

# PROPOSED RULEMAKING

## DEPARTMENT OF LABOR AND INDUSTRY

[ 34 PA. CODE CH. 61 ]

### Unemployment Compensation; Administration

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits and Office of Unemployment Compensation Tax Services, propose to amend Chapter 61 (relating to administration) to read as set forth in Annex A.

#### A. Statutory Authority

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)) which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

#### B. Background and Description of Proposed Rulemaking

This proposed rulemaking, which covers ten sections of Chapter 61, updates the Department's regulations to conform to current law and practice.

Section 61.1 (relating to definitions) contains definitions for Part II, Subpart A (relating to unemployment compensation). Definitions regarding the organization of the Department are proposed to be amended or added to reflect the current structure of the Department. Also, obsolete definitions are deleted.

Proposed amendments to § 61.3 (relating to wages) distinguish the tax treatment of delayed wage payments from the existing approach that will continue to be used for benefit purposes. For purposes of taxation, the proposed amendments treat wages as paid on the date the employer actually pays them. This treatment reflects the decision of the United States Supreme Court in *United States v. Cleveland Indians Baseball Company*, 532 U.S. 2001. In that case, the Court held that, for Federal employment tax purposes, back wages should be attributed to the date on which they actually are paid. The Department is required to follow this decision when allocating wages for tax purposes because section 4(x)(6) of the law (43 P. S. § 753(x)(6)) requires that payments subject to taxation under the Federal Unemployment Tax Act (26 U.S.C.A. §§ 3301—3311) also are taxed as wages under the law. For benefits purposes, however, the existing treatment of wages remains in effect. That is, when a payment of wages is delayed, the wages are considered paid on the day on which the employer generally pays amounts definitely assignable to a payroll period.

Section 61.3 is also amended regarding the valuation of remuneration made in mediums other than cash. In addition to prescribing the general rule that the value of noncash compensation is its fair market value, this section specifies minimum values to be placed on meals and lodging by reference to recognized Federal standards, subject to rebuttal by the employer.

When sick pay is paid to a worker by a third party, proposed § 61.3a (relating to third party sick pay) provides that the third party is responsible to report, and pay unemployment compensation (UC) taxes on, the sick pay. An exception provides that the third party may meet certain requirements to shift that responsibility to the employer.

Proposed amendments to § 61.11 (relating to persons eligible for compensation and expenses) provide that an agent of an employer, like the employer he represents, is ineligible for witness fees for participating in an administrative proceeding if the employer is an interested party in the proceeding.

Proposed amendments to § 61.12 (relating to reimbursable items) delete specific amounts for the mileage allowance and the per diem fee for witnesses. As amended, the section will provide that witnesses may be paid compensation and expenses in accordance with 42 Pa.C.S. (relating to Judicial Code).

Sections 61.21—61.24, regarding confidentiality of information, are proposed to be rescinded and replaced by § 61.25 (relating to confidentiality of information and fees), which implements new Federal confidentiality requirements that were recently promulgated by the United States Department of Labor.

#### C. Affected Persons

Because this proposed rulemaking amends the definitions for all chapters of the UC regulations, it potentially affects the 280,000 employers covered by the law and UC claimants who file approximately 617,000 new applications for benefits each year. Specifically, this proposed rulemaking would affect payors and recipients of delayed wages and noncash compensation, witnesses at UC administrative proceedings and third party payors of sick pay.

#### D. Fiscal Impact

##### *Commonwealth and the Regulated Community*

Some provisions of this proposed rulemaking reflect current practice and, as a result, would not involve fiscal impact. The section prescribing the date when wages are considered paid for tax purposes and the section updating the valuation of noncash compensation could affect the amount of UC tax owed by certain employers, and the latter provision could cause some claimants to qualify for an increased amount of UC benefits. While the Department is unable to estimate the amount of monetary impact from these sections, the number of employers and claimants affected is expected to be small and the overall fiscal impact is expected to be minimal.

##### *Political Subdivisions*

This proposed rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

##### *General Public*

This proposed rulemaking does not affect the general public.

#### E. Paperwork Requirement

This proposed rulemaking will not impose additional paperwork requirements on the regulated community.

#### F. Sunset Date

The proposed rulemaking will be monitored through practice and application. Therefore, no sunset date is designated.

#### G. Effective Date

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

exception. Amended § 61.3 will be in effect as to wages paid on or after the first January 1 following publication.

H. Public Comment

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Michael L. Ziemke, Office of Unemployment Compensation Tax Services, Room 900, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to [mziemke@state.pa.us](mailto:mziemke@state.pa.us). A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each transmission. In addition, electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, contact Michael L. Ziemke at (717) 772-1581.

I. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 10, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Labor Relations Committee and the Senate Labor and Industry Committee (Committees). A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to a portion of the proposed rulemaking, it will notify the Department within 30 days of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

SANDI VITO,  
*Secretary*

**Fiscal Note:** 12-78. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 34. LABOR AND INDUSTRY

PART II. BUREAU OF EMPLOYMENT SECURITY

Subpart A. UNEMPLOYMENT COMPENSATION

CHAPTER 61. ADMINISTRATION

GENERAL PROVISIONS

§ 61.1. Definitions.

Terms which are defined in the law and which are used in this subpart have the same meanings as provided in the law. In addition, the following words and terms, when used in the subpart, have the following meanings, unless the context clearly indicates otherwise:

**Applicant**—An individual applying for [ **employment at an** ] services with an employment office [ **at the Pennsylvania State Employment Service** ].

**Application for benefits**—The initial request for unemployment compensation filed under section 501(a) of the law (43 P. S. § 821(a)), preliminary to

**filing claims for compensation. If an application for benefits is valid, as defined in section 4(w) of the law (43 P. S. § 753(w)), the application establishes a benefit year commencing on the effective date of the application.**

**Board**—The Unemployment Compensation Board of Review of the Commonwealth.

**Bureau**—The [ **Bureau of Employment Security of the Commonwealth** ] Department.

**Claim for compensation**—[ **Either claim for waiting period credit or a claim for compensation, sometimes referred to as a “pay order.”** ] A request for waiting week credit or payment of compensation for a week when the claimant was unemployed, filed under section 501(c) of the law.

\* \* \* \* \*

[ **Partial unemployment**—An individual shall be considered partially unemployed with respect to a week during which he was employed by his regular employer and earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than customary full-time hours due to lack of work.

**Part-total unemployment**—An individual shall be considered to be part-totally unemployed with respect to any week during which he was not employed by his regular employer, earned less than his weekly benefit rate plus his partial benefit credit, and was employed less than his customary full-time hours due to lack of work. ]

**Payments in lieu of contributions**—The money payments made into the Unemployment Compensation Fund by an employer with respect to employment, under sections 1003, 1104 and [ **1202** ] **1202.2** of the law (43 P. S. §§ 893, 904 and [ **912** ] **912.2**).

**Secretary**—The Secretary of the Department.

[ **Total unemployment**—An individual shall be considered totally unemployed with respect to a week during which he performs no services and with respect to which no remuneration is paid or payable to him. ]

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**UC Office**—A Department office established to accept and process applications for benefits and claims for compensation.

**UC Tax Review Office**—The individual or agency within the Department that administers appeals to the Secretary or the Secretary’s designee.

**UCTS**—The Office of Unemployment Compensation Tax Services, or its successor agency, within the Department.

**Week**—Except as otherwise specifically provided, a week, with respect to an individual who files a claim for [ **total, part-total or partial** ] unemployment, means the calendar week—Sunday through Saturday, except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible. For purposes of this section, if the workday of an individual includes parts of 2 calendar

days, the work performed by the individual during the workdays shall be considered to have been performed during the first of the calendar days.

§ 61.3. Wages.

(a) *Date of payment.*

(1) *General rule*—Wages [ shall be considered to be paid on the day on which ] are considered paid on the date when the employer actually pays them.

(2) *Delayed payment of wages*—For purposes of benefits, if payment of wages is delayed, the wages are considered paid on the date when the employer generally pays amounts definitely assignable to a payroll period [ are generally paid by the employer, even though the wages have not actually been reduced to the possession of employes ].

\* \* \* \* \*

(c) [ *Board and lodging.* The money value of board or lodging constituting wages shall be the reasonable cash value to the employe of the board or lodging, but may not be considered less than the following minimum amounts, unless the employer produces evidence to the satisfaction of the Bureau that the minimum amounts are in excess of the actual value to the employe of his board or lodging:

- (1) Lodging for 1 week, \$2.50.
- (2) Meals for 1 week, \$4.50.
- (3) Meals for 1 day, 75¢.
- (4) One meal, 25¢. ]

*Noncash wages.*

(1) *General rule*—Except as provided in paragraph (2), the money value of remuneration paid in mediums other than cash is the fair market value of the remuneration at the time of payment.

(2) *Meals and lodging*—Meals and lodging are valued at amounts assigned to meals and lodging in the documents referenced in 41 CFR 301-11.6 (relating to where do I find maximum per diem and actual expense rates), for the calendar year in which they are provided and for the location where they are provided, unless the employer is able to produce sufficient, credible evidence that the fair market value of the meals and lodging is less than such values.

§ 61.3a. Third party sick pay.

(a) *Definitions.* For purposes of this section:

(1) A sick pay payment is any payment on account of sickness or accident disability that is “wages” as provided in the law.

(2) A third party payor is an entity that makes a sick pay payment, is not reimbursed for the payment on a cost plus fee basis, and is not an employer of the recipient.

(3) A funding employer is an entity that finances, directly or indirectly, in whole or in part, a sick pay payment to one or more of its employees by a third party payor.

(b) *Reporting and contribution requirements.*

(1) A funding employer shall report, and pay the contributions due with respect to, a sick pay payment, unless a third party payor is required to do so.

(2) A third party payor shall report, and pay the contributions due with respect to, a sick pay payment it makes, unless within 15 days of payment the third party payor gives written notice to the funding employer for which the recipient most recently performed services, of the name and social security account number of the recipient and the amount of the payment.

(c) *Date of payment.* A sick pay payment is considered paid as provided in subsection (a).

(d) *Enforcement.* A third party payor that is required to report, and pay contributions on, a sick pay payment, is deemed to be an employer for the purpose of application of all provisions in the law relating to its enforcement, and the collection of contributions, interest and penalties.

WITNESS FEES AND EXPENSES

§ 61.11. Persons [ reimbursable ] eligible for compensation and expenses.

The payment of fees and expenses to individuals who have served as witnesses in proceedings conducted by the Board [ of Review ] or the [ Bureau ] Department will be made subject to the following conditions:

(1) *Persons not parties-in-interest.*

(i) Payment may be made only to individuals who have received a summons or a subpoena issued by the [ Bureau ] Department or the Board [ of Review ] in accordance with sections 506 and 304 of the law (43 P. S. §§ 784 and 826), and who are not a party-in-interest to the proceeding.

\* \* \* \* \*

(iv) [ *Employees* ] Agents and employees, including corporate officers, of an employer who is a party-in-interest to a proceeding, shall be considered as parties-in-interest to the proceeding.

(2) [ *Employees* ] *Employees of the Department.* [ *Employees* ] Employees of the Department may not be entitled to a payment provided by the provisions of this section, but shall be reimbursed for proper expenses in accordance with the provisions of Departmental rules and regulations governing traveling expenses of [ *employees* ] employees. The receipt of a summons or a subpoena by an [ *employee* ] employee of the Department, however, will justify the issuance of whatever authorization for travel as may be required under the travel rules and regulations.

(3) *Commonwealth* [ *employees* ] employees and [ *employees* ] employees of the Department. An [ *employee* ] employee of the Commonwealth who is not an [ *employee* ] employee of the Department will not be entitled to a payment provided by the provisions of this section, but will be reimbursed for expenses in the same manner as provided for [ *employees* ] employees of the Department, unless the [ *employee* ] employee shows to the satisfaction of the [ *comptroller of the Bureau* ] Department that he is not entitled to State pay for the period of time spent in attendance at a proceeding in response to a summons or a subpoena. In this event the [ *employee* ] employee is entitled to allowances as provided for other individuals who are not [ *employees* ] employees of the Commonwealth.

§ 61.12. Reimbursable items.

(a) [ *Transportation.*

(1) An individual who is entitled to reimbursement under § 61.11 (relating to persons reimbursable) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid mileage at the rate of 7¢ for each mile he actually travels in going to the place from his place of residence and returning, but he will not be reimbursed for a greater number of miles than would be required for traveling by the usually traveled route between those places.

(2) When a proceeding is adjourned, continued or postponed for more than 1 day or is prolonged from 1 week to the next, a witness necessarily present both before and after the interval and who returns to his place of residence during the interim may be paid one additional mileage allowance for each interval.

(b) *Fees.*

(1) An individual entitled to reimbursement under § 61.11 may be allowed a fee of \$5.00 for each day or part of a day spent in attending or traveling to and from a proceeding.

(2) When a proceeding is prolonged from 1 day to the next a witness necessarily present on both days who resides more than 50 miles by the usually traveled route from the place the proceeding is held and who remains there overnight may be paid an additional amount equal to the *per diem* witness fee for each night. ]

*Compensation and expenses.* An individual who is entitled to reimbursement under § 61.11 (relating to persons eligible for compensation and expenses) and who resides outside the place where his attendance is required, whether the residence is within or without this Commonwealth, may be paid compensation and expenses by the Department in accordance with of 42 Pa.C.S. § 5903(b)—(g) (relating to compensation and expenses of witnesses).

[ (c) ] (b) *Time limit for filing claims.* An allowance or fee payable under the provisions of this section shall be paid only if a claim [ therefor ] therefore is filed with the Board or the [ Bureau ] Department within 30 days from the date of the proceeding.

**DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION**

§ 61.21. [ Authorization required ] (Reserved).

[ No officer or employe of the Department or the Board or other public employe, except as authorized by the provisions of this chapter, shall produce or disclose to any person or before any tribunal, directly or indirectly, any record or any information acquired from a record pertaining to any employer, applicant, claimant or trainee. ]

§ 61.22. [ Procedure when served with a subpoena ] (Reserved).

[ An officer or employe of the Department or the Board, upon being served with a subpoena or other compulsory process, shall immediately bring the matter to the attention of his superior officer who

shall forthwith supply the following information to the legal division of the Department:

(1) The caption of the case, the names of the parties and other general information.

(2) The nature of the case, if known.

(3) The name of the employe served with the subpoena.

(4) The time and place where the employe is directed to appear.

(5) What records, if any, the employe is directed to produce. ]

§ 61.23. [ Furnishing of information ] (Reserved).

[ Disclosure of records or information may be authorized by specific instruction of the Department or Board in the following cases:

(1) To individual applicants and employers to the extent necessary for the efficient performance of recruitment, placement, employment counseling and other employment service functions.

(2) To any properly identified claimant for benefits or payments under a State, territorial or Federal unemployment compensation or readjustment allowance law, or training allowance law, or to his authorized representative, including information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.

(3) To officers and employes of the Department and the Board of Review, and to an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a Federal, State or territorial unemployment compensation, readjustment allowance or training allowance law, but only for purposes reasonably necessary for the proper administration of the law.

(4) To an officer or employe of an agency of the Federal government or of a State or territorial government, lawfully charged with the administration of a law providing for old age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of the law.

(5) To applicants, employers and the public when the information is of a general nature concerning employment opportunities, employment levels and trends, and labor supply and demand, but only if the release or publication does not include information identifiable to individual applicants, employers or employing establishments.

(6) To governmental authorities, such as antidiscrimination and fair employment practice authorities, whose functions will aid the Pennsylvania State Employment Service in carrying out an amplified and more effective placement service, including information relating to fair employment practices.

(7) To individuals, organizations and agencies, or for purposes other than as specified in paragraphs (1)—(6), if a disclosure does not impede the operation of, and is not inconsistent with the purposes of

the employment security program, and is authorized in writing in individual cases by the Executive Director. ]

§ 61.24. [ Statistical publications ] (Reserved).

[ Nothing in this chapter may be construed to prohibit the publication of statistical data or other general information, if the publication is not identifiable to individual employers, employees, applicants or claimants. ]

§ 61.25. Confidentiality of information and fees.

(a) *Confidentiality.*

(1) *Definition.* For purposes of this subsection, "unemployment compensation information" means both of the following:

(1) Information in the possession of the Department or the Board pertaining to the administration of the law which reveals the name or any other identifying particular about an employer, employee or claimant or which could foreseeably be combined with publicly available information to reveal any identifying particular.

(2) Information obtained directly or indirectly from the Department or the Board that is included in paragraph (1) while in the possession of the Department or the Board.

(2) *Rule of confidentiality.*

(i) Unemployment compensation information is confidential and may be disclosed only as permitted in this subsection.

(ii) Except as provided in paragraph (5), unemployment compensation information will not be competent evidence and may not be used in any action or proceeding in any court or other tribunal.

(3) *Permissible disclosure.* The Department or the Board may disclose or authorize disclosure of unemployment compensation information only as follows:

(i) To officers and employees of the Department and members and employees of the Board in the administration of the law.

(ii) To a claimant, the last employer of the claimant or a base year employer of a claimant, to the extent necessary for the proper determination of the claimant's application for benefits and claims for compensation.

(iii) To an employer, to the extent necessary for the proper determination of the employer's liability for reports and payments under the law and the proper administration of the employer's account.

(iv) To public employees in the performance of their public duties.

(v) As determined by the Department or the Board to be necessary for the proper administration of the unemployment compensation program.

(vi) As permitted by provisions of the law or as required or permitted under Federal law.

(4) *Redisclosure prohibited.*

(i) Officers and employees of the Department and members and employees of the Board to whom unemployment compensation information is disclosed under paragraph (3)(i) may not disclose the

information to any person or before any court or other tribunal, except as authorized by the Department or the Board under paragraph (3).

(ii) Except as provided in paragraph (5), a person, other than an officer or employee of the Department or a member or employee of the Board, to whom unemployment compensation information is disclosed under paragraph (3) or otherwise may not disclose the information to any person or before any court or other tribunal without the prior, written authorization of the Department or the Board. This subparagraph applies to the initial person to whom the information is disclosed and subsequent recipients of the information.

(5) *Exceptions.* Paragraphs (2)(ii) and (4)(ii) do not apply to the following:

(1) A legal proceeding under the law or a statute administered or enforced by the Commonwealth.

(2) Information disclosed to a claimant or employer under paragraph (3)(ii) or (iii).

(3) Information filed with the unified judicial system by the Department or the Board in the administration of the law.

(6) *Safeguards.* A person to whom unemployment compensation information is disclosed under paragraph (3) shall implement and maintain all safeguards required by the Department to protect the confidentiality of the information and comply with all other terms and conditions specified by the Department in connection with disclosure of the information.

(b) *Fees.* Except as provided in section 702 of the law (43 P. S. § 862), the Department or the Board may charge a fee to a person seeking documents or information from the Department or the Board. The fee will be an amount sufficient to compensate the Department or the Board for the costs to process the request and, if the requested documents or information are available, the cost to provide the documents and information. The amount of the fee will be calculated by the Department within its discretion.

[Pa.B. Doc. No. 10-936. Filed for public inspection May 21, 2010, 9:00 a.m.]

[ 34 PA. CODE CH. 65 ]

**Unemployment Compensation; Employee Provisions**

The Department of Labor and Industry (Department), Office of Unemployment Compensation Benefits, proposes to amend Chapter 65 (relating to employee provisions) to read as set forth in Annex A.

A. *Statutory Authority*

This rulemaking is proposed under section 201(a) of the Unemployment Compensation Law (law) (43 P. S. § 761(a)), which authorizes the Department to promulgate and amend rules and regulations necessary to administer the law.

B. *Background and Description of Proposed Rulemaking*

The purpose of this proposed rulemaking, which covers 24 sections of the Department's regulations, is to update the regulations to conform to current law and practice.

This proposed rulemaking rescinds 11 sections of Chapter 65 and deletes portions of additional sections. The Department is rescinding and deleting regulations that are obsolete, inconsistent with the law or superseded by a subsequent statutory enactment. In some cases, the Department is retaining the text of rescinded sections by adding it to other regulatory provisions to consolidate regulations with similar subject matter. In cases where a section repeats an existing statutory provision, the section will be rescinded or amended to refer to the statute.

References to obsolete subdivisions of the Department are being removed or replaced with references to the current agency or the Department generally. References to specific forms, some of which are outdated, are removed wherever possible.

The law provides that a claimant shall register for work to be eligible for compensation. Under existing regulations, a claimant fulfills this requirement by filing an application for benefits. However, the current regulations also provide that a work registration lapses under certain circumstances and must be renewed. This is a technical and little known provision that may prejudice a claimant's eligibility. Proposed amendments to § 65.11 (relating to work registration; effective period) provide that a work registration created by an application for benefits remains effective throughout the benefit year. Sections 65.12 and 65.13 (relating to registration renewals; and predated claims), which provide for the lapse and renewal of a work registration and retroactive registration renewals, are proposed to be rescinded.

Proposed amendments to § 65.14 (relating to additional information) state that a claimant shall provide the information required by the Department to facilitate reemployment.

Sections 65.31 and 65.41 (relating to filing; and filing methods) provide that claimants shall file paper applications for benefits and claims for compensation in person at a local Department office. In their present form, these sections reflect outdated procedures. The Department no longer requires claimants to appear in person to conduct unemployment compensation (UC)-related business. Therefore, § 65.31 is proposed to be rescinded and existing text in § 65.41 is deleted and replaced with current procedure. As amended, § 65.41 will provide that a claimant may file an application for benefits by telephone, Internet, United States mail or fax transmission and may file a claim for compensation by telephone or the Internet.

Proposed amendments to § 65.42 (relating to application for benefits—effective date) specify that an application for benefits is effective on the first day of the week in which the application is filed or deemed filed under proposed § 65.43a (relating to extended filing).

Section 65.32 (relating to week of unemployment) reflects an outdated procedure in which a claim for compensation was filed every week. That is, a claim for compensation had to be filed during the week immediately following the week of unemployment being claimed. This section is proposed to be rescinded and replaced with the proposed amendments to § 65.43 (relating claims for compensation—when to file). As amended, § 65.43 reflects the current procedure in which claims are filed biweekly and each biweekly pair of claims covers the preceding 2 weeks.

Currently, § 65.33 (relating to predating) provides that a claim for compensation may be filed late under certain circumstances and §§ 65.41 and 65.42(a) set forth the circumstances in which an application for benefits may be

filed late. This proposed rulemaking consolidates the provisions regarding late filing of claims and applications in proposed § 65.43a. This proposed section contains provisions similar to the sections it replaces. It also reflects circumstances that may prevent a claimant from filing a timely application or claim under current procedures, in which applications and claims are taken by telephone, Internet and fax transmission.

Proposed § 65.56 (relating to withdrawing an application for benefits) specifies circumstances under which the Department may approve a claimant's request to withdraw an application for benefits and cancel the corresponding benefit year.

Under section 4(u) of the law (43 P.S. § 753(u)), a claimant may be "unemployed" for purposes of eligibility for UC if he is working "less than his full-time work." Neither the law nor the regulations define "full-time work" for purposes of section 4(u) of the law. As a result, this provision has been applied inconsistently. Proposed § 65.73 (relating to full-time work) will specify how a claimant's full-time work is determined.

#### C. *Affected Persons*

The proposed rulemaking would affect persons claiming UC benefits. Approximately 617,000 new applications for benefits are filed each year.

#### D. *Fiscal Impact*

##### *Commonwealth and the Regulated Community*

The majority of this proposed rulemaking concerns procedural matters, such as the methods and time for filing UC applications and claims. Although this proposed rulemaking contains procedural requirements, these do not affect the amount or duration of benefits available to the claimant under the law. Also, some of the procedural provisions of this proposed rulemaking codify current practice. For these reasons the new and amended regulations addressing procedures would not involve fiscal impact to the UC Fund or the regulated community. Only a small portion of this proposed rulemaking involves substantive matters. Either these sections reflect the current application of the law, in which event there would be no fiscal impact, or the Department is unable to estimate the amount of fiscal impact that may occur.

##### *Political Subdivisions*

This proposed rulemaking does not affect political subdivisions, except to the extent that they are employers covered by the law.

##### *General Public*

This proposed rulemaking does not affect the general public.

#### E. *Paperwork Requirement*

This proposed rulemaking will not impose additional paperwork requirements on the regulated community.

#### F. *Sunset Date*

The regulations will be monitored through practice and application. Therefore, no sunset date is designated.

#### G. *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The following sections, as promulgated, amended or rescinded by this proposed rulemaking, apply to weeks of unemployment ending on or after the effective date of the final-form rulemaking: §§ 65.11, 65.12, 65.13, 65.14, 65.15, 65.32, 65.33, 65.43, 65.43a(a), 65.43a(b), 65.43a(d), 65.43a(f), 65.43a(i) and 65.73. The following sections, as

amended or rescinded by this proposed rulemaking, apply to claims for compensation filed on or after the effective date of the final-form rulemaking: §§ 65.31 and 65.41. The following sections, promulgated or as amended by this proposed rulemaking, apply to applications for benefits filed on or after the regulations' effective date of the final-form rulemaking: §§ 65.41, 65.42, 65.43a(c), 65.43a(g), 65.43a(i) and 65.56. Proposed amendments to § 65.22 (relating to applicable rules) apply to an offer of work made on or after the effective date of the final-form rulemaking. Proposed amendments to § 65.102 (relating to application of the deduction) apply to weeks of unemployment ending on or after December 16, 2005. Section 65.56 applies to a request made on or after the section's effective date to withdraw an application for benefits.

**H. Public Comment**

Interested parties are invited to submit written comments, objections or suggestions about the proposed rulemaking to Craig Pontz, Assistant Director, Office of Unemployment Compensation Benefits, 6th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Written comments received by the Department may be made available to the public.

Comments may also be submitted electronically to [cpontz@state.pa.us](mailto:cpontz@state.pa.us). A subject heading referencing the proposed rulemaking, name and return mailing address must be included in each transmission. In addition, electronic comments shall be contained in the text of the transmission, not in an attachment.

For further information on this proposed rulemaking, contact Craig Pontz at (717) 783-0605.

**I. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 10, 2010, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the House Labor Relations Committee and the Senate Labor and Industry Committee (Committees). A copy of this material is available to the public upon request.

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

SANDI VITO,  
*Secretary*

**Fiscal Note:** 12-74. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 34. LABOR AND INDUSTRY**

**PART II. BUREAU OF EMPLOYMENT SECURITY**

**Subpart A. UNEMPLOYMENT COMPENSATION**

**CHAPTER 65. EMPLOYEE PROVISIONS**

**Subchapter A. GENERAL PROVISIONS**

§ 65.1. [ Definitions ] (Reserved).

[ In addition to the terms defined in § 61.1 (relating to definitions), the following words and terms,

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

**Agent state**—A state in which an individual files a claim for benefits from another state.

**Benefits**—Compensation payable to an individual with respect to the individual employment, under the unemployment insurance law of a state.

**Interstate Benefit Payment Plan**—The plan approved by the Interstate Conference of Employment Security Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

**Interstate claimant**—An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term does not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the Bureau finds that this exclusion would create undue hardship on the claimants in specified areas.

**Liable state**—A state against which an individual files, through another state, a claim for benefits.

**Registered for work**—When a claimant has appeared at a regularly established public employment office and has completed and signed an Application for Benefits, Form UC-42; and when, upon request, he has furnished that office with the accepted title for the occupations at which he is usually employed.

**Registration for work**—When an individual has appeared in person at a public employment office and has furnished that office with his name, usual occupation and correct post office address and has declared his availability for suitable work.

**State**—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

**Week of unemployment**—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed. ]

**Subchapter B. PREREQUISITES FOR ELIGIBILITY  
REGISTRATION FOR WORK**

§ 65.11. [ Effective period ] Work registration; effective period.

[ A registration for work created by the actions stated in § 65.1 (relating to definitions) shall continue in effect as follows:

(1) For a period of 3 weeks following the date of the valid application for benefits.

(2) As long as the claimant continues to file claims for weeks of unemployment ending at intervals of not more than 3 weeks, the first of which claims was for a week ending within the 3 week period following the date of the valid application for benefits. ]

(a) A claimant who files an application for benefits in accordance with § 65.41 (relating to filing

methods) and declares his availability for suitable work has registered for work for purposes of section 401(b) of the law (43 P.S. § 801(b)). The work registration is effective on the date that the application is effective in accordance with § 65.42 (relating to application for benefits—effective date) or § 65.43a (relating to extended filing) and remains in effect for the benefit year corresponding to the application and any subsequent period for which benefits are payable pursuant to the application.

(b) When a claimant files an application for benefits in accordance with § 65.41, the Department will provide information relevant to the claimant's reemployment and receipt of employment services to the employment office.

§ 65.12. [ Registration renewals ] (Reserved).

[ (a) If, during the claim-filing period, commencing with the date of the valid application for benefits, the interval between claims exceeds 3 weeks, the claimant shall renew his registration for work by appearing at a regularly established public employment office and completing and signing a Notice of Registration Renewal and Request for Separation Information, Form UC-45A.

(b) The registration for work resulting from a registration renewal shall continue in effect in the same manner and under the same conditions as a registration for work resulting from an application for benefits. ]

§ 65.13. [ Predated claims ] (Reserved).

[ (a) Registration renewals may be predated for the same reasons and the same periods of time permitted for an application for benefits, as provided by §§ 65.41—65.43 (relating to procedure; date of filing; and places of filing).

(b) If an application for benefits, a registration renewal or a claim for a week of unemployment filed by a claimant is predated for any reason given in this subsection, the requirement that the claimant is registered for work will be waived for the number of weeks specified for the applicable reason, or for the total of the specified number of weeks for the applicable reasons where there is a combination of more than one reason and in each instance the term week means the calendar week, Sunday through Saturday, immediately preceding the week, which includes the day on which the application for benefits, registration renewal or claim was actually filed:

(1) The inaccessibility of the local public employment office, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing his application or claim, shall permit a waiver of not more than 2 weeks.

(2) The closing of an office due to a Sunday or holiday shall permit a waiver of not more than 2 weeks.

(3) The inability of the office to take the claimant's application or claim on the day he reported for that purpose or the postponement of application or claims taken by the office for administrative reasons shall permit a waiver of not more than 6 weeks.

(4) The refusal of the office to accept the application or claim as a result of an error or mistake shall permit a waiver of not more than 52 weeks.

(5) Pending determination of the eligibility of similarly situated employes under section 402(d) of the law (43 P.S. § 802(d)) if the application or claim is filed within 6 weeks after the determination has become final.

(6) The claimant's failure to file an application for benefits or registration renewal due to erroneous advice by his employer that he would be recalled to work within 1 week shall permit a waiver for not more than 2 weeks.

(7) The claimant's failure to file a claim for a week of unemployment due to sickness of the claimant, a sickness or death of another member of the claimant's family, or an act of God shall permit a waiver for not more than 2 weeks.

(8) The claimant's failure to file a claim for a week of unemployment if the claimant became employed shall permit a waiver for not more than 4 weeks.

(9) If the claimant files for a week of partial unemployment a waiver for that week shall be permitted regardless of when the claim is actually filed.

(c) The period of time during which the registration for work is waived may not exceed the period of time by which the application for benefits, registration renewal or claim, was predated, nor may the effective date of the registration for work be a day previous to the date of the application for benefits, registration renewal or the first day of a week of unemployment with respect to which a claim is filed. ]

§ 65.14. Additional information.

[ Nothing in this subchapter shall be construed to prevent the Department from requiring of a claimant additional information with respect to his work history and occupational aptitudes in a manner and on forms which it may require. ] A claimant shall provide all information required by the Department to facilitate reemployment, including the claimant's work history, education and receipt of employment services.

§ 65.15. [ Claims filed in other states ] (Reserved).

[ A claimant, filing claims in another state under the section 312 of the law (43 P.S. § 792), will be considered to have registered for work when he has complied with the registration for work requirements of the state in which he is filing his claim. Registration for work shall continue in effect for the length of time provided by the laws, regulations and procedures of the state in which he is filing his claim. ]

#### OFFERS OF SUITABLE WORK

§ 65.21. [ Disqualification for benefits ] (Reserved).

[ In accordance with the provisions of section 402(a) of the law (43 P.S. § 802), an employe shall be ineligible for benefits for any week in which he is unemployed because he has refused without good cause an offer for suitable work made either by the local public employment office or by an employer



who notifies the employment office within 7 working days of his offer to the potential employe. ]

§ 65.22. Applicable rules.

(a) With respect to offers of suitable work made by an employer, the following rules apply:

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(2) The [ notification shall be made ] employer shall give notice of the offer to the [ local public employment office ] UC Office at which the [ employe ] employee has filed or may file an application for benefits [ or a registration renewal ].

(3) The offer to the [ employe ] employee may be in writing, in which case a carbon copy or an exact duplicate shall be furnished to the [ employment office ] UC Office within 7 working days after the mailing of the offer. If the employer's offer is not made in writing, as, for example, where it is made by telephone, the employer shall provide the [ employment office ] UC Office with a detailed written description of the offer within 7 working days after the making thereof. Regardless of the manner in which the offer is communicated to the [ employe, it ] the employer shall include in the offer all of the following:

\* \* \* \* \*

(v) [ An ] Any unusual requirement or condition of work.

(b) [ Where ] When the employer who makes the offer has employed the [ employe ] employee after the beginning of the [ employe's ] employee's base year and, in [ his ] the offer of employment to the [ employe ] employee, states that the conditions of the job are substantially the same as those under which the [ employe ] employee last worked for the employer, the requirements enumerated in subsection (a) are not required to be included.

(c) If the job offered the [ employe ] employee is covered under a labor-management agreement and a statement to this effect is made in the offer of employment, no further description [ will be ] is required.

(d) [ It will be the responsibility of the Department, before ] Before issuing a decision on a claim for benefits, [ to ] the Department will determine on the basis of facts whether the work offer was suitable within the meaning of section 4(t) of the law (43 P. S. § 753(t)).

Subchapter C. APPLICATION PROCEDURE  
[ CLAIMS FOR COMPENSATION ]

§ 65.31. [ Filing ] (Reserved).

[ Claims for compensation shall be filed personally by the claimant on official forms available for that purpose at local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement. ]

§ 65.32. [ Week of unemployment ] (Reserved).

[ (a) The week of unemployment with respect to which a claim is filed shall be the calendar week preceding the week which includes the day on which the claim is actually or constructively filed;

except that those individuals who are filing claims for compensation for a period of unemployment which began prior to the effective date of this section shall continue to file claims for weeks of any 7 consecutive days for as long as that period of unemployment continues and they are otherwise eligible.

(b) Notwithstanding the provisions contained in this section, the local offices shall insure that claimants be scheduled to report for the purpose of processing the first compensable week of their application on the first local office work day possible within the applicable time limits of this section regardless of the last digit of their Social Security number. Thereafter, claimants may be rescheduled in accordance with the digit reporting schedule. ]

§ 65.33. [ Predating ] (Reserved).

[ (a) A claim for a week of total, partial or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented, through no fault of his own, from filing his claims during the week immediately subsequent to the week for which the claim is filed because of one or more of the following reasons:

(1) The inability of the local public employment office to handle currently all claims, or the postponement of claims-taking by the local office for administrative reasons shall permit not more than 6 weeks of predating.

(2) The inaccessibility of the office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant resides shall permit not more than 2 weeks of predating.

(3) The closing of an office due to a holiday or by official pronouncement shall permit not more than 2 weeks of predating.

(4) The refusal of an office to accept a claim as a result of an error or mistake shall permit not more than 52 weeks of predating.

(5) Sickness or death of another member of the claimant's immediate family or an act of God shall permit not more than 2 weeks of predating, provided the claimant was available for work during the week for which the claim is being filed.

(6) Illness or injury which incapacitates the claimant shall permit predating for the duration of the incapacitation plus 2 weeks but in no instance for more than 52 weeks, provided the claimant meets the eligibility requirements during the week for which the claim is being filed.

(7) If the claimant is employed not more than 4 weeks of predating shall be permitted. Where a claimant is filing claims for partial or part-total benefits not more than 4 weeks predating shall be permitted, commencing with the date on which the employer paid wages for the claim week in question.

(8) An appeal of a claimant from disqualification may permit not more than 4 weeks of predating while the appeal is pending.

(b) When a combination of more than one of the reasons outlined in subsection (a) has prevented the claimant from filing a claim and adherence to the most liberal limitation applicable to his case would be inequitable to the claimant, the predating provisions for applicable reasons shall be added and predating to the number of weeks which is equal to the sum of all applicable limitations shall be permitted.

(c) A claim for a week of total or part-total unemployment may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employes under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the claim is filed within 6 weeks after the determination has become final. ]

§ 65.35. [ Ineligibility ] (Reserved).

[ An employe shall be ineligible for compensation for any week with respect to which or a part of which he has received or is seeking compensation under the provisions of an unemployment compensation law of any other state or of the United States. If it is finally determined that he is not entitled to compensation for the week this disqualification does not apply. ]

#### APPLICATION FOR BENEFITS AND CLAIMS FOR COMPENSATION

§ 65.41. [ Procedure ] Filing methods.

(a) [ Applications for benefits shall be filed on Form UC-42 in local public employment offices, Monday through Friday, unless closed due to a holiday or by official pronouncement.

(b) Claimants reporting to file new applications for benefits shall be served and their claims processed on the day they report, or are scheduled to report, regardless of the last digit of their Social Security numbers, unless it is factually determined that rescheduling, within applicable time limits of this section, is deemed necessary by the local office manager for administrative reasons.

(c) An application for benefits may be deemed to be constructively filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed when, in the opinion of the Bureau, the claimant was prevented or persuaded, through no fault of his own, from filing the application because of one of the following reasons; and in each instance the term week or weeks means the calendar week or weeks, Sunday through Saturday.

(1) The inaccessibility of the local public employment office in isolated areas, or the infrequency of the periodic itinerant service established for the area in which the claimant is filing an application shall permit not more than 2 weeks of predating.

(2) The closing of an office due to a holiday or by official pronouncement may permit not more than 2 weeks of predating.

(3) The inability of an office to take the claimant's application on the day on which he reported for the purpose, or the postponement of application

taken by the office for administrative reasons may permit not more than 6 weeks of predating.

(4) Erroneous advice by his employer that he would be recalled to work within 1 week may permit not more than 2 weeks of predating.

(5) The refusal of the office to accept the application as a result of an error or mistake shall permit not more than 52 weeks of predating.

(d) Notwithstanding the criteria set forth in this section establishing maximum time limitations to and reasons for backdating an application for benefits, and for the purpose of insuring prompt adjudication of each application, the local employment office shall schedule or reschedule claimants, regardless of the last digit of their Social Security numbers, to report on the first local office work day possible within the applicable time limits of this section following the day on which their failure or inability to report was due to a reason specified in this section.

(e) An application for benefits may be deemed to be filed as of the first day of a calendar week previous to the week which includes the day on which it is actually filed, when a determination of the eligibility of similarly situated employes under section 402(d) of the law (43 P. S. § 802(d)) is pending, provided that the application is filed within 6 weeks after the determination has become final. ]

An application for benefits shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Completing the Department's Internet application and electronically transmitting it to the Department.

(3) Completing the Department's application form and sending the form to a UC Office by United States Mail or transmitting the form to a UC Office by facsimile machine.

(b) A claim for compensation shall be filed by one of the following methods:

(1) Telephoning a UC Office and providing all information required by the Department representative.

(2) Telephoning the Department's telephone claim system and providing all information required by the system.

(3) Completing the Department's Internet claim and electronically transmitting it to the Department.

(c) The filing date of an application for benefits or a claim for compensation is:

(1) For applications and claims filed by telephone, the date when the telephone call occurs if the claimant provides all information required by the Department representative or the Department's telephone claim system.

(2) For applications and claims filed by the Internet, the date indicated on the confirmation page displayed upon completion of the filing process.

(3) For applications and claims filed by United States Mail:

(i) The date of the official United States Postal Service postmark on the envelope, a United States Postal Service Form 3817 (Certificate of Mailing) or a United States Postal Service certified mail receipt.

(ii) If there is no official United States Postal Service postmark, United States Postal Service Form 3817 or United States Postal Service certified mail receipt, the date of a postage meter mark on the envelope.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application or claim.

(4) For applications filed by facsimile machine:

(i) The date of receipt imprinted by the UC Office fax machine.

(ii) If the UC Office fax machine does not imprint a legible date, the date of transmission imprinted by the sender's fax machine.

(iii) If the filing date cannot be determined by any of the methods in subparagraph (i) or (ii), the date recorded by the UC Office when it receives the application.

(d) Notwithstanding subsections (a)—(c), the Department may prescribe additional methods for claimants to file applications for benefits and claims for compensation and additional places where applications and claims may be filed. If the Department prescribes an additional method to file an application or claim, it will designate the date on which an application or claim is filed by that method.

(e) The Department may suspend use of one or more of the methods of filing applications for benefits and claims for compensation prescribed by subsections (a), (b) and (d) when it determines, in its discretion, that the method is obsolete, impractical, inefficient, or infrequently used.

§ 65.42. [ Date of filing ] Application for benefits—effective date.

[ (a) Notwithstanding the provisions of § 65.41(b) (relating to procedure) an application for benefits shall be deemed to be filed as of the first day of any week for which a claim is filed for compensation for partial unemployment within the time limits prescribed under § 65.33 (relating to predating), if the claimant has not previously established a benefit year applicable to that week.

(b) A claim for a week of total or part-total unemployment may not be filed with respect to an application for benefits which is prior to the first day of the week which includes the day on which the application for benefits is actually filed, except within the time limits prescribed in § 65.41(b) and (c). ]

An application for benefits is effective on the first day of the calendar week in which the application is filed or deemed filed in accordance with § 65.43a (relating to extended filing), whichever is earlier.

§ 65.43. [ Places of filing ] Claims for compensation—when to file.

[ Notwithstanding the provisions of this chapter that applications for benefits, claims and work registrations shall be filed at local public employment offices, the Bureau may accept applications for benefits, claims and work registration at any other places which may be advisable and expedient. ]

(a) Claims for compensation shall be filed bi-weekly in accordance with this subsection.

(1) The Department will establish a schedule of consecutive 2-week periods for each claimant, and may revise a claimant's schedule as necessary.

(2) At the end of each 2-week period for a claimant, the claimant may file claims for compensations for both of the weeks or a claim for compensation for one of the weeks. The claims or claim shall be filed no later than the last day of the week immediately following the 2-week period.

(b) Notwithstanding the provisions of subsection (a), the Department may allow a claimant to file a claim for compensation for the first week of a 2-week period before the 2-week period has ended. The claim shall be filed no later than the last day of the 2-week period.

§ 65.43a. Extended filing.

(a) For a week in which a claimant was employed less than his full time work, the claimant shall file a claim for compensation not later than the last day of the second week after the employer paid wages for that week. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(b) If a determination regarding the eligibility of claimants under section 402(d) of the law (43 P. S. § 802(d)) is issued, similarly situated claimants shall file claims for compensation for weeks during the work stoppage not later than the last day of the 6th week after the determination becomes final. If the earliest week for which a claim for compensation is filed in accordance with this subsection precedes the week in which the claimant's application for benefits is filed or deemed filed, as determined without regard to this subsection, the Department will deem the application to be filed during the earliest week for which a claim is filed.

(c) The Department will deem an application for benefits to be filed prior to the week in which it actually is filed if the claimant did not file the application earlier for a reason listed in subsection (e). The Department will deem the application to be filed during the week that precedes the week of actual filing by the number of weeks indicated in subsection (e).

(d) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 (relating to claims for compensation—when to file), for a reason listed in subsection (e),

the time for filing the claim is extended for the number of weeks indicated in subsection (e).

(e) For purposes of subsections (c) and (d) the number of weeks is determined as follows:

<i>Reason</i>	<i>Number of weeks</i>
The Department suspends accepting filings or is unable to handle all filings.	6
The claimant attempts to file by telephone, Internet or fax transmission in accordance with § 65.41 (relating to filing methods), the method used to attempt to file is unavailable or malfunctions, and the attempt to file occurs on the last day that the claimant could timely file by the method used.	2
A UC Office fails to accept a filing as a result of error or mistake by the Department.	52
Sickness or death of a member of the claimant's immediate family or an act of God.	2
Other, if the claimant makes all reasonable and good faith efforts to file timely but is unable to do so through no fault of the claimant.	2

(f) If a claimant fails to file a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43 due to the claimant's illness or injury, the time for filing the claim is extended until the last day of the second week after the incapacity ends.

(g) The Department will deem an application for benefits to be filed no more than 2 weeks prior to the week in which it actually is filed if the claimant did not file the application earlier because an employer erroneously advised the claimant that the claimant would be recalled to work within 1 week.

(h) If two or more of the reasons enumerated in subsections (e) and (f) have prevented a claimant from filing a claim for compensation within the time allowed in subsection (a) or (b) or § 65.43, the longest extension applies. If adherence to the longest extension would be inequitable to the claimant, the sum of the applicable extensions applies.

(i) Notwithstanding any provision of this section, the Department may not extend the time for filing a claim for compensation more than 52 weeks and may not deem an application for benefits to be filed in a week included in a previous benefit year.

§ 65.44. [ Information as to eligibility ] (Reserved).

[ A base-year employer or last employer, who, under the provisions of section 501(c) of the law (43 P. S. § 821(c)), desires to raise a question as to the eligibility of a claimant, may do so only in writing delivered to the local public employment office indicated on the form by which he has been notified that the claimant has filed an application for benefits. ]

§ 65.56. **Withdrawing an application for benefits.**

(a) A claimant may request to withdraw an application for benefits and cancel the corresponding benefit year only if the following requirements are met:

(1) If benefits are paid to the claimant pursuant to the application or benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the claimant's request to withdraw the application and cancel the corresponding benefit year is made no later than one of the following:

(i) Fifteen days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment.

(ii) Forty-five days after the Department issues the first payment of benefits or first uses benefits otherwise payable to recoup an overpayment, if the claimant is withdrawing the application and canceling the corresponding benefit year in order to file an application under the unemployment compensation law of another state or the Federal government.

(2) All benefits paid to the claimant pursuant to the application, if any, are repaid.

(3) If benefits otherwise payable to the claimant pursuant to the application are used to recoup an overpayment of benefits, the amount owed on the overpayment is restored to the amount owed prior to recoupment.

(4) The claimant has not been disqualified for benefits under sections 3, 402(a), 402(b), 402(e), 402(e.1) or 402(h) of the law or, if the claimant has been disqualified under any of those sections, the disqualification is terminated under section 401(f) of the law (43 P. S. § 801(f)) or § 65.62 (relating to duration of disqualification).

(b) A request to withdraw an application for benefits and cancel the corresponding benefit year is not effective until the Department approves it. The Department will deny a request to withdraw an application for benefits and cancel the corresponding benefit year if the requirements of this section are not met or good cause exists to disapprove the request.

(c) For purposes of this section, benefits paid to a claimant include amounts deducted from the claimant's benefits and paid on the claimant's behalf, including without limitation deductions for income tax withholding and support.

#### DECISIONS AND DISQUALIFICATIONS

§ 65.63. **Filing of appeals.**

Appeals filed under the provisions of section 501(e) of the law (43 P. S. § 821(e)) and further appeals filed under the provisions of section 502 of the law (43 P. S. § 822) shall be filed [ through the local public employment office at which the claimant has filed his application or claim with respect to which the appeal is taken. Appeals and further appeals shall be in writing and shall state the reasons for the appeal ] in accordance with Chapter 101 (relating to general requirements).

**Subchapter D. PARTIAL UNEMPLOYMENT AND DECEASED OR INCOMPETENT CLAIMANTS**

**§ 65.73. Full-time work.**

(a) A claimant's full-time work for purposes of section 4(u) of the law (43 P.S. § 753(u)) shall be determined in accordance with the following:

(1) Except as provided in paragraphs (4) and (5), a claimant's full-time work is determined by reference to the claimant's base year, as follows:

(i) The total number of hours the claimant worked in the base year for all employers is divided by the number of weeks in the base year in which the claimant worked to determine the claimant's full-time work.

(ii) If information for only a portion of the base year is available, the formula in subparagraph (i) is applied to the portion of the base year for which information is available to determine the claimant's full-time work.

(iii) If the claimant's full-time work cannot be determined in accordance with subparagraph (i) or (ii), the Department may determine the claimant's full-time work by another method that calculates the average number of hours per week that the claimant worked during weeks in the claimant's base year in which the claimant worked.

(2) For purposes of paragraph (1), the number of hours that a claimant worked during a week in the base year for an employer in excess of the customary number of hours the claimant worked per week for that employer in the base year is excluded from the determination of the claimant's full-time work.

(3) For purposes of paragraph (1), if a claimant's normal work schedule in the base year consisted of multiple week cycles, and the cycle normally included one or more weeks during which the claimant did not work, all weeks in the cycle are deemed weeks in which the claimant worked.

(4) If a claimant voluntarily leaves employment to accept new employment that provides fewer hours of work, the number of hours the claimant customarily works at the new job constitutes the claimant's full-time work.

(5) If a claimant limits the number of hours per week the claimant will work, that number of hours constitutes the claimant's full-time work.

(b) For purposes of section 4(u) of the law, if a claimant's normal work schedule during the benefit year consists of multiple week cycles, and the claimant normally works a different number of hours, which may include zero, during the weeks in the cycle, for each week in the cycle the claimant is deemed to be working the number of hours determined by dividing the total number of hours worked during the cycle by the number of weeks in the cycle.

**Subchapter E. ELIGIBILITY IN CONJUNCTION WITH OTHER PAYMENTS**

**RETIREMENT PENSIONS AND ANNUITIES**

**§ 65.102. Application of the deduction.**

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(d) The Department will [ deduct all Social Security retirement pensions which are based upon the

claimant's previous work or self-employment, or both, including primary Social Security, old age and retirement disability benefits ] not deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397jj) or the Railroad Retirement Act of 1974 (45 U.S.C.A. §§ 231—231u), if the claimant contributed to the pension in any amount, and will not deduct Social Security payments that are not based on the claimant's previous work, such as Supplemental Security Income.

[ (1) The Department will not deduct Social Security payments which are not based on the claimant's previous work, such as Supplemental Security Income.

(2) The Department will deduct pensions paid under the Social Security Act (42 U.S.C.A. §§ 301—1397e) and the Railroad Retirement Act (45 U.S.C.A. §§ 231—231s) when the claimant's base year employer contributed to the pension plan. The pensions are deductible irrespective of whether the claimant's base year employment affected the eligibility for, or increased the amount of, the pension. ]

\* \* \* \* \*

(j) The Department will not deduct pension payments if the services performed by the individual during the base period or the remuneration received for those services from a base period or chargeable employer did not affect the individual's eligibility for, or increase the amount of, the pension[ , except for pensions paid under the Social Security Act and the Railroad Retirement Act ].

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**Subchapter F. COMPUTATIONS**

**DETERMINATION OF WEEKLY BENEFIT RATE**

**§ 65.117. [ Appeals ] (Reserved).**

[ (a) For the purpose of appeals filed by employers the date of decision with respect to determination of the weekly benefit rate of a claimant shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was mailed to the employer.

(b) For the purpose of appeals filed by claimants the date of the decision shall be the date on which the Notice of Financial Determination (Form UC-44F) indicating the weekly benefit rate was personally delivered to him.

(c) In order to avoid multiplicity of appeals, whenever, pending an appeal, an issue arises as to the weekly benefit rate the issue shall be determined by the Department and submitted to the appropriate appellate tribunal for inclusion in the pending appellate proceedings and decision thereon. ]

**Subchapter G. INTERSTATE CLAIMS**

**COMPENSATION TO INTERSTATE CLAIMANTS**

**§ 65.139. Definitions.**

In addition to the words and terms defined in § 61.1 (relating to definitions), the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

**Agent state**—A state in which an individual files a claim for benefits from another state.

**Benefits**—Compensation payable to an individual with respect to the individual's unemployment, under the unemployment insurance law of a state.

**Interstate Benefit Payment Plan**—The plan approved by the National Association of State Workforce Agencies, under which benefits are payable to unemployed individuals absent from the state in which benefit credits have been accumulated.

**Interstate claimant**—

(i) An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state.

(ii) The term does not include an individual who customarily commutes from a residence in an agent state to work in a liable state unless the Department finds that this exclusion would create undue hardship on the claimants in specified areas.

**Liable state**—A state against which an individual files, through another state, a claim for benefits.

**State**—The term includes Puerto Rico, the Virgin Islands and the District of Columbia.

**Week of unemployment**—Any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

**Subchapter H. ALLOWANCES FOR DEPENDENTS**

**§ 65.156. Reserve accounts of employers.**

(a) [ Allowances for dependents are not chargeable to the reserve accounts of employers.

(b) ] If a reserve account for an employer subject to this act is not authorized or not required to be maintained under criteria established in the law, allowances for dependents shall be subject to a reimbursement as follows:

\* \* \* \* \*

(2) The Unemployment Compensation Fund [ will ] shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable nonprofit organization as defined under section 1101 of the law (43 P. S. § 901). Charges will be made to the employer's account in accordance with section 1108 of the law (43 P. S. § 908). Reimbursement will be made in accordance with section 1106 of the law (43 P. S. § 906).

(3) The Unemployment Compensation Fund shall be reimbursed for dependent's allowance paid as a result of service in the employ of a reimbursable instrumentality or political subdivision of this Commonwealth as defined under section 1201 of the law (43 P. S. § 911). Charges will be made to the employer's account in accordance with section 1203 of the law (43 P. S. § 913). Reimbursement shall be made in accordance with section 1202.4 of the law (43 P. S. § 912.4).

(4) The Unemployment Compensation Fund [ will ] shall be reimbursed based upon the percent of charge for dependent's allowance paid on a combined wage claim. The transferring state's reimbursement shall be in accordance with arrangements entered into under section 312 of the law (43 P. S. § 792).

[Pa.B. Doc. No. 10-937. Filed for public inspection May 21, 2010, 9:00 a.m.]

# STATE BOARD OF MEDICINE

[ 49 PA. CODE CHS. 16 AND 18 ]

## Perfusionist

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and to add Subchapter J (relating to perfusionists) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The proposed rulemaking is authorized under sections 8 and 13.3 of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.13c).

*Background and Need for the Proposed Rulemaking*

The act of June 11, 2008 (P. L. 154, No. 19) (Act 19) amended the act to provide for licensure of perfusionists. Section 2 of the act (63 P. S. § 422.2) now defines the term "perfusion" as "the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular system or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician. . . ." This proposed rulemaking is intended to implement licensure of perfusionists under the act as amended by Act 19. Practice of perfusion in this Commonwealth without a license from the Board will be prohibited after August 10, 2010. This proposed rulemaking is also designed to provide to prospective licensees adequate notice of the requirements for licensure as a perfusionist.

*Description of the Proposed Rulemaking*

The Board's current regulation in § 16.11(b) identifies licenses that the Board issues. The proposed rulemaking adds licensure as a perfusionist. Similarly, § 16.11(c) identifies registrations that the Board issues and the proposed rulemaking adds biennial registration of perfusionist licenses. The proposed rulemaking also adds § 16.13(k) setting forth the fees associated with perfusionist licensure to be charged by the Board, as authorized under section 13.3(l) of the act. To recover the costs of providing those services, the fee for applications for perfusionist license, reactivation of perfusionist license and temporary graduate perfusionist license would each be \$50 and the fee for application for temporary provisional perfusionist license would be \$40. Because the Board believes that the cost to provide the service would be minimal and does not want to delay application, the Board has not set any fee for notification of emergency

practice as a perfusionist. To provide for an appropriate share of the general costs of operating the Board, the biennial renewal fee for a perfusionist would be \$50.

The proposed rulemaking amends Chapter 18 by adding Subchapter J. Proposed § 18.531 (relating to purpose) identifies the purpose of the subchapter as providing for licensure of perfusionists. Proposed § 18.532 (relating to definitions) provides necessary definitions. These include the statutory definitions of “extracorporeal circulation,” “perfusion,” “perfusionist” and “ventricular assist device” as are used in the subchapter. Additionally, the Board defines “ABCP” as the American Board of Cardiovascular Perfusion (ABCP), the National body that both accredits perfusion education programs and certifies perfusionists. The Board proposes to define “accredited perfusion program approved by the Board” as a perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board. The Board would further define “Nationally-recognized accrediting agency approved by the Board” as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs. The Board also defines “Nationally-recognized certifying agency approved by the Board” as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists. Finally, the Board proposes to define an “hour of continuing education” to consist of at least 50 minutes of instruction (including question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live. This time is consistent with the standards for continuing education that is required by the ABCP for recertification.

Under proposed § 18.533(a) (relating to application for perfusionist license), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(f) of the act sets five criteria for licensure as a perfusionist: The applicant must be at least 18 years of age, be of good moral character, have graduated from an accredited perfusion program approved by the Board and be certified by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board. Accordingly, proposed § 18.533(b)(1) provides that the Board will license as a perfusionist an applicant who demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act for licensure as a perfusionist. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.533(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.533(c) would provide that the Board may, in its discretion, deny an application for perfusionist licensure upon those grounds for disciplinary action in § 18.539 (relating to disciplinary action for licensed perfusionists).

The Board has not proposed a rulemaking to incorporate the grandfather provision of section 13.3(g) of the act, which, during the first 2 years after the effective date of Act 20, permits a person who was not a graduate of an accredited program prior to 1981, but who met the then-current eligibility requirements for certification as a certified clinical perfusionist and subsequently was certified, to become licensed if the person otherwise complies with the requirements for licensure. Not only is this

statutory provision self-executing, but the opportunity to take advantage of it will expire August 10, 2010, not long after final promulgation of the rulemaking.

Proposed § 18.534 (relating to application for temporary graduate perfusionist license) addresses the application for temporary graduate perfusionist license, as provided in section 13.3(h) of the act. Under proposed § 18.534(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(h)(1)(i) of the act provides that an individual who has graduated from an educational program in compliance with the education requirements and is eligible for and has applied for the examination may receive a temporary graduate license. These criteria, along with good moral character and being at least 18 years of age, would be in proposed § 18.534(b)(1) as the basic requirements for a temporary graduate license. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.534(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.534(c) provides that the Board may, in its discretion, deny an application for temporary graduate perfusionist license upon those grounds for disciplinary action in § 18.539. Because section 13.3(h)(1)(iii) of the act provides that a temporary graduate license is to be issued for 2 years but not be renewable, proposed § 18.534(d) provides that a temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed. Because section 13.3(h)(1)(iv) of the act provides that a temporary graduate license is to expire upon notice of failing the required examination, proposed § 18.534(e) provides that a temporary graduate perfusionist license will expire upon notice to the Board that the holder failed the Nationally-recognized certifying agency’s certification examination.

Proposed § 18.535 (relating to application for temporary provisional perfusionist license) would address the application for temporary provisional perfusionist license, as provided under section 13.3(i) of the act. Under proposed § 18.535(a), an applicant must submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(i)(1) of the act provides that an individual who holds a current license in good standing under the laws of another state, which includes certification by a certifying agency approved by a Nationally-recognized accrediting agency, may receive a temporary provisional license if the applicant meets the requirements of section 13.3(f) of the act that the applicant is at least 18 years of age and of good moral character and has graduated from an accredited perfusion program approved by the Board. These criteria are in proposed § 18.535(b)(1) as the basic requirements for a temporary provisional license. Because section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 18.535(b)(2) would require that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action, proposed § 18.535(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary provisional license upon those grounds for disciplinary action in § 18.539. Because section 13.3(i)(2) of the act provides that a temporary provisional license is to be issued for 1 year but not be renewable, proposed § 18.535(d) provides

that a temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed thereafter.

Section 13.3(j) of the act provides an exemption to the general prohibition against unlicensed practice for one-time temporary emergency services by an out-of-State licensed perfusionist when the licensed perfusionist that would normally have provided the services is unavailable or incapable of providing services and no other licensed perfusionist is available or capable of providing services. Section 13.3(j) of the act requires the out-of-State perfusionist to provide to the Board electronic notice of the emergency and acknowledgment that the out-of-State perfusionist is subject to jurisdiction of the Board as if licensed by the Board and requires the healthcare facility to provide to the Board electronic notice that services were provided and the grounds for the exemption. Proposed § 18.536(a) (relating to registration of temporary emergency perfusionist service) requires the out-of-State perfusionist to register with the Board in accordance with section 13.3(j) of the act prior to providing emergency services. Under proposed § 18.536(b), the out-of-State perfusionist or other person acting on behalf of the out-of-State perfusionist (such as healthcare facility staff) shall submit a completed registration on forms provided by the Board. It is anticipated that this registration will be done almost exclusively from the Board's web site. Because "one-time emergency perfusionist service" is not defined in section 13.3(j) of the act, proposed § 18.536(c) provides that although the services are not limited to a single procedure or patient or group of related patients, the out-of-State perfusionist may not provide emergency services for a period longer than 72 hours. However, section 13.3(j)(3) of the act prohibits the out-of-State perfusionist from providing services other than emergency services. Consistent with section 13.3(j)(2) of the act, proposed § 18.536(d) provides that the out-of-State perfusionist may not provide further perfusionist service in this Commonwealth without being licensed as a perfusionist or holding a temporary graduate license or temporary provisional license.

Because licenses issued by the Board must be registered biennially as a condition of continued practice in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status), proposed § 18.537 (relating to biennial registration of perfusionist license) addresses biennial registration of perfusionist licenses. Proposed § 18.537(a) provides that licensed perfusionists shall register biennially by December 31 of each even-numbered year. Under proposed § 18.537(b), a licensed perfusionist is required to complete and submit an application for biennial registration, including the required fee, disclose a license to practice as a perfusionist in another jurisdiction, disclose a disciplinary action pending before or taken by the appropriate healthcare licensing authority in another state, disclose pending criminal charges and convictions, verify that the licensee has complied with the continuing education requirements, and verify that, if practicing as a perfusionist in this Commonwealth, the licensed perfusionist maintains professional liability insurance coverage as required under section 13.3(k) of the act. Because the ABCP requires a perfusionist to complete a minimum number of procedures each year to maintain certification, the Board has chosen not to require continued National certification as a condition of renewal.

Proposed § 18.538 (relating to inactive status of perfusionist license; reactivation of inactive license) addresses inactive status of perfusionist licenses. Proposed

§ 18.538(a) provides that the license may become inactive either by the licensee's request or by expiration at the end of the biennial registration period. To minimize the opportunity or consequence of a license being incorrectly placed on inactive status at what appears to be the request of the licensee, proposed § 18.538(a)(1) provides that the Board will forward written confirmation of inactive status to the licensee. Proposed § 18.538(b) provides that a perfusionist whose license is inactive may not practice as a perfusionist in this Commonwealth until the license has been reactivated. Proposed § 18.538(c) provides the general requirement for reactivation of an inactive perfusionist license that the licensee shall apply on forms supplied by the Board, answer questions fully, provide documentation of completion of the required amount of continuing education for the preceding biennium, as required under section 13.3(n)(5) of the act, pay the current biennial registration fee and the reactivation fee specified in § 16.13(k) and verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive. If the licensee cannot verify that the licensee did not practice during the period of lapse, the license may be reactivated under proposed § 18.538(d). Under that proposed section, in addition to the requirements of subsection (c), the licensee shall pay the biennial registration fee for past registration periods and a late fee of \$5 per month. This late fee is the standard late fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). However, as provided in proposed § 18.538(d), payment of late fees will not preclude the Board from taking disciplinary action for practicing while the license was inactive.

Proposed § 18.539 next addresses disciplinary action. Although section 13.3 of the act does not specifically authorize the Board to take disciplinary action against a licensed perfusionist, section 13.3(m) of the act provides that disciplinary action taken by the Board against a perfusionist shall be enforceable by the State Board of Osteopathic Medicine if the perfusionist seeks licensure by that board. Section 41 of the act (63 P. S. § 422.41) authorizes the Board "to impose disciplinary or corrective measures on a board-regulated practitioner" for a variety of grounds. Accordingly, proposed § 18.539(a) provides that a licensed perfusionist, including one holding a temporary graduate license or temporary provisional license, is subject to disciplinary action under the grounds of section 41 of the act and that the Board may impose a corrective action in section 42 of the act (63 P. S. § 422.42). Because section 41(8) of the act authorizes the Board to take disciplinary action for immoral or unprofessional conduct, proposed § 18.539(b) defines unprofessional conduct and proposed § 18.539(c) defines immoral conduct. Modeled upon §§ 16.61 and 18.181 (relating to unprofessional and immoral conduct; and disciplinary and corrective measures), unprofessional conduct includes the following: performing acts in a healthcare profession in a fraudulent or incompetent or negligent manner; performing acts in the practice of a healthcare profession in violation of statute or regulation in this Commonwealth or another state; violating a provision of the act or regulation of the Board setting a standard of professional conduct; engaging in healthcare practice beyond the licensee's authority to practice; representing oneself to be a licensed physician or other healthcare provider; practicing while the licensee's ability to do so is impaired by alcohol or drugs or disability; and revealing personally identifiable facts obtained as the result of the practitioner-patient relationship. Immoral conduct includes the following: misrepresenting or concealing a



material fact in obtaining a license or reactivating or renewing the biennial registration of the license; being convicted of a crime involving moral turpitude; or committing an act involving moral turpitude or dishonesty or corruption. Additionally, unprofessional conduct includes engaging in conduct prohibited under § 16.110 (relating to sexual misconduct). Section 13.3(e)(2) of the act exempts from the general prohibition against practicing perfusion without a license a perfusion student who, among other requirements, is performing under the direct supervision of a perfusionist who is assigned to supervise the student. Section 13.3(e)(3) of the act exempts a perfusion graduate who, among other requirements, is performing under the supervision and responsibility of a perfusionist. Accordingly, proposed § 18.539(b)(9) includes as unprofessional conduct failing to provide supervision as required under section 13.3(e)(2) of the act of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to practice perfusion.

Section 13.3(n) of the act provides for required continuing education and proposed § 18.540 (relating to continuing education for licensed perfusionists) addresses that topic. Proposed § 18.540(a) sets forth the general credit hour requirements. As required under section 13.3(n)(2) of the act, proposed § 18.540(a)(1) requires each licensed perfusionist to complete at least 30 hours of continuing education—including at least 10 hours in category I continuing education—applicable to the practice of perfusion during each biennial registration period. Consistent with section 13.3(n)(3) of the act, a licensee would not be required to complete continuing education during the biennial registration period in which the licensee was first licensed. Although a licensee would not be permitted to carry over continuing education credit into a subsequent renewal period, proposed § 18.540(a)(2) recognizes that a licensee may need to make up deficient continuing education credit to reactivate an inactive license or if otherwise ordered by the Board. However, a particular hour of continuing education taken in a given biennial registration period may not be used to satisfy the requirement both for that period and to make up a deficiency for a prior period. Proposed § 18.540(a)(3) identifies that a licensee who failed to complete the required continuing education is subject to disciplinary action. Section 13.3(n)(4) of the act permits a licensee to submit a written request for waiver of the continuing education requirement due to serious illness, military service or other demonstrated hardship. Proposed § 18.540(a)(4) requires that the request be submitted at least 90 days before the end of the biennial registration period so that the Board could address the request and, if it is denied, give the licensee adequate opportunity to complete the required continuing education before the end of the period. Additionally, this proposed section explicitly notes that waiver may include extending the deadline, rather than simply relieving the licensee of the obligation to take continuing education. Proposed § 18.540(b) sets forth the standards for documentation of continuing education. Under proposed § 18.540(b)(1), a licensee shall receive a record of completion from the continuing education provider, setting forth the participant's name, the provider's name, the date of the course, the name of the course and the number of hours of continuing education. Proposed § 18.540(b)(2) requires the licensee to retain the record for at least 5 years after completion of the continuing education course or biennial registration period for which the continuing education was required, whichever is later. Because records of continuing education will not be sent

to the Board and the Board will not track licensees' completion of required continuing education, the Board will conduct postrenewal audits of licensees to verify compliance. Proposed § 18.540(c) sets forth the types of activities for which continuing education credit may be earned. To better facilitate compliance with the requirements, these standards are modeled upon those of the ABCP. Under proposed § 18.540(c)(1), category I continuing education (which must provide at least 10 of the required 30 hours) could be earned by attendance at perfusion meetings, publication of a perfusion-related book, chapter or paper in a professional journal, presentation at a perfusion meeting, participation in a site visitor workshop or as a site visitor for perfusion program accreditation or completion of an ABCP-approved self-directed continuing education course for which the licensee scores at least 80% on an examination. Under proposed § 18.540(c)(2), other continuing education to reach the required total could be earned by reading journals or other educational materials, participating in electronic forums or journal clubs, participation in degree-oriented professional-related course work, presentation of perfusion topics at a nonperfusion meeting or working as a clinical or didactic instructor in an accredited school of perfusion. However, as noted in section 13.3(n)(6) of the act, proposed § 18.540(c)(3) prohibits continuing education credit for a course in office management.

Section 13.3(k) of the act provides for required professional liability insurance for perfusionists and proposed § 18.541(a) (relating to professional liability insurance coverage for licensed perfusionist) requires a licensed perfusionist to maintain a level of professional liability insurance as required under section 13.3(k) of the act. Conversely, proposed § 18.541(d) prohibits a perfusionist who does not have the required amount of liability insurance from practicing as a perfusionist in this Commonwealth. Section 13.3(k)(2) of the act requires an applicant to provide proof that the applicant has obtained the liability insurance. Proposed § 18.541(b) sets forth the general requirement that proof of liability insurance consists of a certificate of insurance or a copy of the declarations page from the insurance policy setting forth the effective and expiration dates and the dollar amounts of coverage. However, section 13.3(k)(2) of the act permits an applicant to file with the application a letter from an insurance carrier stating that the applicant will be covered in the required amounts effective upon issuance of the license, but the applicant must then submit the certificate of insurance or copy of the declaration page within 30 days after issuance of the license. To effectuate this provision, proposed § 18.541(c) provides that a license issued in reliance upon the insurance carrier's letter will become inactive as a matter of law 30 days after the license is issued if the licensee has not submitted proof of insurance. The license will be inactivated and not suspended, because it is not a disciplinary action, as insurance is required only if practicing as a perfusionist in this Commonwealth.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. Perfusionists who wish to become licensed to practice in this Commonwealth will bear the fiscal impact of the proposed rulemaking in the form of required fees and costs associated with obtaining the required continuing education. The Board will be required to develop forms required to implement the proposed rulemaking. The

proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the 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 May 11, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, st-medicine@state.pa.us within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference No. 16A-4931 (perfusionist) when submitting comments.

CAROL E. ROSE, M.D.,
Chairperson

Fiscal Note: 16A-4931. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

\* \* \* \* \*

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

\* \* \* \* \*

(6) Perfusionist license.

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

\* \* \* \* \*

(10) Biennial registration of a perfusionist license.

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

\* \* \* \* \*

(k) Perfusionist license.

Application for perfusionist license ..... \$50
Biennial renewal of perfusionist license ..... \$50
Application for reactivation of perfusionist license ..... \$50
Application for temporary graduate perfusionist license ..... \$50
Application for temporary provisional perfusionist license ..... \$40

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

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter J. PERFUSIONISTS

Sec. 18.531. Purpose.
18.532. Definitions.
18.533. Application for perfusionist license.
18.534. Application for temporary graduate perfusionist license.
18.535. Application for temporary provisional perfusionist license.
18.536. Registration of temporary emergency perfusionist service.
18.537. Biennial registration of perfusionist license.
18.538. Inactive status of perfusionist license; reactivation of inactive license.
18.539. Disciplinary action for licensed perfusionists.
18.540. Continuing education for licensed perfusionists.
18.541. Professional liability insurance coverage for licensed perfusionist.

§ 18.531. Purpose.

This subchapter implements section 13.3 of the act (63 P. S. § 422.13c) pertaining to perfusionists, which was added by the act of June 11, 2008 (P. L. 154, No. 19), effective August 10, 2008.

§ 18.532. Definitions.

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

ABCP—American Board of Cardiovascular Perfusion.

Board—The State Board of Medicine.

Accredited perfusion program approved by the Board—A perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board.

Extracorporeal circulation—As defined in section 2 of the act (63 P. S. § 422.2), the diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of the patient's heart, lungs, kidneys, liver or other organs.

Hour of continuing education—At least 50 minutes of instruction (including relevant question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live.

Nationally-recognized accrediting agency approved by the Board—ABCP, or any other organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs.

Nationally-recognized certifying agency approved by the Board—ABCP, or any other organization for which the

Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists.

*Perfusion*—As defined in section 2 of the act, the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular system or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician licensed under the act or the Osteopathic Medical Practice Act (63 P. S. §§ 271.1—271.18).

*Perfusionist*—As defined in section 2 of the act, an individual who is licensed to practice perfusion by the Board or the State Board of Osteopathic Medicine.

*Ventricular assist device*—

(i) As defined in section 2 of the act, a mechanical device used to partially or completely replace the function of a failing heart through connections to the heart and great vessels that may be located intracorporeally or extracorporeally.

(ii) The term includes a device that is placed intravascularly or extravascularly and provides support through direct means or via counterpulsation.

**§ 18.533. Application for perfusionist license.**

(a) An applicant for a license to practice as a perfusionist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for license to practice as a perfusionist and pay the fee set forth in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for a perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will license to practice as a perfusionist an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act (63 P. S. § 422.13c(f)) for licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for licensure as a perfusionist upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

**§ 18.534. Application for temporary graduate perfusionist license.**

(a) An applicant for a temporary graduate perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee in § 16.13(k) (relating to

licensure, certification, examination and registration fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary graduate perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(h)(1)(i) of the act (63 P. S. § 422.13c(h)(1)(i)) for temporary graduate licensure to practice as a perfusionist, including all of the following:

(i) The applicant is qualified and has applied to sit for the examination of a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary graduate perfusionist license upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

(d) A temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed.

(e) A temporary graduate perfusionist license will expire upon notice to the Board that the holder has failed the Nationally-recognized certifying agency's certification examination.

**§ 18.535. Application for temporary provisional perfusionist license.**

(a) An applicant for a temporary provisional perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary provisional perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(i) of the act (63 P. S. § 422.13c(i)) for temporary provisional licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current license in good standing under the laws of another state, the District of Columbia or a territory of the United States that includes certification by a certifying agency approved by a Nationally-recognized accrediting agency.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 18.541 (relating to professional liability insurance coverage for licensed

perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act.

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for certification as a perfusionist upon the grounds for disciplinary action set forth in § 18.539 (relating to disciplinary action for licensed perfusionists).

(d) A temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed.

**§ 18.536. Registration of temporary emergency perfusionist service.**

(a) An out-of-State perfusionist shall register with the Board in accordance with this section prior to providing temporary emergency perfusionist service in this Commonwealth in accordance with section 13.3(j) of the act (63 P. S. § 422.13c(j)).

(b) The out-of-State perfusionist or another person acting on behalf of the out-of-State perfusionist shall submit, on forms supplied by the Board, a completed registration form, fully answering all questions.

(c) Although not limited to a single procedure or single patient or group of related patients, an out-of-State perfusionist may provide temporary emergency perfusionist services in this Commonwealth for not longer than a period of 72 hours.

(d) An out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth more than once without being licensed in accordance with § 18.533, § 18.534 or § 18.535 (relating to application for perfusionist license; application for temporary graduate perfusionist license; and application for temporary provisional perfusionist license).

**§ 18.537. Biennial registration of perfusionist license.**

(a) A licensed perfusionist shall register biennially by December 31 of each even-numbered year, in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status).

(b) A licensee applying for biennial registration of a perfusionist license shall submit a completed application, including payment of the biennial registration fee set forth in § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for biennial registration of perfusionist license. On the biennial registration application, the licensed perfusionist shall:

(1) Disclose any license to practice as a perfusionist in another state, territory, possession, or country.

(2) Disclose any disciplinary action pending before or taken by the appropriate healthcare licensing authority in any other jurisdiction since the most recent application for biennial registration, whether or not licensed to practice in that other jurisdiction.

(3) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of *nolo contendere*, probation without verdict, disposition in lieu of trial or accelerated rehabilitative disposition in any criminal matter since the most recent application for biennial registration.

(4) Verify that the licensed perfusionist has complied with the continuing education requirements mandated under section 13.3(n) of the act (63 P. S. § 422.13c(n))

during the biennial period immediately preceding the period for which registration is sought in accordance with § 18.540 (relating to continuing education for licensed perfusionists).

(5) Verify that, if practicing as a perfusionist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 13.3(k) of the act.

**§ 18.538. Inactive status of perfusionist license; re-activation of inactive license.**

(a) A perfusionist license will become inactive upon either of the following:

(1) The licensee requests in writing the Board to place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to register the license by the expiration of the biennial registration period, that is, by December 31 of each even-numbered year.

(b) A perfusionist whose license has expired or been placed on inactive status may not practice as a perfusionist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 18.540(b) (relating to continuing education for licensed perfusionists) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under section 13.3(n)(4) of the act (63 P. S. § 422.13c(n)(4)), the Board will not reactivate any license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current biennial registration fee and the reactivation application fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive.

(d) A licensee who has practiced with an inactive license, and who cannot make the verification required by subsection (c)(3) shall also pay the fees required by this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a perfusionist without a currently registered license.

(1) A licensee whose license was active at the end of the immediately preceding biennial registration period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of a month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the biennial registration fee for each biennial registration period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of a month from the first date the licensee practiced as a perfusionist in this Commonwealth after the license became inactive until the date the reactivation application is filed.

**§ 18.539. Disciplinary action for licensed perfusionists.**

(a) A licensed perfusionist, including a perfusionist holding a temporary graduate license or a temporary

provisional license, is subject to disciplinary action under the grounds of section 41 of the act (63 P. S. § 422.41). Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42).

(b) Unprofessional conduct includes:

(1) Engaging in any conduct prohibited under § 16.110 (relating to sexual misconduct).

(2) Performing acts in a healthcare profession in a fraudulent, incompetent or negligent manner.

(3) Performing acts in the practice of a healthcare profession in violation of a statute or regulation of the Commonwealth, another state of the United States, or another country.

(4) Violating a provision of the act or this chapter setting a standard of professional conduct.

(5) Engaging in healthcare practice beyond the licensee's authority to practice.

(6) Representing oneself to be a physician, physician assistant, certified registered nurse practitioner or other healthcare practitioner whose profession the perfusionist is not licensed to practice.

(7) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(8) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(9) Failing to provide supervision as required under section 13.3(e)(2) of the act (63 P. S. § 422.13c(e)(2)) of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to perform perfusion in this Commonwealth.

(c) Immoral conduct includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, or another state, territory or county.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

**§ 18.540. Continuing education for licensed perfusionists.**

(a) *Credit hour requirements.* A licensed perfusionist shall satisfy the following continuing education credit hour requirements.

(1) During each biennial registration period, a licensee shall complete 30 hours of continuing education applicable to the practice of perfusion, including at least 10 hours of category I continuing education. A licensee is not required to complete continuing education during the biennium in which the licensee was first licensed.

(2) Except as permitted in § 18.538(c)(1) (relating to inactive status of perfusionist license; reactivation of inactive license), paragraph (4), or as directed by the

Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it was completed. No hour of continuing education may be used to satisfy the requirement of paragraph (1) for more than one biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable biennial registration period as required under section 13.3(n) of the act (63 P. S. § 422.13c(n)) and this section will subject the licensee to discipline under section 41(6) of the act (63 P. S. § 422.41(6)).

(4) A licensee seeking waiver of the continuing education requirements under section 13.3(n)(4) of the act shall submit the request with all supporting documentation to the Board at least 90 days prior to the end of the biennial registration period for which waiver is sought. Waiver may include extending the deadline by which the required continuing education must be completed.

(b) *Documentation of continuing education.* Continuing education shall be documented in the following manner.

(1) Proof of completion of continuing education must consist of a certified record issued by the provider, including:

(i) The name of the participant.

(ii) The name of the provider.

(iii) The date or dates of the course.

(iv) The name of the course.

(v) The number of hours of continuing education credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the biennial registration period for which the continuing education was required, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements.

(c) *Continuing education activities.* Credit for continuing education may be earned in the following activities.

(1) Category I continuing education may be earned by:

(i) Attendance at an international, National, regional or state perfusion meeting.

(ii) Publication of a perfusion-related book, chapter or paper in a professional journal.

(iii) Presentation at an international, National, regional, state or local perfusion meeting.

(iv) Participation in a site visitors workshop or as a site visitor for perfusion program accreditation.

(v) Completion of ABCP-approved self-directed continuing education for which the licensee scored at least 80% on an examination.

(2) In addition to category I, continuing education may also be earning by:

(i) Reading or viewing medical journals, audio-visual, or other educational materials.

(ii) Participation in electronic forums.

(iii) Participation in a journal club.

(iv) Participation in degree-oriented, professionally-related course work.

(v) Presentation of perfusion topic at a nonperfusion meeting.

(vi) Working as a clinical or didactic instructor in an accredited school of perfusion.

(3) Continuing education credit may not be earned in any course in office management.

**§ 18.541. Professional liability insurance coverage for licensed perfusionist.**

(a) A licensed perfusionist shall maintain a level of professional liability insurance coverage as required under section 13.3(k) of the act (63 P. S. § 422.13c(k)).

(b) Proof of professional liability insurance coverage shall consist of a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date, and dollar amounts of coverage.

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.3(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance on the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.3(k) of the act may not practice as a perfusionist in this Commonwealth.

[Pa.B. Doc. No. 10-938. Filed for public inspection May 21, 2010, 9:00 a.m.]

## STATE BOARD OF OSTEOPATHIC MEDICINE

[ 49 PA. CODE CH. 25 ]

### Perfusionist

The State Board of Osteopathic Medicine (Board) proposes to amend § 25.231 (relating to schedule of fees) and to add Subchapter N (relating to perfusionists) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

The proposed rulemaking is authorized under sections 13.3 and 16 of the Osteopathic Medical Practice Act (act) (63 P. S. §§ 271.13c and 271.16).

#### *Background and Need for the Proposed Rulemaking*

The act of June 11, 2008 (P. L. 161, No. 20) (Act 20) amended the act to provide for licensure of perfusionists. Section 2 of the act (63 P. S. § 271.2) now defines the term "perfusion" as "the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs, or a combination of those functions . . . by monitoring and analyzing the parameters of the systems under the supervision of a physician. . . ." This proposed rulemaking amends the Board's regulations to implement licensure of perfusionists under the act as amended by Act 20. Practice of

perfusion in this Commonwealth without a license from the Board will be prohibited after August 10, 2010. This proposed rulemaking is also designed to provide to prospective licensees adequate notice of the requirements for licensure as a perfusionist.

#### *Description of the Proposed Rulemaking*

The proposed rulemaking adds licensure as a perfusionist. The proposed rulemaking amends § 25.231 to set the fees associated with perfusionist licensure to be charged by the Board, as authorized by section 13.3(1) of the act. To recover the costs of providing those services, the fee for applications for perfusionist license, reactivation of perfusionist license and temporary graduate perfusionist license would each be \$50 and the fee for application for temporary provisional perfusionist license would be \$40. Because the Board believes that the cost to provide the service would be minimal and does not want to delay application, the Board has not set fees for notification of emergency practice as a perfusionist. To provide for an appropriate share of the general costs of operating the Board, the biennial renewal fee for a perfusionist would be \$50.

The proposed rulemaking adds Subchapter N. Proposed § 25.811 (relating to purpose) identifies the purpose of the subchapter as providing for licensure of perfusionists. Proposed § 25.812 (relating to definitions) provides necessary definitions. These include the statutory definitions of "extracorporeal circulation," "perfusion," "perfusionist" and "ventricular assist device" as are used in the subchapter. Additionally, the Board defines "ABCP" as the American Board of Cardiovascular Perfusion (ABCP), the National body that both accredits perfusion education programs and certifies perfusionists. The Board defines "accredited perfusion program approved by the Board" as a perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board. The Board further defines "Nationally-recognized accrediting agency approved by the Board" as the ABCP or another organization for which the Board publishes notice that the organization is approved by the Board as an accrediting agency for perfusionist programs. Finally, the Board defines an "hour of continuing education" as "at least 50 minutes of instruction (including question and answer sessions) in an approved course of continuing education or an equivalent time that an on-line or correspondence course would be presented live." This time is consistent with the standards for continuing education that is required by the ABCP for recertification.

Under § 25.813(a) (relating to application for perfusionist license), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(f) of the act sets five criteria for licensure as a perfusionist as follows: at least 18 years of age; good moral character; graduation from an accredited perfusion program approved by the Board; and certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board. Accordingly, proposed § 25.813(b)(1) provides that the Board will license as a perfusionist an applicant who demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act for licensure as a perfusionist. Because, as discussed regarding proposed § 25.821 (relating to professional liability insurance coverage for licensed perfusionist), section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.813(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as

follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819 (relating to disciplinary action for licensed perfusionist), proposed § 25.813(c) provides that the Board may, in its discretion, deny an application for perfusionist licensure upon those grounds for disciplinary action.

The Board has not proposed a rulemaking to incorporate the grandfather provision of section 13.3(g) of the act, which, during the first 2 years after the effective date of Act 20, permits a person who was not a graduate of an accredited program prior to 1981, but who met the then-current eligibility requirements for certification as a certified clinical perfusionist and subsequently was certified, to become licensed if the person otherwise complies with the requirements for licensure. Not only is this statutory provision self-executing, but the opportunity to take advantage of it will expire August 10, 2010, not long after adoption of the final-form rulemaking.

Proposed § 25.814 (relating to application for temporary graduate perfusionist license) addresses the application for temporary graduate perfusionist license as provided in section 13.3(h) of the act. Under proposed § 25.814(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(h)(1)(i) of the act provides that an individual who has graduated from an educational program in compliance with the education requirements and is eligible for and has applied for the examination may receive a temporary graduate license. These criteria, along with good moral character and being at least 18 years of age, are set forth in proposed § 25.814(b)(1) as the basic requirements for a temporary graduate license. Because, as discussed regarding proposed § 25.821, section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.814(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819, proposed § 25.814(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary graduate license upon those grounds for disciplinary action. Because section 13.3(h)(1)(iii) of the act provides that a temporary graduate license is to be issued for 2 years but not be renewable, proposed § 25.814(d) provides that a temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed. Because section 13.3(h)(1)(iv) of the act provides that a temporary graduate license is to expire upon notice of failing the required examination, proposed § 25.814(e) would provide that a temporary graduate perfusionist license will expire upon notice to the Board that the holder failed the Nationally-recognized accrediting agency's certification examination.

Proposed § 25.815 (relating to application for temporary provisional perfusionist license) addresses the application for temporary provisional perfusionist license, as provided in section 13.3(i) of the act. Under proposed § 25.815(a), an applicant shall submit a completed application form, including necessary supporting documents, and pay the required application fee. Section 13.3(i)(1) of the act provides that an individual who holds a current license in good standing under the laws of another state, which includes certification by a certifying agency approved by a Nationally-recognized accrediting agency, may receive a temporary provisional license if the applicant meets the requirements of section 13.3(f) of the act

that the applicant is at least 18 years of age, of good moral character and has graduated from an accredited perfusion program approved by the Board. These criteria, along with good moral character and being at least 18 years of age, are set forth in proposed § 25.815(b)(1) as the basic requirements for a temporary provisional license. Because, as discussed regarding proposed § 25.821, section 13.3(k) of the act requires a perfusionist to carry a minimum level of professional liability insurance, proposed § 25.815(b)(2) requires that an applicant provide proof of liability insurance. Because, as discussed as follows, the Board is also setting forth in this proposed rulemaking grounds for disciplinary action in proposed § 25.819, proposed § 25.815(c) provides that the Board may, in its discretion, deny an application for perfusionist temporary provisional license upon those grounds for disciplinary action. Because section 13.3(i)(2) of the act provides that a temporary provisional license is to be issued for 1 year but not be renewable, proposed § 25.815(d) provides that a temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed thereafter.

Section 13.3(j) of the act provides an exemption to the general prohibition against unlicensed practice for one-time temporary emergency services by an out-of-State licensed perfusionist when the licensed perfusionist that would normally have provided the services is unavailable or incapable of providing services and another licensed perfusionist is available or capable of providing services. Section 13.3(j) of the act requires the out-of-State perfusionist to provide to the Board electronic notice of the emergency and acknowledgment that the out-of-State perfusionist is subject to jurisdiction of the Board as if licensed by the Board and requires the healthcare facility to provide to the Board electronic notice that services were provided and the grounds for the exemption. Proposed § 25.816(a) (relating to registration of temporary emergency perfusionist service) requires the out-of-State perfusionist to register with the Board in accordance with section 13.3(j) of the act prior to providing emergency services. Under proposed § 25.816(b), the out-of-State perfusionist or other person acting on behalf of the out-of-State perfusionist (such as healthcare facility staff) shall submit a completed registration on forms provided by the Board. It is anticipated that this registration will be done almost exclusively from the Board's web site. Because "one-time emergency perfusionist service" is not defined in section 13.3(j) of the act, proposed § 25.816(c) provides that the services are not limited to a single procedure or patient or group of related patients, the out-of-State perfusionist may not provide emergency services for a period longer than 72 hours. However, section 13.3(j)(3) of the act prohibits the out-of-State perfusionist from providing services other than the emergency services. Consistent with section 13.3(j)(2) of the act, which states that the out-of-State perfusionist shall obtain a license if providing any future perfusionist service, proposed § 25.816(d) provides that the out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth without being licensed as a perfusionist or holding a temporary graduate license or temporary provisional license.

Because licenses and certifications issued by the Board within the Bureau of Professional and Occupational Affairs expire after 2 years and must be renewed biennially, proposed § 25.817 (relating to renewal of perfusionist license) addresses renewal of perfusionist license. Proposed § 25.817(a) requires the licensed perfusionist to register by October 31 of each even-numbered year, the

expiration date for other licenses and certifications issued by the Board. Additionally, this subsection requires a licensed perfusionist to notify the Board within 10 business days of a change in name or address. Substantially identical to existing § 25.272 (relating to name and address changes) for licensed doctors of osteopathy, this subsection permits the Board to properly send notices, including notices of renewal, to the licensees. Under proposed § 25.817(b), a licensed perfusionist is required to complete and submit the renewal application, including the required renewal fee, and disclose a license to practice as a perfusionist in another state, disclose a disciplinary action pending before or taken by the appropriate healthcare licensing authority in another state, disclose pending criminal charges and convictions, verify that the licensee has complied with the continuing education requirements of section 13.3(n) of the act and verify that if practicing as a perfusionist in this Commonwealth the licensee maintains professional liability insurance coverage as required under section 13.3(k) of the act. Because the ABCP requires a perfusionist to complete a minimum number of procedures each year to maintain certification, the Board has chosen not to require continued National certification as a condition of renewal.

Proposed § 25.818(a) (relating to inactive status of perfusionist license; reactivation of inactive license) provides that the license may become inactive either by the licensee's request or by expiration at the end of the biennial renewal period. To minimize the opportunity or consequence of a license being incorrectly placed on inactive status at what appears to be the request of the licensee, proposed § 25.818(a)(1) provides that the Board will provide written notice to the licensee. Proposed § 25.818(b) provides that a perfusionist whose license is inactive may not practice as a perfusionist in this Commonwealth until the license has been reactivated. Proposed § 25.818(c) provides the general requirement for reactivation of an inactive perfusionist license that the licensee shall apply on forms supplied by the Board, answer questions fully, provide documentation of completion of the required amount of continuing education for the preceding biennium, as required under section 13.3(n)(5) of the act, pay the current renewal fee and the reactivation fee specified in § 25.231, and verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive. If the licensee does not verify that the licensee did not practice during the period of lapse, the license may be reactivated under proposed § 25.818(d) by paying additional fees. Under that proposed section, in addition to the requirements of subsection (c), the licensee shall pay the renewal fee for past renewal periods and a late fee of \$5 per month. This late fee is the standard late renewal fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-225). However, as provided in proposed § 25.818(d), payment of late fees will not preclude the Board from taking disciplinary action for practicing while the license was inactive.

Proposed § 25.819 addresses disciplinary action. Although section 13.3 of the act does not specifically authorize the Board to take disciplinary action against a licensed perfusionist, section 13.3(m) of the act provides that disciplinary action taken by the Board against a perfusionist shall be enforceable by the Board if the perfusionist seeks licensure by the Board. Section 15(b) of the act (63 P. S. § 271.15(b)) authorizes the board "to

refuse, revoke or suspend the license of a physician assistant or respiratory therapist, or the certification of a certified athletic trainer," that is, other nonphysicians licensed by the Board, for a variety of grounds. Accordingly, proposed § 25.819(a) provides that a licensed perfusionist, including one holding a temporary graduate license or temporary provisional license, is subject to disciplinary action under the grounds of section 15(b) of the act and that the Board may impose corrective actions in section 15(c) of the act. Because section 15(b)(9) of the act authorizes the Board to take disciplinary action for immoral or unprofessional conduct, proposed § 25.819(b) defines unprofessional conduct and proposed § 25.819(c) defines immoral conduct. Modeled upon § 25.201 (relating to grounds for complaint), unprofessional conduct would include: performing acts in a healthcare profession in a fraudulent or incompetent or negligent manner; performing acts in the practice of a healthcare profession in violation of statute or regulation in this Commonwealth or another state; violating a provision of the act or regulation of the Board setting a standard of professional conduct; engaging in healthcare practice beyond the licensee's authority to practice; representing oneself to be a licensed physician or other healthcare provider; practicing while the licensee's ability to do so is impaired by alcohol or drugs or disability; and revealing personally identifiable facts obtained as the result of the practitioner-patient relationship. Also modeled upon § 25.201, immoral conduct would include: misrepresenting or concealing a material fact in obtaining a license or reactivating or renewing the license; being convicted of a crime involving moral turpitude; or committing an act involving moral turpitude or dishonesty or corruption. Additionally, unprofessional conduct would include engaging in conduct prohibited by § 25.216 (relating to sexual misconduct). Section 13.3(e)(2) of the act exempts from the general prohibition against practicing perfusion without a license a perfusion student who, among other requirements, is performing under the direct supervision of a perfusionist who is assigned to supervise the student. Section 13.3(e)(3) of the act exempts a perfusion graduate who, among other requirements, is performing under the supervision and responsibility of a perfusionist. Accordingly, proposed § 25.819(b)(9) includes in unprofessional conduct failing to provide supervision as required under section 13.3(e)(2) of the act of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to practice perfusion.

Section 13.3(n) of the act provides for required continuing education and proposed § 25.820 (relating to continuing education for licensed perfusionist) addresses that topic. Proposed § 25.820(a) sets forth the general credit hour requirements. As required under section 13.3(n)(2) of the act, proposed § 25.820(a)(1) requires each licensed perfusionist to complete at least 30 hours of continuing education—including at least 10 hours in category I continuing education—applicable to the practice of perfusion during each biennial renewal period. Consistent with section 13.3(n)(3) of the act, a licensee would not be required to complete continuing education during the biennial renewal period in which the licensee was first licensed. Although a licensee would not be permitted to carry over continuing education credit into a subsequent renewal period, proposed § 25.820(a)(2) recognizes that a licensee may need to make up deficient continuing education credit to reactivate an inactive license or if otherwise



ordered by the Board. However, a particular hour of continuing education taken in a given biennial renewal period may not be used to satisfy the requirement both for that period and to make up a deficiency for a prior period. Proposed § 25.820(a)(3) identifies that a licensee who failed to complete the required continuing education is subject to disciplinary action. Section 13.3(n)(4) of the act permits a licensee to submit a written request for waiver of the continuing education requirement due to serious illness, military service or other demonstrated hardship. Proposed § 25.820(a)(4) requires that the request be submitted at least 90 days before the end of the renewal period so that the Board could address the request and, if it is denied, give the licensee adequate opportunity to complete the required continuing education before the license would expire. Additionally, this proposed section explicitly notes that waiver may include extending the deadline, rather than simply relieving the licensee of the obligation to take continuing education. Proposed § 25.820(b) sets forth the standards for documentation of continuing education. Under proposed § 25.820(b)(1), a licensee shall receive a record of completion from the continuing education provider, setting forth the participant's name, the provider's name, the date of the course, the name of the course and the number of hours of continuing education. Proposed § 25.820(b)(2) requires the licensee to retain the record for at least 5 years after completion of the continuing education course or renewal period for the continuing education was required, whichever is later. Because records of continuing education will not be sent to the Board and the Board will not track licensees' completion of required continuing education, the Board will conduct postrenewal audits of licensees to verify compliance. Proposed § 25.820(c) sets forth the types of activities for which continuing education credit may be earned. To better facilitate compliance with the requirements, these standards are modeled upon those of the ABCP. Under proposed § 25.820(c)(1), category I continuing education (which must provide at least 10 of the required 30 hours) could be earned by attendance at perfusion meetings, publication of a perfusion-related book chapter or paper in a professional journal, presentation at a perfusion meeting, participation in site visitor workshop or as a site visitor for perfusion program accreditation or completion of an ABCP-approved self-directed continuing education course for which the licensee scores at least 80% on an examination. Under proposed § 25.820(c)(2), other continuing education to reach the required total could be earned by reading journals or other educational materials, participating in electronic forums or journal clubs, participation in degree-oriented professional-related course work, presentation of perfusion topics at a nonperfusion meeting or work as a clinical or didactic instructor in an accredited school of perfusion. However, as noted in section 13.3(n)(6) of the act, proposed § 25.820(c)(3) prohibits continuing education credit for a course in office management.

Section 13.3(k) of the act provides for required professional liability insurance for perfusionists and proposed § 25.821(a) requires a licensed perfusionist to maintain a level of professional liability insurance as required under section 13.3(k) of the act. Conversely, proposed § 25.821(d) prohibits a perfusionist who does not have the required amount of liability insurance from practicing as a perfusionist in this Commonwealth. Section 13.3(k)(2) of the act requires an applicant to provide proof that the applicant has obtained the liability insurance. Proposed § 25.821(b) sets forth the general requirement

that proof of liability insurance consists of a certificate of insurance or a copy of the declarations page from the insurance policy setting forth the effective and expiration dates and the dollar amounts of coverage. However, section 13.3(k)(2) of the act permits an applicant to file with the application a letter from an insurance carrier stating that the applicant will be covered in the required amounts effective upon issuance of the license, but the applicant must then submit the certificate of insurance or copy of the declaration page within 30 days after issuance of the license. To effectuate this provision, proposed § 25.821(c) provides that a license issued in reliance upon the insurance carrier's letter will become inactive as a matter of law 30 days after the license is issued if the licensee has not submitted proof of insurance. The license will be inactive and not suspended, because it is not a disciplinary action, as insurance is required only if practicing as a perfusionist in this Commonwealth.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *Sunset Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on May 11, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

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

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, [st-osteopathic@state.pa.us](mailto:st-osteopathic@state.pa.us) within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-5320 (perfusionist) when submitting comments.

JOSEPH C. GALLAGHER, Jr., DO,  
*Chairperson*

**Fiscal Note:** 16A-5320. 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 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

\* \* \* \* \*

- Application for perfusionist license ..... \$ 50
- Biennial renewal of perfusionist license ..... \$ 50
- Application for reactivation of perfusionist license ..... \$ 50
- Application for temporary graduate perfusionist license ..... \$ 50
- Application for temporary provisional perfusionist license ..... \$ 40

(Editor's Note: The following subchapter is new and printed in regular type to enhance readability.)

Subchapter N. PERFUSIONISTS

- Sec. 25.811. Purpose.
- 25.812. Definitions.
- 25.813. Application for perfusionist license.
- 25.814. Application for temporary graduate perfusionist license.
- 25.815. Application for temporary provisional perfusionist license.
- 25.816. Registration of temporary emergency perfusionist service.
- 25.817. Renewal of perfusionist license.
- 25.818. Inactive status of perfusionist license; reactivation of inactive license.
- 25.819. Disciplinary action for licensed perfusionist.
- 25.820. Continuing education for licensed perfusionist.
- 25.821. Professional liability insurance coverage for licensed perfusionist.

§ 25.811. Purpose.

This subchapter implements section 13.3 of the act (63 P. S. § 271.13c) pertaining to perfusionists, which was added by the act of June 11, 2008 (P. L. 161, No. 20), effective August 10, 2008.

§ 25.812. Definitions.

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

*ABCP*—American Board of Cardiovascular Perfusion.

*Accredited perfusion program approved by the Board*—A perfusion program accredited by a Nationally-recognized accrediting agency approved by the Board.

*Board*—The State Board of Osteopathic Medicine.

*Extracorporeal circulation*—As defined in section 2 of the act (63 P. S. § 271.2), the diversion of a patient's blood through a heart-lung machine or similar device that assumes the functions of the patient's heart, lung, kidney, liver or other organs.

*Hour of continuing education*—At least 50 minutes of instruction (including relevant question and answer sessions) in an approved course of continuing education or

an equivalent time that an on-line or correspondence course would be presented live.

*Nationally-recognized accrediting agency approved by the Board*—ABCP, or any other organization for which the Board publishes notice that the organization is approved by the Board as a certifying agency for perfusionists.

*Perfusion*—As defined in section 2 of the act, the functions necessary for the support, treatment, measurement or supplementation of the cardiovascular systems or other organs, or a combination of those functions, and for ensuring the safe management of physiologic functions by monitoring and analyzing the parameters of the systems under the supervision of a physician licensed under the act or the Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45).

*Perfusionist*—As defined in section 2 of the act, an individual who is licensed to practice perfusion by the Board or the State Board of Medicine.

*Ventricular assist device*—

(i) As defined in section 2 of the act, a mechanical device used to partially or completely replace the function of a failing heart through connections to the heart and great vessels that may be located intracorporeally or extracorporeally.

(ii) The term includes a device that is placed intravascularly or extravascularly and provides support through direct means or via counterpulsation.

§ 25.813. Application for perfusionist license.

(a) An applicant for a license to practice as a perfusionist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for licensure to practice as a perfusionist and pay the fee of § 25.231 (relating to schedule of fees) for application for a perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will license to practice as a perfusionist an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(f) of the act (63 P. S. § 271.13c(f)) for licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current certification by a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) In its discretion, the Board may deny an application for licensure as a perfusionist upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

§ 25.814. Application for temporary graduate perfusionist license.

(a) An applicant for a temporary graduate perfusionist license shall submit, on forms supplied by the Board, a

completed application, including all necessary supporting documents, and pay the fee set forth in § 25.231 (relating to schedule of fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary graduate perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(h)(1)(i) of the act (63 P. S. § 271.13c(h)(1)(i)) for temporary graduate licensure to practice as a perfusionist, including all of the following:

(i) The applicant is qualified and has applied to sit for the examination of a certifying agency approved by a Nationally-recognized accrediting agency approved by the Board.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for a temporary graduate perfusionist license upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

(d) A temporary graduate perfusionist license will expire 2 years after the date of issuance and may not be renewed.

(e) A temporary graduate perfusionist license will expire upon notice to the Board that the holder has failed the Nationally-recognized certifying agency's certification examination.

**§ 25.815. Application for temporary provisional perfusionist license.**

(a) An applicant for a temporary provisional perfusionist license shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, and pay the fee set forth in § 25.231 (relating to schedule of fees) for application for a temporary graduate perfusionist license.

(b) Except as otherwise provided in subsection (c), the Board will grant a temporary provisional perfusionist license to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of section 13.3(i) of the act (63 P. S. § 271.13c(i)) for temporary provisional licensure to practice as a perfusionist, including the following:

(i) The applicant holds a current license in good standing under the laws of another state, the District of Columbia or a territory of the United States that includes certification by a certifying agency approved by a Nationally-recognized accrediting agency.

(ii) The applicant has graduated from an accredited perfusion program approved by the Board.

(iii) The applicant is at least 18 years of age and of good moral character.

(2) Provides proof as set forth in § 25.821 (relating to professional liability insurance coverage for licensed

perfusionist) that the applicant has obtained professional liability insurance as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(3) Otherwise complies with this subchapter.

(c) The Board may deny an application for certification as a perfusionist upon the grounds for disciplinary action set forth in § 25.819 (relating to disciplinary action for licensed perfusionist).

(d) A temporary provisional perfusionist license will expire 1 year after the date of issuance and may not be renewed.

**§ 25.816. Registration of temporary emergency perfusionist service.**

(a) An out-of-State perfusionist shall register with the Board in accordance with this section prior to providing temporary emergency perfusionist service in this Commonwealth in accordance with section 13.3(j) of the act (63 P. S. § 271.13c(j)).

(b) The out-of-State perfusionist or another person acting on behalf of the out-of-State perfusionist shall submit, on forms supplied by the Board, a completed registration form, fully answering all questions.

(c) Although not limited to a single procedure or single patient or group of related patients, an out-of-State perfusionist may provide temporary emergency perfusionist services in this Commonwealth for not longer than a period of 72 hours.

(d) An out-of-State perfusionist may not provide temporary emergency perfusionist service in this Commonwealth more than once without being licensed in accordance with § 25.813, § 25.814 or § 25.815 (relating to application for perfusionist license; application for temporary graduate perfusionist license; and application for temporary provisional perfusionist license).

**§ 25.817. Renewal of perfusionist license.**

(a) A licensed perfusionist shall register biennially by October 31 of each even-numbered year to retain the right to engage in practice. It is the responsibility of the licensee to notify the Board of any change in name or mailing address within 10 business days of the change.

(b) A licensee applying for biennial license renewal shall submit a completed application, including payment of the biennial renewal fee as set forth in § 25.231 (relating to schedule of fees) for application for biennial renewal of a perfusionist license. On the biennial registration application, the licensed perfusionist shall:

(1) Disclose any license to practice as a perfusionist in another state, territory, possession, or country.

(2) Disclose any disciplinary action pending before or taken by the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.

(3) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of *nolo contendere*, or other criminal conviction since the most recent application for renewal.

(4) Verify that the licensed perfusionist has complied with the continuing education requirements mandated under section 13.3(n) of the act (63 P. S. § 271.13c(n)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 25.820 (relating to continuing education for licensed perfusionist).

(5) Verify that, if practicing as a perfusionist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 13.3(k) of the act.

**§ 25.818. Inactive status of perfusionist license; re-activation of inactive license.**

(a) A perfusionist license will become inactive upon either of the following:

(1) The licensee requests in writing the Board place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to renew the certificate by the expiration of the renewal period, that is by December 31 of each even-numbered year.

(b) A perfusionist whose license has expired or been placed on inactive status may not practice as a perfusionist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 25.820(b) (relating to continuing education for licensed perfusionist) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under section 13.3(n)(4) of the act (63 P.S. § 271.13c(n)(4)), the Board will not reactivate any license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee specified in § 25.231 (relating to schedule of fees).

(3) Except as provided in subsection (d), verify that the licensee did not practice as a perfusionist in this Commonwealth while the license was inactive.

(d) A licensee who has practiced with an inactive license and who cannot make the verification required under subsection (c)(3) shall also pay the fees required by this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a perfusionist without a current license to do so.

(1) A licensee whose license was active at the end of the immediately preceding biennial renewal period and who practiced after the license became inactive shall pay a late fee of \$5 for each month or part of month from the beginning of the current biennium until the date the reactivation application is filed.

(2) A licensee whose license has been inactive since before the beginning of the current biennium shall pay the renewal fee for each biennial renewal period during which the licensee practiced and shall pay a late fee of \$5 for each month or part of month from the first date the licensee practiced as a perfusionist in this Commonwealth after the license became inactive until the date the reactivation application is filed.

**§ 25.819. Disciplinary action for licensed perfusionist.**

(a) A licensed perfusionist, including a perfusionist holding a temporary graduate license or a temporary provisional license, is subject to disciplinary action under the grounds of section 15(b) of the act (63 P.S. § 271.15(b)). Following a final determination subject to the right of notice, hearing and adjudication and the right

of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 15(c) of the act.

(b) Unprofessional conduct includes:

(1) Engaging in any conduct prohibited by § 25.216 (relating to sexual misconduct).

(2) Performing acts in a healthcare profession in a fraudulent, incompetent or negligent manner.

(3) Performing acts in the practice of a healthcare profession in violation of statute or regulation of the Commonwealth, another state of the United States, or another country.

(4) Violating a provision of the act or this chapter setting a standard of professional conduct.

(5) Engaging in healthcare practice beyond the licensee's authority to practice.

(6) Representing oneself to be a physician, physician assistant, certified registered nurse practitioner, or other healthcare practitioner whose profession the perfusionist is not licensed to practice.

(7) Practicing while the licensee's ability to do so is impaired by alcohol, drugs, physical disability or mental instability.

(8) Revealing personally identifiable facts obtained as the result of a practitioner-patient relationship without the prior consent of the patient, except as authorized or required by statute or regulation.

(9) Failing to provide supervision as required under section 13.3(e)(2) of the act (63 P.S. § 271.13c(e)(2)) of a perfusion student or failing to provide supervision as required under section 13.3(e)(3) of the act of a perfusion graduate who is not otherwise licensed by the Board to perform perfusion in this Commonwealth.

(c) Immoral conduct includes:

(1) Misrepresenting or concealing a material fact in obtaining a license issued by the Board or renewal, reactivation or reinstatement thereof.

(2) Being convicted of a crime involving moral turpitude, dishonesty or corruption in the courts of the Commonwealth, the United States, or another state, territory or county.

(3) Committing an act involving moral turpitude, dishonesty or corruption.

**§ 25.820. Continuing education for licensed perfusionist.**

(a) *Credit hour requirements.* A licensed perfusionist shall satisfy the following continuing education credit hour requirements.

(1) During each biennial renewal period, a licensee shall complete 30 hours of continuing education applicable to the practice of perfusion, including at least 10 hours of category I continuing education. A licensee is not required to complete continuing education during the biennium in which the licensee was first licensed.

(2) Except as permitted in § 25.818(c)(1) (relating to inactive status of perfusionist license; reactivation of inactive license), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it

was completed. No hour of continuing education may be used to satisfy the requirement of paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 13.3(n) of the act (63 P. S. § 271.13.3(n)) and this section will subject the licensee to discipline under section 15(b)(7) of the act (63 P. S. § 271.15(b)(7)).

(4) A licensee seeking waiver of the continuing education requirements under section 13.3(n)(4) of the act shall submit the request with all supporting documentation to the Board at least 90 days prior to the end of the renewal period for which waiver is sought. Waiver may include extending the deadline by which the required continuing education must be completed.

(b) *Documentation of continuing education.* Continuing education shall be documented in the following manner.

(1) Proof of completion of continuing education must consist of a certified record issued by the provider, including:

- (i) The name of the participant.
- (ii) The name of the provider.
- (iii) The date or dates of the course.
- (iv) The name of the course.
- (v) The number of hours of continuing education credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the biennial renewal period during which the continuing education was required, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements.

(c) *Continuing education activities.* Credit for continuing education may be earned in the following activities.

- (1) Category I continuing education may be earned by:
  - (i) Attendance at an international, National, regional or state perfusion meeting.
  - (ii) Publication of a perfusion-related book chapter or paper in a professional journal.
  - (iii) Presentation at an international, National, regional, state or local perfusion meeting.
  - (iv) Participation in a site visitors workshop or as a site visitor for perfusion program accreditation.

(v) Completion of ABCP-approved self-directed continuing education for which the licensee scored at least 80% on an examination.

(2) In addition to category I, continuing education may also be earning by:

- (i) Reading or viewing medical journals, audio-visual, or other educational materials.
- (ii) Participation in electronic forums.
- (iii) Participation in a journal club.
- (iv) Participation in degree-oriented, professionally-related course work.
- (v) Presentation of perfusion topic at a nonperfusion meeting.
- (vi) Working as a clinical or didactic instructor in an accredited school of perfusion.

(3) Continuing education credit may not be earned in any course in office management.

**§ 25.821. Professional liability insurance coverage for licensed perfusionist.**

(a) A licensed perfusionist shall maintain a level of professional liability insurance coverage as required under section 13.3(k) of the act (63 P. S. § 271.13c(k)).

(b) Proof of professional liability insurance coverage must include a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date, and dollar amounts of coverage.

(c) A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 13.3(k)(2) of the act will become inactive as a matter of law 30 days after the date of issuance on the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(d) A licensee who does not have professional liability insurance coverage as required under section 13.3(k) of the act may not practice as a perfusionist in this Commonwealth.

[Pa.B. Doc. No. 10-939. Filed for public inspection May 21, 2010, 9:00 a.m.]