

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF NURSING [49 PA. CODE CH. 21] Clinical Nurse Specialists

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

Effective Date

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

Statutory Authority

The final-form rulemaking is required under the act of July 20, 2007 (P. L. 320, No. 49) (Act 49), which amended The Professional Nursing Law (act) (63 P. S. §§ 211—225.5) to authorize the Board to certify clinical nurse specialists (CNSs) in accordance with statutory criteria, to provide title protection for CNSs, to require CNSs to complete continuing education to renew their certification and to require CNSs to maintain professional liability insurance.

Response to Comments

The proposed rulemaking was published at 38 Pa.B. 3246 (June 14, 2008). The Board received comments from the Pennsylvania State Nurses Association (PSNA) and the American Psychiatric Nurses Association of Pennsylvania (APNA-PA). PSNA and APNA-PA suggested that the Board should delete the reference to the National Council of State Boards of Nursing (NCSBN) in § 21.811(1)(i) (relating to qualifications for initial certification) and reference instead the National Organization of Competency Assurance (NOCA). NOCA created the National Commission for Certifying Agencies (NCCA) in 1987 as the organization that would bestow accreditation under the NCCA's Standards for the Accreditation of Certification Programs. The Board rewrote proposed § 21.811 in this final-form rulemaking and deleted references to certifying bodies.

The Board rewrote proposed § 21.811 in this final-form rulemaking to make the section less convoluted and easier to understand. The requirement that an applicant hold a current, unrestricted registered nurse (RN) license is consistent with requirements for certified registered nurse practitioners (CRNPs). The requirement that an applicant hold the appropriate degree is in section 8.5(a) of the act (63 P. S. § 218.5(a)). These requirements are now in subsections (a) and (b). Subsection (c) also applies to applicants for whom current National certification is available, mirroring section 8.5(a)(1) of the act. Subsection (c) also applies to an applicant who currently holds National certification as a CNS. Subsection (d) applies to applicants for whom National certification is not available, mirroring section 8.5(a)(2) of the act. As rewritten, these applicants will be required to submit a letter from a National certifying organization that demonstrates that the applicant is not eligible to sit for a National certification examination, a curriculum vitae, the employer's job description which evidences practice in the CNS role as

evaluated by the Board's nursing practice advisors and a letter verifying the applicant's dates of employment to show that the applicant has practiced at least 1,000 hours in the CNS role in the past 5 years. Subsection (e) mirrors section 8.5(a)(3) of the act.

Next, PSNA, APNA-PA and the National Association of Clinical Nurse Specialists (NACNS) suggested that § 21.813(d)(1) (relating to application for certification) does not take into consideration a CNS who does not have access to official transcripts from the CNS's educational program. The Board understands that there may be a rare exception of a CNS who does not have access to official transcripts. In this case, the CNS may request a waiver of this section under 1 Pa. Code § 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations). The Board declines to specify this procedure in this section, as it could be applicable to virtually any provision of its regulations and it would be repetitive to add a statement or cross reference to every provision to which it might apply.

Third, the organizations recommended that CNSs be given 18 months instead of 12 months to complete their applications for certification under § 21.813(f). Every other class of individuals licensed or certified by the Board is subject to the 12-month limitation on completing an application for licensure. The Board declines to set a different time frame for completion of a CNS's application for certification.

Finally, APNA-PA recommended that § 21.813 should not repeat section 8.6 of the act (63 P. S. § 218.6), regarding scope of practice for a CNS, because the statute is merely title recognition and does not confer scope of practice on CNSs. Other organizations, specifically the Pennsylvania Psychiatric Society (PPS) and Pennsylvania Medical Society (PMS), commented that the statutory section should be added to § 21.813. The Independent Regulatory Review Commission (IRRC) commented that the final-form rulemaking "should include all requirements from the Act or justify why certain provisions are being omitted." Because the weight of comments suggested including this statutory section, the Board decided to add this language to the final-form rulemaking.

The Hospital and Healthsystem Association of Pennsylvania (HAP) wrote in support of the overall direction taken by the Board in the rulemaking. However, HAP expressed concern that CNSs might be confused about the different requirements for continuing education for RNs and CNSs. Section 8.5(c)(2) of the act requires CNSs to complete at least 30 hours of Board-approved continuing education prior to biennial renewal of their certification. The Board set forth its requirements for continuing education in §§ 21.822—21.827. Because CNSs are educated at an advanced, master's degree level, they are more akin to CRNPs than RNs. Therefore, the Board modeled the CNS continuing education provisions after the existing CRNP continuing education provisions.

Specifically, HAP noted that the list of preapproved courses for RNs is more expansive than those proposed for CNSs. The list is equivalent to the list of preapproved courses for CRNPs. HAP questioned whether a course completed from the RN list that is not on the CNS list would qualify for continuing education completed by the CNS. Just as courses completed from the RN list that are not on the CRNP list will not qualify for continuing education completed by a CRNP, a course completed from

the RN list that is not on the CNS list will not qualify for continuing education completed by a CNS.

HAP next questioned why individual nurses or providers of RN continuing education shall submit their materials to the Board 90 days prior to the beginning of the activity but individual CNSs or providers of CNS continuing education shall submit their materials to the Board 60 days prior to the beginning of the activity. There are approximately 200,000 licensed RNs and the Board anticipates only about 4,000 CNS licensees. The Board allowed itself additional time to review requests for approval regarding RN continuing education because there is a higher likelihood that there will be substantially more requests to consider for RN continuing education than for CNS continuing education. Additionally, the 60-day time period is consistent with the time period provided for individual CRNPs or providers of CRNP continuing education.

HAP questioned why the RN continuing education provisions allow for group or individual research but the CNS provisions are silent regarding research. The Board intended that research be creditable under § 21.825(e) (relating to sources of continuing education) when the research is published in a refereed journal or other scholarly publication, similar to when research is creditable for CRNPs. Regarding this provision, HAP also noted that the RN continuing education provisions do not allow for publication in a refereed journal or other scholarly publication. Again, the Board designed the CNS continuing education regulations to be like the CRNP continuing education regulations because CNSs and CRNPs are both master's prepared nurses. HAP recommended that the Board clarify whether participation in a research project is applicable to the CNS and CRNP. The Board determined that, as master's prepared nurses, only published research would be creditable.

HAP also noted the discrepancy between the CNS and CRNP provisions with respect to the number of hours that could be credited for service as a teacher or preceptor. The Board initially determined that CNS should be able to obtain credit for more hours for these activities because these activities are integral to the CNS role. Upon consideration of HAP's comment, and in a further effort to coincide the CNS and CRNP provisions, the Board amended § 21.825(e) to reduce the number of hours that may be credited.

Finally, the Board notes that continuing education for CNSs, like CRNPs, is well-developed because CNSs, like CRNPs, complete extensive continuing education to maintain their National certification. For this additional reason, the Board sought to draft similar regulations for CNS and CRNP continuing education and to grant credit consistent with the standards for continuing education for maintenance of National certification.

NACNS suggested that the Board add a definition of "accepted" and amend its definition of "approved" to indicate Board approval of offerings by entities in this Commonwealth. Because "accepted" is not used in the final-form rulemaking, it is not necessary to define the term.

NACNS recommended phrasing "post-master's degree or certificate in nursing" in § 21.811(b) as "post-master's nursing degree." Board staff has told the Board that nursing schools may call what is awarded a post-master's certificate or a post-master's degree. To ensure that all eligible programs are included, the Board will retain the post-master's degree or certificate in nursing language.

NACNS recommended different language regarding CNSs who are not eligible to take a National certification examination or for whom no examination is available to permit a CNS to "demonstrate eligibility through validation" by a credentialing organization. The Board believes that the General Assembly intended, in this title protection legislation, to be as all-inclusive as possible and permit master's-prepared individuals who have been working in the CNS role to continue to do so and to use the title CNS. The Board has drafted equivalency qualifications that effectuate this intent.

NACNS recommended a new paragraph to permit a CNS to demonstrate eligibility for certification by submitting documents and a fee to a CNS program in this Commonwealth for review and critique. The Board prefers to have applicants submit information directly to the Board, where it can be reviewed by Board staff and, if necessary, the full Board.

NACNS next recommended that § 21.812 (relating to qualifications for certification by endorsement; additional certification) refer to the addition or change of specialty area. The Board determined that the section should apply to addition of specialty area because a CNS already certified in one area does not change the area of specialty even if the CNS decides to allow National or Board certification in that specialty area lapse. The Board also made amendments to improve the clarity of § 21.812 and make the language more closely follow statutory language.

NACNS proposed that the Board add a provision, wherever appropriate, stating that a nurse will be eligible to apply for Board certification for 2 years after the publication of the final-form rulemaking. The Board believes that nurses will be eligible to apply for Board certification indefinitely after the publication of the final-form rulemaking, whenever the nurses meet the qualifications for certification. This approach will allow for ongoing certification of CNSs in new areas of practice for which there is not a National certification examination, notably genetics and forensics.

With response to continuing education, NACNS suggested that the Board refer to "clock hours" rather than "hours." The Board specifically did not refer to clock hours, which means a 60-minute hour, to allow CNSs who wish to receive continuing education credit for taking additional nursing classes to do so. The vast majority of academic institutions use the 50-minute academic hour rather than the 60-minute clock hour. Moreover, because the 50-minute period is a minimum, it will not preclude CNSs from taking continuing education courses based on the clock hour.

NACNS also suggested that the Board should specify, in § 21.805 (relating to fees), that fees are nonrefundable. This is not specified in the regulations for any other class of licensees; however, it is specified on every application. Therefore, the Board declines to make the amendment. NACNS suggested that the fee for approval of continuing education activity be for "each review of a proposal" of continuing education activity in § 21.805(a). The Board agrees and amended the language. NACNS suggested that the Board add § 21.805(c), stating that an action would not be taken until all documents and fees are received. The Board believes this is implicit in its regulations and applications and declines to add a subsection. Finally, NACNS suggested that the regulation specify that the application shall be completed within 12 months "from the first date of application." The Board believes

that this is also implicit in the language already and declines to make the amendment.

The Board received identical comments from PMS and PPS. These associations suggested that the regulation should repeat section 8.6 of the act. The Board agrees that some reference to section 8.6 of the act would improve the regulation and amended § 21.821(a) (related to CNS standards of conduct) to specify that a CNS may perform only those services that comprise the practice of professional nursing as defined in section 2(1) of the act (63 P. S. § 212); amended § 21.831 (relating to penalties for violations) to specify that a CNS may be disciplined for engaging in medical diagnosis or the prescription of medical therapeutic or corrective measures prohibited by section 8.6(a) of the act; and amended § 21.831(2) to specify that a CNS may be disciplined for performing a service beyond the scope of practice of professional nursing.

Several commentators, including the House Professional Licensure Committee (HPLC), suggested that the regulation should include a reference to the liability insurance provisions in section 8.5(e) of the act. The Board referenced section 8.5(e) of the act in § 21.813(f).

IRRC next noted that several commentators suggested the regulation should include a grandfather clause for nurses that have a master's degree in nursing and have previously "demonstrated success" and effectiveness in the role of CNS. IRRC stated: "The Board should consider adding a grandfather clause for a CNS in this situation. If the Board adds a grandfather clause, it should also specify the criteria that must be met for a nurse to be certified as a CNS under a grandfather clause." The Board provided for broad equivalence requirements which will permit master's-educated CNSs to continue using the CNS title.

IRRC noted that the regulatory definition of a CNS is not identical to the statutory definition of a CNS. The regulation replaces the term "registered nurse" with the definition in section 3 of the act (63 P. S. § 213) for clarity. In addition, the regulation clarifies that the Board may only certify a professional nurse as a CNS if the professional nurse meets the requirements in the act. The definition in the regulation is wholly consistent with the statutory definition and the Board believes that the definition is much clearer for the regulated community.

IRRC asked whether the Board intends to require candidates to pay fees to the National certification or credentialing organizations, and if so, asks what is the Board's authority to do so. Section 8.5(a) of the act requires that a candidate either hold current National certification or meet equivalence requirements. The Board assumes that the General Assembly was aware that fees are required to be paid to the National certification organization and intended to require candidates to pay these fees. Section 21.805 merely informs candidates that there are fees associated with obtaining National certification or meeting equivalence requirements and is consistent with the Board's regulations of other licensees who are required to pay fees to entities other than the Board associated with licensure. See §§ 21.5(b), 21.147(b) and 21.705(b) (relating to fees). It should be noted that CRNPs, who under section 8.1(b)(1)(ii) of the act (63 P. S. § 218.1(b)(1)(ii)) shall also hold National certification, also shall pay a fee to the National certification body that confers National certification on CRNPs. In the past, licensing boards have been advised to include in their rulemakings the requirement that candidates pay fees to

organizations involved in certification or credentialing. See 32 Pa.B. 1861 (April 13, 2002).

IRRC commented that §§ 21.811 and 21.813 should specify what evidence shall be submitted by an applicant for certification to demonstrate completion of a CNS educational program, current National certification or certification from a National nursing, nursing specialty or credentialing organization. The Board declines to include these specifics in its regulation for two main reasons. First, because the regulation represents the initial certification of CNSs in this Commonwealth, the Board does not have extensive experience with all of the organizations involved in CNS credentialing and does not know the proper titles of documents used by these organizations. To include the name of every organization's credentialing documents would be unwieldy and unnecessary in the regulations. Second, the Board believes that certification to licensing boards will change in the next several years with the advent of and increased use of online verification programs, which would require rewriting and repromulgating the regulations, an unnecessary expense. As with its other licensees, the Board intends to provide details of the information applicants should submit directly on the application for certification. This procedure has worked well for the Board for many years with the licensure of RNs, LPNs, licensed dietitian-nutritionists and CRNPs and the Board does not anticipate that following the same procedure for CNSs will create confusion or difficulties.

IRRC also commented on other commentator's remarks about NOCA and NCSBN, about "change" or "addition" of specialty area and about applicants who do not have access to their official transcripts. The Board has previously addressed these comments.

Regarding § 21.813(f), which has been renumbered § 21.813(g), IRRC posited that the subsection allowed 12 months for CNSs to meet compliance standards and asked how the Board determine that this was an appropriate time frame. The section does not provide a time frame for candidates to meet compliance standards. The section limits the lifespan of an application for certification. Certification is not granted until the application is complete, that is, until all supporting documentation has been received. If supporting documentation is not received within 12 months of the initial receipt of the application for certification, this section provides that the application will expire and the applicant will be required to file a new application. The section does not give an applicant 12 months to meet compliance standards because the certification is not granted until all standards have been met.

IRRC next questioned § 21.821 and asked how the Board would determine whether a CNS has the "necessary knowledge, preparation, experience and competency" to properly execute a specific practice of procedure. A virtually identical provision has been part of the RN regulations for many years and the Board has not had problems applying the provision. In accordance with 2 Pa.C.S. § 504 (relating to hearing and record), the Board imposes discipline on its licensees only after licensees have been afforded due process protections. Through the legal process, and after hearing evidence presented at hearing, the Board may make determinations regarding whether a licensee has the "necessary knowledge, preparation, experience and competency" to properly execute a specific practice of procedure.

In response to commentators, including IRRC, who suggested that the Board should reference the scope of

practice of CNSs in its final-form rulemaking, the Board added § 21.821(b). The Board notes that the CNS enabling amendments to the act do not confer a scope of practice on CNSs. Rather, Act 49 noted that the scope of practice of a CNS is the same as the statutorily defined scope of practice of the RN. The Board believes its changes and the addition of § 21.821(b) meets the concerns raised by commentators.

Regarding § 21.822 (relating to biennial renewal of certification), IIRC suggested that the Board specify the time when the Board will forward renewal notices to licensees. The boards within the Bureau of Professional and Occupational Affairs (Bureau) plan to send renewal notices to licensees 90 days prior to the expiration date. However, if this time frame were placed in regulations, it is not clear what effect a delay in sending renewal notices would have. Therefore, the Board declines to put a specific time in its regulations. The expiration date is printed on every license, so every licensee is aware of the date by which they shall renew their license.

IIRC suggested that § 21.822(f) was misplaced. The Board decided that the provision, which required identifying information be submitted with correspondence, was unnecessary.

Second, IIRC suggested that the Board should provide circumstances for when it would waive the continuing education requirement or provide a cross reference to § 21.823(b) (relating to CNS-level continuing education; waiver; sanctions). The Board added the requested cross-reference. Third, IIRC asked how the Board would determine if a licensee met the continuing education requirement and suggested that the regulation should clarify how the Board makes this determination. The Board is not aware of regulations of any board within the Bureau that specify how the Board determines that its licensees have met the continuing education requirement. The Board intends to follow the same procedure it uses for CRNP continuing education and that the State Board of Medicine uses for physician continuing education—an audit of licensees. Because the enforcement of the act and regulations is a matter left to the administrative discretion of the Board, and the methods the Board uses to perform this function may change, the Board declines to specify a single procedure that will be used to monitor compliance with this or any other section of the act or regulations.

Regarding § 21.823, IIRC requested that the Board specify in what time frame the Board would grant, deny or grant in part a request for waiver of continuing education requirements. The Board's time frame is determined by its meeting dates, which are set annually, usually in October or November. The Board considers matters at its earliest opportunity, but cannot specify a time frame. If a request was timely made and the inability of the Board to respond to the request resulted in noncompliance, the Board would provide additional time to meet the requirement before discipline would be imposed.

IIRC submitted numerous comments regarding § 21.825. IIRC asked whether the Board considered allowing CNSs to get credit for group or individual research, as RNs may do. The Board did consider this and determined that CNS continuing education should be similar to CRNP continuing education because these two groups of professional nurses have similar educational backgrounds. IIRC asked how one would know that the preapproved continuing education providers and credentialing organizations agreed to abide by §§ 21.826

and 21.827 (relating to requirements for continuing education courses; and continuing education course approval). The Board amended § 21.825(a) to require providers to comply with the provisions.

IIRC next asked what circumstances would result in a reevaluation of approval given to a provider or credentialing organization and what circumstances would warrant a rescission of approval. Reevaluation would result from complaints filed with the Board. Failure to meet the regulatory criteria for continuing education would warrant rescission.

IIRC asked why the time frame for submission of an individual request for continuing education approval from a CNS or CNS provider is different than for an RN or RN provider. The reason is that the Board anticipates licensing several thousand CNS, but licenses 200,000 RNs. Additional time may be needed to process requests from RNs.

IIRC asked how the Board determined that 15 credit hours were sufficient for services such as teaching in a nursing education program or precepting students in a clinical setting. The Board originally thought that nurses providing these services should be able to obtain half of the requirement from the service. Since the rulemaking was published as proposed, the Board has reconsidered. The Board believes that continuing education should advance the knowledge of the practitioner. The Board cannot find that teaching in a nursing education program or precepting students advances the practitioner's knowledge. Therefore, the Board determined that only 4 hours should be credited toward the continuing education requirement. This provision is consistent with § 21.334(e) (relating to sources of continuing education) which limits CRNPs to obtaining 4 hours of continuing education through teaching or precepting activities.

IIRC next noted that "adequate" in § 21.826(2) is nonregulatory language. The Board amended this paragraph for clarity, requiring an adequate physical facility and appropriate instructional materials to carry out the continuing education course. A facility would be adequate to carry out a course if it was adequately lit and ventilated, of adequate temperature, had sufficient seating to accommodate the number of attendees, the attendees were able to hear the presenters, and the like. The regulated community did not express concern with understanding the provision.

Finally, regarding § 21.827, IIRC noted that it would be impossible for an applicant to know what "other information" the Board would want at the time of initial submittal of the application and suggested that this requirement should be in its own subsection. The Board has made the requested change.

The Board received two comments from individuals. The first commenter, Mr. Legg, inquired whether an individual could be eligible for licensure by endorsement if the individual was not Nationally certified. As amended, section 7(c) of the act (63 P.S. § 217(c)) authorizes the Board to issue a certification to a CNS licensed in another state, territory or possession or a foreign country as deemed equivalent to the Commonwealth's certification requirements. Because the Commonwealth's certification requirements mandate National certification or its equivalent, applicants for licensure by endorsement will be required to demonstrate National certification or its equivalent just as will CNSs who are currently practicing in this Commonwealth.

Mr. Legg next asked about CNSs who received their master's degrees before the American Nurses Credentialing Center (ANCC) required 500 hours of supervised clinical practice in CNS educational programs. This is significant because only individuals who completed programs with at least 500 hours of supervised clinical practice are eligible to sit for ANCC National certification examinations. These individuals would be able to obtain certification in this Commonwealth under § 21.811(2)(i)(B).

Next, Mr. Legg asked why National certification was being required for initial CNS licensure when it was not required for initial CRNP licensure. The General Assembly made this determination when it enacted Act 59 granting title protection to CNSs. Mr. Legg also asked if the Board had considered provisions for CRNPs who do not practice as CRNPs, but whose practice more closely reflects the CNS role; specifically inquiring whether a CRNP could obtain a CNS license. Mr. Legg went on to state that some CRNPs are considering surrendering their CRNP certification because of the costs associated with maintaining malpractice insurance. To Mr. Legg's first question, a CRNP cannot "become" a CNS through application; to be certified as a CNS requires completion of a CNS educational program and National certification as a CNS. To Mr. Legg's second remark, CNSs are also required, under the statute, to maintain liability insurance.

The Board also received comments from Ms. Allen. Ms. Allen stated that she held a master's degree in nursing and believed that she had been prepared as a CNS, but did "not have a confirmation that the accreditation focused on the CNS component." Ms. Allen should contact the director of her master's degree program to determine if the program prepared graduates to practice as a CNS. Ms. Allen also expressed concerns about the National certification requirement. Ms. Allen considers as her specialty maternity nursing, for which she states that there is not a National certification examination. Section 21.811(2) allows CNSs for whom there is not a certification examination available in the specialty area to demonstrate equivalency. If there is not a National certification examination for which Ms. Allen is qualified to sit, Ms. Allen may pursue certification under the equivalency requirements.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth or political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 4, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 3246, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 5, 2010, the final-form rulemaking was approved by the HPLC. On June 2, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 3, 2010, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Ann Steffanic, Board Administrator, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Nursing finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1201).

(4) These amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of professional nurses in this Commonwealth.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.801—21.805, 21.811—21.813, 21.821—21.828 and 21.831 to read as set forth in Annex A.

(b) The Board shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

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

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3471 (June 19, 2010).)

Fiscal Note: Fiscal Note 16A-5133 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter H. CLINICAL NURSE SPECIALISTS

GENERAL PROVISIONS

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MAINTENANCE OF CERTIFICATION

- 21.821. CNS standards of conduct.
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PENALTIES FOR VIOLATION

- 21.831. Penalties for violations.

GENERAL PROVISIONS

§ 21.801. Definitions.

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

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

Approved—Approved by the Board.

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

Board—The State Board of Nursing of the Commonwealth.

Board-designated specialty—One of six patient populations, including neonatal, pediatrics, family/across the lifespan, adult/gerontology, women’s health/gender-related and psychiatric/mental health.

Board-recognized—The Board has determined that an entity meets the Board’s quality standards to conduct an activity and has named the entity on the Board’s web site.

Certification—Certification as a CNS issued by the Board.

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

CNS—Clinical nurse specialist—An individual licensed in this Commonwealth to practice professional nursing who meets the educational and examination or equivalent

requirements of the act and who is certified by the Board as a clinical nurse specialist.

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

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

National certification organization—An organization recognized by the Board and maintained on the approved list on the Board’s website that has as one of its purposes the examination of individuals who will practice as CNSs.

§ 21.802. Scope.

In this subchapter, the Board:

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

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

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

(4) Regulates the practice of CNSs.

§ 21.803. Applicability of rules relating to professional nurses.

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

§ 21.804. Approved educational programs.

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

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

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

§ 21.805. Fees.

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

Certification as a CNS	\$100
Biennial renewal fee	\$50
Restoration of certificate after sanction.....	\$50
Restoration of certificate after lapse of 5 years or greater	\$50
Fee for verification of certification	\$15
Fee for certification of license history	\$30
Application for approval of a CNS continuing education activity.....	\$75

(b) In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for National certification will also pay an additional fee to the certifying organization. A candidate

may contact the certifying organization for more information regarding the National certification examination and examination fee.

CERTIFICATION REQUIREMENTS

§ 21.811. Qualifications for initial certification.

The Board may certify an applicant for initial certification who files an application on a form provided by the Board and pays the application fee in § 21.805 (relating to fees), in accordance with the following:

(1) *RN license.* The Board may certify an applicant who has a current, unrestricted license to practice professional nursing in this Commonwealth.

(2) *Education.* The Board may certify an applicant who has a master's degree, doctoral degree or post-master's degree or certificate in nursing from an educational program that meets the requirements of section 6.2(c)(1) of the act (63 P. S. § 216.2(c)(1)).

(3) *Alternative education.* An applicant for initial certification who completed an educational program in a related discipline previously recognized for National certification as a CNS may be granted certification from the Board in the area of the applicant's current National certification from the American Nurses Association or the American Nurses Credentialing Center.

(4) *National certification or equivalence.*

(i) The Board may grant initial certification in a Board-designated specialty or other pertinent specialty to an applicant who demonstrates current National certification by examination.

(ii) The Board may grant initial certification without specialty to applicants who demonstrate that their educational program does not make them eligible to take a National certification examination and who demonstrate equivalence. For purposes of this section, the Board will determine equivalence on a case-by-case basis after considering the information submitted by the applicant that may include an official transcript, course descriptions, current curriculum vitae, work history in the CNS role, professional recommendations and additional advanced nursing education and certification examinations.

§ 21.812. Qualifications for certification by endorsement; additional certification.

(a) *Certification by endorsement.* An applicant for certification by the Board who holds an unrestricted license, certificate or authorization to practice as a CNS from another state, territory or possession of the United States or a foreign country, who met initial certification requirements equivalent to the Board's certification requirements and a current RN license in this Commonwealth may be granted certification by endorsement.

(b) *Additional certification.* A CNS who is already certified by the Board may apply for an additional certification. To be granted an additional certification, the CNS shall meet the educational and National certification requirements for the additional certification.

§ 21.813. Application for certification.

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

(b) An applicant for initial certification shall include documentation satisfactory to the Board that the applicant meets the qualifications in § 21.811 (relating to qualifications for initial certification).

(c) In addition to the documentation in subsections (a) and (b), an applicant for certification by endorsement shall include documentation satisfactory to the Board that the applicant meets the educational qualifications in § 21.812(a) (relating to qualifications for certification by endorsement; additional certification) and the following:

(1) Verification of unrestricted licensure, certification or authority to practice as a professional nurse and CNS issued by the proper licensing authority of another state, territory or possession of the United States or a foreign country.

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

(d) An applicant who holds certification from the Board who is applying for an additional certification under § 21.812(b) shall submit, in addition to the documentation required under subsections (a) and (b), documentation of the following:

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

(2) Proof of current National certification as a CNS.

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

(f) An applicant shall verify compliance with section 8.5(e) of the act (63 P. S. § 218.5(e)) on the application for certification.

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

MAINTENANCE OF CERTIFICATION

§ 21.821. CNS standards of conduct.

(a) In addition to the standards of conduct for a professional nurse set forth in § 21.18 (relating to standards of nursing conduct), a CNS shall perform only those services that comprise the practice of professional nursing as defined in section 2(1) of the act (63 P. S. § 212(1)).

(b) A CNS practicing in this Commonwealth shall maintain a level of professional liability coverage as set forth in section 8.5(e) of the act (63 P. S. § 218.5(e)).

§ 21.822. Biennial renewal of certification.

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

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

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

(d) As a condition of biennial renewal, a CNS shall complete a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal as required under section 8.5(c)(2) of the act (63 P. S.

§ 218.5(c)(2)), unless the requirement is waived by the Board under § 21.823(b) (relating to CNS-level continuing education; waiver; sanctions) or the CNS's certification is on inactive status.

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

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

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

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

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

§ 21.824. Inactive status and reactivation.

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

§ 21.825. Sources of continuing education.

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

- (1) Board-approved CNS educational programs and CNS educational programs approved by other state boards of nursing or that hold current accreditation issued by a National nursing accreditation organization.
- (2) National and international nursing organizations and their state and local affiliates.
- (3) National and international medical and osteopathic organizations and their state and local affiliates.
- (4) National pharmaceutical organizations and their state and local affiliates.
- (5) National nursing specialty organizations and programs accredited by National nursing accrediting associations.
- (6) Continuing education programs approved by other state boards of nursing for advanced practice nurses or CNSs.

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

(c) CNSs may obtain credit for continuing education offered by providers not indicated in subsection (a) if the provider obtains Board approval of the continuing education prior to its implementation, or the CNS obtains Board approval of the continuing education prior to attending the continuing education. A continuing education provider or CNS may obtain Board approval of continuing education by submitting an application for approval, the fee in § 21.805 (relating to fees) and the supporting documentation in § 21.827(b) at least 90 days prior to the course.

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

(e) Up to 4 hours may be approved under subsection (c) for service as a teacher in a nursing education program, preceptor providing direct clinical supervision in a specialty area, lecturer or speaker and for publication in a refereed journal or other scholarly publication relating to the CNS's area of practice.

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

(g) The Board will apply § 21.132(b) (relating to continuing education hours) to determine the number of hours awarded for academic coursework.

§ 21.826. Requirements for continuing education courses.

Each course must have:

- (1) An established mechanism to measure its quality, established criteria for selecting and evaluating faculty, and established criteria for the evaluation of each participant who completes the course.
- (2) An adequate physical facility and appropriate instructional materials to carry out the continuing education course.
- (3) An instructor whose area of expertise is in the subject matter being taught.

§ 21.827. Continuing education course approval.

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

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

- (1) The full name and address of the provider.
- (2) The title of the program.
- (3) The dates and location of the program.
- (4) The faculty names, titles, affiliations, degrees and areas of expertise.

(5) The schedule of the program—title of subject, lecturer and time allocated.

(6) The total number of hours requested.

(7) The method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants.

(8) The course objectives.

(9) The target audience.

(10) The core subjects.

(11) The instruction and evaluation methods.

(c) Providers shall submit other information requested by the Board.

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

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

§ 21.828. CNS responsibilities.

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

(1) CNS's name.

(2) Dates attended.

(3) Continuing education hours.

(4) Title of course.

(5) Course provider.

(6) Location of course.

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

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

PENALTIES FOR VIOLATION

§ 21.831. Penalties for violations.

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

(1) The CNS has engaged in medical diagnosis or the prescription of medical therapeutic or corrective measures prohibited under section 8.6(a) of the act (63 P. S. § 218.6(a)).

(2) The CNS has performed a service beyond the scope of practice of professional nursing as defined in section 2(1) of the act (63 P. S. § 212(1)).

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

[Pa.B. Doc. No. 10-1275. Filed for public inspection July 16, 2010, 9:00 a.m.]

STATE BOARD OF VETERINARY MEDICINE [49 PA. CODE CH. 31] Responsibility to Clients and Patients

The State Board of Veterinary Medicine (Board) amends § 31.21 (relating to Rules of Professional Conduct for Veterinarians) to read as set forth in Annex A. The final-form rulemaking amends Principle 7 (relating to responsibility to clients and patients) to specify two exceptions to the existing regulation that veterinarians may choose whom they will serve. First, the final-form rulemaking requires a veterinarian to provide euthanasia to relieve the suffering of an animal physically presented to the veterinarian's facility during the veterinarian's business hours. Second, the final-form rulemaking requires a veterinarian to provide notice and a reasonable time to secure alternative services should a veterinarian decide to discontinue treatment of an animal.

In addition, the final-form rulemaking clarifies an existing provision regarding protecting the personal privacy of clients. The final-form rulemaking also requires veterinarians to practice in accordance with current advancements in veterinary medicine and acceptable and prevailing standards of care, including with respect to drugs used by a veterinarian. Finally, the final-form rulemaking requires veterinarians to utilize analgesic drugs and therapies in accordance with current veterinary medical knowledge and acceptable and prevailing standards of practice.

Effective Date

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

Statutory Authority

Section 21(11) of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.21(11)) provides that the Board "shall suspend or revoke" a licensee or certificateholder who "depart[s] from or fail[s] to conform to the standards of acceptable and prevailing veterinary medical practice." The Board's amendments to subsections (d) and (f) are consistent with this provision.

Section 21(12) of the act provides that the Board "shall suspend or revoke" a licensee or certificate holder who is found guilty of "[e]ngaging in practices in connection with the practice of veterinary medicine which are in violation of the standards of professional conduct as defined herein or prescribed by the rules of the board." Section 5(2) of the act (63 P. S. § 485.5(2)) authorizes the Board to "[a]dopt rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity, skills and practice in the profession of veterinary medicine." The Board's amendments to subsections (a), (c) and (e) update the Board's rules of professional conduct and set forth standards to maintain high standards of integrity, skills and practice in the profession.

Summary of Comments and the Board's Response

The Board received comments from Tom Garg, VMD, and the Pennsylvania Veterinary Medical Association

(PVMA). Dr. Garg opined that the proposed standards were very reasonable; however, he voiced concern with subsection (e). The first issue raised was whether a client who gave oral consent for euthanasia of a pet being treated at a veterinary facility would find it inappropriate and insensitive for the veterinarian to later ask the client to provide written consent. In addition, Dr. Garg questioned what would happen if the client later refused to return the euthanasia consent form (if it was mailed to the client) or refused to sign the consent form. The Board agrees that many clients would find it insensitive to be asked to provide written consent after a beloved pet had been euthanized. The Board has replaced the proposed requirement with a requirement that the veterinarian document, in the patient's veterinary medical record, a client's oral consent to euthanasia or other treatments that have significant potential risks.

Second, Dr. Garg noted that in an emergency/critical care practice where critically ill patients are continually being reevaluated, it would not be feasible to obtain written consent each time the treatment plan is revised, as the animal's owner is rarely present. Dr. Garg accurately noted that the use of a broad consent form at the outset of treatment would not be obtaining truly informed consent. Section 31.21, Principle 7(e) was not intended to stifle the provision of veterinary care to patients. The Board added language to this subsection to indicate that the subsection does not preclude a veterinarian from obtaining general consent to treat that is effective whenever circumstances require veterinary medical intervention in the best interests of the patient and within parameters previously discussed with the client.

PVMA wrote in support of the requirement that veterinarians provide euthanasia to an animal that is physically presented to the veterinarian, noting that the requirement was consistent with the American Veterinary Medical Association's professional veterinary medical ethics and in the best interest of the welfare of suffering animals. PVMA questioned how "reasonable attempts" to contact an owner would be interpreted and who would establish the definition. The Board added a definition for both a "reasonable attempt" to determine the identity of an animal's owner and for a "reasonable attempt" to contact the owner. Specifically, the new provision provides that a reasonable attempt to contact the owner includes telephoning or using another contact method found on the animal's tag or microchip.

PVMA next asked who defines what are "significant" potential risks of treatment options. The treating veterinarian would be responsible for determining the significant potential risks that need to be explained to a client. The adjective "significant" is intended to limit the list of potential risks that shall be discussed to those that are statistically significant either in frequency or severity. It would be impossible for a health care provider to discuss every potential risk of every treatment; the provision requires veterinarian address with clients those risks that are generally recognized by the veterinary medical community as significant risks. The Board added the words "reasonably anticipated" to further describe the significant potential risks that must be explained to clients.

PVMA next commented on subsection (f), stating that the "'acceptable and prevailing standards of veterinary medical practice' can vary from region to region, general vs. specialty practice, [and so forth]. These terms should be spelled out to prevent subject interpretation." The Board disagrees that the acceptable and prevailing standards of veterinary medical practice, as this phrase is

used in the act and Chapter 31, can vary from region to region or type of practice. The General Assembly created only one Statewide Board and the act provides for only one standard of practice that is acceptable and prevailing across this Commonwealth. Every practitioner of the healing arts—whether veterinarian, physician, dentist or podiatrist—is required to maintain current knowledge of the generally accepted treatments and precautions within their fields. It is impossible for any licensing board to "spell out" the acceptable and prevailing standards of practice in the healing professions for two primary reasons: first, the standards are too extensive; and second, because the acceptable and prevailing standard is, by definition, always changing.

Regarding subsection (g), PVMA questioned what would be a "reasonable period of time." The Board added an explanatory statement that the reasonableness of the time period will be based on the nature of the animal's condition and the transfer shall be sufficiently timely to accommodate the animal's veterinary medical needs. Thus, if the animal were in critical condition, the veterinarian should fax the records immediately; however, if the animal is well and stable, a longer time, up to the 3-day period for release of records to clients, would be acceptable.

Finally, PVMA questioned whether a client shall provide a written release for medical records as currently required under § 31.22 (relating to recordkeeping). Section 31.22(8) requires a veterinarian to release records to an animal owner within 3 business days of receipt of the client's written request. Subsection (h) refers to a transfer of the records from one veterinarian to another veterinarian; this request may be oral.

PVMA also raised the following concerns: (1) what is the protocol when a person adopts an animal and the original owner cannot be located or does not respond to contact attempts; (2) what protection does the veterinarian have when releasing those records; and (3) what recourse does the new owner have in obtaining the records. As to the first inquiry, the Board is not clear how an animal could be adopted if the animal's owner cannot be located or does not respond to contact attempts. If an animal is abandoned at a veterinary facility, the veterinarian shall follow the abandonment provisions in section 601(c) of the Dog Law (3 P. S. § 459-610(c)). In this case, ownership of the animal would be asserted by the humane society. In some cases, by agreement with the humane society, the veterinarian retains possession of the animal and the humane society transfers ownership of the animal to the veterinarian. In this case, the veterinarian either releases the records to the humane society or, if the veterinarian becomes the animal's owner, may release the animal's records to a new adopter. Regarding the second inquiry, the abandonment provisions in section 601(c) of the Dog Law provide the protection. The third question appears to be answered in the response to the first question.

The House Professional Licensure Committee (HPLC) submitted two comments. First, the HPLC requested an explanation "as to how to reconcile the conflict between the need of a veterinarian to obtain oral consent or a signature of an owner to perform humane euthanasia for an animal and the lack of need for client consent for euthanasia when a client cannot be contacted." The Board does not view the provision that requires a veterinarian to obtain an owner's consent for treatment as conflicting with the provision that allows a veterinarian to provide treatment without an owner's consent if the owner cannot

be identified or contacted. There is not a conflict because, in the latter case, there is effectively no owner from whom to obtain consent to treatment.

In the vast majority of cases, the animal's owner brings the animal to a veterinarian for treatment. Euthanasia is a treatment that may be provided by a veterinarian in certain cases. Owner consent is required for treatment; however, an animal may urgently require care in some cases when the owner is unknown or cannot be contacted. The Board's provision allows veterinarians to provide care in these limited cases and sets forth guidelines for the provision of care in these cases. A case such as this might arise when a law enforcement officer or good Samaritan brings an injured animal to a veterinarian. The Board's provision requires the veterinarian to check the animal for tags, a tattoo and to scan for a microchip to attempt to identify the animal's owner and obtain consent for treatment (which may include euthanasia). In some cases the animal does not have identification and an owner cannot be determined, or if an owner is identified, the owner cannot be contacted to obtain consent to treatment. In this case, Principle 7(b), which requires veterinarians to "consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright" would guide the veterinarian's actions. Principle 7(a)(1) authorizes the veterinarian to provide treatment to the animal without the owner's consent. The veterinarian is bound by the standards of acceptable and prevailing veterinary medical practice in the type of treatment that the veterinarian shall provide. In cases when euthanasia is medically necessary to relieve an animal's suffering, the provision allows a veterinarian to provide euthanasia.

Second, the HPLC inquired as to how standards that veterinarians are to follow are determined to be "acceptable and prevailing." The standards are identified through expert testimony, learned treatises, textbooks and peer-reviewed professional journals, just as they are determined in other fields of the healing arts.

The Independent Regulatory Review Commission (IRRC) also submitted comments. IRRC asked the Board to submit information regarding the widespread acceptance that the use of analgesia is the acceptable and prevailing standard of care, which had been detached from the Regulatory Analysis Form prior to submission of the proposed rulemaking. This information is being provided to IRRC as an attachment to the Regulatory Analysis Form.

Regarding subsection (a)(1), IRRC recommended using either "humane euthanasia" or "euthanasia" throughout the final-form rulemaking. As the concept of humane is integral to "euthanasia," the Board deleted the repetitive word from subsection (a)(1). IRRC next recommended that the Board provide a clear standard for what a "reasonable attempt" would be in subsection (a)(1). The Board added language to address the concern. IRRC also inquired as to the meaning of "proper veterinary medical judgment" as used in subsection (a)(1) and (2). The Board intended that veterinarians act in accordance with the acceptable and prevailing standards of veterinary medical practice, as is required by the act.

Next, regarding subsection (a)(2), IRRC asked what type of notice would be required to be given to a client prior to terminating the veterinarian-client-patient relationship and suggested that the notice be in writing. The Board adopted the suggestion.

Regarding subsection (c), IRRC questioned under what circumstances a veterinarian would obtain or need a

person's Social Security number or confidential health information and requested an explanation of why it would be necessary for a veterinarian to request, possess and document a person's Social Security number, sensitive financial information or confidential health information. Subsection (c) does not require a veterinarian to request, possess or document this information; rather, subsection (c) requires a veterinarian who does have this information to protect it. By way of further answer, a veterinarian may have a client's Social Security number if the client applies for Care Credit through the veterinarian. A veterinarian may have confidential health information about a client if the veterinarian is caring for an emotional support animal or assistance animal. Finally, a veterinarian may have sensitive financial information, such as a client's credit card information, if the client has provided this information to pay for services.

IRRC echoed PVMA's questions about defining the acceptable and prevailing standard of veterinary medical practice in subsections (d) and (f). Section 21(11) of the act authorizes the Board to discipline a licensee for the "departure from, or failure to conform to, the standards of acceptable and prevailing veterinary medical practice, in which case actual injury need not be established." Virtually identical language exists in nearly every healthcare profession's practice act. For example, section 7(a)(10) of the Optometric Practice and Licensure Act (63 P.S. § 244.7(a)(10)) states that the State Board of Optometry may discipline a licensee for the "[f]ailure to conform to, the acceptable and prevailing standards of optometric practice in rendering professional service to a patient. Actual injury to a patient need not be established"; section 15(a)(8) of the Osteopathic Medical Practice Act (63 P.S. § 271.15(a)(8)) states that the State Board of Osteopathic Medicine may discipline a licensee for "any departure from, or the failure to conform to, the standards of acceptable and prevailing osteopathic medical practice. Actual injury to a patient need not be established"; section 5(a)(12) of the Pharmacy Act (63 P.S. § 390-5(a)(12)) states that the State Board of Pharmacy may discipline a licensee for "the departure from, or failure to conform to, the standards of acceptable and prevailing pharmacy practice, in which case actual injury need not be established"; and section 41(8) of the Medical Practice Act of 1985 (63 P.S. § 422.41(8)) states that the State Board of Medicine may discipline a licensee for "departure from or failing to conform to an ethical or quality standard of the profession . . . actual injury to a patient need not be established." Section 41(8)(i) of the Medical Practice Act of 1985 further explains the deviation from a standard of the profession by stating that "the accepted standard of care for a practitioner is that which would normally be exercised by the average professional of the same kind in this Commonwealth under the circumstances." The Board has already further defined the "acceptable and prevailing standards of care" as used in subsection (d) by stating that abiding by these standards "includ[es] using current proven techniques, drugs and scientific research that may affect treatment decisions" and to "practice in accordance with . . . pharmacologic properties, indications and contraindications of drugs and biologics." The Board believes these provisions further clarify the statutory phrase.

Next, IRRC raised issues with subsection (e). First, IRRC suggested deleting the word "significant" from the phrase "significant potential risks," stating that the word "significant" was vague. The Board intended the word "significant" to modify and limit the word "risks," thus adding clarity to the vague term "risks." Veterinarians are

required to conform their professional conduct to the acceptable and prevailing standards of practice; this requirement extends to veterinarians' conversations with clients regarding treatment options. Potential risks are significant and shall be disclosed to clients if the risks are generally accepted in the veterinary medical community to be significant and if a majority of practitioners acting on this generally accepted knowledge would disclose the risks to clients. Second, IRRC questioned the requirement for written consent to euthanasia, particularly if oral consent is first obtained. IRRC agreed with commentators that to request a signature after an animal had been euthanized was unrealistic and awkward. As previously discussed, the Board deleted this provision.

Regarding subsection (g), IRRC asked who determines what is a reasonable period of time to forward records to a new veterinarian and suggested that the final-form rulemaking set a finite time limit. The Board declines to set a finite time limit because the time is wholly dependent on the condition of the animal. As an outside period, the Board believes that guidance is already found in § 31.22, which gives a veterinarian a maximum of 3 business days to provide copies of records to a client. The Board added a provision regarding this maximum time period.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking should not have financial impact on licensees, the Board or any other State entity. The final-form rulemaking will not have fiscal impact on the public. There are not additional paperwork requirements associated with the final-form rulemaking.

Sunset Date

The Board continuously monitors its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 2, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5438 (September 19, 2009), to IRRC and to the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 5, 2010, the final-form rulemaking was approved by the HPLC. On June 2, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 3, 2010, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Board, acting under its authorizing statute, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 31, are amended by amending § 31.21 to read as set forth in Annex A, with ellipses referring to the existing text of the regulation.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ROBIN J. BERNSTEIN, Esq.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Commission relating to this document, see 40 Pa.B. 3471 (June 19, 2010).)

Fiscal Note: Fiscal Note 16A-5722 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 31. STATE BOARD OF VETERINARY MEDICINE

PROFESSIONAL CONDUCT

§ 31.21. Rules of Professional Conduct for Veterinarians.

* * * * *

Principle 7. Responsibility to clients and patients.

(a) Except as provided in this subsection, veterinarians may choose whom they will serve, but may not neglect an animal with which the veterinarian has an established veterinarian/client/patient relationship.

(1) During a veterinarian's regular business hours, a veterinarian may not refuse to provide euthanasia to relieve the suffering of an animal that is physically presented to the veterinarian at the veterinarian's facility. A veterinarian may provide euthanasia for an animal under this paragraph without a veterinarian/client/patient relationship if the owner is unknown or cannot be contacted. If the owner is unknown, the veterinarian shall make a reasonable attempt to determine the identity of the animal's owner, including, at a minimum, checking the animal for a tag, tattoo or microchip. If the owner is known or identified, the veterinarian shall make a reasonable attempt to contact the owner, including, at a minimum, telephoning or using another contact method found on the animal's tag or microchip, and obtain consent to euthanasia or treatment. If the owner cannot be identified or cannot be contacted, the veterinarian shall exercise proper veterinary medical judgment to determine whether to provide euthanasia or other veterinary medical care to the animal.

(2) If a veterinarian deems it necessary to discontinue the treatment of an animal with which the veterinarian has a veterinarian/client/patient relationship, the veterinarian shall give written notice to the client of his intention to withdraw and provide reasonable time, based on the condition of the animal and the availability of alternative veterinary medical services, to allow the client to obtain necessary veterinary care for the animal.

(b) Veterinarians shall consider first the welfare of the animal for the purpose of relieving suffering and disability while causing a minimum of pain or fright.

(c) Veterinarians and their staffs shall protect the personal privacy of clients, unless the veterinarians are required by law to reveal the confidences or it becomes necessary to reveal the confidences to protect the health and welfare of an individual, the animal or others whose health and welfare may be endangered. Personal information that should be protected under this section includes a client's Social Security number and sensitive financial information and confidential health information about the client. Veterinary medical records of a client's animals shall be released to the Board or its agents upon demand, as set forth in section 27.1(b)(1) of the act (63 P.S. § 485.27a(b)(1)). Any portion of a veterinary medical record relevant to public health shall be released to public health or law enforcement officials upon demand. Veterinary medical records shall be released to the general public only with the written consent of the client, subpoena or court order.

(d) Veterinarians shall practice in accordance with current advancements and acceptable and prevailing standards of care in veterinary medicine, including using current proven techniques, drugs and scientific research that may affect treatment decisions. Veterinarians shall practice in accordance with advancements and acceptable and prevailing standards of veterinary medical practice in this Commonwealth related to the pharmacologic properties, indications and contraindications of drugs and biologics.

(e) Veterinarians shall explain the benefits and reasonably anticipated significant potential risks of treatment options to clients. When the client or client's agent is present, veterinarians shall document, by signature, the client's consent for euthanasia and other treatments that have significant potential risks. If the client is not present to provide a signature, veterinarians shall attempt to contact the owner by telephone or other established means to obtain oral consent and shall document the oral consent in the animal's veterinary medical record. This subsection does not preclude a veterinarian from obtaining general consent to treat that is effective whenever circumstances require veterinary medical intervention in the best interests of the patient within parameters previously discussed with the client.

(f) Veterinarians shall serve as patient advocates especially regarding the alleviation of pain and suffering, consistent with the acceptable and prevailing standards of veterinary medical practice. Veterinarians shall utilize analgesic drugs, dosages, treatment intervals and combination therapies proven to be safe and effective in different species and in various conditions of age, illness or injury in accordance with current veterinary medical knowledge and acceptable and prevailing standards of veterinary medical practice in this Commonwealth.

(g) If a client desires to consult with another veterinarian about the same case, the first veterinarian shall readily withdraw from the case, indicating the circum-

stances on the veterinary medical record of the animal, and shall forward copies of the animal's veterinary medical records in a reasonable period of time to other veterinarians who request them. For purposes of this subsection and subsection (h), the reasonableness of the period of time shall be based on the nature of the animal's condition and the transfer shall be sufficiently timely to accommodate the animal's veterinary medical needs, but may not be longer than 3 business days after the client makes the request.

(h) If a client requests referral to another veterinarian or veterinary hospital, the attending veterinarian shall honor the request and facilitate the necessary arrangements, which includes forwarding copies of the veterinary medical records of the animal in a reasonable period of time to the other veterinarian or veterinary hospital.

* * * * *

[Pa.B. Doc. No. 10-1276. Filed for public inspection July 16, 2010, 9:00 a.m.]

STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

[49 PA. CODE CH. 36]

Appraiser Trainees; Initial and Continuing Education; Supervised Experience; Practice Standards

The State Board of Certified Real Estate Appraisers (Board) amends Chapter 36 (relating to State Board of Certified Real Estate Appraisal) to read as set forth in Annex A.

The final-form rulemaking accomplishes the following: (1) establishes a regulatory scheme for the appraiser trainee license, which was added to the Real Estate Appraisers Certification Act (REACA) (63 P.S. §§ 457.1—457.19) by the act of July 8, 2008 (P.L. 833, No. 59) and the act of October 9, 2008 (P.L. 1380, No. 103); (2) amends and clarifies initial education, continuing education and supervised experience requirements for certified appraisers, consistent with Federal criteria that are binding on the Board under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101-173, 103 Stat. 183); (3) clarifies appraiser practice standards regarding supervision and use of titles; and (4) harmonizes requirements for certified Pennsylvania evaluators with those for certified appraisers.

Summary of Comments, Responses and Changes to Proposed Rulemaking

The Board published a notice of proposed rulemaking at 39 Pa.B. 5423 (September 19, 2009) with a 30-day public comment period. The Board received a general comment in support of the proposed rulemaking from the Pennsylvania Association of Realtors.

The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of the review of the proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of the proposed rulemaking under the Regulatory Review Act.

§ 36.2. *Application process*

Section 36.2 establishes the procedure for applying for certification as a residential or general real estate appraiser. Section 36.2(e) provides that, except as otherwise stated in §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser), an applicant shall comply with increased education or experience requirements that take effect between the applicant's initial filing of an application and the applicant's passing the certification examination.

The final-form rulemaking amends § 36.2 to include the procedure for applying for licensure as an appraiser trainee. One of the amendments to § 36.2(e) provided that an applicant for licensure as an appraiser trainee shall comply with increased education requirements that take effect between the applicant's filing of an application that is disapproved and the applicant's filing of a new application.

IRRC questioned the intent of this amendment to § 36.2(e), which was not specifically discussed in the preamble of the proposed rulemaking. IRRC also asked how or when increased education requirements would take effect; how the Board would notify applicants of increased requirements; and whether increased requirements would be implemented through future rulemaking.

The intent of the amendment is to clarify that an applicant for an appraiser trainee license shall meet the education requirements that are in effect at the time of licensure. This is consistent with the general rule applicable to applicants for residential and general appraiser certification. Increased education requirements for appraiser trainees would be implemented by the Board through rulemaking. The impetus for future rulemaking would be if the requirements adopted by this final-form rulemaking should prove to be inadequate. The Board would publicize pending changes in trainee qualifications in its online newsletter and in special mailings to residential and general appraisers and to individuals who had previously submitted nonqualifying applications for licensure.

§ 36.11. *Qualifications for certification as residential real estate appraiser*

§ 36.12. *Qualifications for certification as general real estate appraiser*

Sections 36.11 and 36.12 are identically structured sections that set forth the qualifications for certification as a residential and general appraiser, respectively. Sections 36.11 and 36.12 were last amended on July 21, 2007, to implement new education and experience requirements prescribed by the Appraiser Qualifications Board (AQB), an independent body charged under the FIRREA with establishing the minimum initial education, continuing education, experience and examination requirements for state-credentialed real estate appraisers. The AQB's new education requirements took effect January 1, 2008.

Sections 36.11(b) and 36.12(b) provide that effective January 1, 2008, an applicant for residential or general appraiser certification, respectively, shall have completed 200 or 300 classroom hours, respectively, in a prescribed appraisal curriculum, while §§ 36.11(d) and 36.12(d) provide that effective January 1, 2008, an applicant for residential or general appraiser certification, respectively, shall possess at least an associate's degree or a bachelor's degree, respectively, or an equivalent number of college credits. These sections exempt from the new education

requirements an applicant who had satisfied, before January 1, 2008, the former 120-classroom hour requirement for residential appraiser certification or the former 180-classroom hour requirement for general appraiser certification.

The exception to the new education requirements for an applicant who satisfied the former education requirements before January 1, 2008, reflects a segmented approach, rather than a firm date approach, to implementation of the AQB's new education requirements. Under the firm date approach, an appraiser certificate would not be issued to an applicant on or after January 1, 2008, unless the applicant satisfied the increased classroom hour requirement. The AQB allowed states the option of implementing the new education requirements through either the firm date approach or the segmented approach. In promulgating the new requirements in 2007, the Board opted for the segmented approach to minimize the potential disruption to the career plans of those persons who, at the time of the adoption of new regulations, were then taking steps to satisfy the education and experience requirements for appraiser certification.

The final-form rulemaking amends §§ 36.11(b) and 36.12(b) to provide that the increased classroom hour requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that includes evidence of the applicant's having satisfied the former classroom hour requirement before January 1, 2008. The purpose is to establish a reasonable period of time after January 1, 2008, during which an applicant who satisfied the former classroom hour requirement may qualify for appraiser certification without having to complete the increased classroom hour requirement. The Board determined that placing a 4-year limit on the grandfathering effect of the segmented approach to implementation of the increased classroom hour requirement is desirable because it eliminates the possibility that persons could be credentialed as residential or general appraisers in the distant future who lack the level of appraisal education that users of appraisal services would have come to expect of newly credentialed appraisers.

IRRC questioned whether the proposed 4-year time frame for a grandfathered applicant is too generous, considering that the experience requirement for residential and general appraiser certification can be completed in as little as 24 months and 30 months, respectively, and that experience can be acquired contemporaneously with classroom hours after a minimum of 75 classroom hours have been completed. The Board regards 4 years as an appropriate time frame because it takes into account the fact that many apprentice appraisers acquire their qualifying experience on a part-time basis, depending on the availability of appraisal assignments from their supervising appraisers.

Sections 36.11(b) and (d) and 36.12(b) and (d) reference an applicant's obligation to provide evidence of having completed the requisite classroom hours in appraisal subjects. IRRC recommended that the final-form rulemaking clarify what the Board considers appropriate documentation of classroom hours. The Board does not believe a clarification is necessary for these sections. The Board's application for residential or general appraiser certification, which can be downloaded from the Board's web site, provides detailed instructions to prospective applicants about the acceptable forms of documentation needed to establish their compliance with education and experience requirements for certification.

Sections 36.11(b) and (d) and 36.12(b) and (d) also reference an applicant's obligation to complete the 15-hour National Uniform Standards of Professional Appraisal Practice (USPAP) Course "or equivalent course." IRRC recommended that the final-form rulemaking clarify how the Board will determine what course is equivalent to the 15-hour National USPAP Course. The AQB, which developed the 15-hour National USPAP Course, determines what is an acceptable equivalent. The final-form rulemaking revises §§ 36.11(b) and (d) and 36.12(b) and (d) to reflect this clarification.

The HPLC noted that the proposed rulemaking inadvertently misplaced two brackets in §§ 36.11(b) and 36.12(b) that identified material for elimination. The Legislative Reference Bureau corrected the errors before the proposed rulemaking was published in the *Pennsylvania Bulletin*.

§ 36.12a. *Qualifications for licensure as appraiser trainee*

The final-form rulemaking adds § 36.12a, which sets forth the requirements for licensure as an appraiser trainee. Section 36.12a(b)(2) provides that with respect to each of the three courses that comprise the 75-hour education requirement for licensure, an appraiser trainee candidate shall have passed "an examination pertinent to the course." IRRC recommended that the Board clarify what is meant by "an examination pertinent to the course." The Board does not believe a clarification of the phrase is necessary because its meaning is not likely to be misunderstood by trainee candidates. Identical language applies to residential and general appraiser candidates in §§ 36.11(b)(1) and 36.12(b)(1), respectively. The usage was derived from the AQB's education criteria, which provides that an individual seeking credit for classroom hours in an appraisal subject shall have passed "an examination pertinent to that educational offering."

Section 36.12a(b)(4) permits a trainee candidate to utilize a distance education course if the course that meets the following criteria: (1) is approved by the Board; (2) is presented either by an accredited college or university that offers distance education courses in other disciplines or by a course provider that has received approval of course content from the Board or the AQB through its Course Approval Program and approval of course design and delivery mechanism from the International Distance Education Certification Center; (3) requires completion of a written examination proctored by an official approved by the college, university or other course provider; and (4) meets the course content and classroom hour requirements prescribed by the Board. These distance education requirements are the same as those applicable to residential and general appraiser candidates in §§ 36.11(b)(4) and 36.12(b)(4), respectively.

The HPLC asked whether there is a limit on the number of classroom hours that can be obtained through distance education. There is not a limit, either for appraiser trainee candidates or for residential and general appraiser candidates. The HPLC also asked how a written examination for a distance education course is proctored. The proctoring standard, established by the AQB, requires that the proctor be physically present to administer the written examination.

Section 36.12a(d) provides that an appraiser trainee license may not be biennially renewed more than four times unless the Board, for good cause shown and on a case-by-case basis, should determine that one or more additional renewals is warranted. IRRC asked when the Board would consider additional renewals appropriate

and whether there would be a limit on the number of additional renewals. IRRC also asked what the Board considers good cause for an additional renewal and what procedures a trainee would have to follow to request an additional renewal.

Section 36.12a(d) expressly restricts the Board's authority to grant a trainee more than four renewals to those circumstances establishing good cause. While not susceptible of precise definition, "good cause" would apply to circumstances in which a relaxation of the four-renewal limit is necessary to avoid an unjust result. Among the possible circumstances that might give rise to a bona fide claim of good cause are military service, lack of apprenticeship opportunities, and serious, extended illness. The Board is not limited in the number of additional renewals that it may grant to a trainee who establishes good cause. The Board does not consider it necessary to prescribe by regulation specific procedures for a trainee to follow in requesting one or more additional renewals; if the Board should determine that a request needs to be made in a particular format, it can develop an application or request form that a trainee can download from the Board's web site for submission.

§ 36.13. *Experience options for preparation of appraisal reports*

Section 36.13 sets forth the standards by which the Board evaluates experience acquired in the preparation of appraisal reports by a candidate for certification as a residential or general appraiser. The final-form rulemaking amends § 36.13(a) to establish July 1, 2010, as the date by which an appraisal assistant shall be licensed as an appraiser trainee to continue acquiring qualifying experience in the preparation of appraisal reports. Because publication of final-form rulemaking will not occur until July 2010, the final-form rulemaking revises § 36.13(a) to extend the deadline by which an appraisal assistant must obtain an appraiser trainee license to October 1, 2010. The extended deadline will allow the Board sufficient time to process license applications from persons currently employed as appraisal assistants so that their acquisition of qualifying experience may continue without interruption.

§ 36.52. *Use of certificate number and title*

Section 36.52 requires a certified appraiser to place his name, signature and certificate number immediately adjacent to or immediately below the appraiser's title on each appraisal report and appraisal agreement. Section 36.52 references the titles of "Pennsylvania certified general real estate appraiser," "Pennsylvania certified residential real estate appraiser" and "Pennsylvania certified broker/appraiser" and provides an example of how these titles, together with the other required information, should appear on an appraisal report or appraisal agreement. The final-form rulemaking amends § 36.52 to permit "substantially similar" titles to be substituted for those referenced in the section. IRRC asked why an appraiser would need to use a "substantially similar" title given the list of titles already in § 36.52. IRRC also asked what the Board considers a "substantially similar" title.

The current regulation sets forth a separate title for use by each of the three classes of certified appraiser, that is, broker/appraiser, residential appraiser and general appraiser. The titles are not interchangeable among the certification classes. As stated in the proposed rulemaking, the need to allow appraisers to use a substantially similar version of their titles arises from the fact that some of the commercial software and templates that

appraisers use to prepare appraisal reports cannot be easily modified to accommodate their titles. A substantially similar title would likely be a shortened or abbreviated version of the prescribed title that provides enough information to identify the certification class of the user.

§ 36.54. *Duties of supervisory appraiser*

Section 36.54 sets forth the supervisory duties of a residential or general appraiser when utilizing the services of an appraisal assistant, an appraiser trainee or another appraiser. Consistent with the amendment to § 36.13(a) (relating to experience options for preparation of appraisal reports) regarding the revised deadline by which an appraisal assistant shall obtain an appraiser trainee license, the final-form rulemaking extends the deadline by which a residential or general appraiser must cease utilizing the services of an appraisal assistant from July 1, 2010, to October 1, 2010.

Statutory Authority

Section 5(2) of the REACA (63 P. S. § 457.5(2)) and section 3 of the Assessors Certification Act (ACA) (63 P. S. § 458.3) authorize the Board to promulgate regulations as necessary to carry out the provisions of the REACA and the ACA, respectively. Additionally, section 9(a) of the REACA (63 P. S. § 457.9(a)) authorizes the Board to establish fees for its operations by regulation.

Fiscal Impact

The final-form rulemaking requires applicants for licensure as appraiser trainees to pay an application fee of \$75 to the Board. The fee will generate approximately \$30,000 in biennial revenues for the Board, based on projections that the Board will receive approximately 400 license applications biennially. The final-form rulemaking also requires those seeking to become licensed as appraiser trainees to incur costs in obtaining qualifying education for licensure. Although these costs cannot be quantified, they do not add to the overall cost of becoming credentialed as a residential or general appraiser because the coursework that is necessary for licensure as an appraiser trainee is part of the coursework that is necessary for certification as a residential or general appraiser.

The final-form rulemaking does not have a direct fiscal impact on the public or on other agencies and political subdivisions of this Commonwealth.

Paperwork Requirements

The final-form rulemaking requires each prospective appraiser trainee to file a license application with the Board and, once licensed, to file a biennial renewal application to retain the right to practice as a trainee. The Board is required to develop application forms for initial licensure and biennial renewal of licensure as well as an appraiser trainee checklist for use by trainees and their supervisory real estate appraisers in documenting the nature of trainees' work in the preparation of appraisal reports. The final-form rulemaking does not create additional paperwork for residential and general appraisers because they are already required to use checklists to document the experience acquired by appraisal assistants in their employ. The final-form rulemaking does not create additional paperwork for the general public or the Commonwealth and its political subdivisions.

Effective Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 9, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B. 5423, to IRRC and to the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on May 5, 2010, the final-form rulemaking was approved by the HPLC. On June 2, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 3, 2007, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Heidi M. Weirich, Administrator, State Board of Certified Real Estate Appraisers, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-4866, ST-APPRAISE@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the REACA and the ACA.

Order

The Board, acting under the REACA and the ACA, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 36, are amended by amending §§ 36.1—36.3, 36.6, 36.42, 36.51, 36.52 and 36.262 and by adding § 36.12a to read as set forth at 39 Pa.B. 5423; and by amending §§ 36.11—36.13 and 36.54 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

DANIEL A. BRADLEY,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3471 (June 19, 2010).)

Fiscal Note: Fiscal Note 16A-7015 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 36. STATE BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Subchapter A. GENERAL PROVISIONS

QUALIFICATIONS FOR CERTIFICATION OR LICENSURE

§ 36.11. Qualifications for certification as residential real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* Effective January 1, 2008, an applicant shall submit evidence to the Board of having completed 200 classroom hours in the appraisal curriculum set forth in subsection (c)(2). This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 120 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

(1) *Length of classroom hour requirement.* Credit toward the classroom hour requirement will only be granted when the length of the course is at least 15 hours, and the applicant successfully completes an examination pertinent to the course. A classroom hour is defined as 50 minutes out of each 60 minute segment.

(2) *Providers of appraisal courses.* Credit for the classroom hour requirement may be obtained from accredited colleges or universities and community or junior colleges. Subject to Board approval under § 36.31 (relating to provider registration/appraisal courses), credit for the classroom hour requirement may also be obtained from real estate appraisal or real estate related organizations, State or Federal agencies or commissions, proprietary schools and other providers.

(3) *Distance education.* A distance education course is acceptable to meet the classroom hour requirement if the course is approved by the Board and meets the following conditions:

(i) The course is presented by one of the following:

(A) An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines.

(B) A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program.

(ii) The applicant successfully completes a written examination proctored by an official approved by the college, university or other course provider.

(iii) The length and content of the course meet the requirements of paragraph (1) and subsection (c), respectively.

(c) *Content of appraisal education.* The content of an applicant's appraisal education must be as follows:

* * * * *

(d) *Postsecondary education.*

(1) Effective January 1, 2008, an applicant shall submit evidence to the Board of having satisfied one of the following requirements:

(i) Possession of an associate's degree, or higher, from an accredited college or university.

(ii) Completion of 21 semester credit hours in the following college-level subjects at an accredited college or university:

(A) English composition.

(B) Principles of economics (micro or macro).

(C) Finance.

(D) Algebra, geometry or higher mathematics.

(E) Statistics.

(F) Computer science.

(G) Business or real estate law.

(2) This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 120 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

§ 36.12. Qualifications for certification as general real estate appraiser.

* * * * *

(b) *Appraisal classroom hours.* Effective January 1, 2008, an applicant shall submit evidence to the Board of having completed 300 classroom hours in the appraisal curriculum set forth in subsection (c)(2). This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 180 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

(1) *Length of classroom hour requirement.* Credit toward the classroom hour requirement will only be granted when the length of the course is at least 15 hours, and the applicant successfully completes an examination pertinent to the course. A classroom hour is defined as 50 minutes out of each 60 minute segment.

(2) *Providers of appraisal courses.* Credit for the classroom hour requirement may be obtained from accredited colleges or universities and community or junior colleges. Subject to Board approval under § 36.31 (relating to provider registration/appraisal courses), credit for the classroom hour requirement may also be obtained from real estate appraisal or real estate related organizations, State or Federal agencies or commissions, proprietary schools and other providers.

(3) *Distance education.* A distance education course is acceptable to meet the classroom hour requirement if the course is approved by the Board and meets the following conditions:

(i) The course is presented by one of the following:

(A) An accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines.

(B) A course provider that has received approval for course design and delivery mechanism from the IDECC and approval for course content from the Board or from the AQB through its Course Approval Program.

(ii) The applicant successfully completes a written examination proctored by an official approved by the college, university or other course provider.

(iii) The length and content of the course meet the requirements of paragraph (1) and subsection (c), respectively.

(c) *Content of appraisal education.* The content of an applicant's appraisal education must be as follows:

* * * * *

(d) *Postsecondary education.*

(1) Effective January 1, 2008, an applicant shall submit evidence to the Board of having satisfied one of the following requirements:

(i) Possession of a bachelor's degree, or higher, from an accredited college or university.

(ii) Completion of 30 semester credit hours in the following college-level subjects at an accredited college or university:

- (A) English composition.
- (B) Macroeconomics.
- (C) Microeconomics.
- (D) Finance.
- (E) Algebra, geometry or higher mathematics.
- (F) Statistics.
- (G) Computer science.
- (H) Business or real estate law.

(I) Two elective courses in accounting, geography, ag-economics, business management or real estate.

(2) This requirement does not apply to an applicant who submits an otherwise qualifying application before January 1, 2012, that shows evidence of the applicant's having completed 180 classroom hours of courses related to real estate appraisal, including the 15-hour National USPAP Course or equivalent course approved by the AQB, together with coverage of the topics listed in subsection (c)(1), before January 1, 2008.

* * * * *

§ 36.13. Experience options for preparation of appraisal reports.

(a) An applicant for certification as a residential real estate appraiser or a general real estate appraiser under §§ 36.11 and 36.12 (relating to qualifications for certification as residential real estate appraiser; and qualifications for certification as general real estate appraiser) shall have acquired experience in the preparation of appraisal reports in one or more of the following:

(1) Prior to September 3, 1998:

(i) As a licensed real estate broker under the Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902) and Chapter 35 (relating to State Real Estate Commission).

(ii) As an elected officer, director or employee of a banking institution, savings institution, savings bank, credit union or trust company operating under applicable Federal or State laws, when acting on behalf of the institution in connection with a loan transaction.

(iii) As a certified broker/appraiser.

(iv) As an assistant to a certified residential real estate appraiser or certified general real estate appraiser, provided the assistant satisfies the requirements of subsection (b).

(v) As a certified residential real estate appraiser assisting a certified general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, provided the residential appraiser satisfies the requirements of subsection (d).

(2) On or after September 3, 1998:

(i) As a certified broker/appraiser.

(ii) As an assistant to a certified residential real estate appraiser or certified general real estate appraiser, provided the experience is acquired before October 1, 2010, and the assistant satisfies the requirements of subsection (b).

(iii) As a licensed appraiser trainee assisting a certified residential real estate appraiser or certified general real estate appraiser, provided the trainee satisfies the requirements of subsection (c).

(iv) As a certified residential real estate appraiser assisting a general real estate appraiser in an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units, provided the residential appraiser satisfies the requirements of subsection (d).

(b) An assistant to a certified general real estate appraiser or certified residential real estate appraiser shall observe the following requirements when preparing an appraisal report:

(1) The assistant shall perform an inspection of the interior and exterior of the property.

(2) The assistant may not arrive at an independent determination of value.

(3) The assistant shall comply with USPAP.

(4) The assistant shall complete and co-sign a Board-approved appraisal assistant checklist that relates to the assistant's work on the appraisal report.

(5) Unless the appraisal assistant checklist is made part of the appraisal report, the assistant shall co-sign the appraisal report as "assistant to the certified real estate appraiser" or be referenced in the certification section of the appraisal report, or in an addendum to the appraisal report, as having provided significant real property appraisal assistance.

(c) A licensed appraiser trainee shall observe the following requirements when preparing an appraisal report for a certified general real estate appraiser or certified residential real estate appraiser:

(1) The trainee may not be supervised by more than one residential or general appraiser on each appraisal assignment.

(2) The trainee shall perform an inspection of the interior and exterior of the property.

(3) The trainee may not arrive at an independent determination of value.

(4) The trainee shall comply with USPAP.

(5) The trainee shall complete and co-sign a Board-approved appraiser trainee checklist that relates to the trainee's work on the appraisal report and that is made part of the appraisal report submitted to the client.

(d) A certified residential real estate appraiser shall observe the following requirements when preparing an appraisal report for a certified general real estate appraiser:

(1) The residential appraiser shall perform an inspection of the interior and exterior of the property.

(2) The residential appraiser may not arrive at an independent determination of value.

(3) The residential appraiser shall comply with USPAP.

(4) The residential appraiser shall co-sign the appraisal report as set forth in § 36.52 (relating to use of certificate number and title) and ensure that the nature of his significant real property appraisal assistance is specified in the report.

STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

§ 36.54. Duties of supervisory appraiser.

(a) A certified residential real estate appraiser or certified general real estate appraiser who utilizes an appraisal assistant before October 1, 2010, shall:

(1) Provide written notification to the Board of the name and address of the assistant when the assistant begins work for the appraiser.

(2) Directly supervise and control the assistant's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.

(3) Accompany the assistant during the physical inspection of the property until the assistant has logged 300 hours of appraisal experience or until the supervising appraiser determines the assistant is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.

(4) Co-sign the appraisal report as a certified real estate appraiser under § 36.52 (relating to use of certificate number and title) and, unless the appraisal assistant checklist referenced in paragraph (5) is made part of the appraisal report submitted to the client, either have the assistant sign the appraisal report as assistant to the certified real estate appraiser or identify the assistant in the certification section of the appraisal report, or in addendum to the appraisal report, as having provided significant real property appraisal assistance.

(5) Co-sign a Board-approved appraisal assistant checklist that has been completed by the assistant and relates to the assistant's work on the appraisal report.

(6) Provide a current or former assistant who is applying for appraiser certification with copies of designated appraisal reports and appraisal assistant checklists requested by the Board to verify the assistant's experience.

(b) A certified residential real estate appraiser or certified general real estate appraiser who utilizes a licensed appraiser trainee shall:

(1) Have at least 5 years' experience as a residential or general appraiser.

(2) Supervise no more than three trainees at one time.

(3) Directly supervise and control the trainee's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.

(4) Accompany the trainee during the physical inspection of the property until the trainee has logged 300 hours of appraisal experience or until the supervising appraiser determines the trainee is competent under USPAP to perform the physical inspection unaccompanied, whichever is the longer period.

(5) Co-sign a Board-approved appraiser trainee checklist that has been completed by the trainee, relates to the trainee's work on the appraisal report and is made part of the appraisal report submitted to the client.

(6) Provide a current or former trainee who is applying for appraiser certification with copies of designated appraisal reports requested by the Board to verify the trainee's experience.

(c) A certified general real estate appraiser who utilizes a certified residential real estate appraiser as an assistant for an appraisal of nonresidential property or an appraisal of residential property of more than four dwelling units shall:

(1) Directly supervise and control the residential appraiser's work, assuming total responsibility for the contents of the appraisal report, including all value conclusions.

(2) Accompany the residential appraiser during the physical inspection of the property until the general appraiser determines the residential appraiser is competent under USPAP to perform the physical inspection unaccompanied.

(3) Co-sign the appraisal report as set forth in § 36.52 and specify in the appraisal report the nature of the significant real property appraisal assistance rendered by the residential appraiser.

(4) Provide the residential appraiser, at the time of application for general appraiser certification, with copies of designated appraisal reports requested by the Board to verify the residential appraiser's experience.

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