available at www.cdc.gov/hiv/stats/hasrlink.htm.)

The Board recognizes that there is a compelling public health interest in reducing the spread of hepatitis C and HIV. Increased access to clean needles and syringes is essential to this interest. Studies have shown that removing the requirement that hypodermic needles and syringes only be sold with a prescription in pharmacies in this Commonwealth would not lead to increased drug use. To this end, the Board proposes amending the prescription requirement by permitting pharmacists to sell up to 30 hypodermic needles and syringes to persons 18 years of age or older without a prescription. Persons who use hypodermic needles and syringes for injecting medications may still obtain more than 30 by presenting a prescription. It is anticipated that many patients will continue to present a prescription to obtain prescription benefits in paying for hypodermic needles and syringes.

Description of Proposed Amendments

The proposed rulemaking would amend § 27.18(s)(2) to eliminate the requirement that a prescription be presented in all cases for a pharmacist to sell hypodermic needles and syringes to persons 18 years of age and older. Further, the proposed rulemaking would require that these needles and syringes be kept in the prescription area of the pharmacy. Section 27.1 (relating to definitions) defines "prescription area" as the area of the pharmacy used for compounding, legend drug storage and other activities necessary to the practice of pharmacy. The term does not include waiting counters or display space attached to the waiting counter. Hypodermic needles and syringes would have to be stored behind the counter and accessible only by pharmacists and pharmacy personnel authorized to be behind the counter while the pharmacy is open. Anyone under 18 years of age would still need to present a prescription to purchase hypodermic needles and syringes in a pharmacy.

The proposed amendment would also delete § 27.18(s)(1), which requires pharmacists to report to the Board the sale of accessories found in illegal traffic when sold in unusually large quantities; as well as the language that deems it unprofessional conduct to sell, give away or otherwise dispose of accessories, chemicals or proprietary products when the pharmacist knows or has reason to know of their intended use for illegal purposes. The Board proposes to remove this language because it has not served as the basis for disciplinary action in the recent history of the Board, nor has the Board received a report as currently required by this section. The reporting requirement is unenforceable and counterintuitive to the goal of the proposed rulemaking. The language that deems it unprofessional conduct to sell, give away or otherwise dispose of accessories, chemicals or proprietary products when the pharmacist knows or has reason to know of their intended use for illegal purposes is also counterintuitive to the goal of the proposed rulemaking. Furthermore, it is duplicative in that § 27.18(u) provides that a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143) or the rules and regulations promulgated thereunder constitutes a violation of the Board's regulations and the act.

The Department of Health recommended that the Board also require pharmacies to distribute information on safe needle disposal. The Board declined to include this in the proposed rulemaking, but will work with the Department of Health to alert pharmacies of available literature and safe needle disposal practices.

Fiscal Impact

The proposed rulemaking will have no fiscal impact on the Board or the regulated community.

Paperwork Requirements

The proposed rulemaking will impose no paperwork requirements on the Board or the regulated community.

Sunset Date

The Board monitors 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 15, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections 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*.

EDWARD J. BECHTEL, R.Ph.,
Chairperson

Fiscal Note: 16A-5418. 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 STANDARDS

§ 27.18. Standards of practice.

* * * * *

(s) [The following provisions are applicable to paraphernalia and accessories:

(1) Sale of accessories, such as empty capsules, quinine, sugar of milk or a similar product found in illegal traffic when sold in unusually large quantities shall be immediately reported to the Board. A

pharmacist who sells, gives away or otherwise disposes of accessories, chemicals or proprietary products when the pharmacist knows or has reason to know of their intended use for illegal purposes shall be guilty of unprofessional conduct and in violation of this chapter.

(2) Sales of needles and syringes shall be made by the pharmacist only to persons showing a prescription issued by a licensed practitioner. The prescription shall be in force for a maximum of 1 year from date of its issuance. This subsection shall take effect 3 months after the other provisions of this chapter take effect in order to give the public ample notice.]

Sales of hypodermic needles and syringes shall be made by a pharmacist or under the direct supervision of a pharmacist in accordance with the following:

(1) Up to 30 hypodermic needles and syringes may be sold to persons 18 years of age or older without a prescription.

(2) Sales of over 30 hypodermic needles and syringes shall be made only to persons presenting a prescription issued by a licensed practitioner.

(3) Sales of hypodermic needles and syringes may not be made to persons under 18 years of age without a prescription.

(4) Hypodermic needles and syringes shall be kept in the prescription area of the pharmacy, as defined in § 27.1 (relating to definitions), and be accessible only by pharmacists and pharmacy personnel authorized to be in the prescription area of the pharmacy while the pharmacy is open.

* * * * *

[Pa.B. Doc. No. 07-1552. Filed for public inspection August 24, 2007, 9:00 a.m.]