

PROPOSED RULEMAKING

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]
Biennial Renewal Fees

The State Board of Nursing (Board) proposes to amend §§ 21.5, 21.147, 21.253 and 21.705 to read as set forth in Annex A. The proposed rulemaking provides for a new biennial renewal fee for licensed practical nurses (LPNs), professional nurses (RNs), certified registered nurse practitioners (CRNPs) and licensed dietitian-nutritionists (LDNs).

Effective Date

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

Statutory Authority

Section 11.2 of the Professional Nursing Law (RN act) (63 P. S. § 221.2) and section 17.5 of the Practical Nurse Law (63 P. S. § 667.5) require the Board to set fees sufficient to meet expenditures.

Background and Purpose

The Board receives an annual report from the Bureau of Finance and Operations of the Department of State (BFO) regarding its income and expenses. The last increase to biennial renewal fees for nurses occurred November 18, 2000, when the fee for LPNs was increased from \$16 to \$40; the fee for RNs was increased from \$21 to \$45; and the fee for CRNPs was increased from \$26 to \$50. See 30 Pa.B. 5952 (November 18, 2009). The biennial renewal fees for LDNs were established at 36 Pa.B. 2396 (May 20, 2006).

In the fall of 2008, BFO advised the Board that it would be required to raise its biennial renewal fees to meet current and projected expenses. On July 27, 2009, BFO again met with the Board and provided an updated recommendation regarding whether a fee increase would be required for the Board to meet its operating expenses, and what fee would be recommended.

BFO reported that the Board would face an inability to meet its obligations if fees were not increased. BFO advised the Board that it would face a deficit of over \$1 million by Fiscal Year (FY) 2011-2012 if fees are not raised, will face a deficit of over \$3.8 million in FY 2012-2013, a deficit of over \$6.4 million in FY 2013-2014, a deficit of over \$10.3 million in FY 2014-2015, a deficit of over \$14 million in FY 2015-2016, a deficit of over \$19 million in FY 2016-2017 and a deficit of over \$22.6 million in FY 2017-2018. BFO recommended, and the Board adopted, an approximately 45% increase. Pursuant to the increase, the new RN biennial fee will be \$65, the new LPN biennial fee will be \$60, the new CRNP biennial fee will be \$75, and the new LDN biennial fee will be \$65.

Description of Amendments

The Board proposes an approximately 45% increase in the biennial renewal fees for LPNs, RNs, CRNPs and LDNs. The Board proposes no increase in the biennial renewal fee for CRNP prescriptive authority approval because CRNPs will already be faced with an increase to both the RN and CRNP biennial renewal fees.

Fiscal Impact and Paperwork Requirements.

The amendments will have a fiscal impact on nurses and licensed dietitian-nutritionists in this Commonwealth in that the amendments increase the biennial licensure renewal fees for these licensees. The amendments will not otherwise have any fiscal impact nor impose additional paperwork on the private sector, the general public and the Commonwealth and its political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2009, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference (16A-5136) Biennial Renewal Fees when submitting comments.

ANN L. O'SULLIVAN, Ph.D., FAAN, CRNP,
Chairperson

Fiscal Note: 16A-5136. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

GENERAL PROVISIONS

§ 21.5. Fees.

(a) The following fees are charged by the Board for services provided to licensees:

* * * * *

[Application for approval of new nursing program\$935]
 * * * * *

[Biennial renewal of license\$45]
 * * * * *

[Request under § 21.134(b) by a provider of a continuing education activity not listed in § 21.134(a) or an individual seeking credit for a continuing education activity not preapproved by the Board for approval of each hour of continuing education for which credit is requested.....\$75]

(b) [In addition to the examination and licensure fee of \$35 prescribed in subsection (a), which is payable directly to the Board, a candidate for the registered nurse licensing examination shall also pay a fee of \$40 to the National Council of the State Boards of Nursing to cover costs associated with the preparation and administration of the registered nurse licensing examination. Effective April 1994, or upon implementation of the computer adaptive examination, the fee paid directly to the National Council of the State Boards of Nursing or its designated agent is \$88.]

The following fees are charged by the Board to support its operations:

Biennial renewal of license..... \$65

(c) The following fees are charged by the Board for services provided to nursing education programs:

Application for approval of new nursing program\$935

(d) The following fees related to continuing education are charged by the Board:

Request, under § 21.134(b) (relating to continuing education sources) by a provider of a continuing education activity not listed in § 21.134(a) or an individual seeking credit for a continuing education activity not preapproved by the Board, for approval of each hour of continuing education for which credit is requested..... \$75

(e) In addition to the examination and licensure fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the registered nurse licensing examination shall also pay a fee to the National Council of the State Board of Nursing (www.ncsbn.org) to cover costs associated with the preparation and administration of the registered nurse licensing examination.

**Subchapter B. PRACTICAL NURSES
 GENERAL PROVISIONS**

§ 21.147. Fees.

(a) The following fees are charged by the Board for services to licensees:

* * * * *

[Application for approval of new nursing program\$935]
 * * * * *

[Biennial renewal of license\$40]
 * * * * *

(b) [In addition to the examination and licensure fee of \$35 prescribed in subsection (a), which is payable directly to the Board, a candidate for the practical nurse licensing examination shall also pay a fee of \$40 to the National Council of the State Boards of Nursing to cover costs associated with the preparation and administration of the practical nurse licensing examination. Effective April 1994, or upon implementation of the computer adapted examination, the fee paid directly to the National Council of the State Boards of Nursing or its designated agent is \$88.]

The following fees are charged by the Board to support its operations:

Biennial renewal of license..... \$60

(c) The following fees are charged by the Board for services to nursing education programs:

Application for approval of new nursing program\$935

(d) In addition to the examination and licensure fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the practical nurse licensing examination shall also pay a fee to the National Council of the State Boards of Nursing (www.ncsbn.org) to cover costs associated with the preparation and administration of the practical nurse licensing examination.

**Subchapter C. CERTIFIED REGISTERED NURSE
 PRACTITIONERS
 GENERAL PROVISIONS**

§ 21.253. Fees.

(a) The following fees are charged by the Board for services to licensees:

[Certification] CRNP certification \$100
 [Biennial renewal of certification \$50]
 * * * * *

[Biennial renewal of prescriptive authority .. \$25
 Application for approval of new nursing program \$735
 Application for approval of CRNP continuing education course \$100]

(b) The following fees are charged by the Board to support its operations:

Biennial renewal of CRNP certification \$75
 Biennial renewal of prescriptive authority approval \$25

(c) The following fees for approval and review of CRNP education programs are charged by the Board:

Application for approval of new nursing program \$735

(d) The following fees related to continuing education are charged by the Board:

Application for approval of CRNP continuing education course \$100

**Subchapter G. DIETITIAN-NUTRITIONISTS
 GENERAL PROVISIONS**

§ 21.705. Fees.

(a) The following fees are charged by the Board for services to licensees:

* * * * *

[**Renewal fee** **\$45**]

* * * * *

(b) **The following fees are charged by the Board to support its operations:**

Biennial renewal of license **\$65**

(c) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for the Registration Examination for Registered Dietitians will also pay an additional examination fee. A candidate may contact the Commission on Dietetic Registration, 216 West Jackson Blvd., Chicago, IL 60606-6995, [www.cdrnet.org] www.dcrnet.org for more information regarding the examination and examination fee.

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

[Pa.B. Doc. No. 09-2313. Filed for public inspection December 18, 2009, 9:00 a.m.]

**STATE BOARD
OF PODIATRY**
[**49 PA. CODE CH. 29**]
Continuing Education

The State Board of Podiatry (Board) proposes to amend Chapter 29, to read as set forth in Annex A, by amending § 29.61 (relating to requirements for biennial renewal and eligibility to conduct educational conferences) and rescinding § 29.63a (relating to preapproved course provider).

Need for Proposed Rulemaking

Section 9.1 of the Podiatry Practice Act (act) (63 P. S. § 42.9a) requires a podiatrist to complete continuing education hours prescribed by the Board as a condition of biennial renewal of licensure to practice podiatric medicine. Since January 1987, the Board has required podiatrists to complete 30 hours of continuing education during each biennial license period. Given the increasing complexity of modern podiatric medical practice, the Board now considers the 30-hour biennial continuing education requirement inadequate to ensure that podiatrists maintain and increase their skill, knowledge and proficiency as practitioners. Only 16 states currently require podiatrists to biennially complete 30 or fewer hours of continuing education. Moreover, many podiatrists are required to biennially complete well in excess of 30 hours of continuing education to maintain credentials issued by podiatric specialty bodies, to participate in insurance plans, or to practice in hospitals and other health care facilities.

Description of Proposed Rulemaking

§ 29.61. *Biennial continuing education requirement*

Section 29.61 sets forth the basic continuing education requirements for podiatrists in this Commonwealth. Sub-

section (a) provides that as a condition of biennial renewal of licensure, a podiatrist shall complete, during the immediately preceding biennial renewal period, 30 hours of continuing education in acceptable courses and programs in podiatry that are offered by approved providers. A maximum of 10 hours may be obtained through courses and programs involving the use of the computer/Internet, magazines or journal articles. Excess continuing education hours may not be carried over to the next biennial renewal period. A licensee is responsible for ensuring that continuing education hours are in compliance with the Board's requirements. Subsection (b) states that Board-approved providers are eligible to conduct continuing education courses and programs. Subsection (c) lists the continuing education information that a licensee must set forth on the biennial renewal application. Subsection (d) requires a licensee to retain documentation of a continuing education course or program for 5 years after its completion and to produce the documentation when demanded by the Board or its agents who conduct the audit of continuing education hours.

The proposed rulemaking would rewrite § 29.61(a) to reflect substantive and editorial changes. The proposed rulemaking would increase the biennial continuing education requirement in § 29.61(a) from 30 hours to 50 hours, effective with the renewal of licensure for the biennial license period that begins January 1, 2011. Consistent with current regulations, at least 30 hours would have to be in podiatry courses and programs approved by the Board or the Council on Podiatric Medical Education (CPME). The CPME, a division of the American Podiatric Medical Association, is currently recognized in § 29.63a as an approving entity for podiatric continuing education. The remaining 20 hours could be either in Board- or CPME-approved podiatry courses and programs or in courses and programs in related medical subjects that are approved by the American Medical Association or the American Osteopathic Association.

A 50-hour biennial continuing education requirement for podiatrists is consistent with the requirements of podiatric licensing boards in other states, particularly those with large populations. Fourteen states—including California, Texas, Michigan and Illinois—require podiatrists to complete 50 hours of continuing education biennially. Virginia and Oklahoma require podiatrists to complete 60 hours of continuing education biennially, while Ohio and New Jersey require podiatrists to complete 100 hours of continuing education biennially. Permitting podiatrists to obtain some of their continuing education hours in related medical subjects, in addition to podiatric subjects, is desirable because the collaborative, interdisciplinary approach to the diagnosis and treatment of medical conditions has fostered a commonality of interests between podiatrists and allopathic and osteopathic physicians. Continuing education in related medical subjects is widely available to podiatrists because allopathic and osteopathic physicians in this Commonwealth are required to complete 100 hours of continuing education biennially.

In December 2008, the Board provided each currently licensed podiatrist in this Commonwealth with written notification of the Board's intention to initiate regulatory action that would increase the continuing education requirement, as described in this proposed rulemaking, effective with the renewal of licensure for the 2011-2012 biennial license period. The same information has been posted on the Board's web site since January 2009.

The proposed rulemaking would retain, with editorial changes, the 10-hour limitation in § 29.61(a) on the

number of continuing education hours that may be obtained by means of the Internet or through the reading of articles in professional journals and magazines. The proposed rulemaking also would retain the provision in § 29.61(a) that prohibits the carrying over of excess continuing education hours from one biennial license period to another. The proposed rulemaking also would retain the provision in § 29.61(a) that places responsibility on a licensee to ensure that continuing education hours have been approved, with the clarification that the licensee should do so before participating in the course or program for which continuing education credit is sought.

The proposed rulemaking would add to § 29.61(a) a provision, currently set forth in § 29.63a, stating that continuing education credit will not be awarded for courses or programs in office management or marketing the practice. Section 9.1 of the act specifically proscribes the awarding of continuing education credit for office management or practice building.

§ 29.63a. Preapproved continuing education provider and continued education subject matter

Section 29.63a currently provides that the Board will accept continuing education hours in courses and programs offered or approved by the CPME. Section 29.63a further provides that all courses and programs must fall within the scope of podiatry, and that no continuing education credit will be awarded for office management or marketing the practice.

The proposed rulemaking would rescind § 29.63a as unnecessary because its contents would be adequately treated in the revised § 29.61(a).

Fiscal Impact

The proposed rulemaking would require podiatrists to incur costs in meeting the increased biennial continuing education requirement. The costs cannot be quantified because of the large number and type of continuing education courses and programs available; however, the costs are not believed to be substantial or burdensome. As noted previously, many podiatrists already exceed the current 30-hour biennial continuing education requirement.

The proposed rulemaking would cause the Board's administrative staff to incur unspecified costs relating to auditing compliance with the increased biennial continuing education requirement. The current \$395 biennial renewal fee paid by podiatrists would defray the costs, which are not believed to be substantial.

The proposed rulemaking would not have a fiscal impact on the public or on other agencies and political subdivisions of the Commonwealth.

Paperwork Requirements

The proposed rulemaking would require podiatrists to retain records relating to their increased biennial continuing education hours and to submit these records to the Board upon audit. The proposed rulemaking would require the Board to revise its biennial renewal application. The proposed rulemaking would not create additional paperwork for the general public or for other agencies and political subdivisions of this Commonwealth.

Effective Date

The proposed rulemaking would become effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin* and would apply to the renewal of licensure for the 2011-2012 biennial license period.

Statutory Authority

Section 9.1 of the act authorizes the Board to prescribe continuing education requirements, while section 15 of the act (63 P. S. § 42.15) authorizes the Board to adopt the regulations as it deems necessary and proper to carry out its statutory responsibilities.

Regulatory Review

On December 9, 2009, as required under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the proposed rulemaking and a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Standing Committee on Consumer Protection and Professional Licensure and the House Standing Committee on Professional Licensure. A copy of the Regulatory Analysis Form is available to the public upon request.

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

Public Comment

The Board invites interested persons to submit written comments, recommendations or objections regarding the proposed rulemaking to Steven Wennberg, Counsel, State Board of Podiatry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the proposed rulemaking in the *Pennsylvania Bulletin*.

Fiscal Note: 16A-4401. No fiscal impact; (8) recommends adoption.

MARY E. LOFTUS, D.P.M.,
Chairperson

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY CONTINING EDUCATION

§ 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences.

(a) [As a condition of biennial renewal of a license, a licensee shall have completed 30 clock hours of continuing education during the preceding biennium in acceptable courses and programs in podiatry by approved providers. It is the responsibility of the licensee to ensure that credits used to comply with this continuing education requirement have been approved by the Board. Excess clock hours may not be carried over to the next biennium. A maximum of 10 clock hours of computer/Internet, magazine or journal article courses, which are approved by the Council on Podiatric Medical Education, shall be accepted by the Board.] Effective with the renewal of licensure for the 2011-2012 biennium, a licensee applying for biennial renewal of a license shall have completed 50 clock hours of

continuing education in approved courses and programs during the preceding biennium. At least 30 of the clock hours must be in courses and programs in podiatry that are approved by the Board or the Council on Podiatric Medical Education (CPME). The remaining clock hours must be either in courses and programs in podiatry that are approved by the Board or the CPME or in courses and programs in related medical subjects that are approved by the American Medical Association or the American Osteopathic Association. A maximum of 10 clock hours may be in approved courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. Continuing education credit will not be awarded for clock hours in office management or marketing the practice. Excess clock hours may not be carried over to the next biennium. A licensee is responsible for ensuring that a particular course or program is approved for continuing education credit prior to participating in the course or program.

* * * * *

§ 29.63a. [Preapproved course provider] (Reserved).

[Courses or programs offered or approved by the Council on Podiatric Medical Education will be accepted for continuing education credit. All courses shall fall within the scope of podiatry practice. The Board will not approve courses or programs, or portions thereof, in office management or in marketing the practice.]

[Pa.B. Doc. No. 09-2314. Filed for public inspection December 18, 2009, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]
Initial Licensure Fees

The State Real Estate Commission (Commission) proposes to amend § 35.203 (relating to fees) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

Sections 404 and 407 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. §§ 455.404 and 455.407), authorize the Commission to promulgate and adopt regulations to administer and effectuate the purposes of the RELRA.

C. Background and Purpose

Currently applicants for licensure complete a paper application and submit it along with the required fee to the Commission. Those who obtain a real estate license in the first year of the renewal cycle pay 100% of the biennial renewal fee in addition to the application and real estate recovery fees while applicants who obtain a real estate license in the second year of the renewal cycle

pay 50% of the renewal fee in addition to the application and real estate recovery fees. This two-tiered fee structure, however, precludes the Commission from participating in on-line initial licensure applications for salesperson classes, currently being used by the State Board of Motor Vehicle Manufacturers, Dealers and Salespersons, as the Bureau's licensure software cannot accommodate a two-tiered fee structure.

D. Description of Amendment

This proposal would amend current fees by consolidating the initial licensure fee charged to new applicants from a two-tiered structure to a one-tier structure. Instead of charging applicants in the first year of the licensure period 100% of the biennial renewal fee and applicants who apply in the second year of the licensure period 50% of the biennial renewal fee, the regulation consolidates these fees into one fee, which represents 75% of the biennial renewal fee. Brokers, cemetery brokers, branch offices, rental listing referral agents, broker of records, partners or officers for a partnership, associations and corporations would pay an initial licensure fee of \$94.50 in addition to the application and real estate recovery fees while associate brokers, salespersons, cemetery associate brokers, cemetery salespersons, builder-owner salespersons, time-share salespersons, campground membership salespersons and cemetery companies would pay an initial fee of \$72 in addition to the application and real estate recovery fees.

E. Fiscal Impact and Paperwork Requirements

The amendment will not have a fiscal impact or impose additional paperwork requirements on the Commonwealth as initial licensure fees are currently being charged to new applicants. This proposal will have a minimal fiscal impact on the regulated community over the biennial period as the Commission continues to charge an aggregate initial licensure fee of 150% of the biennial renewal fee over the same 2-year period. The proposed amendment will not necessitate any legal, accounting, paperwork or reporting requirements on the regulated community.

F. Sunset Date

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

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on December 7, 2009, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

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

H. Public Comment

Interested persons are invited to submit comments, recommendations or objections regarding the proposed

amendment to Judith Pachter Schulder, Counsel, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, ST-REALESTATE@state.pa.us/estate within 30 days of publication of this proposed rulemaking. Reference No. 16A-5615 (Fees), when submitting comments.

MICHAEL WEISS,
Chairperson

Fiscal Note: 16A-5615. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.203. Fees.

The following fees are charged by the Commission:

* * * * *

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

(i) If issued in first half of biennial period.....100% of biennial renewal fee

(ii) If issued in second half of biennial period 50% of biennial renewal fee] ... \$94.50

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

(i) If issued in first half of biennial period100% of biennial renewal fee

(ii) If issued in second half of biennial period 50% of biennial renewal fee] \$72

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[Pa.B. Doc. No. 09-2315. Filed for public inspection December 18, 2009, 9:00 a.m.]