PROPOSED RULEMAKING

EVIRONMENTAL HEARING BOARD

[25 PA. CODE CH. 1021]

Practice and Procedure

The Environmental Hearing Board (Board) proposes to revise Chapter 1021 (relating to practice and procedures) by adding new procedural rules to read as set forth in Annex A.

The proposed procedural rules have the following objectives:

(1) To provide the regulated community and the Department of Environmental Protection (Department) and other potential litigants with more specific guidance on how to represent their interests before the Board.

(2) To improve the rules of practice and procedure before the Board.

I. *Statutory Authority for Proposed Revisions*

The Board has the authority under section 5 of the Environmental Hearing Board Act (act) (35 P. S. § 7515) to adopt regulations pertaining to practice and procedure before the Board.

II. *Description of Proposed Revisions*

The proposed revisions are modifications to provisions of the rules to improve practice and procedure before the Board. These proposed revisions are based on the recommendations of the Environmental Hearing Board Rules Committee (Rules Committee), a nine member advisory committee created by section 5 of the act to make recommendations to the Board on its rules of practice and procedure. The Board may promulgate proposed regulations based in whole or in part on the recommendations of the Rules Committee.

This summary provides a description of: (1) the existing rules of practice and procedure when relevant to proposed revisions; (2) the Board's proposed revisions; and (3) how, if any, the proposal differs from the Rules Committee's recommendations.

Where the recommendations of the Rules Committee were not in proper legislative style and format, they have been modified to conform to those requirements. Similarly, where recommendations did not contain proper cross references to 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure), references to those rules have been added.

The proposed rulemaking can be divided into three categories: 1) adoption of new rules; 2) substantive amendments to existing rules; and 3) correction of typographical errors.

1. *§ 1021.32 (relating to filing)*

Two changes have been proposed to § 1021.32. The first is the correction of a typographical error in subsection (f). The second is the addition of subsection (h) which would require all documents filed with the Board to conform to recently enacted Pa.R.C.P. 204.1, requiring uniformity of filings.

2. *§ 1021.34(b). (relating to service by a party)*

The proposed rule change in § 1021.34(b) clarifies that when documents are filed with the Board in an expedited manner, such as, by overnight mail, facsimile or same day delivery, they should also be delivered to the other parties on the same day or by overnight delivery.

3. *§ 1021.51. (relating to commencement, form and content)*

In subsection (f), a change adds a reference to proposed new § 1021.54a (relating to prepayment of penalties), dealing with prepayment of penalties.

Subsections (h)—(j) ensure that all recipients of an action being appealed receive notice of the appeal and are provided an opportunity to participate in the appeal, under the Commonwealth Court's holding in *Schneiderwind v. DEP*, 867 A.2d 724 (Pa. Cmwlth. 2005).

4. *§ 1021.54a. (relating to prepayment of penalties).*

In the last set of revisions to its rules, the Board deleted an earlier version of this rule dealing with prepayment of civil penalties since it did not conform to statutory requirements regarding prepayment of penalties. The proposed rule explains that parties must follow the requirements of the statute under which a penalty has been assessed when determining whether to submit prepayment of the penalty to either the Board or the Department.

5. *§ 1021.55 (relating to hearing on inability to prepay)*

The proposed change adds a reference to proposed new § 1021.54a, dealing with prepayment of penalties.

6. *§ 1021.74 (relating to answers to complaints)*

This change adds a reference to proposed new § 1021.76a, dealing with default judgment.

7. *§ 1021.76a. (relating to entry of default judgment)*

This proposed new section clarifies that the Board, upon motion, may enter default judgment not only as to liability but also on the amount of the civil penalty requested by the Department of Environmental Protection in a complaint for civil penalties when the defendant fails to file an answer to the complaint.

8. *§ 1021.93. (relating to discovery motions)*

This proposed amendment to subsection (b) of the existing rule would require parties to certify that they have conferred or attempted to confer with opposing parties before filing a discovery motion with the Board.

9. *§ 1021.94a. (relating to summary judgment motions)*

This rule was created in the Board's last set of rules changes in an attempt to make summary judgment practice more manageable by discouraging the filing of summary judgment motions containing lengthy recitations of background facts to which the opposing party must respond. The proposed amendments to § 1021.94a are a further attempt to accomplish this and to discourage the filing of summary judgment motions when there are clear issues of disputed material fact. The proposed amendments require the moving party to file a statement of undisputed material facts and the opposing party to file a responding statement. The proposed amendments impose page limits on the statement of undisputed material facts, responding statement and briefs.

10. *§§ 1021.96a—1021.96d (relating to expedited hearings)*

The Board has proposed new rules clarifying when parties may request an expedited prehearing and hearing

schedule and setting forth the factors the Board will consider in granting the request.

11. *§ 1021.141b. (relating to withdrawal without prejudice)*

This proposed new rule would clarify that appellants may withdraw appeals without prejudice upon agreement of the parties.

The Board concurred with each of the recommendations set forth in this preamble.

III. *Fiscal Impact of the Proposed Revisions*

The proposed amendments will have no measurable fiscal impact on the Commonwealth, political subdivision or the private sector. The amendments may have a favorable economic impact in that they may eliminate potential litigation over existing uncertainties in the Board's procedures, authority and requirements.

IV. *Paperwork Requirements for Proposed Revisions*

The proposed amendments may require only minor changes to the Board's standard orders.

V. *Public Meeting on Proposed Rules*

In accordance with 65 Pa.C.S. §§ 701—716 (relating to Sunshine Law), a quorum of the members of the Board voted to adopt the proposed rules at a public meeting held on February 12, 2008, at the Board's Harrisburg office, Hearing Room 2, Second Floor, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA.

VI. *Government Reviews of Proposed Revisions*

On October 28, 2008, as required under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the proposed revisions to the Independent Regulatory Review Commission (IRRC) and the Senate and House Standing Committees on Environmental Resources and Energy (Committees). The Board also provided IRRC and the Committees with copies of a Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1 (relating to regulatory review and promulgation). Copies of the Regulatory Analysis Form are available to the public upon request.

If IRRC has objections to any of the proposed revisions, it will notify the Board within 30 days of the close of the public comment period, specifying the regulatory review criteria that have not been met. The Regulatory Review Act sets forth procedures for review, prior to final publication of the proposed revisions, by the Board, the General Assembly and the Governor of objections raised.

VII. *Public Comment Regarding Proposed Revisions*

The Board invites interested persons to submit written comments, suggestions or objections regarding the proposed revisions to Mary Anne Wesdak, Senior Assistant Counsel, 1507 State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222, within 30 days of this publication.

THOMAS W. RENWAND,
Acting Chairperson and Chief Judge

Fiscal Note: 106-9. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART IX. ENVIRONMENTAL HEARING BOARD

CHAPTER 1021. PRACTICE AND PROCEDURES

DOCUMENTARY FILINGS

FILING AND SERVICE OF DOCUMENTS

§ 1021.32. Filing.

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(f) Hard copy of any electronically filed legal document which exceeds 50 pages in length must also be filed with the Board in accordance with subsections (a) and (c) and § 1021.37 (relating to the number of copies). Exhibits to legal documents may be filed and served either electronically or by hard copy in accordance with the sections in this chapter relating to filing and service. If these requirements are met by hard copy of exhibits, they must be sent to the Board by mail or express delivery and, in the case of requests for expedited disposition, service shall mean actual receipt by the opposing party as required by § 1021.34 **[(b)](c)** (relating to service by a party).

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(h) Pleadings and other documents filed with the Board must comply with Pa.R.C.P. 204.1 (relating to filing uniformity).

§ 1021.34. Service by a party.

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(b) When a document is filed with the Board by overnight delivery**, facsimile** or personal service, it shall be **[served] delivered to the opposing parties on the same day or** by overnight delivery **[or personal service on the parties]**.

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FORMAL PROCEEDINGS

APPEALS

§ 1021.51. Commencement, form and content.

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(f) When the appeal is from an assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond, the appellant shall **[submit to the Board with the appeal a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay] follow the procedures set forth in § 1021.54a (relating to prepayment of civil penalties) [(*Editor's Note:* Section 1021.54 dealing with prepayment of penalties has been deleted in this final rulemaking. Section 1021.51(f) should have been amended to reflect this change and will be corrected in future rulemaking.)]**.

* * * * *

(h) For purposes of this section, the term "recipient of the action" includes the following:

(1) The **[recipient of a permit, license, approval or certification] person to whom the action of the Department is directed or issued**.

* * * * *

(3) **[The] A** mining company**, well operator or owner or operator of a storage tank in** appeals involving a claim of subsidence damage **[or],** water loss **[under The Bituminous Mine Subsidence and Land Conservation Act (52 P. S. §§ 1406.1—1406.2)] or contamination**.

(4) **[The well operator in appeals involving a claim of pollution or diminution of a water supply under section 208 of the Oil and Gas Act (58 P. S. § 601.208).**

(5) The owner or operator of a storage tank in appeals involving a claim of an affected water supply under section 1303 of the Storage Tank and Spill Prevention Act (35 P. S. § 6021.1303).

(6)] Other interested parties as ordered by the Board.

(i) The service upon the **[recipient of a permit, license, approval or certification, as required by subsection (h)(1),] person to whom the action of the Department is directed or issued** shall subject the recipient to the jurisdiction of the Board, and the recipient shall be added as a party to the third-party appeal without the necessity of filing a petition for leave to intervene under § 1021.81. The **[recipient of a permit, license, approval or certification] person to whom the action of the Department is directed or issued** who is added to an appeal **[pursuant to] under** this section **[must] shall** still comply with §§ 1021.21 and 1021.22 (relating to representation of parties; and notice of appearance.)

(j) Other recipients of an action **[appealed by a third party, served as required by subsections] under subsection** (h)(2), (3)**[,] or** (4) **[or (5)]**, may intervene as of course in the appeal by filing an entry of appearance within 30 days of service of the notice of appeal in accordance with §§ 1021.21 and 1021.22, without the necessity of filing a petition for leave to intervene **[pursuant to] under** § 1021.81. **If a recipient of an action under subsection (h)(2), (3) or (4) elects not to intervene as of course following service of notice of an appeal, the recipient's right to appeal from the Board's adjudication in the matter may be adversely affected.**

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***Comment*: Subsection (j) of this rule was amended in response to the Commonwealth Court's ruling in *Schneiderwind v. DEP*, 867 A.2d 724 (Pa. Cmwlth. 2005).**

§ 1021.54a. Prepayment of penalties.

(a) When an appeal is from the assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond with the Department, the appellant shall submit to the Office of Chief Counsel of the Department a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay.

(b) When an appeal is from the assessment of a civil penalty for which the statute requires an appellant to prepay the penalty or post a bond with the Board, the appellant shall submit to the Board a check in the amount of the penalty or an appropriate bond securing payment of the penalty or a verified statement that the appellant is unable to pay.

(c) When an appellant claims it does not have the ability to prepay a civil penalty assessment, it shall include with the notice of appeal a verified statement that alleges financial inability to prepay or post an appeal bond.

***Comment*: Practitioners should note that the Air Pollution Control Act (35 P. S. §§ 4001—4015) requires that prepayment of a civil penalty be made to the Board and not to the Department. If a civil penalty is assessed under more than one statute, an appellant shall follow the procedures set forth in each statute.**

§ 1021.55. Hearing on inability to prepay penalty.

(a) If an appellant submits a verified statement that he is unable to pay in accordance with §**[§ 1021.51] 1021.54a(c)** (relating to **[commencement, form and content] prepayment of penalties**), the Board may schedule a hearing on the validity of this claim and may require the appellant to supply appropriate financial information to the Department in advance of the hearing.

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SPECIAL ACTIONS

§ 1021.74. Answers to complaints.

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(d) A defendant failing to file an answer within the prescribed time shall be deemed in default and, upon motion made **as set forth in § 1021.76a (relating to entry of default judgment)**, all relevant facts in the complaint may be deemed admitted **and default judgment may be entered**. Further, the Board may impose any other sanctions for failure to file an answer in accordance with § 1021.161 (relating to sanctions).

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§ 1021.76a. Entry of default judgment.

(a) The Board, on motion of the plaintiff, may enter default judgment against the defendant for failure to file within the required time an answer to a complaint that contains a notice to defend.

(b) The motion for default judgment must contain a certification that the plaintiff served on the defendant a notice of intention to seek default judgment after the date on which the answer to the complaint was due and at least 10 days prior to filing the motion.

(c) The filing of an answer to the complaint by the defendant prior to the filing of a motion for default judgment by the plaintiff shall correct the default.

(d) Where default judgment is sought in a matter involving a complaint for civil penalties, the Board may assess civil penalties in the amount of the plaintiff's claim or may assess the amount of the penalty following a hearing at which the issues shall be limited to the amount of the civil penalties.

***Comment*: This rule is modeled after Pa.R.C.P. 237.1 and 1037.**

MOTIONS

§ 1021.93. Discovery motions.

* * * * *

(b) **A discovery motion may not be filed unless it contains a certification that the movant has in good faith conferred or attempted to confer with the party against whom the motion is directed in an effort to secure the requested discovery without Board action.** Discovery motions **[shall] must** contain as exhibits the discovery requests and answers giving rise to the dispute.

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§ 1021.94a. Summary judgment motions.

(a) ***Rules governing summary judgment motions.*** **Except as otherwise provided by these rules, motions for summary judgment shall be governed by Pa.R.C.P. Rules 1035.1—1035.5.**

(b) *Summary judgment motion record.*

(1) A summary judgment motion record must contain the following separate items:

(i) A motion prepared in accordance with subsection **[(b)] (c)**.

(ii) **A statement of undisputed material facts in accordance with subsection (d).**

(iii) A supporting brief prepared in accordance with subsection **[(c)] (e)**.

[(iii)] (iv) The evidentiary materials relied upon by the movant.

[(iv)] (v) A proposed order.

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[(b)] (c) *Motion*. A motion for summary judgment must contain only a concise statement of the relief requested and the reasons for granting that relief. The motion should not include any recitation of the facts and should not exceed two pages in length.

(d) ***Statement of undisputed material facts.*** **A statement of undisputed material facts must consist of numbered paragraphs and contain only those material facts to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation must identify the document and specify the paragraphs and pages or lines thereof or the specific portions of exhibits relied on. The statement of undisputed material facts, absent the portions of exhibits and affidavits relied upon, may not exceed five pages in length unless leave of the Board is granted.**

[(c)] (e) *Brief* ***in support of the motion for summary judgment***. The motion for summary judgment shall be accompanied by a brief containing an introduction **[and],** summary of the case, **[a statement of material facts]** and **[a discussion of]** the legal argument supporting the motion. **[The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on.**

(d) ***Evidentiary materials.*** **Affidavits, deposition transcripts or other documents relied upon in support of a motion for summary judgment shall accompany the motion and brief and shall be separately bound and labeled as exhibits. Affidavits shall conform to Pa.R.C.P. 76 and 1035.4.**

(e) ***Proposed order.*** **The motion shall be accompanied by a proposed order.]**

(f) **[** ***Brief by party in opposition to motion.*** **]** *Opposition to motion for summary judgment*. Within 30 days of the date of service of the motion, a party opposing the motion shall file **the following:**

(1) A response to the motion for summary judgment which includes a concise statement, not to exceed two pages in length, as to why the motion should not be granted.

(2) [a brief containing a responding statement] A response to the statement of undisputed material facts either admitting or denying or disputing each of the facts in the movant's statement**. [and a discussion of the legal argument in opposition to the motion. All material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, unless specifically disputed by citation conforming to the requirements of subsection (c)] Any response must include citation to the portion of the record contraverting a material fact. The citation must identify the document and specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on** demonstrating existence of a genuine issue as to the fact disputed. An opposing party may also include in the responding statement additional facts the party contends are material and as to which there exists a genuine issue. Each fact shall be stated in separately numbered paragraphs **[together with] and contain** citations to the motion record. **[Affidavits, deposition transcripts or other documents relied upon in support of a response to a motion for summary judgment, which are not already a part of the motion record, shall accompany the responding brief.] The response to the statement of undisputed material facts may not exceed five pages in length unless leave of the Board is granted.**

(3) A brief containing the legal argument in opposition to the motion.

(g) ***Length of brief in support of and in opposition to summary judgment.*** **Unless leave of the Board is granted, the brief in support of or in opposition to the motion may not exceed 30 pages.**

(h) ***Evidentiary materials.*** **Affidavits, deposition transcripts or other documents relied upon in support of a motion for summary judgment or response must accompany the motion or response and be separately bound and labeled as exhibits. Affidavits must conform to Pa.R.C.P. 76 and 1035.4 (relating to definitions; and affidavits).**

(i) ***Proposed order.*** **The motion shall be accompanied by a proposed order.**

[(g)](j) *Reply brief. A* **[concise]** reply brief may be filed by the movant within 15 days of the date of service of the response. **It may not exceed 15 pages unless leave of the Board is granted.** Additional briefing may

be permitted at the discretion of the presiding administrative law judge.

[(h) *Motion for summary*] (k) *Summary judgment*. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading or its notice of appeal, but the adverse party's response, by affidavits or as otherwise provided by this rule, must set forth specific facts showing there is a genuine issue for hearing. If the adverse party does not so respond, summary judgment may be entered against the adverse party. Summary judgment may be entered against a party who fails to respond to a summary judgment motion.

[(i)] (l) *Judgment rendered*. The judgment sought shall be rendered forthwith if the motion record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Comment: The statement of material facts **[in the briefs]** should be limited to those facts which are material to disposition of the summary judgment motion and should not include lengthy recitations of undisputed background facts or legal context.

§ 1021.96a. Motions for expedited hearing.

(a) A motion for an expedited hearing may be filed at any time in either an appeal or special action, or the Board may order an expedited hearing on its own motion.

(b) The Board may issue an order, for an expedited hearing notwithstanding the time requirements contained in a previous order of the Board, the Board's Rules of Practice and Procedure in § 1021.101 (relating to prehearing procedure), or the Pa.R.C.P. relating to discovery.

(c) In issuing such an order, the Board will be guided by relevant judicial and Board precedent. Among other factors to be considered:

(1) Whether pollution or injury to the public health, safety or welfare exists or is threatened during the period ordinarily required to complete the proceedings.

(2) The severity of prejudice to any party during the time period ordinarily required to complete the proceedings.

(3) The status of discovery and the realistic need of the parties for extended discovery and for time to prepare for a hearing.

(4) Whether the issuance of such an order would promote judicial economy or would otherwise be in the public interest.

(5) The effect of expedited proceedings on the nonrequesting party.

(d) The Board will grant a motion for expedited hearing only in rare circumstances.

(e) The Board may direct that a prehearing conference be held to determine an appropriate schedule for the completion of prehearing proceedings as well as the time and place of the hearing.

§ 1021.96b. Contents of motion for expedited hearing.

(a) A motion for an expedited hearing must state facts with particularity and be supported by one of the following:

(1) Affidavits based on personal knowledge or experience setting forth facts supporting the issuance of an order for an expedited hearing.

(2) An explanation of why affidavits have not accompanied the motion if no affidavits are submitted with the motion for an expedited hearing.

(b) A motion for an expedited hearing shall be accompanied by a memorandum of law.

(c) A motion may not be filed unless it contains a certification that the moving party has in good faith conferred or attempted to confer with the party against whom the motion is directed in an effort to secure an agreement on expediting the proceeding.

§ 1021.96c. Response to motion for expedited hearing.

A response and supporting memorandum of law shall be filed within 10 days of service unless otherwise ordered by the Board.

§ 1021.96d. Conduct of expedited hearing.

(a) Nothing contained in this rule limits the rights of the parties to a full hearing before the Board under the applicable rules of evidence with full rights of cross-examination of witnesses. The Board may limit the number of witnesses or the subjects of examination to avoid duplication of evidence as provided in § 1021.126 (relating to limiting number of witnesses and additional evidence).

(b) Testimony may be submitted by prepared written testimony as provided under § 1021.124 (relating to written testimony).

(c) After the conclusion of the hearing the Board will direct the prompt filing of post hearing briefs.

TERMINATION OF PROCEEDINGS

§ 1021.141b. Withdrawal without prejudice.

(a) Upon agreement of all parties, an appellant may withdraw an appeal without prejudice.

(b) Except as agreed by the parties under subsection (c), when an appeal is withdrawn without prejudice the withdrawal of the appeal shall have no effect upon the ability of any party to raise, in future proceedings, any issue of law or fact raised or that could have been raised in the withdrawn appeal.

(c) Any agreement by the parties that limits the issues that may be raised or that determines the finality of the action being appealed will be binding

[Pa.B. Doc. No. 08-2016. Filed for public inspection November 7, 2008, 9:00 a.m.]

PENNSYLVANIA GAMING CONTROL BOARD

[58 PA. CODE CHS. 441a AND 467a]

Smoking in Licensed Facilities

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(30) (relating to general and specific powers) and specific

authority contained in sections 3 and 4 of the Clean Indoor Air Act (35 P. S. §§ 637.3—637.4) (act) proposes to amend Chapters 441a and 467a (relating to slot machine licenses; and commencement of slot operations) to read as set forth in Annex A.

Purpose of the Proposed Rulemaking

This proposed rulemaking adds a new § 441a.25 (relating to smoking in licensed facilities) and amends § 467a.1 (relating to gaming floor plan) to implement the provisions of the act.

Explanation of Amendments to Chapters 441a and 467a

The new § 441a.25 sets forth the procedures and requirements that slot machine licensees must comply with as a result of the passage of the act.

Subsection (a) mirrors the provisions of the act which restrict smoking to no more than 25% of the gaming floor on September 11, 2008, the effective date of the act, and limit the maximum amount of the gaming floor that may eventually be designated as smoking to 50% of the gaming floor.

Subsection (b) reflects the requirement of the act that slot machine licensees request a gross terminal report from the Department of Revenue on December 10, 2008, and subsection (c) reflects the slot machine licensees' right to request subsequent reports on a quarterly basis.

Subsection (d) parallels the language of the act that permits proportionate increases in the amount of the gaming floor designated for smoking areas when there is a difference in the average gross terminal revenue for slot machines in the smoking areas as opposed to the slot machines in the nonsmoking areas.

Subsection (e) sets forth the process slot machine licensees will be required to use whenever they want to make a change to the designated smoking areas. Changes to designated smoking areas will be submitted to the Board's Executive Director, who will verify that the changes are consistent with the provisions of the act and the Board's regulations. Once this is done, the slot machine licensee will be notified and may proceed with the changes.

Subsection (f) reflects the provision of the act that allows a slot machine licensee who is operating a temporary licensed facility to use the same percentage of square footage designated for smoking areas in the temporary licensed facility in the permanent licensed facility. For example, if a slot machine licensee is authorized to designate 35% of the gaming floor in the temporary licensed facility as smoking, the slot machine licensee will be able to designate 35% of the gaming floor in the permanent facility as smoking.

Subsection (g) requires signage that clearly delineates where smoking may or may not be permitted on the gaming floor and requires that signs be posted at all public entrances which indicate that smoking is permitted in designated areas. While the act only requires "smoking permitted" signs at entrances, such signs at a licensed facility could give patrons the misimpression that they can smoke anywhere in the licensed facility. Because licensed facilities are only partially exempt from the smoking ban, language reflecting that fact is needed at the entrances to licensed facilities.

The Board is also seeking comments on whether or not smoking or nonsmoking labels should be required on each individual slot machine. In particular, the Board is requesting input on the effectiveness of individual labels and the costs and possible logistical problems that would be associated with placing labels on each slot machine.

Subsection (h) requires slot machine licensees to provide training to their employees on when smoking is and is not permitted and on what the employees should do if they see an individual smoking in a nonsmoking area.

Lastly, § 467a.1 has been amended to add designated smoking areas as one of the items that must be depicted on gaming floor plans.

Affected Parties

This proposed rulemaking will affect any slot machine licensee that permits smoking in designated areas in a licensed facility.

Fiscal Impact

Commonwealth

Under this proposed rulemaking, the Board's Executive Director will be required to review requests filed by slot machine licensees desiring to change the size or location of the designated smoking areas in their licensed facilities. These requests will be handled by existing staff so the Board does not foresee that there will be any new costs or savings to the Board or other Commonwealth agencies as a result of this proposed rulemaking.

Political Subdivisions

This proposed rulemaking will have no direct fiscal impact on political subdivisions of this Commonwealth.

Private Sector

Affected slot machine licensees will experience costs related to submitting changes to their gaming floor plans to designate areas where smoking is permitted; for posting signs indicating where smoking may or may not occur and training their employees.

The actual costs will vary by licensed facility depending on how frequently a slot machine licensee elects to make changes to their gaming floor. Costs per change are anticipated not to exceed $2,500.

Violations of these regulations could subject the slot machine licensee to fines between $250 to $1,000 under the act and other disciplinary action by the Board.

General Public

This proposed rulemaking will have no fiscal impact on the general public. However, under the act, individuals who smoke in areas designated as nonsmoking will be subject to fines of $250 to $1,000.

Paperwork requirements

Slot machine licensees will have to submit a request and revised floor plan any time they want to make a change to their designated smoking areas.

Effective Date

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

Public Comments

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin* to Richard Sandusky, Director of Regulatory Review, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation No. 125-92.

Contact Person

The contact person for questions about this proposed rulemaking is Richard Sandusky, Director of Regulatory Review, at (717) 214-8111.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 28, 2008, the Board submitted a copy of this proposed rulemaking and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board's web site (www.pgcb.state.pa.us).

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

MARY DIGIACOMO COLINS,
Chairperson

Fiscal Note: 125-92. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART VII. GAMING CONTROL BOARD

Subpart C. SLOT MACHINE LICENSING

CHAPTER 441a. SLOT MACHINE LICENSES

§ 441a.25. Smoking in licensed facilities.

(a) Beginning on September 11, 2008, a slot machine licensee, except a slot machine licensee whose licensed facility is located in a city of the first class that has prohibited smoking in public places, may permit smoking on up to 25% of the square footage of the gaming floor. A slot machine licensee may increase the area of the gaming floor where smoking is permitted to a maximum of 50% of the square footage of gaming floor in accordance with the procedures in subsections (b)—(e).

(b) On December 10, 2008, or 90 days after commencement of slot operations at the licensed facility, whichever occurs later, a slot machine licensee shall request a report from the Department that analyzes the gross terminal revenue per slot machine unit in operation at the licensed facility within the 90-day period preceding the request.

(c) After receipt of the initial report under subsection (b), a slot machine licensee may request additional reports from the Department that analyze the gross terminal revenue per slot machine unit in operation at the licensed facility within the 90-day period preceding the request on a quarterly basis.

(d) When a report from the Department indicates that the average gross terminal revenue per slot machine unit in the designated smoking areas exceeds the average gross terminal revenue per slot machine unit in the designated nonsmoking areas, the slot machine licensee may, after verification by the Board's Executive Director, increase the square footage of the gaming floor designated for smoking in proportion to the percentage difference in revenue. The designated smoking areas may at no time exceed 50% of the square footage of the gaming floor.

(e) A notice of intent to increase, decrease or reconfigure the square footage of the gaming floor designated for smoking shall be submitted to the Board's Executive Director in writing and include a revised gaming floor plan. The Executive Director will review the revised gaming floor plan to verify compliance with the Clean Indoor Air Act (35 P. S. §§ 637.1—637.14) and this part. A slot machine licensee may not implement the increase, decrease or reconfiguration until compliance is verified.

(f) If a slot machine licensee moves from a temporary licensed facility to a permanent licensed facility, the slot machine licensee may utilize the current percentage of the square footage of the temporary licensed facility that is designated for smoking areas to determine the percentage of the square footage in the permanent facility that may be designated smoking areas. The designated smoking areas in the permanent facility shall be indicated on the gaming floor plan for the permanent facility submitted to the Board under § 467a.1 (relating to gaming floor plan).

(g) Slot machine licensees that permit smoking in designated areas of the licensed facility shall post signs, which at a minimum, contain the words "Smoking" or "No Smoking" or the international "No Smoking" symbol, to clearly delineate smoking and nonsmoking areas. Slot machine licensees that permit smoking in designated areas of a licensed facility shall also post signs that contain the phrase "Smoking Permitted in Designated Areas" at every public entrance to the licensed facility.

(h) Slot machine licensees that permit smoking in designated areas of the licensed facility shall provide training to their employees on:

(1) Where smoking is and is not permitted.

(2) The procedures employees should follow if an employee sees an individual smoking in an area that is not designated for smoking.

Subpart E. SLOT MACHINE TESTING, CERTIFICATION AND CONTROL

CHAPTER 467a. COMMENCEMENT OF SLOT OPERATIONS

§ 467a.1. Gaming floor plan.

(a) An applicant for, or holder of a slot machine license, shall submit to the Board a floor plan of its gaming floor and the restricted areas servicing the slot operation. A floor plan must be:

* * * * *

(2) Certified by an architect licensed to practice in this Commonwealth and depict the following:

* * * * *

(xii) **Designated smoking areas.**

(xiii) Additional documentation requested by the Board relating to the floor plan for the gaming floor.

* * * * *

[Pa.B. Doc. No. 08-2017. Filed for public inspection November 7, 2008, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

Certified Registered Nurse Practitioners; General Provisions

The State Board of Nursing (Board) proposes to amend Chapter 21, Subchapter C (relating to certified registered nurse practitioners) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed amendments are authorized under sections 2.1(k) and (l) and 8.1—8.3 of the Professional Nursing Law (act) (63 P. S. §§ 212.1(k) and (l) and 218.1—218.3).

Background and Purpose

In 1974, the General Assembly, in amendments to the act and the Medical Practice Act of 1974 (63 P. S. §§ 211—225) authorized the Board and the State Board of Medical Education and Licensure (now the State Board of Medicine) to jointly promulgate regulations that would authorize qualified nurses to perform acts of medical diagnosis and prescribe medical, therapeutic or corrective measures. In 1977, the Board and the State Board of Medicine jointly promulgated regulations granting certified registered nurse practitioner (CRNP) status to certain professional nurses (RNs), and governing acts of medical diagnosis and prescription of medical therapeutic or corrective measures performed by CRNPs. These regulations were promulgated in Chapter 18, Subchapter C. In 2000, the Boards jointly promulgated additional regulations for CRNP practice with regard to prescribing and dispensing drugs.

The act of December 9, 2002 (P. L. 1567, No. 206) (Act 206), amended section 2.1 of the act (63 P. S. § 212.1) and repealed sections of the Medical Practice Act to give the Board exclusive jurisdiction over CRNPs. Section 7(c) of Act 206 required the Board to promulgate regulations consistent with Act 206.

The act of July 20, 2007 (P. L. 318, No. 48) (Act 48), amended section 8.2(c.1) of the act (63 P. S. § 218.2(c.1)) to provide specific authorization for CRNPs to perform certain tasks, including ordering home health and hospice care; ordering durable medical equipment; issuing oral orders in health care facilities; making physical therapy, occupational therapy, respiratory therapy and dietitian referrals; performing disability assessments for the program providing Temporary Assistance to Needy Families; issuing home bound schooling certifications; and performing and signing the initial assessment of methadone treatment evaluations. The act also amended section 8.7 of the act (63 P. S. § 218.7), to require CRNPs to maintain a level of professional liability coverage as required for a nonparticipating health care provider under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910). The MCARE Act requires nonparticipating health care providers to maintain a minimum of $1 million per occurrence and $3 million annual aggregate. The act became effective on September 18, 2007.

The existing regulations prevent the effective use of CRNPs to the full extent of their education and ability and are inconsistent with the expanded scope of practice authorized by Act 48. The proposed amendments will enhance patient access to care in all practice settings by expanding the utilization of CRNPs in a manner comparable to other mid-level practitioners and giving practitioners and facilities clearer guidelines for CRNP scope of practice.

Description of Proposed Amendments

The proposed amendments make substantive and editorial changes to §§ 21.251—21.351. All references to the State Board of Medicine are removed or changed to refer solely to the State Board of Nursing. The following is a section-by-section analysis of the proposed changes.

§ 21.251 (relating to definitions)

The Board proposes to add a definition for "act" to indicate that references are to the Professional Nursing Law. The Board proposes to delete the definition for "Boards" because it is no longer used in the regulations. The Board proposes to amend the definition of "certified registered nurse practitioner" and to delete the definition for "direction" to reflect changes made by Act 206. The Board proposes to add definitions for "collaborative agreement" and "prescriptive authority collaborative agreement" which are terms used in amendments to the regulations. To mirror other subchapters of its regulations, the Board will also add a definition of "Board."

§ 21.252 (relating to purpose)

The Board proposes to rescind this section, which became outdated by Act 206.

§ 21.261 (relating designation of CRNP; authority to use CRNP)

The proposed give a new title to § 21.261 and clarify when a registered nurse practitioner may use the designation CRNP. The proposal indicates that the Board will name the CRNP's clinical specialty area on the current Pennsylvania certification document of the CRNP. The Board is already placing the clinical specialty area on CRNP certifications. This section also consolidates and clarifies the long-standing rule that a CRNP may not practice during the time the CRNP's Pennsylvania certification is revoked, suspended, inactive, lapsed or expired.

§ 21.271 (relating to currently licensed; course of study and experience; continuing education)

This section has been renamed and amended to clarify the statutorily mandated qualifications for certification as a CRNP. The section also adds a provision by which a CRNP may change clinical specialty area. The requirements set forth in this section mirror the qualifications set forth in Act 206.

§ 21.272 (relating to certification by endorsement)

The regulation is proposed to be rescinded because the qualifications for certification by endorsement have been moved to § 21.271.

§ 21.273 (relating to application for certification as a CRNP)

The Board proposes to add this section to detail the requirements for applications for approval and certification as a CRNP in this Commonwealth. Subsection (b) sets forth the application requirements for individuals applying for initial certification as a CRNP while subsection (c) sets forth the qualifications for individuals applying for certification by endorsement. Subsection (d) sets forth the requirements for individuals applying for certification in a new specialty area. This section includes the requirement that the CRNP-applicant verify that the CRNP is covered by liability insurance as set forth in section 8.7 of the act.

§§ 21.281 and 21.282 (relating to application for approval; and approval by the State Board of Nursing)

The Board proposes to reserve these sections, as the relevant information in them has been moved.

§ 21.282a (relating to medical examination, diagnosis and treatment)

The Board proposes to add a new section effectuating section 8.2(b) of the act, as amended, which authorizes all CRNPs to perform acts of medical diagnosis in accordance with regulations promulgated by the Board. The proposal provides that a CRNP may perform comprehensive assessments and establish medical diagnoses for patients; may order diagnostic tests; may interpret diagnostic tests (such as blood work, sugar levels, and the like) to the extent that the interpretation is within the CRNP's capabilities; may initiate referrals to and consultations with other licensed professionals; may consult with other licensed health care professionals; may develop and implement treatment plans, excluding plans for pharmaceutical treatments unless the CRNP holds current prescriptive authority approval; complete admission and discharge summaries; order blood and blood components; order diets; order durable medical equipment for patients; and perform other acts authorized by section 8.2(c.1) of the act.

§ 21.283 (relating to prescribing and dispensing drugs)

The Board proposes to amend this section, in accordance with sections 8.2(c) and 8.3 of the act (63 P. S. §§ 218.2(c) and 218.3), to clarify that a CRNP with prescriptive authority approval may, within the scope of the CRNP's specialty and prescriptive authority collaborative agreement, prescribe and dispense drugs and order medical therapeutic or corrective measures. The section codifies the current procedure that a CRNP obtain prescriptive authority approval from the Board by submitting an application, paying a fee and documenting that the CRNP has 45 hours of coursework in advanced pharmacology. The proposed rulemaking would also clarify that a CRNP may issue orders, either written or oral, for medical and therapeutic measures, including orders for drugs, Total Parenteral Nutrition and Lipids, and disposables and devices adjunctive to a treatment plan. The examples given are not intended to be a finite list, but include items about which the Board is frequently asked and which the Board has determined are within the existing scope of practice for CRNPs.

§ 21.284 (relating to prescribing and dispensing parameters)

The Board rewrote § 21.284(b) in accordance with current statutory language requiring that CRNPs practice within their area of clinical specialty (see § 8.2(a) of the act, 63 P. S. § 218.2(a)) and consistent with the CRNPs prescriptive authority collaborative agreement (see section 8.3(a)(2) of the act (63 P. S. § 218.3(a)(2)).

The Board retained the list of categories of drugs in § 21.284 from the prior jointly-promulgated regulations. The Board's proposal does not add or delete categories of drugs from which CRNPs may prescribe. Within the categories of drugs, the Board proposes to remove references to physicians in § 21.284(b)(3), to allow individual physicians and CRNPs to make determinations, based on their patients and practice, related to initial and ongoing prescriptions. The category of central nervous system agents will also remain, without reference to specific drugs within that category. At the Board's February 12, 2007, public hearing related to procedural sedation, representatives from the Pennsylvania Chapter of the American College of Emergency Physicians, the Capital Area Chapter of the Emergency Nurses Association, the Pennsylvania Emergency Nurses Association, the Hospital and Healthsystem Association of Pennsylvania and the Children's Hospital of Pittsburgh, among others, spoke strongly in support of the use of general anesthetics for purposes other than the administration of general anesthesia. CRNPs are prohibited from administering general anesthesia under § 21.17 (relating to anesthesia) of the Board's regulations. MAOIs are infrequently used as more effective central nervous system agents are now available.

The Board has retained the prohibitions on CRNPs prescribing from particular categories set forth in § 21.284(c), and has added, as prohibited, all Schedule I controlled substances.

The Board proposes to delete subsection (d), which regulates the collaborating physician and allows the State Board of Medicine to regulate physicians. The Board proposes to amend subsection (e)(1) and (2) to conform to acceptable practice standards and to delete subsection (f)(2) to conform to common usage of certain prescription medications. The proposed rulemaking would authorize a CRNP to write a prescription for a Schedule II controlled substance for up to a 30-day dose, instead of a 72-hour dose. The proposed rulemaking would authorize a CRNP to write a prescription for a Schedule III or IV controlled substance for up to a 90-day dose, instead of a 30-day dose. These amendments will allow consumers to utilize common 30-day and 90-day insurance discounts for these categories of drugs. The current provision in subsection (e)(1) requiring notification of the collaborating physician within 24 hours is deleted as an unnecessary paperwork requirement that does not positively influence patient care. The current provision in subsection (e)(2), providing that only a physician may refill a prescription for controlled substances, is deleted as an unnecessary duplication of health care efforts.

The Board proposes to amend current subsection (f), now renumbered subsection (e), to delete the prohibition on CRNPs prescribing or dispensing drugs for off-label use without approval of the collaborating physician. Many drugs are routinely prescribed for off-label use. The Board also proposes to remove language that suggesting that a CRNP's prescriptive authority derives from an assignment by the collaborating physician. A CRNP's prescriptive authority derives from the individual's prescriptive authority approval granted by the Board in accordance with the act and regulations of the Board. Finally, the Board proposes to delete current subsections (g) and (h), as these provisions have been incorporated into the new § 21.284a (relating to prescribing and dispensing drugs).

§ 21.284a (relating to prescribing and dispensing drugs)

The Board proposes to add this new section detailing the requirements for prescribing and dispensing drugs. Subsection (a) would provide that a CRNP who holds current prescriptive authority approval from the Board may request, receive and sign for professional samples and may distribute professional samples to patients in accordance with the collaborative agreement and facility policies.

Subsection (b) would repeat the current requirements that the CRNP's name and certification must be printed on prescription blank, along with identification of the collaborating physician. However, because CRNPs often practice in collaboration with other CRNPs and multiple collaborating physicians and inclusion of all those names could overwhelm the available space on a prescription blank, the proposed rulemaking would permit a CRNP's prescription blank to omit the collaborating physician so long as the collaborating physician is appropriately identified on the prescription as finally written. Consistent with the current regulation, the proposed rulemaking would continue to require a CRNP to designate the CRNP's status and to include the new National Provider Identifier (NPI) number, in addition to the CRNP's DEA registration number. The proposed rulemaking would also permit a CRNP to use a prescription blank generated by a hospital, but no prescription blank could be presigned.

Proposed subsection (c) sets forth recordkeeping requirements, similar to those recently adopted by the State Board of Medicine for physician assistants. Proposed subsection (c) also requires that the collaborative agreement must be available for inspection to determine the CRNP's authority to prescribe or dispense a drug. Proposed subsection (d) relates to packaging and requires that prescription drugs be dispensed in accordance with Federal regulations relating to packaging drugs. Proposed subsection (e) relates to the labeling of dispensed drugs. The proposal would also move references to the regulations of the Department of Health from § 21.283 to subsection (f).

§ 21.284b (relating to prescribing, administering and dispensing controlled substances)

This new section would repeat the duties previously imposed by the State Board of Medicine in § 16.92 (relating to prescribing, administering and dispensing controlled substances), as required by section 2.1(l) of the act. The provisions relate to the duties of a CRNP when prescribing controlled substances in facilities regulated by the Department of Health under 28 Pa. Code (relating to Health and Safety) and in facilities regulated by the Department of Public Welfare under 55 Pa. Code (relating to Public Welfare).

§ 21.285 (relating to collaborative agreement)

The Board proposes to rename and amend this section to reflect the requirements of section 8.3(a)(2) of the act with regard to prescriptive authority collaborative agreements. The definition of collaborative agreement formerly in subsection (a) is moved to § 21.251 (relating to definitions), along with a new definition for a prescriptive authority collaborative agreement.

§ 21.286 (relating to identification of the CRNP)

The Board proposes to modify this section. Department of Health regulations in 28 Pa. Code § 51.6 (relating to identification of personnel) require licensed health care providers to wear an identification tag which displays that person's full name and professional designation at all licensed facilities, including ambulatory surgical facilities, general hospitals, special hospitals, long-term care nursing facilities, birth centers, home health care agencies and cancer treatment centers. For CRNPs not covered under the Department of Health regulations, the Board proposes to provide that a CRNP shall wear an identification tag with the CRNPs name and title.

§ 21.287 (relating to physician supervision)

The Board proposes to rescind this section as unnecessary. In the 6 years since the regulations granting prescriptive authority to qualified CRNPs have been in effect, the Board has not received any requests from physicians to supervise more than four CRNPs who prescribe and dispense drugs. In addition, the State Board of Medicine is the proper regulatory body to adopt regulations relating to the parameters of a physician's practice.

§ 21.288 (relating to CRNP standards of conduct)

The Board proposes to add this section to emphasize that CRNPs may undertake a specific practice only if the CRNP is competent to properly perform the task.

§§ 21.291—21.294 (relating to health care facility policies)

The Board proposes to rescind these sections relating to health care facility policies as unnecessary. Most health care facilities are cognizant of CRNP functions and utilize CRNPs. It is the Board's understanding that these health care facilities have well-established committees which establish standard written policies and procedures pertaining to the scope and circumstances of the practice of CRNPs in the medical management of patients. The Board further notes that it has no jurisdiction over health care facilities, which are licensed and regulated by the Department of Health.

§ 21.311 (relating to accountability of the CRNP)

The Board proposes to rescind this section as unnecessary and unenforceable. The standards of conduct at §§ 21.18 and 21.288 (relating to standards of nursing conduct; and CRNP standards of conduct) provide the relevant standards for CRNP practice and conduct.

§ 21.321 (relating to performance of tasks without collaboration; performance of tasks without training; other)

The Board proposes to rescind this section and move its substantive provisions to § 21.351 (relating to penalties for violation).

§ 21.331 (relating to biennial renewal of certification)

The Board proposes to revise this section to consolidate and clarify the provisions for biennial renewal of certification, to include continued licensure as a registered nurse, completion of statutorily-mandated continuing education for CRNPs, and continued certification as a nurse practitioner from a Board-recognized National certification organization in the particular clinical specialty area in which the nurse is certified by the Board. In addition, this section will note that CRNPs will verify, on their biennial renewal applications, that they have the required liability insurance coverage.

§ 21.332 (relating to requirement of continuing education)

The Board proposes to amend this section so as not to repeat provisions added to § 21.331.

§ 21.332a (relating to inactive status and reactivation)

The Board proposes to add the requirement that a nurse practitioner show continued competency to practice after a lengthy period of nonpractice in this Common-

wealth, either by continued certification as a nurse practitioner by a Board-recognized National certification organization in the particular clinical specialty area or by continued practice as a registered nurse practitioner in another jurisdiction under a current license. This provision is consistent with that of §§ 21.30a and 21.156a (relating to continued competency) for RNs and LPNs, respectively.

The Board also proposes to add new subsections (d) and (e) to set forth specific continued competency requirements for CRNPs whose licenses have been suspended or revoked.

§ 21.333 (relating to continuing education subject matter)

The Board proposes to amend this section to eliminate cross-references that are unnecessary and to clarify that a CRNP must complete courses that address the CRNP's area of specialty certification.

§ 21.334 (relating to sources of continuing education)

The Board proposes to amend this section to provide that a continuing education course offered by a provider approved by any of various types of National organizations, CRNP education programs and state boards, instead of certain named providers, is approved for continuing education credit.

§ 21.351 (relating to penalties for violation)

The Board proposes to amend this section to provide for disciplinary action against a CRNP for practicing beyond the scope of certification or for practicing without the requisite competence or qualification, as well as for practicing as a CRNP on a lapsed or suspended or revoked certification.

Fiscal Impact and Paperwork Requirements

The amendments 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 amendments 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 October 24, 2007, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the 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 of 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 that 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-5124 (CRNP general revisions), when submitting comments.

MARY BOWEN, RN, DNS, CNAA,
Chairperson

Fiscal Note: 16A-5124. 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 C. CERTIFIED REGISTERED NURSE PRACTITIONERS

GENERAL PROVISIONS

§ 21.251. Definitions.

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

***Act*—The Professional Nursing Law (63 P. S. §§ 211—225.5).**

[*Boards*—The State Board of Nursing and the State Board of Medicine.]

***Board*—The State Board of Nursing of the Commonwealth.**

CRNP—*Certified Registered Nurse Practitioner* **[*(CRNP)*]**—A registered nurse licensed in this Commonwealth who is certified by the **[Boards] Board** in a particular clinical specialty area and who, while functioning in the expanded role as a professional nurse, performs acts of medical diagnosis or prescription of medical therapeutic or corrective measures in collaboration with **[and under the direction of]** a physician licensed to practice **[medicine]** in this Commonwealth **and in accordance with the act and this subchapter**. Nothing in this subchapter is to be deemed to limit or prohibit a nurse from engaging in those activities which normally constitute the practice of nursing as defined in section 2 of **[The Professional Nursing Law] the act** (63 P. S. § 212).

***Collaborative agreement*—The oral or written agreement between a CRNP and a collaborating physician in which they agree to the details of their collaboration.**

[*Direction*—The incorporation of physician supervision to the certified registered nurse practitioner's performance of medical acts in the following ways:

(i) Immediate availability of a licensed physician through direct communications or by radio, telephone or telecommunications.

(ii) A predetermined plan for emergency services which has been jointly developed by the supervising physician and the certified registered nurse practitioner.

(iii) A physician available on a regularly scheduled basis for:

(A) Referrals.

(B) Review of the standards of medical practice incorporating consultation and chart review.

(C) Establishing and updating standing orders, drug and other medical protocols within the practice setting.

(D) Periodic updating in medical diagnosis and therapeutics.

(E) Cosigning records when necessary to document accountability by both parties.]

***Prescriptive authority collaborative agreement*— The written and signed agreement between a CRNP with prescriptive authority and a collaborating physician in which they agree to the details of their collaboration.**

§ 21.252. **[Purpose] (Reserved)**.

[The Boards have established rules and regulations to govern acts of medical diagnosis or prescription of medical therapeutic or corrective measures as authorized by The Professional Nursing Law (63 P. S. §§ 211—225.5) and the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.51a).]

LEGAL RECOGNITION

§ 21.261. **[Designation of CRNP; authority to use CRNP] Use of title; authorization to practice**.

(a) A registered nurse who has satisfactorily met the requirements set forth in **the act and** this subchapter **[and in additional rules and regulations that may be jointly promulgated by the Boards shall be designated on his license "Certified Registered Nurse Practitioner (CRNP)," in the area for which qualified] and holds current certification issued by the Board as a CRNP or whose certification is maintained on inactive status may use the designation CRNP**.

(b) **The Board will identify the particular clinical specialty area in which a CRNP is certified by the Board on the certification issued to the CRNP.**

(c) [A nurse may not practice or offer to practice as a Certified Registered Nurse Practitioner in this Commonwealth or use the abbreviation CRNP unless authorized to do so by the State Board of Nursing] Only persons who hold current active certification from the Board as a CRNP may practice or offer to practice as a CRNP in this Commonwealth.

(d) A nurse may not practice or offer to practice as a CRNP in this Commonwealth during the time the nurse's certification is revoked, suspended, inactive, lapsed or expired.

CERTIFICATION REQUIREMENTS [FOR APPROVAL]

§ 21.271. **[Currently licensed; course of study and experience; continuing education] Licensure, educational and National certification requirements for applicants seeking certification as a CRNP**.

(a) **[The applicant for whom approval is requested shall be currently licensed as a registered nurse by the State Board of Nursing.**

(b) The applicant shall have successfully completed a course of study consisting of at least 1 academic year in a program administered by nursing in an institution of higher education as approved by the Boards.

(c) Nurses currently practicing in the role covered by this subchapter prior to the promulgation of this subchapter who have not completed an approved course of study, may individually petition the Boards for certification within 2 years following the final filing of this subchapter.

(d) Evidence of continuing competency in the area of medical diagnosis and therapeutics at the time of renewal of the applicant's certification renewal.]

***Initial certification*. An applicant for initial certification as a CRNP by the Board shall meet the following requirements:**

(1) *Professional nurse license.* An applicant for certification by the Board shall hold a current, unrestricted license as a professional nurse in this Commonwealth.

(2) *Education.* An applicant for certification by the Board shall have completed an accredited, Board-approved master's or postmaster's nurse practitioner program or other Board-approved program that awarded an advanced degree or a course of study considered by the Board to be equivalent to that required for certification in this Commonwealth at the time the course was completed.

(3) *National certification.* An individual applying for initial certification by the Board after February 7, 2005, shall hold certification as a CRNP from a Board-recognized National certification organization which required passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking certification by the Board.

(b) *Certification by endorsement.* An applicant for certification by the Board who holds a current, unrestricted license or certificate as a CRNP from another state, territory or possession of the United States or a foreign country, shall meet the certification requirements of the Board that were effective at the time the applicant was licensed or certified as a CRNP by the other jurisdiction. Applicants who were initially licensed by another state, territory or possession of the United States or a foreign country on or after February 7, 2005, shall hold certification as a CRNP from a Board-recognized National certification organization which required passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking certification by the Board.

(c) *Change of clinical specialty area.* A CRNP 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 CRNP shall meet the educational and National certification requirements for the specialty area in which the CRNP is applying for certification.

§ 21.272. [Certification by endorsement; currently licensed] (Reserved).

[(a) A registered nurse who has been granted certification by another state board may be granted certification in this Commonwealth by endorsement of the original certifying board if the credentials are equivalent to those required by the Boards.

(b) The applicant for certification in this Commonwealth by endorsement shall meet the requirements as stated in the act for licensure as a registered nurse.]

§ 21.273. Application for certification as a CRNP.

(a) An applicant for certification as a CRNP shall submit an application form provided by the Board to the Board for its review and approval. The applicant shall verify compliance with section 8.7 of the act (63 P. S. § 218.7) regarding liability coverage.

(b) An applicant for initial certification shall include documentation satisfactory to the Board of the following:

(1) Proof of completion of a Board-approved master's or postmaster's nurse practitioner program or other Board-approved program that awarded an advanced degree as a nurse practitioner or proof of completion of a course of study and evidence demonstrating that the course of study is equivalent to that required in this Commonwealth at the time the course was completed.

(2) Proof of current certification as a nurse practitioner from a Board-recognized National certification organization that requires passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking certification by the Board.

(c) An applicant for certification by endorsement shall verify compliance with section 8.7 of the act and include documentation satisfactory to the Board of the following:

(1) Verification of current, unrestricted licensure or certification as a CRNP issued by the proper licensing authority of another state, territory or possession of the United States or a foreign country.

(2) Copy of the licensure or certification requirements at the time the applicant was first licensed or certified by another jurisdiction and a copy of the criteria under which the applicant was originally licensed or certified.

(3) Official transcript from the applicant's CRNP program, including degree awarded.

(4) Proof of current National certification as a nurse practitioner from a Board-recognized National certification organization that requires passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking certification by the Board, if the applicant was first licensed after February 7, 2005.

(d) An applicant who holds certification from the Board as a CRNP who is applying for certification in a different specialty than the applicant's current certification shall verify that the applicant is in compliance with section 8.7 of the act and submit documentation of the following:

(1) Official copy of the transcript from the applicant's CRNP 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 certification as a nurse practitioner from a Board-recognized National certification organization that requires passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking certification by the Board.

(e) An applicant shall remit the certification fee set forth in § 21.253 (relating to fees).

(f) An applicant shall submit additional information as identified on the application or as requested by the Board. Applications will remain on file for 12 months.

[APPLICATION FOR APPROVAL]

§ 21.281. [Application for approval] (Reserved).

[The applicant shall submit an application form provided by the State Board of Nursing to the Board for its review and approval. The application shall include the following:

(1) An official document from the program.

(2) Additional information as identified on the application.]

§ 21.282. [Approval by the State Board of Nursing] (Reserved).

[Applicants approved by the State Board of Nursing may use the designation C.R.N.P., and the designation and area of specialty will be indicated on the current license of the nurse.]

CRNP PRACTICE

§ 21.282a. Medical examination, diagnosis and treatment.

(a) A CRNP may perform comprehensive assessments of patients and establish medical diagnoses.

(b) A CRNP may order, perform and supervise diagnostic tests for patients and, to the extent that the performance and interpretation of diagnostic tests is within the CRNP's capabilities and consistent with other laws and regulations, may perform and interpret diagnostic tests.

(c) A CRNP may initiate referrals to and consultations with other licensed professional health care providers, and may consult with other licensed professional health care providers at their request.

(d) A CRNP may develop and implement treatment plans, including issuing orders to implement treatment plans; however, only a CRNP with current prescriptive authority approval from the

Board may develop and implement treatment plans for pharmaceutical treatments.

(e) A CRNP may complete admission and discharge summaries.

(f) A CRNP may order blood and blood components for patients.

(g) A CRNP may order diets for patients.

(h) A CRNP may order durable medical equipment required to carry out a treatment plan developed by the CRNP or by a physician.

(i) A CRNP may perform other acts authorized by section 8.2(c.1) of the act (63 P. S § 218.2(c.1)).

§ 21.283. **[Prescribing] Authority and qualifications for prescribing** and dispensing drugs **and other medical therapeutic or corrective measures**.

(a) A CRNP **with prescriptive authority approval from the Board** may**, when acting in collaboration with a physician as set forth in a prescriptive authority collaborative agreement,** prescribe and dispense drugs **[if the following requirements are met] and give written or oral orders for medical therapeutic or corrective measures. These orders may include**:

(1) Orders for drugs, Total Parenteral Nutrition and lipids, in accordance with §§ 21.284 and 21.285 (relating to prescribing and dispensing parameters; and prescriptive authority collaborative agreement).

(2) Disposables and devices adjunctive to a treatment plan.

(b) To obtain prescriptive authority approval, a CRNP shall:

(1) **[The CRNP has completed a CRNP program which is approved by the Boards or, if completed in another state, is equivalent to programs approved by the Boards.**

(2) The CRNP has successfully completed] Successfully complete at least 45 hours of course work specific to advanced pharmacology in accordance with the following:

(i) The course work in advanced pharmacology may be either part of the CRNP education program or, if completed outside of the CRNP education program, an additional course or courses taken from an educational program or programs approved by the **[Boards] Board**.

* * * * *

(iii) The course work shall have been completed within 5 years immediately preceding the date the applicant applies for initial prescriptive authority approval.

(2) Submit an application for prescriptive authority approval to the Board.

(3) **Pay the fee set forth in § 21.253 (relating to fees).**

(c) A CRNP who has prescriptive authority shall complete at least 16 hours of State Board of Nursing approved continuing education in pharmacology in the 2 years prior to the biennial renewal date of the CRNP certification. The CRNP shall show proof that the CRNP completed the continuing education when submitting a biennial renewal. **The forms for the application, collaborative agreement and verification of completion of pharmacology are available on the Board's website or by contacting the Board.**

[(4) In prescribing and dispensing drugs, a CRNP shall comply with standards of the State Board of Medicine in §§ 16.92—16.94 (relating to prescribing, administering and dispensing controlled substances; packaging; and labeling of dispensed drugs) and the Department of Health in 28 Pa. Code §§ 25.51—25.58, 25.61—25.81 and 25.91—25.95.]

§ 21.284. Prescribing and dispensing parameters.

* * * * *

(b) A CRNP **with current prescriptive authority approval from the Board** may prescribe **[and dispense a drug], dispense and administer drugs and therapeutic or corrective measures consistent with the prescriptive authority collaborative agreement and** relevant to the **CRNP's** area of practice **[of the CRNP]** from the following categories **[if that authorization is documented in the collaborative agreement (unless the drug is limited or excluded under this or another subsection)]**:

* * * * *

(3) Antineoplastic agents, unclassified therapeutic agents, devices and pharmaceutical aids **[if originally prescribed by the collaborating physician and approved by the collaborating physician for ongoing therapy]**.

* * * * *

(7) Central nervous system agents**[, except that the following drugs are excluded from this category:**

(i) General anesthetics.

(ii) Monoamine oxidase inhibitors].

* * * * *

(c) A CRNP may not prescribe or dispense a drug from the following categories:

* * * * *

(5) Schedule I controlled substances as defined section 4 of The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. § 780-104).

(d) **[If a collaborating physician determines that the CRNP is prescribing or dispensing a drug inappropriately, the collaborating physician shall immediately take corrective action on behalf of the patient and notify the patient of the reason for the action and advise the CRNP as soon as possible. This action shall be noted by the CRNP or the collaborating physician, or both, in the patient's medical record.**

(e)] Restrictions on CRNP prescribing and dispensing practices are as follows:

(1) A CRNP may write a prescription for a Schedule II controlled substance for up to a **[72 hour] 30-day** dose. **[The CRNP shall notify the collaborating physician as soon as possible but in no event longer than 24 hours.]**

(2) A CRNP may prescribe a Schedule III or IV controlled substance for up to **[30] 90** days. **[The pre-**

scription is not subject to refills unless the collaborating physician authorizes refills for that prescription.

(f)] **(e)** A CRNP may not **[** :

(1) Prescribe or dispense a Schedule I controlled substance as defined in section 4 of the Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. § 780-14).

(2) Prescribe or dispense a drug for a use not approved by the United States Food and Drug Administration without approval of the collaborating physician.

(3) Delegate] **delegate** prescriptive authority **[** specifically assigned to the CRNP by the collaborating physician **]** to another health care provider.

[(g) A prescription blank shall bear the certification number of the CRNP, name of the CRNP in printed format at the top of the blank and a space for the entry of the DEA registration number, if appropriate. The collaborating physician shall also be identified as required in § 16.91 (relating to identifying information on prescriptions and orders for equipment and service).

(h) The CRNP shall document in the patient's medical record the name, amount and dose of the drug prescribed, the number of refills, the date of the prescription and the CRNP's name.]

§ 21.284a. Prescribing and dispensing drugs.

(a) ***Professional samples.*** **A CRNP who holds current prescriptive authority approval may request, receive and sign for professional samples and may distribute professional samples to patients.**

(b) *Prescription blanks.* The requirements for prescription blanks are as follows:

(1) Prescription blanks must bear the name, title and identification number of the CRNP in printed format. The collaborating physician must be identified on the prescription blank.

(2) When appropriate, the CRNP's National Provider Identifier (NPI) number must appear on the prescription. When prescribing controlled substances, the CRNP's DEA registration number must appear on the prescription.

(3) Prescription blanks may not be presigned.

(4) The CRNP may use a prescription blank generated by a hospital, provided the information in paragraph (1) appears on the blank.

(c) *Recordkeeping requirements.* Recordkeeping requirements are as follows:

(1) When prescribing a drug, the CRNP shall document in the patient's medical record the name, amount and dosage of the drug prescribed, the number of refills, the date of the prescription and the CRNP's name.

(2) When dispensing a drug, the CRNP shall record in the patient's medical records the CRNP's name, the name, amount and dosage of the medication dispensed and the date the medication was dispensed.

(3) The CRNP shall provide immediate access to the prescriptive authority collaborative agreement to anyone seeking to confirm the CRNP's authority to prescribe or dispense a drug. The agreement must list the categories of drugs that the CRNP is permitted to prescribe.

(d) *Packaging.* Prescription drugs shall be dispensed in accordance with Federal regulations pertaining to packaging. (See 16 CFR Part 1700 (relating to poison prevention packaging).)

(e) *Labeling of dispensed drugs.*

(1) The label on a dispensed drug container must include the name of the drug, using abbreviations if necessary; the quantity; and the name of the manufacturer if the drug is a generic drug. If a CRNP specifically indicates that the name of the drug may not appear on the label, the recognized National drug code number shall be placed on the label if the number is available for the product. The label must also bear the name and address of the CRNP, the date dispensed, the name of the patient and the directions for use of the drug by the patient.

(2) Drugs that, at the time of their dispensing, have full potency for less than 1 year, as determined by the expiration date placed on the original label by the manufacturer, may only be dispensed with a label that indicates the expiration date. The label must include the statement, "Do not use after manufacturer's expiration date," or similar wording.

(f) *Compliance with regulations relating to prescribing, administering, dispensing, packaging and labeling of drugs.* A CRNP shall comply with this section, § 21.284b (relating to prescribing, administering and dispensing controlled substances) and regulations of the Department of Health in 28 Pa. Code §§ 25.51—25.58, 25.61—25.63, 25.72, 25.81 and 25.91—25.95.

§ 21.284b. Prescribing, administering and dispensing controlled substances.

(a) A CRNP authorized to prescribe or dispense, or both, controlled substances shall register with the Drug Enforcement Administration.

(b) A CRNP shall carry out the following minimum standards when prescribing, administering or dispensing controlled substances:

(1) *Initial medical history and physical examination.* In a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government, an initial medical history shall be taken and an initial physical examination shall be conducted to the extent required by the Department of Health in 28 Pa. Code (relating to health and safety) or Department of Public Welfare in 55 Pa. Code (relating to public welfare) or the Federal government in appropriate Federal regulations, whichever is applicable, and bylaws of the health care facility and its medical staff. In other practice settings, before commencing treatment that involves prescribing, administering or dispensing a controlled substance, an initial medical history shall be taken and an initial physical examination shall be conducted unless emergency circumstances justify otherwise. Alternatively, medical history and physical examination information recorded by another health care provider may be considered if the medical history was taken and the physical examination was conducted

within the immediately preceding 30 days. The physical examination must include an evaluation of the heart, lungs, blood pressure, pain level, and body functions that relate to the patient's specific complaint.

(2) ***Reevaluations.*** **Among the factors to be considered in determining the number and frequency of follow-up evaluations that should be recommended to the patient are the condition diagnosed, the controlled substance involved, expected results and possible side effects. For chronic conditions, periodic follow-up evaluations shall be recommended to monitor the effectiveness of the controlled substance in achieving the intended results.**

(3) ***Patient counseling.*** **Appropriate counseling shall be given to the patient regarding the condition diagnosed and the controlled substance prescribed, administered or dispensed. Unless the patient is in an inpatient care setting, the patient shall be specifically counseled about dosage levels, instructions for use, frequency and duration of use and possible side effects.**

(4) ***Medical records.*** **In a health care facility regulated by the Department of Health, the Department of Public Welfare or the Federal government, information pertaining to the prescription, administration or dispensation of a controlled substance shall be entered in the medical records of the patient and the health care facility under 28 Pa. Code or 55 Pa. Code or appropriate Federal regulations, whichever is applicable, and bylaws of the health care facility and its medical staff. In other practice settings, certain information shall be recorded in the patient's medical record on each occasion when a controlled substance is prescribed, administered or dispensed. This information must include the name of the controlled substance, its strength, the quantity and the date it was prescribed, administered or dispensed. On the initial occasion when a controlled substance is prescribed, administered or dispensed to a patient, the medical record must also include a specification of the symptoms observed and reported, the diagnosis of the condition for which the controlled substance is being given and the directions given to the patient for the use of the controlled substance. If the same controlled substance continues to be prescribed, administered or dispensed, the medical record must reflect changes in the symptoms observed and reported, in the diagnosis of the condition for which the controlled substance is being given and in the directions given to the patient.**

(5) ***Emergency prescriptions.*** **In the case of an emergency phone call by a known patient, a prudent, short-term prescription for a controlled substance may be issued. Neither a refill nor a consecutive issuance of this emergency prescription may be given unless a physical examination and evaluation of the patient are first conducted. The results of this examination and evaluation shall be set forth in the patient's medical record together with the diagnosis of the condition for which the controlled substance is being prescribed. An emergency oral prescription for a Schedule II controlled substance shall be covered by a written prescription delivered to the pharmacist within 72 hours. In certain health care facilities regulated by the Department of Health, the Department of Public Welfare and the Federal government, an order for the immediate, direct administration of a Schedule II controlled substance to a patient is not considered a prescription and is, therefore, not subject to the requirements in this paragraph. Further information regarding this exclusion can be found in The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) and 28 Pa. Code Chapter 25 (relating to controlled substances, drugs, devices and cosmetics).**

(c) This section establishes minimum standards for the prescription, administration and dispensation of controlled substances by a CRNP. This section does not restrict or limit the application of The Controlled Substance, Drug, Device and Cosmetic Act or of another statute or regulation, and does not relieve a CRNP from complying with more stringent standards that may be imposed by another statute or regulation, or policy of the CRNP's employer or facility in which the CRNP is employed.

(d) Compliance with this section will not be treated as compliance with the standards of acceptable and prevailing practice as a CRNP when medical circumstances require that the CRNP exceed the requirements of this section.

§ 21.285. **[Collaborative] Prescriptive authority collaborative** agreement.

(a) **[A collaborative agreement is the signed written agreement between a CRNP and a collaborating physician in which they agree to the details of the collaborative arrangement between them with respect to the care of CRNP patients.**

(b)] The **prescriptive authority** collaborative agreement between a physician and a CRNP who will prescribe drugs **[shall] and other medical therapeutic or corrective measures, as set forth in § 21.283(a) (relating to authority and qualifications for prescribing and dispensing drugs and other medical therapeutic or corrective measures), must** satisfy the following requirements. The agreement **[shall] must**:

(1) Identify the parties, including the collaborating physician, the CRNP, and **[a] at least one** substitute physician who will provide collaboration **[and direction for up to 30 days]** if the collaborating physician is unavailable.

(2) Identify the **[area of practice] clinical specialty** in which the CRNP is certified **by the Board**.

(3) Identify the categories of drugs from which the CRNP may prescribe or dispense in accordance with **[§ 21.284 (relating to prescribing and dispensing parameters)] section 8.3(a)(2)(ii) of the act (63 P. S. § 218.3(a)(2)(ii))**.

(4) **[Contain attestation by the collaborating physician that the physician has knowledge and experience with any drug that the CRNP will prescribe.**

(5)] Specify the circumstances and how often the collaborating physician will personally see the patient**[, based on the type of practice, sites of service and condition of the patient, whether the treatment is for an ongoing or new condition, and whether the patient is new or continuing.**

(6) Specify the conditions under which the CRNP may prescribe a Schedule II controlled substance for up to 72 hours].

[(7)] (5) Be kept at the primary practice location of the CRNP and a copy filed with the Bureau of Professional and Occupational Affairs.

[(8)] (6) Be made available for inspection **[to anyone seeking to confirm the scope of practice of the CRNP] and be provided, without charge, to any licensed pharmacist or pharmacy**.

[(9)] (7) Be **reviewed and** updated by the **primary** collaborating physician and the CRNP **at least once every 2 years or** whenever **[it] the agreement** is changed **[substantively]**.

[(10)] (8) Specify the amount of professional liability insurance **[carried by] that covers** the CRNP.

[(c)] (b) The CRNP shall notify the Bureau whenever a **prescriptive authority** collaborative agreement **[of a CRNP who prescribes and dispenses drugs]** is updated or terminated.

§ 21.286. Identification of the CRNP.

[(a) A patient shall be informed at the time of making an appointment that the patient will be seen by a CRNP.

(b)] A CRNP shall wear a name tag **[that clearly identifies the] using the title** CRNP **[with the title "certified registered nurse practitioner."] and comply with State, Federal and facility regulations regarding identification of personnel**.

[(c) A CRNP who holds a doctorate should take appropriate steps to inform patients that the CRNP is not a doctor of medicine or doctor of osteopathic medicine.]

§ 21.287. **[Physician supervision] (Reserved)**.

[(a) At any time a physician may not supervise more than four CRNPs who prescribe and dispense drugs. This section, however, does not limit the number of collaborative agreements that a physician may have with prescribing CRNPs. By way of example, a physician may supervise four prescribing CRNPs who work in the morning and four other prescribing CRNPs who work in the afternoon as long as the physician has a collaborative agreement with each CRNP.

(b) A physician may apply for a waiver of the supervision requirements expressed in subsection (a) for good cause, as determined by the Boards.

(c) The limit of the general rule of not more than four prescribing CRNPs to one physician does not apply to CRNPs who do not prescribe or dispense drugs. By way of example, a physician may supervise at the same time four CRNPs who prescribe and dispense drugs and one or more CRNPs who do not prescribe and dispense drugs.]

§ 21.288. CRNP standards of conduct.

A CRNP shall undertake a specific practice or procedure only if the CRNP has the necessary knowledge, preparation, experience and competency to properly execute the practice or procedure and the practice is within the scope of the CRNP's particular clinical specialty. A CRNP shall comply with § 21.18 (relating to standards of nursing conduct).

[HEALTH CARE FACILITY POLICIES]

§ 21.291. **[Institutional health care facility committee; committee determination of standard policies and procedures] (Reserved)**.

[(a) In those health care facilities providing health services in which the practice of certified registered nurse practitioners involves the acts of medical diagnosis or prescription of medical therapeutic or corrective measures, there shall be a committee in each area of practice whose function is to establish standard policies and procedures, in writing, pertaining to the scope and circumstances of the practice of the nurses in the medical management of the patient.

(b) The committee may serve not only as a policy making body for the special area but also as an advisory and interpretative body to the various staff of the health facility. The committee shall include equal representation from the medical staff, the nursing staff, including a nurse practitioner and nursing administration.]

§ 21.292. **[Free-standing health care facility committee] (Reserved)**.

[If a certified registered nurse practitioner is associated with a physician or group of physicians, the committee may consist of, but need not be limited to, the nurse practitioners and the physicians.]

§ 21.293. **[Review and acceptance of standard policies and procedures by the committee] (Reserved)**.

[The standard policies and procedures shall be reviewed and accepted by the committee at least annually and at such other times as necessary.]

§ 21.294. **[Review of the medical functions of the C.R.N.P. by the committee] (Reserved)**.

[The committee shall review annually the effectiveness of the medical functions of the C.R.N.P. through an evaluation of the care rendered to patients using the data sources as patient records, statistics and patient follow-up.]

[ACCOUNTABILITY]

§ 21.311. **[Accountability of CRNP] (Reserved)**.

[The CRNP is responsible for his own professional judgments and is accountable to the individual consumer. He is also accountable to the physician and the employing agency in the area of medical diagnosis and therapeutics.]

[TERMINATION OF APPROVAL]

§ 21.321. **[Performance of tasks without direction; performance of tasks without training; other] (Reserved)**.

[(a) The approval as provided in this subchapter for a certified registered nurse practitioner may be

terminated by the State Board of Nursing when, after notice and hearing, the Board finds the following:

(1) That the registrant has engaged in the performance of medical functions and tasks other than at the direction of a physician licensed by the State Board of Medicine, except in the situations as provided for in section 1 of the act of August 8, 1963 (P. L. 582, No. 301) (Reserved).

(2) That the registrant has performed a medical task or function which the registrant is not qualified by education to perform.]

MAINTENANCE OF CERTIFICATION

§ 21.331. Biennial renewal of certification.

(a) **[Effective October 31, 1985, the certifications of Certified Registered Nurse Practitioners shall be renewed at the same time as their registered nurse licenses. See § 21.29 (relating to expiration and renewal of license).**

(b) The certification renewal fee for certifications that expire on April 30, 1986 will be 25% of the renewal fee for the usual 2-year renewal period. The renewal fee for certifications that expire on a biennial anniversary of April 30, 1986 will be the renewal fee for the usual 2-year renewal period.

(c) The certification renewal fee for certifications that expire on October 31, 1986 will be 50% of the renewal fee for the usual 2-year renewal period. The renewal fee for certifications that expire on a biennial anniversary of October 31, 1986 will be the renewal fee for the usual 2-year renewal period.

(d) The certification renewal fee for certifications that expire on April 30, 1987 will be 75% of the renewal fee for the usual 2-year renewal period. The renewal fee for certifications that expire on a biennial anniversary of April 30, 1987 will be the renewal fee for the usual 2-year renewal period.

(e) The certification renewal fee for certifications that expire on October 31, 1987 will be the renewal fee for the usual 2-year renewal period. The renewal fee for certifications that expire on a biennial anniversary of October 31, 1987 will be the renewal fee for the usual 2-year renewal period.

(f) The certification renewal fees for certifications that expire on April 30, 1986, October 31, 1986, April 30, 1987 or October 31, 1987 shall be paid to the Board by October 30, 1985. The certification renewal fees for certifications that expire on a biennial anniversary of April 30, 1986, October 31, 1986, April 30, 1987 or October 31, 1987 shall be paid to the State Board of Nursing by that anniversary date] The certification, and prescriptive authority approval, if applicable, of a CRNP will expire at the same time as the CRNP's registered nurse 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 CRNP at the CRNP'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 CRNP shall:

(1) Simultaneously renew the CRNP's registered nurse license.

(2) Complete a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal. As a condition of biennial renewal of prescriptive authority approval, a CRNP shall complete a minimum of 16 of the 30 hours of Board-approved continuing education in pharmacology in the 2 years prior to renewal.

(3) For a CRNP certified by the Board after February 7, 2005, also maintain current certification as a nurse practitioner from a Board-recognized National certification organization which requires passing of a National certifying examination in each particular clinical specialty area in which the nurse is certified by the Board.

(d) Renewal application forms shall be accompanied by the required renewal fee in § 21.253 (relating to fees) and verification that the CRNP is in compliance with section 8.7 of the act (63 P. S. § 218.7) regarding liability coverage. Upon approval of the renewal application, the CRNP will receive a certification for the current renewal period.

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

§ 21.332. Requirement of continuing education.

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(b) Continuing education requirements shall be completed each biennial cycle.

(1) **[An applicant for biennial renewal of certification is required to complete, during the 2 years preceding renewal, a minimum of 30 hours of Board-approved continuing education, as set forth in section 8.1(c) of the act (63 P. S. § 218.1(c)). Completion of a course described in § 21.283(2) (relating to prescribing and dispensing drugs) satisfies the continuing education requirement for the biennial renewal period in which it is completed.**

(2) An applicant for biennial renewal of prescriptive authority approval is required to complete, during the 2 years preceding renewal, a minimum of 16 of the 30 hours of continuing education in pharmacology. Completion of a course described in § 21.283(2) shall satisfy the continuing education requirement for the biennial renewal period in which it is completed.

(3) A person] An individual failing to meet the continuing education requirements for a biennial renewal period will be subject to formal disciplinary action under section 14(a)(3) of the act (63 P. S. 244(a)(3)).

[(4)] (2) 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 prior to the end of the renewal period. The Board will grant, deny or grant in part the request for waiver.

(3) An individual who requests a waiver may not prescribe or dispense drugs after the expiration of his current prescriptive authority **[and]** until the Board grants the waiver request **or the prescriptive authority approval has been renewed**.

§ 21.332a. Inactive status and reactivation.

(a) A CRNP who places his certification on inactive status is not required to meet the continuing education

requirements in **[§ 21.332(b)(1) (relating to requirement of continuing education)] section 8.1(c) of the act (63 P. S. § 218.1(c))** during the period the certification is on inactive status. Upon application for reactivation of certification, the CRNP shall show proof of meeting the continuing education requirements for the biennial period immediately preceding the request for reactivation**[(.)], and, if the certification has been lapsed or on inactive status for 5 years or longer, the CRNP shall have a current, active professional nurse license, reactivated in accordance with the continued competency requirements in § 21.30a (relating to continued competency), and at least one of the following:**

(1) Proof of current certification as a nurse practitioner from a Board-recognized National certification organization that requires the passing of a National certifying examination in the particular clinical specialty area in which the nurse is seeking reactivation of certification by the Board, if the CRNP was initially certified after February 7, 2005.

(2) Evidence that the applicant has practiced as a registered nurse practitioner in another jurisdiction at some period of time within the last 5 years under a current license or certification during that time.

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(c) A CRNP who places his prescriptive authority approval on inactive status for 3 years or longer **or whose prescriptive authority approval is lapsed for 3 years or longer,** may reactivate the prescriptive authority approval by meeting one of the following conditions:

(1) Complete the requirement in **[§ 21.283(2) (relating to prescribing and dispensing drugs)] § 21.283(b)(1) (relating to authority and qualifications for prescribing and dispensing drugs and other medical therapeutic or corrective measures)** by taking at least 45 hours of course work in advanced pharmacology.

(2) Provide evidence to the Board that:

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(iii) The CRNP was required, as a condition for continued practice in the other jurisdiction, to complete continuing education that is substantially equivalent to the requirements **[of] in § [21.283(3)] 21.283(b)(1)**.

* * * * *

(d) A CRNP whose certification has been suspended for 5 years or longer shall meet the requirements in subsection (a), and other requirements set forth by Board order. A CRNP whose prescriptive authority approval has been suspended for 3 years or longer shall, in addition to meeting the requirements to renew the CRNP certification, meet the requirements in subsection (c), and other requirements by Board order.

(e) A CRNP whose certification has been revoked shall meet all of the requirements for original licensure as a CRNP, the requirements in subsection (a), and other requirements set forth by Board order. A CRNP whose prescriptive authority approval has been revoked shall, in addition to meeting the requirements to reinstate the CRNP certification, meet the requirements in subsection (c), and other requirements by Board order.

§ 21.333. Continuing education subject matter.

(a) Continuing education courses **[shall] must** address the CRNP's area of **[practice and meet the requirements of § 21.332(b)(1) (relating to continuing education)] specialty certification**.

(b) Pharmacology continuing education courses **[shall meet the requirements of section 8.1(c) of the act (62 P. S. § 218.1(c)) and § 21.332(b)(2) and]** must provide the knowledge and skills to understand the pharmacokinetics and pharmacodynamics of broad categories of drugs **or drugs used in the CRNP's particular specialty** and to analyze the relationship between pharmacologic agents and physiologic/pathologic responses.

§ 21.334. 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. **Therefore, all courses offered by these providers are approved for continuing education credits required for biennial license renewal.**

(1) **[Accordingly, provided that these providers agree to abide by § 21.336(a) (relating to continuing education course approval), the courses offered or approved by the following providers or credentialing organizations are approved:**

(i) Board-approved CRNP programs.

(ii) The American Nurses Credentialing Center's Commission on Accreditation (ANCC).

(iii) The American Academy of Nurse Practitioners (AANP).

(iv) The National Association of Pediatric Nurse Practitioners (NAPNP).

(v) The American Medical Association (AMA).

(2) The approval given to the providers and credentialing organizations in paragraph (1) is subject to reevaluation. A rescission of provider or credentialing organization approval will be made only in accordance with 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) or by amendment of this section.] Board-approved CRNP educational programs and CRNP 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.

(b) CRNPs may obtain credit for courses offered by providers not indicated in subsection (a)(1)**—(6)** if the provider receives approval of the course under § 21.336 **(relating to continuing education course approval)** prior to its implementation.

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PENALTIES FOR VIOLATION

§ 21.351. Penalties for violation.

Certification as a CRNP may be suspended **[or]**, revoked or **[the violator may be placed on probation as the Boards, or a joint committee thereof, determine after a formal hearing has been held, and a violation of The Medical Practice Act of 1974 (63 P. S. §§ 421.1—421.18) and of The Professional Nursing Law (63 P. S. §§ 211—225), of this subchapter, or of regulations pertaining to the aforementioned has been adjudicated.] otherwise restricted when, after notice and opportunity to be heard, the Board finds that:**

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

(2) The CRNP has performed a medical task or function which the CRNP 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 CRNP has violated the act or this subchapter, or engaged in any conduct prohibited for professional nurses.

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