

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CH. 63 ]

### Fishing

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code).

#### A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

#### B. Contact Person

For further information on the proposed rulemaking, contact Jason E. Oyler, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. Statutory Authority

The proposed amendment of § 63.8 (relating to long bows, crossbows, spears and gigs) is published under the statutory authority of section 2102(b) of the code (relating to rules and regulations).

#### D. Purpose and Background

The proposed rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the proposed amendment is described in more detail under the summary of proposal.

#### E. Summary of Proposal

Currently, § 63.8(a) allows the use of long bows and arrows, including compound bows, crossbows, spears and gigs to take carp and suckers in Commonwealth waters and waters bounding and adjacent thereto. Under § 63.8(b), catfish may also be harvested by these gear in the Delaware River. A number of anglers recently have expressed to Commission staff a desire to be permitted to harvest catfish with these gear in all Commonwealth waters. This method of angling is not anticipated to result in any significant population level impacts to catfish, as the angler use levels are likely to be relatively low throughout this Commonwealth.

Currently, under § 63.8(b)(1), the harvest of herring is permitted in the Delaware River. Considering the current declines in river herring populations along the entire Atlantic coast, the Commission believes that the harvest of these species by longbows, crossbows, spears and gigs should no longer be permitted. Finally, § 63.8(b)(2) restricts the use of long bows and arrows, including compound bows, crossbows, spears or gigs to take fish within 275 yards of an eel weir. This is an archaic regulation that is proposed to be removed at this time. The Commission proposes that § 63.8 be amended to read as set forth in Annex A.

#### F. Paperwork

The proposed rulemaking will not increase paperwork and will not create new paperwork requirements.

#### G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

#### H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/reg](http://www.fishandboat.com/reg) comments. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

DOUGLAS J. AUSTEN, Ph.D.,  
*Executive Director*

**Fiscal Note:** 48A-203. No fiscal impact; (8) recommends adoption.

### Annex A

#### TITLE 58. RECREATION

#### PART II. FISH AND BOAT COMMISSION

#### Subpart B. FISHING

#### CHAPTER 63. GENERAL FISHING REGULATIONS

#### § 63.8. Long bows, crossbows, spears and gigs.

(a) *General.* Except as otherwise provided in this part, carp **[ and ]**, suckers **and catfish** may be taken with long bows and arrow, including compound bows, crossbows, spears or gigs any hour of the day or night aided by a light at night if so desired, in Commonwealth waters and waters bounding and adjacent thereto.

(b) **[ Delaware River. The following provisions apply to use of long bows and arrow, including compound bows, crossbows, spears and gigs on the Delaware River:**

**(1) In addition to the species in subsection (a), herring, except shad, and catfish may be taken.**

**(2) It is unlawful to use long bows and arrow, including compound bows, crossbows, spears and gigs to take fish within 275 yards of an eel weir.**

**(3) Except as provided in paragraph (1), it is unlawful to take any fish on the Delaware River by means of long bows and arrow, including compound bows, crossbows, spears or gigs.**

(c) \* \* \*

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

[Pa.B. Doc. No. 08-1095. Filed for public inspection June 13, 2008, 9:00 a.m.]

# GAME COMMISSION

[ 58 PA. CODE CH. 141 ]

## Hunting and Trapping

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 22, 2008, meeting, proposed the following rule-making:

Amend § 141.4 (relating to hunting hours) to replace the Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

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

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

The proposed rulemaking was made public at the April 22, 2008, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 20, 2008.

### 1. Purpose and Authority

Each year there is a shift in calendar days for each month. As a result of this occurrence, the Tables of Hunting Hours found in § 141.4 must be amended and updated on an annual basis to accurately reflect the upcoming year's dates and hours for legal hunting. Towards this end, the Commission is proposing to amend § 141.4 by replacing the current Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

Section 322(c)(1) of the code (relating to powers and duties of the Commission) specifically empowers the Commission to "fix seasons, daily shooting or taking hours, and any modification thereof, and daily, season and possession limits for any species of game or wildlife." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 141.4 were proposed under this authority.

### 2. Regulatory Requirements

The proposed rulemaking will amend § 141.4 to replace the Sunrise/Sunset Table with an up-to-date Hunting Hours Table and Migratory Game Bird Hunting Hours Table to accurately reflect the dates and hours of legal hunting for the 2008-2009 hunting year.

### 3. Persons Affected

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

### 4. Cost and Paperwork Requirements

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

### 5. Effective Date

The effective dates of the proposed rulemaking are July 1, 2008, to June 30, 2009.

### 6. Contact Person

For further information regarding the proposed rule-making, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
Executive Director

**Fiscal Note:** 48-271. No fiscal impact; (8) recommends adoption.

## Annex A

### TITLE 58. RECREATION

#### PART III. GAME COMMISSION

#### CHAPTER 141. HUNTING AND TRAPPING

#### APPENDIX G

(*Editor's Note:* As part of this proposal, the Commission is proposing to replace the table in Appendix G which appears in 58 Pa. Code pages 141-26 and 141-27, serial pages (328428) to (328429) and replace it with the following tables.)

#### HUNTING HOURS TABLE FOR JUNE 29, 2008 THROUGH JULY 4, 2009

Dates	Begin A.M.	End P.M.
June 29—July 5	5:09	9:02
July 6—12	5:13	9:00
July 13—19	5:18	8:55
July 20—26	5:24	8:50
July 27—Aug. 2	5:30	8:43
Aug. 3—9	5:37	8:34
Aug. 10—16	5:44	8:25
Aug. 17—23	5:50	8:15
Aug. 24—30	5:57	8:04
Aug. 31—Sept. 6	6:04	7:53
Sept. 7—13	6:10	7:32
Sept. 14—20	6:19	7:30
Sept. 21—27	6:23	7:19
Sept. 28—Oct. 4	6:30	7:07
Oct. 5—11	6:37	6:56
Oct. 12—18	6:45	6:46
Oct. 19—25	6:52	6:36

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>	<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
Oct. 26—Nov.1	7:00	6:28	Oct. 26—Nov. 1	7:00	5:58
Nov. 2—8*ends	6:08	5:20	Nov. 2—8*ends	6:08	4:50
Nov. 9—15	6:16	5:14	Nov. 9—15	6:16	4:44
Nov. 16—22	6:24	5:09	Nov. 16—22	6:24	4:39
Nov. 23—29	6:32	5:06	Nov. 23—29	6:32	4:36
Nov. 30—Dec. 6	6:38	5:05	Nov. 30—Dec. 6	6:38	4:35
Dec. 7—13	6:44	5:06	Dec. 7—13	6:44	4:36
Dec. 14—20	6:51	5:08	Dec. 14—20	6:51	4:38
Dec. 21—27	6:49	5:13	Dec. 21—27	6:49	4:43
Dec. 28—Jan. 3	6:53	5:18	Dec. 28—Jan. 3	6:53	4:47
Jan. 4—10	6:53	5:20	Jan. 4—10	6:53	4:50
Jan. 11—17	6:50	5:25	Jan. 11—17	6:50	4:56
Jan. 18—24	6:49	5:34	Jan. 18—24	6:49	5:04
Jan. 25—31	6:45	5:42	Jan. 25—31	6:45	5:12
Feb. 1—7	6:39	5:50	Feb. 1—7	6:39	5:20
Feb. 8—14	6:32	5:56	Feb. 8—14	6:32	5:30
Feb. 15—21	6:23	6:07	Feb. 15—21	6:23	5:37
Feb. 22—28	6:14	6:15	Feb. 22—28	6:14	5:45
Mar. 1—7	6:04	6:23	Mar. 1—7	6:04	5:53
Mar. 8—14*begins	6:53	7:30	Mar. 8—14*begins	6:53	7:00
Mar. 15—21	6:42	7:38			
Mar. 22—28	6:30	7:45			
Mar. 29—Apr. 4	6:19	7:52			
Apr. 5—11	6:08	7:59			
Apr. 12—18	5:57	7:54			
Apr. 19—25	5:43	8:13			
Apr. 26—May 2	5:37	8:20			
May 3—9	5:28	8:27			
May 10—16	5:20	8:34			
May 17—23	5:14	8:41			
May 24—30	5:08	8:47			
May 31—June 6	5:04	8:53			
June 7—13	5:02	8:57			
June 14—20	5:01	9:01			
June 21—27	5:04	9:03			
June 29—July 4	5:07	9:03			

\*Daylight Savings Time

[Pa.B. Doc. No. 08-1096. Filed for public inspection June 13, 2008, 9:00 a.m.]

**[ 58 PA. CODE CHS. 139 AND 141 ]**

**Seasons and Bag Limits and Hunting and Trapping**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 22, 2008, meeting, proposed the following rule-making:

Amend § 141.1 (relating to special regulations areas) to permit hunters in the special regulation areas to harvest more than one deer at a time without first lawfully tagging previous harvests, provided all deer harvested are lawfully tagged immediately thereafter. Also amend §§ 139.2 and 141.41 (relating to definitions; and general) to relocate the prohibition against successive takings of deer prior to lawfully tagging a deer previously harvested from § 139.2 to § 141.41 where it is more appropriately located.

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

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

The proposed rulemaking was made public at the April 22, 2008, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 20, 2008.

*1. Purpose and Authority*

Currently, § 139.2 defines “field possession limit for deer” in a manner to prohibit the harvest of a second deer

**MIGRATORY GAME BIRD HUNTING HOURS TABLE**

<i>Dates</i>	<i>Begin A.M.</i>	<i>End P.M.</i>
Aug. 31—Sept. 6	6:04	7:23
Sept. 7—13	6:10	7:02
Sept. 14—20	6:19	7:00
Sept. 21—27	6:23	6:49
Sept. 28—Oct. 4	6:30	6:37
Oct. 5—11	6:37	6:26
Oct. 12—18	6:45	6:16
Oct. 19—25	6:52	6:06

(when multiple harvests per day are authorized) before tagging a deer previously harvested. In light of its continuing efforts to find solutions to the overabundant deer populations in the urban environments found in the Special Regulation Areas, the Commission is proposing to amend § 141.1 to allow a hunter to harvest more than one deer at a time without first lawfully tagging previous harvests, provided all deer harvested are lawfully tagged immediately thereafter. For all other areas of this Commonwealth outside of the Special Regulations Areas, the traditional "tag before second harvest" requirement will remain the same, but will be relocated from § 139.2 to § 141.41 where it is more appropriately located.

Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to §§ 139.2, 141.1 and 141.41 were proposed under this authority.

2. Regulatory Requirements

The proposed rulemaking will amend § 141.1 to allow a hunter in the Special Regulation Areas to harvest more than one deer at a time without first lawfully tagging previous harvests, provided all deer harvested are lawfully tagged immediately thereafter. The proposal would also amend §§ 139.2 and 141.41 to relocate the general prohibition against successive takings of deer prior to lawfully tagging a deer previously harvested from § 139.2 to § 141.41 where it is more appropriately located.

3. Persons Affected

Persons wishing to hunt or trap white-tailed deer within this Commonwealth may be affected by the proposed rulemaking.

4. Cost and Paperwork Requirements

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

5. Effective Date

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

6. Contact Person

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-269. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART III. GAME COMMISSION**

**CHAPTER 139. SEASONS AND BAG LIMITS**

**§ 139.2. Definitions.**

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

\* \* \* \* \*

**[ Field possession limit—deer—When multiple harvests of deer per day are authorized, only one deer at a time may be harvested. Before harvesting additional deer, the deer previously harvested shall be lawfully tagged. ]**

\* \* \* \* \*

**CHAPTER 141. HUNTING AND TRAPPING**

**Subchapter A. GENERAL**

**§ 141.1. Special regulations areas.**

\* \* \* \* \*

(d) *Permitted acts.* It is lawful to:

\* \* \* \* \*

**(6) Harvest more than one deer at a time when multiple harvests of deer per day are authorized without first lawfully tagging previous harvests, provided all deer harvested are lawfully tagged immediately thereafter.**

**Subchapter C. BIG GAME**

**§ 141.41. General.**

\* \* \* \* \*

(b) It is unlawful to:

\* \* \* \* \*

**(7) Except as otherwise provided in § 141.1 (relating to special regulations areas), harvest more than one deer at a time before lawfully tagging a deer previously harvested when multiple harvests of deer per day are authorized.**

[Pa.B. Doc. No. 08-1097. Filed for public inspection June 13, 2008, 9:00 a.m.]

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

**Special Permits**

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 22, 2008, meeting, proposed the following rulemaking:

Amend § 147.675 (relating to validity of permit) to expand the eligibility period for the validity of DMAP permits to include open seasons for antlered deer during the regular firearms season while also providing clarification that DMAP harvest permits are valid only to harvest antlerless deer.

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

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

The proposed rulemaking was made public at the April 22, 2008, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until June 20, 2008.

1. *Purpose and Authority*

At the January 2008 Commission meeting, the Commission proposed the creation of a bifurcated regular firearms season in Wildlife Management Units 2D, 2G, 3C and 4B during which the first 5 days will be limited to the harvest of antlered deer only and the last 7 days open to the harvest of both antlered and antlerless deer. The Commission has recognized that the intentional shortening of the regular firearms season for antlerless deer will also cause a resulting 1 week reduction in the time periods during which DMAP permits would be valid. In its continuing interest to assist landowners in achieving deer densities consistent with their land use goals through the use of licensed hunters, the Commission is proposing to amend § 147.675 to expand the eligibility period for the validity of the DMAP permits to include open seasons for antlered deer during the regular firearms season. In an effort to curb confusion, the Commission is also proposing to amend § 147.675 to clarify that DMAP harvest permits are valid only to harvest antlerless deer.

Section 2901(b) of the code (relating to authority to issue permits) provides "the commission may, as deemed necessary to properly manage the game or wildlife resources, promulgate regulations for the issuance of any permit and promulgate regulations to control the activities which may be performed under authority of any permit issued." Section 2102(a) of the code (relating to regulations) provides that "The commission shall promulgate such regulations as it deems necessary and appropriate concerning game or wildlife and hunting or furtaking in this Commonwealth, including regulations relating to the protection, preservation and management of game or wildlife and game or wildlife habitat, permitting or prohibiting hunting or furtaking, the ways, manner, methods and means of hunting or furtaking, and the health and safety of persons who hunt or take wildlife or may be in the vicinity of persons who hunt or take game or wildlife in this Commonwealth." The amendments to § 147.675 were proposed pursuant to this authority.

2. *Regulatory Requirements*

The proposed rulemaking will amend § 147.675 to expand the eligibility period for the validity of DMAP permits to include open seasons for antlered deer during the regular firearms season while also providing clarification that DMAP harvest permits are valid only to harvest antlerless deer.

3. *Persons Affected*

Persons wishing to hunt white-tailed deer within this Commonwealth pursuant to a DMAP harvest permit may be affected by the proposed rulemaking.

4. *Cost and Paperwork Requirements*

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

5. *Effective Date*

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

6. *Contact Person*

For further information regarding the proposed rulemaking, contact Richard A. Palmer, Acting Director, Bureau of Wildlife Protection, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

CARL G. ROE,  
*Executive Director*

**Fiscal Note:** 48-270. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. GAME COMMISSION  
CHAPTER 147. SPECIAL PERMITS**

**Subchapter R. DEER CONTROL**

**DEER MANAGEMENT ASSISTANCE PROGRAM PERMITS**

**§ 147.675. Validity of permit.**

(a) DMAP harvest permits are valid [ **only** ] during open seasons for hunting **antlered or** antlerless deer.

\* \* \* \* \*

(c) **DMAP harvest permits are valid only to harvest antlerless deer.**

[Pa.B. Doc. No. 08-1098. Filed for public inspection June 13, 2008, 9:00 a.m.]

**PENNSYLVANIA PUBLIC  
UTILITY COMMISSION**

**Extended Area Service Working Group Meeting;  
Docket No. M-2008-2043928**

A meeting is scheduled for June 24, 2008, at 10 a.m. to 1 p.m., Pennsylvania Public Utility Commission, 400 North Street, 3rd Floor, Keystone Building, Law Bureau Conference Room, Harrisburg, PA 17120.

Under the Pennsylvania Public Utility Commission (Commission) Order entered June 2, 2008, the Law Bureau is convening an Extended Area Service Working Group (EAS Working Group). The EAS Working Group solicits comments from the public on the future direction of EAS regulations, currently set forth in 52 Pa. Code Chapter 63, Subchapter F (relating to extended area service), given the changes in the telecommunications market.

The EAS Working Group is developing a recommendation for Commission consideration within 120 days.

Interested parties are requested to contact the Commission and indicate their intent to participate in the initial June 24, 2008, meeting of the EAS Working Group. The contact person for the EAS Working Group is Joseph K. Witmer, Law Bureau, (717) 787-3663, joswitmer@state.pa.us.

Additional information on the EAS Working Group can be found on the Commission's web site at [www.puc.state.pa.us/telecom/telecom\\_index.aspx](http://www.puc.state.pa.us/telecom/telecom_index.aspx). Interested parties are encouraged to visit the web site prior to the meeting.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 08-1099. Filed for public inspection June 13, 2008, 9:00 a.m.]

### Withdrawal of Rulemaking Order

Public Meeting held  
May 22, 2008

*Commissioners Present:* Wendell F. Holland, Chairperson;  
James H. Cawley, Vice Chairperson; Tyrone J. Christy;  
Kim Pizzingrilli

*Rulemaking Re: Proposed Revision to Commission  
Regulations Governing Extended Area Service (EAS) at  
52 Pa. Code §§ 63.71—63.77  
Docket No. L-00050173*

*Report and Recommendation of the Extended  
Area Service Task Force  
Docket No. M-00031703*

### Final Rulemaking Order

*By the Commission:*

Before the Commission for disposition are the proposed Final Rules for Extended Area Service (EAS)<sup>1</sup> modifying the current regulations set forth in the Public Utility Code at 52 Pa. Code §§ 63.71—63.77. The rulemaking was initiated by the Commission in November 2005 with the intention of updating our current regulations so as to reflect changes in the regulatory environment for providing telecommunications services in Pennsylvania. The Commission received comments from the Office of Consumer Advocate, the Pennsylvania Telephone Association, and the Independent Regulatory Review Commission.

#### Discussion

Staff has dedicated significant time and effort in the preparation of proposed and final regulations for our review and they are commended for their efforts. However, pursuant to the Regulatory Review Act, regulations must be submitted in final-form within 2 years of the close of the public comment period. In light of the June 6, 2008, regulatory deadline for submission of these regulations to legislative standing committees and the Independent Regulatory Review Commission, the Commission does not believe that there is sufficient time remaining to give the proposed final rulemaking proper consideration. Consequently, the Commission concludes that this rulemaking proceeding be closed.

Since receiving public comments over 2 years ago, there have been considerable changes in the structure of the telecommunications industry with the implementation of bundled service packages; the emergence of competition, cable telephony, wireless competition and innovative technologies such as Voice over Internet Protocol (VoIP). All of these changes in the market have limited the number of EAS cases coming before us. Although the number of EAS cases has diminished, it does not minimize the relevancy of EAS in areas where true competition is not yet a reality. The Commission should take these changes into consideration and ensure that any modification to our existing regulations accurately reflect the current marketplace.

The closing of this rulemaking does not negate a local exchange carrier's duty to comply with our existing regulations and the Commission will continue to apply these regulations to any EAS cases coming before us. In light of the continued effectiveness of the current regula-

<sup>1</sup> EAS is a term of art referring to a procedure in which the Commission expands a basic local calling area. EAS converts an in-state (intrastate) toll route, in which consumers typically pay for a call on a minute of use (MOU) basis, into a local calling area route. When the consumers get EAS, they typically pay a flat rate for unlimited local calling or, in the case of an Optional Calling Plan (OCP), pay a discounted toll rate.

tions, the suspension of the biennial traffic studies requirement of 52 Pa. Code § 63.72 shall remain in effect.<sup>2</sup>

The closing of the rulemaking does not preclude the Commission from further exploring EAS issues and instituting a new rulemaking, as deemed necessary, at a future date. The Commission will convene a working group of stakeholders to solicit comments on the future direction of EAS given the changes in the market since this rulemaking was initiated over 2 years ago. *Therefore,*

*It Is Ordered That:*

1. The instant rulemaking be closed.
2. A copy of the entered Opinion and Order be served upon the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Telephone Association and published in the *Pennsylvania Bulletin*.
3. The Commission provide notice to the Office of Attorney General, the Governor's Budget Office, the Legislative Standing Committees, and the Independent Regulatory Review Commission that this rulemaking has been closed.
4. The Law Bureau, in conjunction with the Bureau of Fixed Utility Services, convene a stakeholders' working group and develop for Commission consideration within 120 days an updated recommendation regarding possible amendment of our current EAS regulations.

JAMES J. MCNULTY,  
*Secretary*

[Pa.B. Doc. No. 08-1100. Filed for public inspection June 13, 2008, 9:00 a.m.]

## STATE BOARD OF NURSING

[ 49 PA. CODE CH. 21 ]

### Clinical Nurse Specialists

The State Board of Nursing (Board) proposes to amend Chapter 21 by adding a new Subchapter H (relating to clinical nurse specialists) to read as set forth in Annex A.

#### Effective Date

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

#### Statutory Authority

The regulations are required by the act of July 20, 2007 (P. L. 320, No. 49) (Act 49), which amended the Professional Nursing Law (act) (63 P. S. §§ 211—225.5) to authorize the Board to certify clinical nurse specialists (CNSs) in accordance with statutory criteria, to provide title protection for CNSs, to require CNSs to complete continuing education to renew their certification, and to require CNSs to maintain professional liability insurance. Section 5 of Act 49 requires the Board to promulgate regulations to implement Act 49 within 18 months of its effective date, or by March 18, 2009.

#### Background and Purpose

CNSs are nurses educated at the master's degree level. Prior to the amendments made by Act 49, CNSs were not

<sup>2</sup> This requirement was suspended by Commission Order entered June 30, 1999 at Docket No. I-000940035.

recognized as a distinct category of master's educated nurse under the act. The amendments are required to effectuate Act 49.

*Description of Proposed Amendments*

The Board proposes a comprehensive new Subchapter H. The specific proposals are outlined as follows.

*§ 21.801 (relating to definitions)*

Section 21.801 will provide definitions for terms used throughout the subchapter.

*§ 21.802 (relating to scope)*

This section will set out the scope of the Board's regulations in Subchapter H.

*§ 21.803 (relating to applicability of rules relating to professional nurses)*

Because a CNS must also be a professional nurse licensed by the Board, this section provides that the general provisions in §§ 21.1—21.4 governing registered nurses and §§ 21.11—21.18a, relating to responsibilities of the registered nurse, apply to CNSs.

*§ 21.804 (relating to approved educational programs; approval of credentialing organizations)*

This section provides that the Board will approve educational programs for CNSs, will maintain a list of approved educational programs on its web site, and will consider additional programs for inclusion on the approved list as required by section 6.2(c) of the act (63 P. S. § 216.2(c)).

*§ 21.805 (relating to fees)*

This section provides for fees for both fee for service functions of the Board, such as the review and approval of the certification application, restoration of certification after sanction, reactivation after a lapse of 5 or more years, and verification of licensure history, and for biennial renewal fees for CNSs.

*§ 21.811 (relating to qualifications for initial certification)*

This section sets forth the qualifications for certification, which mirror the qualifications in Act 49. To qualify for initial certification as a CNS, an applicant must hold a current, unrestricted license as a professional nurse in this Commonwealth. In addition, the nurse shall meet one of three sets of criteria.

First, as set forth in paragraph (1), the nurse shall have completed a master's degree in nursing, doctorate degree in nursing or postmaster's degree or certificate in nursing at an accredited, Board-approved nursing education program that prepared the applicant to practice as a CNS and submit evidence of current National certification by examination as a CNS in a designated specialty area. The examination must be offered by a Board-recognized National nursing, nursing specialty or credentialing organization. These provisions mirror the qualifications in section 8.5(a)(1) of the act (63 P. S. § 218.5(a)(1)). In subparagraph (i), the Board provides that National nursing, nursing specialty and credentialing organizations may apply to the Board for recognition. In subparagraph (ii), the Board notes that it will maintain the list of Board-recognized organizations on its web site.

National certification under § 21.811(1) includes the American Nurses Credentialing Center (ANCC) specialties—adult health CNS, adult psychiatric and mental health CNS, child/adolescent psychiatric and mental health CNS, gerontological CNS, pediatric CNS, public/community health CNS and diabetes management, ad-

vanced CNS. In addition, the Board anticipates that the Oncology Nursing Certification Corporation, the American Association of Critical Care Nurses, the Hospice and Palliative Nurses Association and the National Association of Orthopaedic Nurses may request inclusion on the list of Board-recognized providers of National examinations at the CNS level.

Second, as set forth in paragraph (2), the nurse shall have completed a master's degree in nursing, doctorate degree in nursing or postmaster's degree or certificate in nursing at an accredited, Board-approved nursing education program that prepared the applicant to practice as a CNS and, if there is no certification examination available in the specialty area, shall demonstrate equivalence to National certification. These provisions mirror the qualifications in section 8.5(a)(2) of the act.

In § 21.811(2)(i)—(iii), the Board sets forth how an applicant can demonstrate equivalence to National certification. Paragraph (2)(i)(A) allows a CNS to take a CNS certifying examination in an area that encompasses the CNS's specialty area. Paragraph (2)(i)(B) allows a CNS to demonstrate certification by an organization that utilizes a method of measuring competence other than an examination; generally, portfolio review. Paragraph (2)(i)(B) explains how an organization offering an alternative to examination may obtain approval from the Board and paragraph (2)(iii) provides that the Board will maintain a list of approved organizations for alternative review on its web site.

The Board anticipates that the Wound, Ostomy, Continence Nurses Association, which offers a portfolio review at the CNS level, will request recognition under paragraph (2)(ii).

Third, the nurse may have graduated from an educational program that culminated in the award of a master's degree or higher in a related discipline that previously qualified the nurse for National certification as a CNS and evidence of current National certification by the American Nurses Credentialing Center (ANCC), in accordance with section 8.5(b)(1) of the act.

A nurse would be eligible for certification as a CNS under § 21.811(3) as, for example, an adult psychiatric mental health CNS if the nurse held a bachelor's degree in nursing and a master's degree in psychology, which previously qualified the nurse to sit for the ANCC CNS certifying examination.

*§ 21.812 (relating to qualifications for certification by endorsement or change of clinical specialty area)*

Section 21.812 provides for certification by endorsement from another state, territory or possession of the United States or a foreign country and change of clinical specialty area by a CNS already certified by the Board.

*§ 21.813 (relating application for certification)*

Section 21.813 provides information about the application for certification and supporting documentation for applicants for initial certification, applicants for certification by endorsement and applicants for certification in an additional specialty area.

*§ 21.821 (relating to CNS standards of conduct)*

This section provides that, in addition to the standards of conduct for professional nurses in § 21.18 (relating to standards of nursing conduct), a CNS may undertake a specific practice or procedure only if the CNS has the necessary knowledge, preparation, experience and compe-

tency to properly execute the practice or procedure and that the CNS must practice within the scope of practice of the particular clinical specialty area in which the nurse is certified by the Board. This provision mirrors a provision related to certified registered nurse practitioners (CRNPs).

*§ 21.822 (relating to biennial renewal of certification)*

This section sets forth the particulars related to a CNS's biennial renewal of the CNS certification. As with CRNPs, the certification expiration date is tied to the nurse's RN license expiration date. The biennial continuing education required by statute is cross-referenced in § 21.822(d).

*§ 21.823 (relating to CNS-level continuing education; waiver; sanctions)*

The Board also provides, in § 21.823(a), that in lieu of meeting the continuing education requirement in section 12.1(b) of the act (63 P. S. § 222(b)), a CNS may submit proof that the CNS has completed 30 hours of continuing education required by section 8.5(c)(2) of the act. This provision is similar to the provision requiring continuing education of CRNPs. Both CRNPs and CNSs will be required to complete just 30 hours of continuing education at the professional nurse level to renew their RN license, rather than requiring a CNS to complete an additional 30 hours of continuing education at the RN level to renew the CNS certificate.

Section 21.823(b) sets forth the circumstances under which the Board might waive the continuing education requirement, and provides that a request for waiver must be made at least 90 days prior to the end of the renewal period.

Finally, § 21.283(c) reminds licensees that they may be sanctioned for failure to meet the statutorily-mandated continuing education requirements.

*§ 21.824 (relating to inactive status and reactivation)*

To renew a license that has been placed on inactive status, a CNS shall provide proof of compliance with the continuing education requirement in the biennial renewal period immediately preceding the request for reactivation. This provision is consistent with provisions related to CRNPs. In addition, if the CNS's professional nursing license was also on inactive status, the CNS will have to renew the RN license and, if necessary, meet the continued competency requirements for RNs in § 21.30a (relating to continued competency).

*§ 21.825 (relating to sources of continuing education)*

This section provides for preapproved providers of continuing education courses, similar to the provisions related to both professional nurses and CRNPs. The section also provides for CNSs or continuing education providers to obtain Board approval for continuing education. Finally, this section provides for CNSs to obtain continuing education credit for individual study, teaching, publishing, and the like.

*§ 21.826 (relating to requirements for continuing education courses)*

This section sets forth the minimum standards for courses, including adequate instructors, facilities and an established mechanism to measure the quality of the continuing education program.

*§ 21.827 (relating to continuing education course approval)*

This section relates to the approval of a continuing education course. Every continuing education provider

shall provide a certificate of attendance to nurses who complete the program. Providers who are not on the list of preapproved providers, shall submit information to the Board to determine whether the provider's proposed course should be authorized for continuing education credit.

*§ 21.828 (relating to CNS responsibilities)*

This section provides that the CNS is required to maintain documentation of the continuing education completed. The section also describes the verification procedure on the biennial renewal application.

*§ 21.831 (relating to penalties for violations)*

This section sets forth the penalties for violations of the act or regulations of the Board.

*Fiscal Impact and Paperwork Requirements*

The regulations will have no adverse fiscal impact on the Commonwealth or its political subdivisions, because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. The regulations will impose no additional paperwork requirements upon the Commonwealth or political subdivisions.

*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 June 4, 2008, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-5133 (clinical nurse specialists), when submitting comments.

MARY E. BOWEN, RN, DNS, CNAA,  
Chairperson

**Fiscal Note:** 16A-5133. 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 H. CLINICAL NURSE SPECIALISTS

GENERAL PROVISIONS

- Sec. 21.801. Definitions. 21.802. Scope. 21.803. Applicability of rules relating to professional nurses. 21.804. Approved educational programs; approval of credentialing organizations. 21.805. Fees.

CERTIFICATION REQUIREMENTS

- 21.811. Qualifications for initial certification. 21.812. Qualifications for certification by endorsement or change of clinical specialty area. 21.813. Application for certification.

MAINTENANCE OF CERTIFICATION

- 21.821. CNS standards of conduct. 21.822. Biennial renewal of certification. 21.823. CNS-level continuing education; waiver; sanctions. 21.824. Inactive status and reactivation. 21.825. Sources of continuing education. 21.826. Requirements for continuing education courses. 21.827. Continuing education course approval. 21.828. CNS responsibilities.

PENALTIES FOR VIOLATION

- 21.831. Penalties for violations.

GENERAL PROVISIONS

§ 21.801. Definitions.

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

Act—The Professional Nursing Law (63 P. S. §§ 211—225.5), which provides for the certification of CNSs.

Approved—Approved by the Board.

Approved program—Those educational programs accredited by the NLNAC or CCNE for preparing a professional nurse to practice as a CNS.

Board—The State Board of Nursing of the Commonwealth.

CCNE—Commission on Collegiate Nursing Education—The organization recognized by the United States Secretary of Education as a National accreditation agency that provides a nongovernmental peer review process in accordance with Nationally recognized standards established for the practice of accreditation in the United States.

CNS—Clinical nurse specialist—A registered nurse licensed in this Commonwealth who meets the educational and examination or equivalency requirements of the act and who is certified by the Board to function in a particular clinical specialty area.

National certification—The credential awarded by a Board-recognized organization evidencing that an individual has passed a National certification examination to practice as a CNS in a particular specialty area and has maintained current National certification in the area as specified by the organization.

National certification organization—An organization recognized by the Board and maintained on the approved list on the Board's web site that has as one of its

purposes the examination of individuals to practice as CNSs in a particular specialty area.

NLNAC—National League for Nursing Accrediting Commission—The organization that is recognized as the accrediting body for all types of nursing education programs by the United States Department of Education and that is responsible for the specialized accreditation of nursing education programs, both postsecondary and higher degrees.

Nursing specialty organization—An organization recognized by the Board and maintained on the approved list on the Board's web site that has as one of its purposes the evaluation of the credentials of an individual to practice as a CNS in a particular specialty area.

§ 21.802. Scope.

In this subchapter the Board:

(1) Provides for certification of CNSs who meet the qualifications set forth in the act.

(2) Administers the act by providing rules and regulations relating to the issuance and renewal of CNS certification.

(3) Provides rules and regulations for the conduct of CNSs.

(4) Regulates the practice of CNSs.

§ 21.803. Applicability of rules relating to professional nurses.

Sections §§ 21.1—21.4a, 21.6 and 21.11—21.18a apply to nurses certified under this subchapter.

§ 21.804. Approved educational programs; approval of credentialing organizations.

(a) The Board will approve educational programs as set forth in section 6.2(c) of the act (63 P. S. § 216.2(c)).

(b) The Board will maintain a list of approved educational programs on its web site as set forth in section 6.2(c)(2) of the act.

(c) Educational programs that prepare nurses to practice as CNSs created after March 20, 2008, shall submit evidence that the program meets the criteria in section 6.2(c)(1) of the act to the Board for inclusion on the list of approved programs.

(d) Organizations that evaluate the credentials of nurses for certification by the Board under § 21.811(b) (relating to qualifications for certification) shall submit documentation of their credentials review process and standards to the Board for consideration and inclusion on the list of approved organizations.

§ 21.805. Fees.

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

Table with 2 columns: Fee description and Amount. Rows include: Certification as a CNS (\$100), Biennial renewal fee (\$50), Restoration of certificate after sanction (\$50), Restoration of certificate after lapse of 5 years or greater (\$50), Fee for verification of certification (\$15), Fee for certification of license history (\$30), Approval of a continuing education activity, per credit hour (\$75).

(b) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a

candidate for National certification will also pay an additional fee to the National certification organization. A candidate may contact the National certification organization for more information regarding the National CNS examination and examination fee. In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for credentials review by a Board-recognized organization will also pay an additional fee to the credentialing organization. A candidate may contact the credentialing organization for more information regarding the evaluation of credentials and the fee for credentials evaluation.

### CERTIFICATION REQUIREMENTS

#### § 21.811. Qualifications for initial certification.

An applicant for initial certification as a CNS by the Board shall hold a current, unrestricted license to practice professional nursing in this Commonwealth and show evidence of one of the following:

(1) *Nursing education and National certification by examination.* Completion of an accredited, Board-approved master's degree in nursing, doctorate degree in nursing or postmaster's degree or certificate in nursing that prepared the applicant to practice as a CNS and current National certification by examination at the CNS level from a Board-recognized National nursing, nursing specialty or credentialing organization in a designated specialty area, as provided in section 8.5(a)(1) of the act (63 P. S. § 218.5(a)(1)).

(i) For purposes of conferring certification under this paragraph, an organization may apply to the Board for inclusion on the list of Board-recognized National nursing, nursing specialty and credentialing organizations for purposes of this section. An applicant shall provide evidence that it is accredited or recognized by the American Board of Nursing Specialties (ABNS) or the National Council of State Boards of Nursing (NCSBN) to offer a CNS certification examination. The CNS certification examination offered by the organization must have, as a minimum prerequisite, the completion of a master's degree in nursing, doctorate degree in nursing or postmaster's degree or certificate in nursing in the specialty area of examination.

(ii) The Board will provide on its web site a list of the National nursing, nursing specialty and credentialing organizations recognized by the Board for conferring CNS National certification by examination under this paragraph.

(2) *Nursing education and equivalency to National certification by examination.* Completion of an accredited, Board-approved master's degree in nursing, doctorate degree in nursing, or postmaster's degree or certificate in nursing that prepared the applicant to practice as a CNS and, if there is no certification examination available in the specialty area, evidence that the applicant has met the equivalence requirements under section 8.5(a)(2) of the act as follows:

(i) An applicant for certification as a CNS under this paragraph may demonstrate equivalence to National certification by examination in the CNS's specialty area as follows:

(A) For a CNS who, by virtue of the CNS's educational program being accepted by a National certification organization, is authorized to take a National certification examination in a CNS specialty, the CNS may demonstrate a passing score on a National CNS certifying examination from a National certification organization on

the list under paragraph (1)(ii), in an area that encompasses the CNS's specialty area.

(B) For a CNS who is not eligible to take a National certification examination in the CNS specialty area or in an area that encompasses the CNS specialty area, the CNS may demonstrate certification by a Board-recognized National nursing, nursing specialty or credentialing organization within the past 3 years, or recertification if the certification or other process occurred more than 3 years ago.

(ii) For purposes of conferring certification under subparagraph (i)(B), an organization may apply to the Board for inclusion on the list of Board-recognized National nursing, nursing specialty and credentialing organizations by submitting documentation of the organization's credentials review standards and process. The Board will recognize organizations that include a reliable mechanism to evaluate an individual's ability to apply the skills and knowledge obtained in the individual's educational program at the advanced practice nursing level in a particular specialty.

(iii) The Board will provide on its web site a list of the National nursing, nursing specialty and credentialing organizations recognized by the Board for certification of CNSs under subparagraph (i)(B).

(3) *Related education and National certification.* Completion of an educational program that culminated in the award of a master's degree in nursing or higher degree, in a related discipline that, prior to the effective date of Act 49 of 2007, which amended the act (July 20, 2007), qualified a nurse for National certification as a CNS, and current National certification as a CNS by the American Nurses Credentialing Center (ANCC), as provided in section 8.5(b)(1) of the act.

#### § 21.812. Qualifications for certification by endorsement or change of clinical specialty area.

(a) *Certification by endorsement.* An applicant for certification by the Board who holds a current, unrestricted license, certificate or authorization to practice as a CNS from another state, territory or possession of the United States or a foreign country, shall meet the certification requirements of the Board at the time of application.

(b) *Change of clinical specialty area.* A CNS who is already certified by the Board may apply for certification in an additional specialty area. To be granted certification in an additional specialty area, the CNS shall meet the educational and National certification or equivalency requirements for the specialty area in which the CNS is applying for certification.

#### § 21.813. Application for certification.

(a) An applicant for certification as a CNS shall submit an application form provided by the Board to the Board for its review and approval.

(b) An applicant for initial certification as a CNS shall include documentation satisfactory to the Board that the applicant meets the educational qualifications and National certification requirements in § 21.811 (relating to qualifications for initial certification).

(c) In addition to the documentation in subsections (a) and (b), an applicant for certification by endorsement shall include documentation satisfactory to the Board of the following:

(1) Verification of current, unrestricted licensure, certification or authority to practice as a professional nurse

and CNS issued by the proper licensing authority of another state, territory or possession of the United States or a foreign country.

(2) A written statement from the out-of State licensing, credentialing or authorizing entity setting forth the licensure, certification or authorization to practice requirements at the time the applicant was first licensed, certified or authorized to practice by that entity.

(d) An applicant who holds certification from the Board as a CNS who is applying for certification in an additional specialty area under § 21.812(b) (relating to qualifications for certification by endorsement or change clinical specialty area) shall submit, in addition to the documentation required under subsections (a) and (b), documentation of the following:

(1) Official transcript from the applicant's CNS program and any additional educational programs, including degree awarded, demonstrating a concentration in the specialty area in which the applicant is seeking certification.

(2) Proof of current National certification as a CNS from a Board-recognized National certification organization or proof the applicant meets the equivalency requirements for the specialty area in which the applicant is applying for certification.

(e) An applicant shall remit the certification fee in § 21.805 (relating to fees).

(f) An applicant shall submit additional information as identified on the application or as requested in writing by the Board. If supporting material is not provided within 12 months, the applicant will be required to file a new application.

#### MAINTENANCE OF CERTIFICATION

##### § 21.821. CNS standards of conduct.

In addition to the standards of conduct for a professional nurse in § 21.18 (relating to standards of nursing conduct), a CNS shall undertake a specific practice or procedure only if the CNS has the necessary knowledge, preparation, experience and competency to properly execute the practice or procedure.

##### § 21.822. Biennial renewal of certification.

(a) The certification of a CNS will expire at the same time as the CNS's professional nursing license as provided in § 21.29 (relating to expiration and renewal of license).

(b) Notice of application for renewal will be forwarded biennially to each active CNS at the CNS's address of record with the Board prior to the expiration date of the current biennial period.

(c) As a condition of biennial renewal, a CNS shall hold a valid, unexpired and unrestricted professional nursing license.

(d) As a condition of biennial renewal, a CNS shall complete a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal as required by section 8.5(c)(2) of the act (63 P. S. § 218.5(c)(2)), unless the requirement is waived by the Board or the CNS's certification is on inactive status.

(e) The applicant shall remit the required renewal fee in § 21.805 (relating to fees) with the applicant's renewal application forms. Upon approval of the renewal application, the CNS will receive a certification for the current renewal period.

(f) Any written communication with the Board must be typed or printed and include the CNS's full name, including former names, the current address and certification number.

##### § 21.823. CNS-level continuing education; waiver; sanctions.

(a) In lieu of meeting the requirements of section 12.1(b) of the act (63 P. S. § 222(b)), a CNS may submit proof of completion of the continuing education requirement in section 8.5(c)(2) of the act (63 P. S. § 218.5(c)(2)).

(b) The Board may waive the requirements of continuing education in cases of illness or undue hardship. It is the duty of each licensee who seeks a waiver to notify the Board in writing and request the waiver at least 90 days prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver.

(c) An individual failing to meet the continuing education requirements for a biennial period will be sanctioned in accordance with § 43b.18a (related to schedule of civil penalties for nurses).

##### § 21.824. Inactive status and reactivation.

A CNS who places the CNS's certification on inactive status is not required to meet the continuing education requirements in section 8.5(c)(2) of the act (63 P. S. § 218.5(c)(2)) during the period the certification is on inactive status. Upon application for reactivation of certification, the CNS shall provide the documentation in § 21.828(b) (relating to CNS responsibilities) to demonstrate that the CNS has met the continuing education requirements for the biennial period immediately preceding the request for reactivation.

##### § 21.825. Sources of continuing education.

(a) The following providers of continuing education and credentialing organizations have currently met the standards for course approval for continuing education and, provided that these providers and credentialing organizations agree to abide by §§ 21.826 and 21.827 (relating to requirements for continuing education courses; and continuing education course approval), they are preapproved to offer creditable continuing education, subject to reevaluation as set forth in subsection (b):

(1) Board-approved CNS educational programs and CNS educational programs approved by other state boards of nursing or that hold current accreditation issued by a National nursing accreditation organization.

(2) National and international nursing organizations and their state and local affiliates.

(3) National and international medical and osteopathic organizations and their state and local affiliates.

(4) National pharmaceutical organizations and their state and local affiliates.

(5) National nursing specialty organizations.

(6) Continuing education programs approved by other state boards of nursing for CNSs.

(b) The approval given to the providers and credentialing organizations in subsection (a) is subject to reevaluation. A rescission of provider or credentialing organization approval will be made in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) or by amendment of this section.

(c) CNSs may obtain credit for continuing education offered by providers not indicated in subsection (a) if the

provider obtains Board approval of the continuing education prior to its implementation, or the CNS obtains Board approval of the continuing education prior to attending the continuing education. A continuing education provider or CNS may obtain Board approval of continuing education by submitting a request for approval and the supporting documentation in § 21.827(b) at least 60 days prior to the course. The Board will approve or disapprove the request within 45 days.

(d) CNSs may obtain credit for correspondence courses, taped study courses, and other independent or online study courses if the course is Board approved.

(e) Up to 15 hours will be credited for service as a teacher, preceptor, lecturer or speaker and for publication in a refereed journal or other scholarly publication relating to the CNS's area of practice.

(f) An hour for the purposes of CNS continuing education is 50 minutes.

**§ 21.826. Requirements for continuing education courses.**

Each course must have:

(1) An established mechanism to measure its quality, established criteria for selecting and evaluating faculty, and established criteria for the evaluation of each participant who completes the course.

(2) Adequate facilities with appropriate instructional materials to carry out continuing education programs.

(3) An instructor whose area of expertise is in the subject matter being taught.

**§ 21.827. Continuing education course approval.**

(a) As a condition of approval, providers and credentialing organizations are required to provide CNSs who complete continuing education courses with a certificate of completion which contains the information in § 21.828(a) (relating to CNS responsibilities).

(b) Providers or CNSs requesting Board approval for continuing education as set forth in § 21.825(c) (relating to sources of continuing education) shall pay the fee in § 21.805 (relating to fees) and submit the following information to the Board:

- (1) The full name and address of the provider.
- (2) The title of the program.
- (3) The dates and location of the program.
- (4) The faculty names, titles, affiliations, degrees and areas of expertise.
- (5) The schedule of the program—title of subject, lecturer and time allocated.
- (6) The total number of hours requested.
- (7) The method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants.
- (8) The course objectives.
- (9) The target audience.
- (10) The core subjects.
- (11) The instruction and evaluation methods.
- (12) Other information requested by the Board.

(c) The provider shall provide CNSs who successfully complete a course with a certificate of attendance.

(d) A separate application shall be submitted whenever a change is made to any information submitted under subsection (b), except for information related to a change in date or location, or both.

**§ 21.828. CNS responsibilities.**

(a) A CNS is required to maintain documentation of completion of continuing education, including:

- (1) CNS's name.
- (2) Dates attended.
- (3) Continuing education hours.
- (4) Title of course.
- (5) Course provider.
- (6) Location of course.

(b) Primary responsibility for documenting completion of the continuing education requirements rests with the CNS. A CNS seeking to renew certification shall verify compliance with continuing education requirements. Certificates of attendance and other documentation of completion of continuing education requirements must be maintained for 5 years. The Board approval letter sent to the applicant will be considered acceptable documentation of hours obtained through § 21.825(c) or (e) (relating to sources of continuing education).

(c) Falsification of information required under this section or failure to complete the continuing education requirements by those who continue to practice as a CNS may result in the institution of formal disciplinary action under section 14(a)(3) of the act (63 P. S. § 221(a)(3)) and § 21.831(3) (relating to penalties for violations).

**PENALTIES FOR VIOLATION**

**§ 21.831. Penalties for violations.**

Certification as a CNS may be suspended, revoked or otherwise restricted when, after notice and opportunity to be heard, the Board finds that:

(1) The CNS has engaged in the performance of functions and tasks beyond the scope of practice permitted for a CNS or beyond the scope of the CNS's clinical specialty area as provided in the act and this subchapter.

(2) The CNS has performed a task or function which the CNS does not have the necessary knowledge, preparation, experience and competency to perform properly or is not qualified under the act and this subchapter to perform.

(3) The CNS has violated the act or this subchapter, or engaged in any conduct prohibited for professional nurses.

[Pa.B. Doc. No. 08-1101. Filed for public inspection June 13, 2008, 9:00 a.m.]

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

[ 49 PA. CODE CHS. 47, 48 AND 49 ]

## Code of Ethical Practice and Standards of Professional Conduct

The State Board of Social Workers, Marriage and Family Therapists and Professional Counselors (Board) proposes to add §§ 47.71, 48.71 and 49.71 (relating to code of ethical practice and standards of professional conduct) to read as set forth in Annex A. The regulations would establish a code of ethical practice and standards of professional conduct for social workers, clinical social workers, marriage and family therapists and professional counselors.

### *Effective Date*

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

### *Statutory Authority*

The regulations are authorized under section 6(2) of the Social Workers, Marriage and Family Therapists and Professional Counselors Act (act) (63 P. S. § 1906(2)).

### *Background and Purpose*

Section 6(2) of the act authorizes the Board to adopt rules and regulations establishing standards of professional practice and conduct for licensed social workers, licensed clinical social workers, licensed marriage and family therapists and licensed professional counselors in this Commonwealth. The Board, through this rulemaking, is implementing section 6(2) of the act.

In developing this code of ethical conduct and standards of professional practice, the Board looked at codes of conduct established by professional associations and organizations as well as other state codes. In particular, the Board modeled these regulations after codes of conduct and professional practice adopted by the following associations and organizations: the National Association of Social Workers; the Clinical Social Work Federation; the Pennsylvania State Board of Psychology; the American Association for Marriage and Family Therapy; the National Board for Certified Counselors; the Professional Counseling Board; the Commission on Rehabilitation Counselor Certification; and the American Psychological Association. In addition, the Board looked at standards promulgated by other state licensing boards.

### *Description*

Sections 47.71, 48.71 and 49.71 explain that this code of ethical practice and professional conduct constitutes the standards by which the licensee shall be measured and that violations of these standards is sufficient reason for the Board to take disciplinary action against a licensee.

The proposed regulations set forth standards pertaining to the responsibility of a licensee to clients/patients. These responsibilities include: competency; informed con-

sent; proper delegation; confidentiality and privacy; manner of terminating services; prohibition of sexual harassment and discrimination; and proper conduct between a licensee and the client/patient.

The proposed regulations also address multiple relationships affecting the licensee's judgment. In particular, §§ 47.71(c), 48.71(c) and 49.71(c) explain that a licensee should avoid multiple relationships and conflicts of interest with any client/patient which could impair professional judgment or increase the risk of client/patient exploitation.

Sections 47.71(d), 48.71(d) and 49.71(d) prohibit a licensee from undertaking or continuing professional relationships with a client, supervisee or student when objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions.

Sections 47.71(e), 48.71(e) and 49.71(e) address standards of conduct relating to research and publication. This includes research responsibility, informed consent, reporting results and publication.

Sections 47.71(f), 48.71(f) and 49.71(f) provide guidance to licensees related to payment for services. Sections 47.71(g), 48.71(g) and 49.71(g) pertain to recordkeeping. These provisions require that licensees keep records of the dates of services, types of services, termination and billing information. They also require that records be maintained by the licensee for 5 years except for records held or owned by government agencies or educational institutions.

Sections 47.71(h), 48.71(h) and 49.71(h) pertain to mandatory reporting and require that all licensees, supervisors and trainees have a responsibility to report any alleged violations of these rules to the Board. Sections 47.71(i), 48.71(i) and 49.71(i) require licensees to notify the Board of any changes of name or address. Sections 47.71(j), 48.71(j) and 49.71(j) require licensees to engage in appropriate advertising and to accurately represent their competencies, education, training and experience relevant to their professional practice.

### *Fiscal Impact and Paperwork Requirements*

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

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

### *Compliance*

The Board solicited predraft input regarding these proposed regulations from licensees, professional associations and educational programs. The Board received seven comments to the draft. The Board considered these comments in developing the proposed rulemaking.

### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 4, 2008, 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 the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P. S. § 745.5(g)), IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to publication of the final 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 the proposed amendments to Sandra Matter, Administrative Assistant, State Board of Social Workers, Marriage and Family Therapists and Professional Counselors, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-6911, Standards of Professional Conduct, when submitting comments.

RONALD HAYS,  
*Chairperson*

**Fiscal Note:** 16A-6911. No fiscal impact; (8) recommends adoption.

### **Annex A**

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

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

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

#### **CHAPTER 47. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS**

#### **CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

#### **§ 47.71. Code of ethical practice and professional conduct.**

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed social workers and licensed clinical social workers will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed social worker or licensed clinical social worker to disciplinary action under section 11 of the act (63 P. S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards promulgated by the National Association of Social Workers, the Pennsylvania Society for Clinical Social Work and the Association of State Social Work Boards and the Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section, except that whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or area or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might affect the clients'/patients' decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian or court-appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court-appointed representative.

(v) Licensees who provide services by the electronic means shall inform the client/patient of the limitations and risks associated with the services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient, or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those

circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients/patients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increase the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with another person if it appears or should appear likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed social worker or licensed clinical social worker or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify

the client/patient of the termination in writing and assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to the subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure

may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.

(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees shall be aware of their obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

(3) *Reporting results.*

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and shall provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(iii) *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.

(iv) *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to



disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

(4) *Publication.*

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

(f) *Payment for services.*

(1) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(2) Licensees may not accept goods or services as payment for professional services.

(3) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(4) Prior to entering into the therapeutic or supervisory relationship, a licensee should clearly disclose and explain to clients/patients and supervisees the following:

(i) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(ii) The use of collection agencies or legal measures for nonpayment.

(iii) The procedure for obtaining payment from the client/patient, to the extent allowed by law, if payment is denied by the third-party payor.

(5) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(6) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When that action is taken, licensees may not disclose clinical information.

(7) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(8) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

(g) *Recordkeeping.*

(1) For each client/patient, a licensee shall keep records of the dates of social work services, types of social work services, termination and billing information.

(2) Records kept by the licensee shall be retained for 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(3) Licensees shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(4) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to the client/patient in the future.

(5) Licensees' documentation should protect clients'/patients' privacy to the extent that it is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(6) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts.

(7) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient should provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when there is compelling evidence that the access would cause serious harm to the client/patient. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients'/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(8) In the event of the licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

(h) *Mandatory reporting.*

(1) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board.

(2) Licensees shall comply with mandatory reporting requirements in this chapter, including §§ 47.51—47.57 (relating to child abuse reporting requirements).

(i) *Notice of name and address change.* Licensees shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensees' current name and mailing address. Failure to do so may result in disciplinary action by the Board.

(j) *Advertising.*

(1) Licensees shall engage in appropriate informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(2) Licensees shall accurately represent their competencies, education, training and experience relevant to their professional practice.

(3) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and State or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and shall not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) A licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

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

**CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

**§ 48.71. Code of ethical practice and professional conduct.**

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed marriage and family therapists will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed marriage and family therapist to disciplinary action under section 11 of the act (63 P. S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards for licensees promulgated by the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the American Dance Therapy Association and the American Association for Marriage and Family Therapy and the Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section, except that whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or area or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might affect the clients/patients of services decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall

obtain consent from the client's/patient's parent, guardian or court appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court appointed representative.

(v) Licensees who provide services of electronic means shall inform the clients/patients of the limitations and risks associated with the services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of the clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients/patients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increases the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with another person if it appears or should appear likely that such a relationship might reasonably impair the professional's objectivity or otherwise interfere with the licensee's effectiveness as a licensed marriage and family therapist or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, a licensee shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients/patients, shall clarify the roles with the parties involved and take reasonable action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is or could reasonably be expected to be impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of termination in writing and assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to their subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.

(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees shall provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

(viii) *Agreements to cooperate.* Licensees who agree to cooperate with another individual in research or publication shall cooperate as promised in terms of punctuality of performance and with regard to the completeness and accuracy of the information required.

(ix) *Informed consent for sponsors.* In the pursuit of research, licensees shall give sponsors, institutions and publication channels the same respect and opportunity for giving informed consent that they accord to individual research participants. Licensees shall be aware of their

obligation to future research workers and ensure that host institutions are given feedback information and proper acknowledgment.

(3) *Reporting results.*

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

(iii) *Obligation to report unfavorable results.* Licensees shall communicate to other licensees the results of any research judged to be of professional value.

(iv) *Identity of subjects.* Licensees who supply data, aid in the research of another person, report research results or make original data available shall take due care to disguise the identity of respective subjects in the absence of specific authorization from the subjects to do otherwise.

(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

(4) *Publication.*

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

(f) *Payment for services.*

(1) When setting fees, licensees shall ensure that the fees are fair, reasonable and commensurate with the services performed.

(2) Licensees may not accept goods or services as payment for professional services.

(3) Licensees shall make financial arrangements with clients/patients, third-party payors and supervisees that are reasonably understandable and conform to accepted professional practices.

(4) Prior to entering into the therapeutic or supervisory relationship, a licensee should clearly disclose and explain to clients/patients and supervisees the following:

(i) Financial arrangements and fees related to professional services, including charges for canceled or missed appointments.

(ii) The use of collection agencies or legal measures for nonpayment.

(iii) The procedure for obtaining payment from the client, to the extent allowed by law, if payment is denied by the third-party payor.

(5) Once services have begun, licensees shall provide reasonable notice of changes in fees or other charges.

(6) Licensees shall give reasonable notice to clients with unpaid balances of their intent to seek collection by agency or legal recourse. When that action is taken, licensees may not disclose clinical information.

(7) Licensees shall represent facts truthfully to clients, third-party payors and supervisees regarding services rendered.

(8) Licensees may not withhold records under their immediate control that are requested and needed for a client's/patient's treatment solely because payment has not been received for past services, except as otherwise provided by law.

(g) *Recordkeeping.*

(1) For each client/patient, a licensee shall keep records of the dates of marriage and family therapy services, types of marriage and family therapy services, termination and billing information.

(2) Records kept by the licensee shall be retained for 5 years from the date of the last entry. Records held or owned by government agencies or educational institutions are not subject to this requirement.

(3) Licensees shall take reasonable steps to ensure that documentation in records is accurate and reflects the services provided.

(4) Licensees shall include sufficient and timely documentation in records to facilitate the delivery of services and to ensure continuity of services provided to clients in the future.

(5) Licensees' documentation should protect clients'/patients' privacy to the extent that it is possible and appropriate and should include only information that is directly relevant to the delivery of services.

(6) Licensees shall store records following termination of services to ensure reasonable future access. Records shall be maintained as required by paragraph (2) unless a longer retention period is otherwise required by statute or relevant contracts.

(7) Licensees shall provide a client/patient with reasonable access to records concerning the client/patient. Licensees who are concerned that clients'/patients' access to their records could cause serious misunderstanding or harm to the client/patient should provide assistance in interpreting the records and consultation with the client/patient regarding the records. Licensees should limit clients'/patients' access to their records, or portions of their records, only in exceptional circumstances when

there is compelling evidence the access would cause serious harm to the client/patient. Both the clients'/patients' requests and the rationale for withholding some or all of the records shall be documented in the clients'/patients' files. When providing clients/patients with access to their records, licensees shall take steps to protect the confidentiality of other individuals identified or discussed in the records.

(8) In the event of a licensee moving from the area or closing the licensee's practice, a licensee shall arrange for the storage, transfer or disposal of client/patient records in ways that maintain confidentiality and safeguard the welfare of clients/patients.

(h) *Mandatory reporting.*

(1) Licensees, supervisors and trainees have a responsibility to report any alleged violations of the act or this chapter to the Board. If a licensee has knowledge or reason to suspect that a colleague or other licensee is incompetent, impaired or unethical, the licensee shall report that practitioner to the Board.

(2) Licensees shall comply with mandatory reporting requirements set forth in this chapter, including §§ 48.51—48.57 (relating to child abuse reporting requirements).

(i) *Notice of name and address change.* A licensee shall notify the Board within 30 days of any changes of name or mailing information to ensure that the Board has the licensee's current name and mailing address. Failure to do so may result in disciplinary action by the Board.

(j) *Advertising.*

(1) Licensees shall engage in appropriate informational activities, including those that enable the public, referral sources or others to choose professional services on an informed basis.

(2) Licensees shall accurately represent their competencies, education, training and experience relevant to their professional practice.

(3) Licensees shall ensure that advertisements and publications in any media, such as directories, announcements, business cards, newspapers, radio, television, internet and facsimiles, convey information that is necessary for the public to make an appropriate selection of professional services. This information may include the following:

(i) Office information, such as name, address, telephone number and credit card acceptability.

(ii) Earned degrees and state or provincial licensures or certifications.

(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source or status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources

recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

**CHAPTER 49. STATE BOARD OF SOCIAL WORKERS, MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS—  
LICENSURE OF PROFESSIONAL COUNSELORS  
CODE OF ETHICAL PRACTICE AND STANDARDS OF PROFESSIONAL CONDUCT**

**§ 49.71. Code of ethical practice and professional conduct.**

(a) *Application.* This code of ethical practice and professional conduct constitutes the standards by which the professional conduct of licensed professional counselors will be measured.

(1) This code of ethical practice and professional conduct applies to the conduct of all licensees.

(2) A violation of this code of ethical practice and professional conduct constitutes unprofessional conduct and subjects the licensed professional counselor to disciplinary action under section 11 of the act (63 P. S. § 1911).

(3) The Board subscribes to the codes of ethics and practice standards for licensees promulgated by the National Board for Certified Counselors, Inc., the Commission on Rehabilitation Counselor Certification, the Certification Board for Music Therapists, the Art Therapists Certification Board, the American Dance Therapy Association, the National Association for Drama Therapy, the Academy of Certified Clinical Mental Health Counselors, the North American Association of Master's in Psychology, the International Certification and Reciprocity Consortium/Alcohol and Other Drug Abuse Inc. and the National Association of Alcoholism and Drug Abuse Counselors. The Board will use these codes and standards as aids in resolving ambiguities which may arise in the interpretation of this section. Whenever any conflict exists between this section and the professional associations' codes and standards, this section shall prevail.

(b) *Responsibility to clients/patients.*

(1) *Competency.*

(i) Licensees may not misrepresent directly, indirectly or by implication their professional qualifications such as education, specialized training, experience or areas of competence.

(ii) Licensees may practice only within the competency areas for which they are qualified by education, training or experience.

(iii) Licensees shall maintain appropriate standards of care. The appropriate standard of care is defined as what an ordinary, reasonable professional with similar training would have done in a similar circumstance.

(iv) Licensees shall make appropriate referrals when the client's/patient's needs exceed the licensee's competence level. The referrals must be made in a timely manner.

(2) *Informed consent.*

(i) Licensees shall inform clients/patients in writing of the extent and nature of services available to them, as well as the limits, rights, opportunities and obligations associated with the services to be provided which might effect the clients'/patients' decisions to enter into or continue the relationship.

(ii) Licensees shall provide services to clients/patients only in the context of a professional relationship based on valid informed consent. Licensees shall use clear and understandable language to inform clients/patients of the purposes of services, limits to the services due to legal requirements, relevant costs, reasonable alternatives, the clients'/patients' rights to refuse or withdraw consent and the time frame covered by the consent.

(iii) In instances when the client/patient is unable to read or understand the consent document or has trouble understanding the primary language contained in the informed consent document, licensees shall take steps to ensure the client's/patient's comprehension including providing a detailed verbal explanation or arranging for a qualified interpreter or translator, as needed. If a client/patient is not competent to provide informed consent because of age or mental condition, the licensee shall obtain consent from the client's/patient's parent, guardian or court-appointed representative.

(iv) When a client/patient is receiving services involuntarily, licensees shall provide information about the nature and extent of the services and about the client's/patient's rights to the client's/patient's parent, guardian or court appointed representative.

(v) Licensees who provide services by means of electronic means shall inform the clients/patients of the limitations and risks associated with such services.

(3) *Delegation.* A licensee may not delegate professional responsibilities to another person when the licensee delegating the responsibilities knows or has reason to know that the other person is not qualified by training, experience or licensure to perform those responsibilities.

(4) *Confidentiality and privacy.*

(i) Licensees shall have a primary obligation to protect the client's/patient's right to confidentiality and privacy as established by law and the professional standards of practice. Confidential and private information shall only be revealed to others when the client/patient or other person legally authorized to give consent on behalf of the client/patient, has given informed consent, except in those circumstances in which failure to do so would violate other laws or result in clear and present danger to the client/patient or others. Unless specifically contraindicated by these situations, a client/patient shall be informed and written consent shall be obtained before the confidential and private information is revealed.

(ii) Licensees shall discuss with clients/patients and the client's/patient's legally authorized representatives, the nature of confidentiality and the limitation of clients'/patients' right to confidentiality. Licensees shall review with clients/patients circumstances when confidential information may be requested and when disclosure of confidential information is legally required. This discussion should occur as soon as possible in the professional relationship and as needed throughout the course of the relationship.

(iii) When licensees provide services to families, couples or groups, licensees should seek agreement among the parties involved concerning each individual's right to confidentiality and obligations to preserve the confidentiality of information shared by others. Licensees shall inform participants in family, group or couples counseling that the licensee cannot guarantee that all participants will honor the agreements. In the context of couple, family or group treatment, the licensee may not reveal any individual's confidences to others in the client unit without the prior written permission of that individual.

(iv) Licensees shall take reasonable steps to protect the confidentiality of information transmitted to other parties through the use of computers, electronic mail, facsimile machines, telephones and telephone answering machines, and other electronic or computer technology.

(5) *Termination.* Licensees shall terminate services only after giving careful consideration to factors affecting the relationship and making an effort to minimize possible adverse effects. If an interruption or termination of services is anticipated, reasonable notification and appropriate referral for continued services shall be provided to the client/patient.

(6) *Sexual harassment.*

(i) Licensees may not sexually harass clients/patients or family members of clients/patients.

(ii) Licensees may not sexually harass supervisees, students, trainees, employees, research subjects or colleagues.

(iii) Sexual harassment includes unwanted sexual advances, sexual solicitation, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature.

(7) *Discrimination.* Licensees may not practice, condone, facilitate or collaborate with any form of discrimination on the basis of race, ethnicity, religion, national origin, color, gender, sexual orientation, age, socioeconomic level, marital status, political belief, veteran status, or mental or physical impairment.

(8) *Conduct with clients.*

(i) Licensees may not physically or verbally abuse or threaten clients/patients or family members of clients/patients.

(ii) Licensees may not use derogatory language in their written or verbal communications to or about clients/patients. Licensees shall use accurate and respectful language in all communications to and about clients/patients.

(c) *Dual or multiple relationships affecting the licensee's judgment.*

(1) A licensee shall avoid dual or multiple relationships and conflicts of interest with any client/patient which could impair the licensee's professional judgment or increase the risk of client/patient exploitation. Dual or multiple relationships occur when the licensee relates to clients/patients in more than one relationship, whether professional, social or business. Dual or multiple relationships can occur simultaneously or consecutively. The licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired or when the relationship with the client/patient, supervisee or student is exploitative. The licensee should be particularly aware

that familial, social, emotional, financial, supervisory, political, administrative and legal relationships with a client/patient or a person related to or associated with the client/patient must be carefully considered to insure that impaired judgment or exploitation is not involved.

(2) Licensees shall always be sensitive to the potentially harmful effects of other contacts on their practice and on those persons with whom they deal. A licensee shall refrain from entering into, or promising another to enter into, personal, scientific, professional or other relationships with other persons if it appears or should appear likely that the relationship might reasonably impair the licensee's objectivity or otherwise interfere with the licensee's effectiveness as a licensed professional counselor or might harm or exploit the other party.

(3) When a dual or multiple relationship cannot be avoided, licensees shall take reasonable professional precautions, such as informed consent, consultation, supervision and documentation, to ensure that judgment is not impaired and that no exploitation occurs.

(4) If a licensee finds that, due to unforeseen factors, a potentially harmful dual or multiple relationship has arisen with a client/patient, the licensee shall attempt to resolve it with due regard for the best interests of the client/patient and maximum compliance with the act and this chapter.

(5) When a licensee provides services to two or more people who have a relationship with each other, such as couples or family members, the licensee shall clarify with all parties which individuals will be considered clients/patients and the nature of the licensee's professional obligation to the various individuals who are receiving services. A licensee who anticipates a conflict of interest among the individuals receiving services or who anticipates having to perform in potentially conflicting roles, such as a licensee who is asked or ordered to testify in a child custody dispute or divorce proceeding involving clients, shall clarify the roles with the parties involved and take appropriate action to minimize any conflict of interest.

(d) *Impaired practice.* A licensee may not undertake or continue a professional relationship with a client/patient, supervisee or student when the objectivity or competency of the licensee is, or could reasonably be expected to be, impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If such a condition develops after a professional relationship has been initiated, the licensee shall terminate the professional relationship in an appropriate manner and shall, either himself or through an appropriate designee, notify the client/patient of the termination in writing and shall assist the client/patient in obtaining services from another professional.

(e) *Research and publication.*

(1) *Research responsibilities.*

(i) *Use of human subjects.* Licensees shall plan, design, conduct and report research in a manner consistent with pertinent ethical principles, Federal and State laws, host institutional rules, and scientific standards governing research with human subjects. Licensees shall conduct research that reflects cultural sensitivity appropriateness.

(ii) *Deviation from standard practice.* Licensees shall seek consultation and observe stringent safeguards to protect the rights of research participants when a research problem suggests a deviation from standard acceptable practices.

(iii) *Precautions to avoid injury.* Licensees who conduct research with human subjects are responsible for the subjects' welfare throughout the experiment and shall take reasonable precautions to avoid causing injurious psychological, physical or social effects to their subjects. Licensees shall warn subjects of any possible harm that might come from being involved in a research project.

(iv) *Principal researcher responsibility.* The ultimate responsibility for ethical research practice lies with the principal researcher. Others involved in the research activities share ethical obligations and full responsibility for their own actions.

(v) *Minimal interference.* Licensees shall take reasonable precautions to avoid causing disruptions in subjects' lives due to participation in research.

(vi) *Diversity.* Licensees shall be sensitive to diversity and research issues with special populations and seek consultation when a reasonable researcher would consider it appropriate.

(2) *Informed consent.*

(i) *Topics disclosed.* In obtaining informed consent for research, licensees shall use language that is understandable to research participants and that:

(A) Accurately explains the purpose and procedures to be followed.

(B) Identifies any procedures that are experimental or relatively untried.

(C) Describes the attendant discomforts and risks.

(D) Describes the benefits or changes in individuals or organizations that might be reasonably expected.

(E) Discloses appropriate alternative procedures that would be advantageous for the subject.

(F) Offers to answer any inquiries concerning the procedures.

(G) Instructs that subjects are free to withdraw their consent and discontinue participation in the project at any time.

(ii) *Prohibition of deception.* The methodological requirements of research study may not include concealment, deception or minimal risk to participants.

(iii) *Voluntary participation.* Licensees shall assure that participation in research is voluntary and without any penalty for refusal to participate. Involuntary participation is appropriate only when it can be demonstrated that participation will have no harmful effects on subjects and is essential to the investigation. A research procedure may not be used if it is likely to cause serious or lasting harm to a participant. Ethical practice requires the investigator to respect the individual's freedom to decline to participate in, or withdraw from, research and to so inform prospective participants. The obligation to protect this freedom requires special vigilance when a licensee is, in any manner, in a position of authority over the participant. It is unethical to penalize a participant in any way for withdrawing from or refusing to participate in a research project.

(iv) *Confidentiality of information.* Information obtained about research participants during the course of an investigation is confidential. When the possibility exists that others may obtain access to the information, ethical research practice requires that the possibility, together with the plans for protecting confidentiality, be explained to participants by the licensee as part of the procedure for obtaining informed consent.



(v) *Persons incapable of giving informed consent.* When a person is not capable of giving informed consent, licensees provide an appropriate explanation, obtain agreement for participation and obtain informed consent from a legally authorized person.

(vi) *Commitments to participants.* Licensees shall take reasonable measures to honor all commitments to research participants.

(vii) *Explanations after data collections.* After data are collected, licensees shall provide participants with full clarifications of the nature of the study to remove any misconceptions. When scientific or human values justify delaying or withholding information, licensees shall take reasonable measures to avoid causing harm.

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### (3) Reporting results.

(i) *Information affecting outcome.* When reporting research results, licensees shall explicitly mention all variables and conditions known to the licensee that may have affected the outcome of a study or the interpretation of the data.

(ii) *Accurate results.* Licensees shall plan, conduct and report research accurately and in a manner that minimizes the possibility that results will be misleading and provide thorough discussions of the limitations of their data and alternative hypotheses. Licensees may not engage in fraudulent research, distort data, misrepresent data or deliberately bias their results.

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(v) *Replication studies.* Licensees shall make available sufficient original research data to qualified professionals who may wish to replicate the study.

### (4) Publication.

(i) *Recognition of others.* When conducting and reporting research, licensees shall be familiar with, and give recognition to, previous work on the topic, observe copyright laws, and give full credit to those to whom credit is due.

(ii) *Contributors.* Licensees shall give credit through joint authorship, acknowledgement, footnote statements or other appropriate means to those who have contributed significantly to research or concept development in accordance with such contributions. The principal contributor shall be listed first and minor technical or professional contributions may be acknowledged in notes or introductory statements.

(iii) *Student research.* For an article that is substantially based on a student's dissertation or thesis, the student shall be listed as the principal author.

(iv) *Duplicate submission.* Licensees shall submit manuscripts for consideration to only one journal at a time. Manuscripts that are published in whole or in substantial part in a journal or published work may not be submitted for publication to another journal without acknowledgment and permission from the previous publication.

(v) *Professional review.* Licensees who review material submitted for publication, research or other scholarly purposes shall respect the confidentiality and proprietary rights of those who submitted it.

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(i) Office information, such as name, address, telephone number and credit card acceptability.

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(iii) Professional association member status.

(iv) Description of practice.

(4) Licensees may not use names that could mislead the public concerning the identity, responsibility, source and status of those practicing under that name, and may not hold themselves out as being partners or associates of a firm if they are not partners or associates of the firm.

(5) Licensees may not use any professional identification, such as a business card, office sign, letterhead, Internet, or telephone or association directory listing, if it includes a statement or claim that is false, fraudulent, misleading or deceptive.

(6) In representing their educational qualifications, licensees shall list and claim only those earned degrees from institutions accredited by regional accreditation sources recognized by the United States Department of Education, from institutions recognized by states or provinces that license or certify the licensee, or from equivalent foreign institutions.

(7) The licensee shall correct, whenever possible, false, misleading or inaccurate information and representations made by others concerning the licensee's qualifications, services or products.

(8) Licensees shall make certain that the qualifications of their employees or supervisees are represented in a manner that is not false, misleading or deceptive.

(9) Licensees may not represent themselves as providing specialized services unless they have the required education, training or supervised experience.

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