

# PROPOSED RULEMAKING

## PENNSYLVANIA GAMING CONTROL BOARD

[ 58 PA. CODE CHS. 423a, 433a, 435a, 436a AND 513a ]

### Employee and Horsemen's Organization Revisions

The Pennsylvania Gaming Control Board (Board), under the general authority in 4 Pa.C.S. § 1202(b)(14) and (30) (relating to general and specific powers) and specific authority in 4 Pa.C.S. §§ 1308, 1311, 1311.1, 1311.2, 1317.2, 1321, 1406 and 1518(a)(13), proposes to amend Chapters 423a, 433a, 435a, 436a and 513a to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

This proposed rulemaking amends provisions regarding horsemen's organizations and employees to improve the clarity and effectiveness of the Board's regulations.

#### *Explanation of Amendments to Chapters 423a, 433a, 435a, 436a and 513a*

In Chapter 423a (relating to applications), proposed amendments to § 423a.4 (relating to deficient and abandoned applications) clarify that Board staff notifies applicants and establishes time periods to cure deficiencies. Subsection (c) would be added to allow the Bureau of Licensing to close an application that has not been completed but that is not recommended for denial. The applications referenced in subsection (c) are most commonly gaming employees who have decided not to accept employment with a licensee. The Board currently has over 200 applications that are stale—in open status but not recommended for denial. The Bureau of Licensing would send notice in accordance with subsection (a). If the applicant did not respond or no longer wished to complete the application process, the application would be closed.

Proposed § 423a.4(d), currently subsection (c), references only applications that have been denied by the Board. The reference to abandoned applications is in proposed subsection (c).

In Chapter 433a (relating to principal licenses), the definition of "publicly traded" is proposed in § 433a.1 (relating to definitions) to include classes of securities that are listed on a foreign exchange. There is an inconsistency between the definition of "controlling interest" in § 401a.3 (relating to definitions) which acknowledges both domestic and foreign corporations and the definition of "publicly traded" which addresses only securities regulated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78nn). This results in different treatment for foreign versus domestically held, publicly traded stock. For instance, if a person passively owns more than 1% but less than 5% of an entity that is required to be licensed and that entity is publicly traded on a domestic exchange, that person would not be required to be licensed. However, if the person had the same interest in a security listed on a foreign exchange, that person would currently be required to be licensed as a principal. This presents practical problems because of the nature of publicly traded stock which is exchanged daily. This amendment will treat domestic and foreign stock exchanges equally, provided that the Bureau of

Licensing determines that the foreign exchange has similar listing and reporting requirements as those exchanges regulated under the Securities Exchange Act of 1934. The Bureau of Licensing has reviewed and determined that exchanges in Canada, Australia and Japan have similar listing and reporting requirements as those regulated under the Securities Exchange Act of 1934.

Section 433a.9(b) (relating to principal license term and renewal) is amended so only principals of manufacturers and suppliers, which are eligible for initial licensure, are required to complete an initial annual renewal. Unlike slot machine licensees, licensed manufacturers and suppliers are subject to an initial 1-year renewal. The manufacturer or supplier license, however, can only be renewed if the principals, including the affiliates, intermediaries, subsidiaries, holding companies, officers, directors and owners also apply for renewal and are investigated. If, however, a person is applying for a principal license with a manufacturer or supplier that has already completed that initial 1-year renewal, the principal would not be subject to an initial annual renewal.

In § 435a.1 (relating to general provisions), a number of amendments have been proposed to clarify the existing provisions governing which licensed, permitted or registered individuals are prohibited from engaging in gaming as well as the duration and scope of the limitation. These subsections have been expanded to cover both registered and certified gaming service providers which reflects the changes in the dollar thresholds that were part of the amendments to Chapter 437a (relating to vendor certification and registration). See 40 Pa.B. 975 (February 20, 2010).

Proposed amendments to § 435a.1(k) clarify that the prohibition on gaming applies to holders of a license or permit who are currently employed by a slot machine licensee, licensed manufacturer, manufacturer designee, gaming related gaming service provider, supplier or gaming junket enterprise. The duration of the prohibition is stated in proposed subsection (n).

Proposed amendments to § 435a.1(l) clarify that this subsection applies to registered employees of a slot machine licensee. The 30-day duration of an employee's prohibition is currently stated in subsection (n).

Proposed § 435a.1(m) restricts employees who are not required to obtain a permit or registration from wagering in the licensed facility where they work. They may wager at any other licensed facility or at the same facility where they worked once their employment has ended.

Proposed § 435a.1(n) applies the same wagering restrictions imposed on employees of a registered or certified gaming service provider to qualifiers of registered or certified gaming service provider. Similarly, proposed subsection (o), currently subsection (m), is amended to include holders of an occupation permit or registration. These amendments will make the prohibition on gaming uniform for registered and certified gaming service provider qualifiers and employees.

In § 435a.2 (relating to key employee license), the number of copies required to be submitted as part of an application for a key employee license has been reduced from three to one. Because of changes in the Bureau of Licensing's internal procedures, three copies are no longer needed. Additionally, subsections (g)—(j) regarding waivers of key employee licensing requirements are proposed to be deleted. This provision has never been used.

Instead, the Bureau of Licensing has relied on the definition of “key employee” to determine whether or not licensure is required.

In § 435a.3 (relating to occupation permit), the number of copies required to be submitted as part of an application for an occupation permit has been reduced from three to one. As previously stated, changes to the Bureau of Licensing’s internal procedures now only require one copy of the application. In subsections (a), (e) and (f), the scope has been expanded to cover both registered and certified gaming service providers and certified gaming related gaming service providers.

As was done in §§ 435a.2 and 435a.3, proposed amendments to § 435a.5 (relating to nongaming employee registration) reduce the number of copies required for an application for a nongaming employee registration from three to one and the scope of these provisions has been expanded to cover both registered and certified gaming service providers. The term “licensed entity” is replaced with “slot machine licensee” because other types of licensed entities, such as manufacturers and suppliers, do not have nongaming employees. Nongaming employees are specific to slot machine licensees and certified and registered gaming service providers.

Proposed amendments to § 435a.8(a) (relating to temporary credentials for principals, key employees and gaming employees) permit the Board to issue temporary credentials to gaming employees as well as principals and key employees. Additionally, the language specifying when the Board may issue a temporary credential has been deleted as there are instances when the investigation has been done but the individual will not be issued a permit. Proposed subsection (d) allows Board staff to add conditions such as restricting the use of a temporary credential for a limited purpose or type of event.

In Chapter 436a (relating to horsemen’s organizations), § 436a.1 (relating to definitions) is amended for clarity and to reflect the terms used in the body of the horsemen’s organization regulations. The term “director” is in the proposed definition of “officer” since it is not a separately defined term. In § 436a.2 (relating to horsemen’s organization notification), horsemen’s organizations may no longer complete a registration application but must file a notification form with the Bureau of Licensing. The organization must be required to file an updated notification form within 30 days of any change in information.

Proposed amendments to § 436a.3 (relating to permitting of officers, representatives and fiduciaries) are made for clarity. The renewal term for permits is amended from 1 year to 3 years in conformity with amendments to 4 Pa.C.S. Part II (relating to gaming).

In § 436a.4 (relating to responsibilities of horsemen’s organizations, officers, representatives and fiduciaries), proposed changes are made for clarity. This section is reorganized so all reporting requirements are in proposed subsection (e).

Section 436a.5(6) (relating to fiduciaries), regarding reporting requirements, is deleted. The text is moved to proposed § 436a.4(e).

In Chapter 513a (relating to underage gaming), § 513a.2 (relating to exclusion requirements) is amended so only individuals over 21 years of age are permitted on the gaming floor unless the individual is over 18 years of age and authorized to be on the gaming floor for employ-

ment purposes. This proposed amendment is consistent with amendments to 4 Pa.C.S. § 1518(a)(13) (relating to prohibited acts; penalties).

#### *Affected Parties*

This proposed rulemaking will affect applicants for and holders of licenses, permits and registrations issued by the Board as well as the horsemen’s organizations.

#### *Fiscal Impact*

*Commonwealth.* This proposed rulemaking will not have fiscal impact on the Board or other Commonwealth agencies.

*Political subdivisions.* This proposed rulemaking will not have direct fiscal impact on political subdivisions of this Commonwealth.

*Private sector.* Individuals applying for a license, permit or registration will not have to submit as many copies of their applications. The cost and time savings from this amendment is expected to be negligible. Additionally, horsemen’s organizations will no longer file a registration application but must file a notification form. The cost savings from this change is \$2,000 every 4 years since there is not an application fee associated with the notification form.

*General public.* This proposed rulemaking will not have fiscal impact on the general public.

#### *Paperwork Requirements*

Individuals applying for a license, permit or registration will have to provide only one copy instead of three copies of their applications. Although horsemen’s organizations will no longer complete a registration application, they must still complete a notification form and file the necessary statements, so there likely will not be a reduction in the amount of paperwork for horsemen’s organizations.

#### *Effective Date*

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

#### *Public Comments*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking, within 30 days after the date of publication in the *Pennsylvania Bulletin*, to Susan Yocum, Assistant Chief Counsel, Pennsylvania Gaming Control Board, P. O. Box 69060, Harrisburg, PA 17106-9060, Attention: Public Comment on Regulation #125-144.

#### *Contact Person*

The contact person for questions about this proposed rulemaking is Susan Yocum, Assistant Chief Counsel, (717) 265-8356.

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 30, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Gaming Oversight Committee and the Senate Community, Economic and Recreational Development Committee. A copy of this material is available to the public upon request and is available on the Board’s website at [www.pgcb.state.pa.us](http://www.pgcb.state.pa.us).

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the

close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

GREGORY C. FAJT,  
Chairperson

**Fiscal Note:** 125-144. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART VII. GAMING CONTROL BOARD**

**Subpart B. LICENSING, PERMITTING, CERTIFICATION AND REGISTRATION**

**CHAPTER 423a. APPLICATIONS**

**§ 423a.4. Deficient and abandoned applications.**

(a) If an application is found to be deficient, [ the ] Board staff will notify the applicant of the deficiencies in the application and permit the applicant to cure the deficiencies within a time period prescribed by [ the ] Board staff.

(b) Failure to provide the information necessary to cure the deficiencies required under subsection (a) may result in the [ immediate ] denial of the application or in the application being declared abandoned.

(c) The Bureau of Licensing may close and declare abandoned an incomplete or deficient application which is not recommended for denial. An applicant whose application has been declared abandoned may file a new application at any time.

(d) When an application is denied [ or declared abandoned ] under subsection (b), the applicant will be given written notice of this action [ by the Board ]. An applicant whose application is denied will be subject [ ot ] to the restrictions on filing a new application in § 423a.7 (relating to restriction on application after denial or revocation). [ An applicant whose application has been declared abandoned may file a new application at any time. ]

**CHAPTER 433a. PRINCIPAL LICENSES**

**§ 433a.1. Definitions.**

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

\* \* \* \* \*

**Publicly traded**—A person, or a subsidiary of a person, that has a class of equity securities listed on an exchange that is regulated under the Securities Exchange Act of 1934 (15 U.S.C.A. §§ 78a—78nn) or on a foreign stock exchange determined by the Bureau of Licensing to have similar listing and reporting requirements to those exchanges that are regulated under the Securities Exchange Act of 1934.

\* \* \* \* \*

**§ 433a.9. Principal license term and renewal.**

\* \* \* \* \*

(b) Notwithstanding subsection (a), a principal of a manufacturer or supplier which is eligible for its initial license shall be subject to an initial annual renewal for each slot machine or table game license held by the manufacturer or supplier. [ Renewals ] Principal renewals thereafter will be valid for 3 years from the date of the approval of the renewal of the license by the Board.

\* \* \* \* \*

**CHAPTER 435a. EMPLOYEES**

**§ 435a.1. General provisions.**

\* \* \* \* \*

(k) An individual who holds a license or permit and is currently employed by a slot machine licensee, manufacturer, manufacturer designee, gaming service provider, gaming related gaming service provider, supplier or gaming junket enterprise in a position that requires a license or permit may not wager at any licensed facility in this Commonwealth. The licensed or permitted individual shall wait at least 30 days following the date that the individual is no longer employed in a position that requires a license or permit before the individual may wager at any licensed facility in this Commonwealth.

(l) A registrant [ or employee of a slot machine licensee who is not required to obtain a license or permit ] employed by a slot machine licensee may not wager at the licensed facility in which the registrant [ or employee ] is currently employed. The individual shall wait at least 30 days following the date that the individual is no longer employed in a position that requires a registration before the individual may wager at the licensed facility in which the individual was formerly employed.

(m) An employee of a slot machine licensee who is not required to obtain a license, permit or registration may not wager at the licensed facility in which the employee is currently employed.

(n) A qualifier of a gaming junket enterprise, registered or certified gaming service provider or a gaming related gaming service provider may not wager at the licensed facility where the registered or certified gaming service provider or gaming related gaming service provider is currently providing services.

(o) A permittee or registrant who is an employee of a registered or certified gaming service provider [ or an employee of a certified gaming service provider who has direct contact with the employees of a licensed facility ] may not wager at the licensed facility where the registered or certified gaming service provider is currently providing services.

[ (n) A licensed, permitted or registered employee shall wait at least 30 days following the date that the employee either leaves employment with a slot machine licensee or is laid off or terminated from employment with a slot machine licensee before the employee may wager at the licensed facility in which the employee was formerly employed.

(o) ] (p) An individual required to obtain a license or permit by this part shall demonstrate that he is current and not in arrears on any financial obligation owed to the Commonwealth or any subdivision thereof, including court-ordered child-support payments.

[ (p) ] (q) An applicant for an occupation permit or nongaming employee registration shall be at least 18 years of age.

[ (q) ] (r) Slot machine licensees, manufacturers, manufacturer designees, suppliers [ and ], registered or certified gaming service providers and gaming related gaming service providers that hire an individual who holds a license, permit or registration issued by the Board shall contact the Bureau of Licensing to confirm that the individual's license, permit or registration is in good standing prior to allowing the individual to work in the licensed facility.

§ 435a.2. Key employee license.

(a) An applicant for a key employee license from the Board, unless otherwise directed by the Board, shall submit:

(1) An original and [ three copies ] one copy of a completed Multi-Jurisdictional Personal History Disclosure Form.

(2) An original and [ three copies ] one copy of a completed Principal/Key Employee Form—Pennsylvania Supplement to the Multi-Jurisdictional Personal History Disclosure Form.

\* \* \* \* \*

[ (g) An individual who is a key employee may request in writing that the Board waive the obligation to be licensed as a key employee by:

(1) Filing an original and three copies of a Principal/Key Employee Waiver Form.

(2) The nonrefundable waiver application fee posted on the Board's website (www.pgcb.state.pa.us).

(h) As part of the waiver request, the individual shall be required to demonstrate one of the following:

(1) The individual is not assigned to an applicant's or licensee's gaming operations in this Commonwealth.

(2) The individual's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(i) The request for a waiver must include, at a minimum, the following:

(1) A description of the individual's title, duties and responsibilities with the applicant, licensee or with any of its affiliates, intermediaries, subsidiaries or holding companies.

(2) A certification by the chief executive officer stating that the employee is not assigned to the licensee's gaming operations in this Commonwealth or that the employee's duties do not have an effect on or require contact with slot machines for use or play in this Commonwealth.

(j) An applicant for a key employee waiver will be required to reimburse the Board for any additional costs, based on the actual expenses incurred by the Board, in conducting the background investigation. ]

§ 435a.3. Occupation permit.

(a) An applicant for an occupation permit shall submit:

(1) An original and [ three copies ] one copy of the Gaming Employee Application and Disclosure Information Form or an electronic application using the SLOTS Link system. When an application for an occupational permit is filed using SLOTS Link, the additional documents required, including releases, shall be submitted to the Board:

\* \* \* \* \*

(ii) Within 10 days of the submission of the SLOTS Link application by an applicant for or holder of a manufacturer, manufacturer designee, or supplier license or [ an applicant for or holder of ] a gaming related gaming service provider certification or gaming service provider registration or certification.

\* \* \* \* \*

(e) An individual who wishes to receive an occupation permit under this chapter may authorize an applicant for or holder of a slot machine, management company, manufacturer, manufacturer designee or supplier license or gaming related gaming service provider certification or gaming service provider registration or certification to file an application on the individual's behalf.

(f) A permit issued under this section shall be valid for employment with any licensed entity, any certified gaming related gaming service provider or any registered or certified gaming service provider.

§ 435a.5. Nongaming employee registration.

(a) An applicant for a nongaming employee registration shall submit:

(1) An original and [ three copies ] one copy of the Nongaming Employee Registration Form or an electronic application using the SLOTS Link system. When an application for a nongaming employee registration is filed using SLOTS Link, the additional documents required, including releases, shall be submitted to the Board:

\* \* \* \* \*

(ii) Within 10 days of the submission of the SLOTS Link application by an applicant for or holder of a manufacturer, manufacturer designee, or supplier license or an applicant for or holder of a gaming service provider registration or certification.

\* \* \* \* \*

(d) An individual who wishes to receive a nongaming employee registration under this chapter may authorize an applicant for or holder of a slot machine license or a gaming service provider registration or certification to file an application on the individual's behalf.

(e) A registration issued under this section is valid for employment with any [ licensed entity ] slot machine licensee or registered or certified gaming service provider.

§ 435a.8. Temporary credentials for principals [ and ], key employees and gaming employees.

(a) A temporary credential may be issued by the Board to a principal [ or a ], key employee [ whose investigation for licensure by the Board is pending but whose presence is necessary in the licensed facility ] or gaming employee.

(b) A temporary credential issued under this section is void a maximum of 180 days after the date of its issuance.

(c) The Board may extend the expiration date of a temporary credential if the Board determines additional time is needed to complete [ the ] an investigation for licensure.

(d) Board staff may impose conditions on the holders of temporary credentials.

CHAPTER 436a. HORSEMEN'S ORGANIZATIONS
§ 436a.1. Definitions.

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

\* \* \* \* \*

Health benefits—A plan, fund or program which is maintained by a horsemen's organization and [ that ] provides healthcare benefits to horsemen [ at licensed racetracks ], their families and employees[ , ] and others designated by the rules and eligibility requirements of the organization consistent with the act.

\* \* \* \* \*

Horsemen's organization—A trade association which represents the majority of horsemen at a licensed racetrack and which exists for the purpose, in whole or in part, of negotiating a horsemen's contract and resolving grievances, disputes or other matters with management of a licensed racing entity[ , as defined by section 1103 of the act (relating to definitions) ].

[ Horsemen's organization office—An officer or person authorized to perform the functions of president, vice president, secretary/treasurer or other executive function of a horsemen's organization, and any member of its board of directors or similar governing body.

Horsemen's organization representative—A person, compensated or not, who is authorized to represent a horsemen's organization or members thereof in matters relating to horsemen's agreements with a licensed racing entity, or who undertakes on behalf of a horsemen's organization or members thereof to promote, facilitate or otherwise influence the relations between a horsemen's organization and a licensed racing entity. ]

Officer—A president, vice president, secretary, treasurer, director, governing body member, and any individual routinely performing corresponding functions, who is authorized to act on behalf of the horsemen's organization.

Pension benefits—Any plan, fund or program which is maintained by a horsemen's organization and [ that funds a program which ] provides retirement income to horsemen [ at licensed racetracks ], their families and employees, and any others [ so ] designated by the rules and eligibility requirements of the organization consistent with the act.

Representative—

(i) An individual who is authorized to represent a horsemen's organization or members thereof in matters relating to horsemen's agreements with a licensed racing entity.

(ii) An individual who promotes, facilitates or otherwise influences the relations between a horsemen's organization and a licensed racing entity.

(iii) The individual may be compensated.

§ 436a.2. Horsemen's organization [ registration ] notification.

(a) [ Each ] A horsemen's organization or affiliate representing horsemen shall [ register ] file a completed Horsemen's Organization Notification Form and supporting documentation with the [ Board in accordance with this section ] Bureau of Licensing.

(b) [ Each horsemen's organization shall file a completed Horsemen's Organization Registration Statement with the registration fee posted on the Board's website (pgcb.state.pa.us).

(c) Horsemen's organization applicants and registrants shall be subject to the general application requirements of Chapters 421a and 423a (relating to general provisions; and applications).] A horsemen's organization or affiliate representing horsemen shall file an updated version of the Horsemen's Organization Notification Form and supporting documentation with the Bureau of Licensing within 30 days of a change in the information contained therein.

[ (d) ] (c) Horsemen's organization [ registrations ] notifications will be valid for 4 years from the date on which the [ registration is approved by the Board ] notification is filed with the Bureau of Licensing.

[ (e) ] (d) Renewals [ will be valid for 4 years and ] shall be filed no later than [ 120 ] 60 days prior to the expiration of the current [ registration ] notification period.

[ (f) A registration for which a completed renewal application and fee has been received by the Board will continue in effect until the Board sends written notification to the horsemen's organization that the Board has approved or denied the renewal of the registration. ]

§ 436a.3. Permitting of officers, [ directors, ] representatives and fiduciaries.

(a) Every officer, [ director or ] representative [ of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or any individual authorized to act in a fiduciary capacity on behalf of horsemen ] or fiduciary shall be permitted in accordance with this section.

(b) Every officer[ , director or ] representative [ of a horsemen's organization who is currently elected or appointed and authorized to act on behalf of the horsemen's organization, or any individual authorized to act in a fiduciary capacity on behalf of horsemen ] or fiduciary shall file a completed Horsemen's Permit Application Form with the permit fee posted on the Board's website (pgcb.state.pa.us).

\* \* \* \* \*

(d) Permits issued under this section will be valid for [ 1 year ] 3 years from the date on which the permit is approved by the Board.

(e) Renewals will be valid for [ 1 year ] 3 years and shall be filed at least 60 days prior to the expiration of the current permit.

\* \* \* \* \*

(g) If a current officer, [ director or ] representative [ of a horsemen's organization ] or fiduciary is denied a permit required by this section, that officer, [ director or ] representative or fiduciary shall be precluded from engaging in any activity [ of the horsemen's organization ] involving gaming funds allocated to, received by, or distributed from the horsemen's organization.

(h) A person who is a third-party provider of a health or pension benefit plan to a horsemen's organization shall be exempt from the requirements of this section. [ A licensed attorney or accountant representing a horsemen's organization who does not meet the conditions in subsection (a) shall also be exempt under this section. ]

§ 436a.4. Responsibilities of horsemen's organizations, officers, [ directors, ] representatives and fiduciaries.

(a) Horsemen's organizations, officers, [ directors, ] representatives and fiduciaries shall ensure that the funds allocated to the horsemen and horsemen's organizations are used for the benefit of all horsemen of this Commonwealth.

(b) Funds allocated to horsemen's organizations for benevolent programs [ are ] must be kept separate and apart from funds acquired from other sources and may not to be used for the personal benefit of any officer, [ director, ] representative or fiduciary of a horsemen's organization except to the extent that the officer, [ director, ] representative or fiduciary [ of the horsemen's organization ] is a participant in the benevolent programs on the same basis as other eligible program participants.

(c) Horsemen's organizations shall ensure that the funds allocated for thoroughbred jockeys and standardbred drivers are paid in accordance with the act and that the distribution of these proceeds is reflected in the annual audit required under section 1406(e) of the act (relating to distributions from Pennsylvania Race Horse Development Fund).

(d) Horsemen's organizations shall maintain adequate records of receipts and distributions of the funds allocated to them under the act.

[ (d) By March 30 of each calendar year, each horsemen's organization shall file with the Board two copies of its audited financial statements together with any management letters or reports written thereon as prepared by its independent auditor. These filings will be available for public inspection during the normal operating hours of the Board at its Harrisburg office. ]

(e) Horsemen's organizations shall file with the Board:

(1) A quarterly report, due by the 20th day of the month following the end of each calendar quarter, which shall account for:

(i) The amounts received from the Pennsylvania Race Horse Development Fund through the Category 1 licensee conducting live racing into the account established by and for the benefit of the horsemen under section 1406(a) of the act.

(ii) The amounts distributed for purse supplements from the account established by and for the benefit of the horsemen under section 1406(a) of the act.

(iii) The amounts received for health and pension benefits under section 1406(a) of the act.

(2) Two copies of its audited financial statements together with management letters or reports as prepared by a certified public accountant. Audited financial statements shall be filed by March 30 of each calendar year and reflect funds received from the Pennsylvania Race Horse Development Fund which are used or intended to be used for purse supplements and health and pension benefits under section 1406(a) of the act. These filings will be available for public inspection during the normal operating hours of the Board at its Harrisburg office.

§ 436a.5. Fiduciaries.

Fiduciaries shall:

\* \* \* \* \*

(6) [ File quarterly reports with the Board within 20 days of the end of each calendar quarter. The reports must detail the expenditure of funds designated by the act for the benefit of horsemen and be in a format and manner designated by the Board.

(7) [ Provide documents to the Board as may be requested in the conduct of investigations or to ensure compliance with the act and this chapter.

§ 436a.6. Health and pension benefit plans.

(a) Contracts for health and pension benefit plans established for the benefit of members of a horsemen's organization [ must; ] shall be submitted to the Board at least 90 days prior to the proposed effective date of the contract. Contracts are not effective until approved by the Board.

[ (1) be submitted to the Board for review at least 90 days prior to the proposed effective date of the contract.

(2) Not be effective until approved by the Board. ]

\* \* \* \* \*

Subpart J. EXCLUSION OF PERSONS

CHAPTER 513a. UNDERAGE GAMING

§ 513a.2. Exclusion requirements.

(a) An individual under [ 18 ] 21 years of age may not enter or be on the gaming floor of a licensed facility except that an individual 18 years of age or older who is employed by a slot machine licensee, a gaming service provider, the Board or other regulatory or emergency response agency may enter and remain in that area while engaged in the performance of the individual's employment duties.

\* \* \* \* \*

[Pa.B. Doc. No. 11-605. Filed for public inspection April 8, 2011, 9:00 a.m.]

# STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[ 49 PA. CODE CH. 42 ]  
Continuing Competency

The State Board of Occupational Therapy Education and Licensure (Board) proposes to amend § 42.17 (relating to fees) and to adopt §§ 42.51—42.58 (relating to continued competency) to read as set forth in Annex A.

## *Effective Date*

The proposed rulemaking will take effect upon final-form publication in the *Pennsylvania Bulletin*.

## *Statutory Authority*

Section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)) authorizes the Board to promulgate and adopt rules and regulations consistent with the act as it deems necessary for the performance of its duties and the proper administration of the act. Section 15(a) of the act (63 P. S. § 1515(a)) further provides that “[t]he board may establish additional requirements for licensure renewal to assure continued competency of the applying occupational therapist.”

## *Background and Purpose*

Board members and licensees have long recognized the need for licensed occupational therapists to maintain and expand their professional knowledge and skills. The purpose of this proposed rulemaking is to implement the requirement for continued competency in section 15(a) of the act and establish continued competency requirements to enable licensed occupational therapists to provide “the highest possible degree of professional care and conduct” to the citizens of this Commonwealth as provided in section 2 of the act (63 P. S. § 1502).

Currently, the Board does not have continued competency requirements. Consequently, the Board proposes to add fees for continued competency providers and course approvals in § 42.17 and institute continued competency requirements for occupational therapists as a condition of licensure renewal and reactivation in proposed §§ 42.51—42.58. The Board has not included occupational therapy assistants in this proposal as section 15(a) of the act only authorizes continued competency for occupational therapists. The Board notes, however, that if Senate Bill 187 is enacted prior to these regulations being adopted as final-form, the Board will add occupational therapy assistants to this proposed rulemaking.

## *Description of Amendments*

### § 42.17. Fees

This proposed rulemaking would amend and rename § 42.17 to add a fee schedule regarding continued competency. Applicants seeking provider approval under proposed § 42.54(d) (relating to program providers) would be required to pay a \$40 application and biennial renewal fee. Applicants seeking course approval under proposed § 42.54(e) would also be required to pay a \$40 application fee. These fees are based upon the actual amount of time it takes to process these applications.

### § 42.51. Purpose

Proposed § 42.51 sets forth the purpose of the continued competency requirements consistent with the Board’s statutory authority.

### § 42.52. Definitions

The Board proposes to define ten terms specifically applicable to continued competency in § 42.52: “contact hour,” “continued competency,” “educational courses,” “level I fieldwork,” “level II fieldwork,” “mentor,” “mentorship,” “mentorship agreement,” “professional continued competence portfolio” and “protégé.”

A “contact hour” is defined as 50-60 minutes of participation in a continued competency activity, depending on the type of activity. Generally, educational courses are 50 minutes in duration while fieldwork, mentorship, writing and editing are measured in 60-minute increments. Unlike continuing education, which is a prerequisite for biennial renewal for many licensing professions, “continued competency” is a multidimensional process by which a licensed occupational therapist demonstrates the development and maintenance of knowledge, skills, attitudes, judgment, abilities and ethics. A “professional continued competence portfolio” is a document that evidences completion of continued competency activities plus a self-assessment as required under § 42.57 (relating to documentation and reporting of continued competency activities).

The remaining definitions stem from the acceptable continued competency activities in § 42.55 (relating to acceptable continued competency activities). The proposed definition of “educational courses” clarifies that these courses include academic and continuing education courses delivered by both onsite and distance education. Another acceptable continued competency activity is fieldwork as described in the American Occupational Therapy Association’s (AOTA) Standards for an Accredited Educational Program for the Occupational Therapist. The definitions of “level I fieldwork” and “level II fieldwork” distinguish between basic and advanced fieldwork experiences. Specific information about level I fieldwork and level II fieldwork is available on the AOTA’s web site at <http://www.aota.org/Educate/EdRes/Fieldwork.aspx>.

In addition to education courses and fieldwork, another acceptable continued competency activity is mentorship. As explained in the proposed definition, a mentorship is a formalized one-on-one teaching/learning relationship specified in a “mentorship agreement” between a “mentor” and a “protégé.” A “mentor” includes a licensed occupational therapist as well as another person who holds a license, certificate or registration from one of the health licensing boards within the Bureau of Professional and Occupational Affairs or who is currently certified by the Department of Education.

### § 42.53. Continued competency requirements

Effective the first biennium following publication of the final-form rulemaking, § 42.53 would require licensed occupational therapists to complete a minimum of 24 contact hours in at least two acceptable continued competency activities each biennium, after their first biennial renewal period, as a condition of licensure renewal. Occupational therapists seeking to reactivate lapsed or inactive licenses would be required to show compliance with the continued competency requirement during the biennium immediately preceding the request for reactivation. Additionally, licensed occupational therapists whose licenses have been suspended or revoked would be required to complete the continued competency contact hour

requirement for each biennium in which the license was suspended or revoked as a condition for reinstatement.

§ 42.54. *Program providers*

Under proposed § 42.54, licensed occupational therapists would have three options for provider approvals: complete activities from preapproved providers; complete activities from Board-approved providers; or seek individual approval for a specific activity provided by an entity that is neither preapproved nor Board-approved. Proposed subsection (c) contains the list of 12 preapproved providers including State, National and international occupational therapy associations; the AOTA's Approved Provider Program; the Department of Education; Federal and State programs related to health care; accredited colleges, universities and postsecondary vocational schools; and National and State professional health care and education organizations.

Proposed subsection (d) contains the criteria the Board will use to evaluate providers for Board approval. At least 60 days prior to the beginning of the activity, but no later than 90 days before the end of the biennial renewal period, a provider seeking Board approval would be required to provide the Board with its learning objectives, criteria for selecting and evaluating faculty instructors, subject matter and instructional materials and its evaluation procedures. Unlike preapproved providers, Board-approved providers must renew their approval biennially.

A licensed occupational therapist who wishes to obtain credit for an activity that is provided by an entity that is neither preapproved nor Board-approved may seek approval for the activity no later than 90 days before the end of the biennial period based on the criteria in proposed subsection (e). Following review, the Board will advise the licensed occupational therapist whether the activity has been approved and the number of contact hours awarded.

§ 42.55. *Acceptable continued competency activities*

Proposed § 42.55 describes the various activities for which continued competency contact hours may be awarded, the maximum number of hours that may be awarded and the documentation required for that activity if it differs from the general requirements in proposed § 42.57(a). These activities include continuing education courses, academic courses, mentorship, fieldwork supervision, professional writing and editing, presentation, and instruction. Irrespective of the provider, contact hours would only be granted for activities that are relevant to the practice of occupational therapy and may not involve marketing, office management, financial gain or self-promotion.

For educational courses, under proposed subsection (b)(1), licensed occupational therapists may earn a maximum aggregate of 18 contact hours. The number of contact hours for continuing education courses equals the number of directed hours while one credit equals 15 contact hours for academic courses.

Mentorship activities are delineated in subsection (b)(2). Prior to the beginning of a mentorship, the mentor and the protégé would enter into a mentorship agreement establishing the scope of the mentorship. Following the mentorship, the mentor would provide the protégé a postmentorship summary documenting the time spent and the outcomes of the mentorship program. Both a mentor and a protégé may earn 1 contact hour for every 5 hours of mentorship activities up to 6 contact hours per biennium. A copy of the mentorship agreement and the

postmentorship summary would be included in the professional continued competence portfolio.

Proposed subsection (b)(3) describes fieldwork supervision. Licensed occupational therapists may earn 1 contact hour per student up to 3 contact hours per biennium for serving as a supervisor for level I fieldwork and 3 contact hours per student up to 6 contact hours per biennium for serving as a supervisor for level II fieldwork. In addition to the documentation required to be produced upon audit in proposed § 42.57(a), fieldwork documentation would have to be verified by the educational program.

Proposed subsection (b)(4) describes professional writing activities. Licensed occupational therapists may earn a maximum of 15 contact hours in this activity. The Board proposes to award 15 contact hours for writing a book, 10 contact hours for writing a chapter in a book, 10 contact hours for writing an article published in a peer-reviewed journal and 5 contact hours for writing an article published in a non-peer-reviewed journal. Although the Board is cognizant that numerous hours are spent writing prior to the document being published, for continued competency contact hour purposes, the Board will only award credit for professional writing activities in the biennium in which the book, chapter or article is published.

Like professional writing, the Board proposes capping the number of contact hours to be awarded for editing to a maximum of 15 contact hours per biennium. Proposed subsection (b)(5) would award a maximum of 10 contact hours for editing a book and 1 contact hour, up to a maximum of 6 contact hours, for each article reviewed for a professional journal.

Proposed subsection (b)(6) addresses presentation and instruction. A licensed occupational therapist may earn a maximum of 12 contact hours in this activity per biennium. Two contact hours would be awarded for each 60-minute peer-reviewed or invited presentation.

§ 42.56. *Waivers of continued competency requirements and curing deficiencies*

As proposed, § 42.56 would allow the Board to waive continued competency requirements for licensees due to illness, injury or emergency. Licensees would be required to request a waiver no later than 60 days before the end of the renewal year unless the applicant proves to the satisfaction of the Board that it was impracticable to do so (as in the instance when a licensee is enrolled for a continued competency activity 15 days before the end of the biennial period and suffers a heart attack preventing the licensee from attending the activity). The proposed rulemaking would also permit licensed occupational therapists to make up deficiencies after presenting a request, along with a remediation plan, to the Board to make up the required contact hours.

§ 42.57. *Documentation and reporting of continued competency activities*

Proposed § 42.57 describes the documentation and reporting responsibilities for providers and for licensed occupational therapists. Regardless of whether the provider is preapproved or Board-approved, subsection (a) requires providers to provide attendees with completion documentation following the activity. The documentation must include the name of the participant, provider and instructor, the title, date and location of the activity, and number of contact hours awarded.

Subsection (b) describes documentation requirements for licensed occupational therapists. For each biennial



period, a licensed occupational therapist would be required to prepare a professional continued competency portfolio which contains verification of completion of the required continued competency contact hours as well as a self-assessment. Licensed occupational therapists would be required to retain the portfolio for 4 years following the last day of the renewal period in which the continued competence activities were earned and to provide them to the Board when requested. It also provides notice that licensed occupational therapists who have not completed the required hours of continued competency activities may not be eligible for renewal until the hours are completed, unless a waiver has been granted or a plan for curing deficiencies has been approved by the Board under § 42.56.

§ 42.58. *Disciplinary action*

Finally, § 42.58 advises licensed occupational therapists that failure to comply with the continued competency requirements or submission of false documentation in connection with those requirements subjects the licensed occupational therapist to disciplinary action under section 16 of the act (63 P.S. § 1516). Procedures and standards for due process stemming from a disciplinary action are in 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), the act of July 2, 1993 (P.L. 345, No. 48) (63 P.S. §§ 2201—2207) and case law.

*Fiscal Impact and Paperwork Requirements*

The proposed rulemaking will have a fiscal impact on the regulated community in that each licensed occupational therapist would incur the costs associated with completion of 24 contact hours of continued competency activities as a condition of biennial renewal. Due to the variety of ways an occupational therapist may obtain contact hours for continued competency purposes, it is impossible to derive an appropriate estimate as to costs for the regulated community. For instance, an occupational therapist could obtain contact hours through a mentoring relationship, professional writing and editing, fieldwork supervision, journal review or presentation. None of these activities necessarily impose an additional cost on the licensee. While some educational courses can be expensive, many Internet-based courses are extremely inexpensive and in some cases free. Nonetheless, the Board estimates an average cost of compliance with the continued competency requirements to be \$300 per licensee annually. In addition, the proposed rulemaking would create additional paperwork for the regulated community in that licensed occupational therapists would be required to retain documentation supporting the completion of the continued competency activities for 4 years and provide that documentation to the Board upon request.

The proposed rulemaking will also have a fiscal impact on the Board in that the Board will be required to expend resources reviewing Board-approved provider and individual activity applications. However, the Board anticipates that there will be no more than 30 applications to review in each category and those costs will be borne by the applicants through the proposed \$40 fee. In addition, the Board will incur costs and increased paperwork associated with audit and enforcement of the continued competency requirements.

*Sunset Date*

The Board continuously monitors the effectiveness of the 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 March 25, 2011, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judith Pachter Schulder, Board Counsel, State Board of Occupational Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ELLEN L. KOLODNER,  
*Chairperson*

**Fiscal Note:** 16A-677. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE**

**LICENSURE**

§ 42.17. [ **Licensure fees** ] **Fees.**

\* \* \* \* \*

**(c) The fee schedule for continued competency providers and courses shall be as follows:**

- Initial provider approval . . . . . \$40**
- Biennial renewal of provider approval . . . . . \$40**
- Individual activity approval . . . . . \$40**

*(Editor’s Note: Sections 42.51—42.58 are new and printed in regular type to enhance readability.)*

**CONTINUED COMPETENCY**

§ 42.51. **Purpose.**

The purpose of §§ 42.52—42.58 is to implement section 15(a) of the act (63 P.S. § 1515(a)), which authorizes the Board to establish additional requirements for licensure renewal to assure continued competency to achieve the legislative purpose in section 2 of the act (63 P.S. § 1502) to assure the highest degree of professional care and conduct on the part of licensed occupational therapists.

### § 42.52. Definitions.

The following words and terms, when used in §§ 42.51 and 42.53—42.58, have the following meanings, unless the context clearly indicates otherwise:

*Contact hour*—A unit of measure for a continued competency activity that equals 50-60 minutes of participation.

*Continued competency*—The multidimensional process by which a licensed occupational therapist demonstrates the development and maintenance of the knowledge, skills, attitudes, judgment, abilities and ethics necessary to practice occupational therapy in a variety of roles and settings.

*Educational courses*—Academic and continuing education courses delivered onsite or by distance education.

*Level I fieldwork*—Introductory fieldwork experiences that are a component of an educational program in occupational therapy in which students develop a basic understanding of the needs of clients through directed observation and supervised participation in the occupational therapy process.

*Level II fieldwork*—Advanced fieldwork experiences that are a component of an educational program in occupational therapy that provide multiple occupational therapy services to a variety of clients in multiple settings.

*Mentor*—A person who holds a current license, certificate or registration from a health-related board within the Bureau of Professional and Occupational Affairs or is currently certified by the Department of Education who is engaged in a one-on-one teaching/coaching relationship with a licensed occupational therapist for the stated purpose of imparting specific knowledge and skills related to the practice of occupational therapy.

*Mentorship*—Participation in a formalized, one-on-one teaching/learning relationship for the purposes of building a licensed occupational therapist's capacity to practice occupational therapy.

*Mentorship agreement*—A written agreement between the mentor and the protégé that outlines specific goals and objectives and designates a plan of activities.

*Professional continued competence portfolio*—A document, which includes a self-assessment, that evidences the licensed occupational therapist's completion of the continued competency requirement in § 42.53 (relating to continued competency requirements).

*Protégé*—A licensed occupational therapist who is engaged in a one-on-one relationship with another health care professional for the stated purpose of acquiring specific skills and knowledge related to the practice of occupational therapy.

### § 42.53. Continued competency requirements.

(a) Beginning with the \_\_\_\_\_ (*Editor's Note: The blank represents the first complete licensure biennium following the date of adoption of this proposed rulemaking.*) biennium, a licensed occupational therapist shall complete a minimum of 24 contact hours in each biennial period in at least two of the acceptable continued competency activities in § 42.55 (relating to acceptable continued competency activities) as a condition of licensure renewal.

(b) For the first biennial renewal after a licensed occupational therapist obtains a license, the licensed occupational therapist is exempt from complying with subsection (a).

(c) A licensed occupational therapist seeking to reactivate a lapsed or inactive license shall show compliance with the continued competency contact hour requirement during the 2-year period immediately preceding application for reactivation.

(d) A licensed occupational therapist whose license has been suspended or revoked shall complete the required continued competency contact hours for each licensure biennium in which the license was suspended or revoked as a condition of reinstatement.

### § 42.54. Program providers.

(a) *General.* Activities offered by preapproved and Board-approved providers will be accepted as satisfying part of the continued competency requirement. It is the responsibility of the licensed occupational therapist to ascertain the approval status of the provider before undertaking a continued competency activity.

(b) *Rights reserved.* The Board reserves the right to reject an activity if it is outside of the scope described in § 42.55(a) (relating to acceptable continued competency activities) or otherwise unacceptable because of presentation or content.

(c) *Preapproved providers.* The Board has preapproved educational courses provided, coprovided or approved by the following entities:

- (1) A State, National or international occupational therapy association.
- (2) The American Occupational Therapy Association's Approved Provider Program.
- (3) American Society of Hand Therapists.
- (4) Association for Driver Rehabilitation Specialists.
- (5) The Department of Education.
- (6) An accredited college or university or post-secondary vocational technical school or institution.
- (7) Federal or State government programs related to health care.
- (8) A provider approved by another health licensing board within the Bureau of Professional and Occupational Affairs or another State licensure board.
- (9) National and State professional health care organizations.
- (10) National and State professional education organizations.
- (11) National Alliance for the Mentally Ill.
- (12) Case Management Society of America.

(d) *Board-approved providers.* The Board will consider for approval, on a biennial basis, providers who wish to offer activities described in § 42.55(a) as follows:

- (1) The provider seeking approval shall submit an application to the Board at least 60 days prior to the beginning of the activity but no later than 90 days before the end of the biennial renewal period. The applicant will be notified of approval or disapproval in writing.
- (2) The Board will not approve a provider unless it:
  - (i) Offers activities with specific learning objectives.
  - (ii) Has criteria for selecting and evaluating faculty instructors, subject matter and instructional materials.
  - (iii) Has a procedure for determining licensees' perceptions of the extent to which the objectives have been met.

(e) *Individual activity approval.*

(1) A licensed occupational therapist may request approval of contact hours for continued competency activities not otherwise approved by submitting an application for approval to the Board no later than 90 days before the end of the biennial renewal period that includes the following:

(i) The title of the activity and number of contact hours.

(ii) The description of the activity from the program catalogue or brochure.

(iii) The learning objectives.

(iv) The name and qualifications of the presenter.

(v) An assessment of the activity.

(2) Upon review of the completed application, the Board will notify the applicant whether the activity has been approved and, if approved, the number of contact hours that will be awarded.

(f) *Withdrawal of approval.* The Board may withdraw approval of a provider for cause. The provider will be notified in writing of the reasons for withdrawal of approval.

**§ 42.55. Acceptable continued competency activities.**

(a) Irrespective of the provider, contact hours will only be awarded for continued competency activities that are relevant to the practice of occupational therapy including direct care, management, education and research. Contact hours will not be awarded for activities related to marketing, office management, financial gain or self-promotion.

(b) The following activities are acceptable as long as the specific activity complies with subsection (a):

(1) Educational courses.

(i) A licensed occupational therapist may earn a maximum aggregate of 18 contact hours in educational courses per biennium.

(ii) For continuing education courses, contact hours equal the number of directed learning hours.

(iii) For academic courses, one credit equals 15 contact hours.

(iv) Instead of the documentation required under § 42.57(a) (relating to documentation and reporting of continued competency activities), acceptable documentation of educational courses consists of an official transcript or certificate of completion indicating the name and date of the course and a description of the course from the school catalog or brochure.

(2) Mentorship.

(i) Prior to beginning a mentorship, the mentor and the protégé shall enter into a mentorship agreement.

(ii) At the conclusion of the mentorship, the mentor shall provide a postmentorship summary documenting the time spent in and outcomes of the mentoring program. A copy of the summary shall be provided to the protégé and maintained by the mentor and the protégé for 4 years.

(iii) The mentor and the protégé may earn 1 contact hour for every 5 hours spent in mentorship activities up to 6 contact hours per biennium.

(iv) Instead of the documentation required under § 42.57(a), acceptable documentation consists of a copy of the mentorship agreement and the postmentorship summary.

(3) Fieldwork supervision.

(i) A licensed occupational therapist may earn:

(A) One contact hour per student, up to 3 contact hours per biennium, for serving as a supervisor for level I fieldwork.

(B) Three contact hours per student, up to 6 contact hours per biennium, for serving as a supervisor for level II fieldwork.

(ii) In addition to the information required under § 42.57(a), the educational program must verify the name of the supervisor, the names and number of students being supervised, the locations where the fieldwork is being performed and the dates and level of fieldwork.

(4) Professional writing.

(i) A licensed occupational therapist may earn the following contact hours, up to a maximum of 15 per biennium, for professional writing:

(A) Fifteen contact hours for writing a book.

(B) Ten contact hours for writing a chapter in a book.

(C) Ten contact hours for writing an article published in a peer-reviewed journal.

(D) Five contact hours for writing an article published in a non-peer-reviewed journal.

(ii) Credit will be awarded for the biennium in which the book, chapter or article is published.

(iii) Instead of the documentation required under § 42.57(a), acceptable documentation of professional writing consists of a copy of the editor's or publisher's acceptance letter and a copy of the article, chapter or the cover page of the book including the title, author, source and date of publication, and editor.

(5) Editing.

(i) A licensed occupational therapist may earn the following contact hours, up to a maximum of 15 per biennium, for editing:

(A) A maximum of 10 contact hours may be earned for editing a book relevant to occupational therapy.

(B) A maximum of 6 contact hours per biennium may be earned for serving as a reviewer for a professional journal, provided that only 1 contact hour may be accrued for each article reviewed.

(ii) Instead of the documentation required under § 42.57(a), acceptable documentation of editing activities consists of the following:

(A) For editing a book, a copy of the editor's or publisher's acceptance letter and the cover page of the book including the title, author, source and date of publication, and editor.

(B) For serving as a reviewer, a copy of a letter from the editor acknowledging the number of articles reviewed.

(6) Presentation and instruction.

(i) A licensed occupational therapist may earn 2 contact hours, up to a maximum of 12 per biennium, for each 60-minute peer-reviewed or invited presentation or workshop related to occupational therapy.

(ii) Credit will only be awarded one time per biennium for each presentation regardless of the number of times the material is presented.

(iii) In addition to the information required under § 42.57(a), the provider shall provide a copy of the official program, schedule or syllabus including presentation title, date, hours of presentation and attestation by the provider.

**§ 42.56. Waivers of continued competency requirements and curing deficiencies.**

(a) *Waivers.*

(1) The Board may waive all or part of the continued competency activity requirements in the case of a serious illness, injury or emergency which prevents a licensee from completing the continued competency requirements.

(2) A licensed occupational therapist seeking a waiver shall submit a written request for a waiver and provide documentary evidence to the satisfaction of the Board of the serious illness, injury or emergency which would preclude the completion of the continued competency requirements.

(3) The request for a waiver shall be filed with the Board 60 days before the end of the biennium in which the contact hours are being accrued unless the licensed occupational therapist proves to the satisfaction of the Board that it was impracticable to do so.

(b) *Curing deficiencies.* A licensed occupational therapist with a deficiency in contact hours may apply to the Board in writing for leave to make up the contact hours in arrears. The request must include an explanation of why the deficiency occurred and a plan, along with the estimated time needed, for curing it. Requests will be evaluated by the Board on a case-by-case basis and will be approved or disapproved at its discretion.

**§ 42.57. Documentation and reporting of continued competency activities.**

(a) A provider of a continued competency activity shall furnish to each participant documentation, signed by the provider, which includes the following, unless otherwise directed in § 42.56 (relating to waivers of continued competency requirements and curing deficiencies):

(1) The name of the participant, provider and instructor.

(2) The title, date and location of the activity.

(3) The number of contact hours awarded.

(b) A licensed occupational therapist shall:

(1) Prepare a professional continued competence portfolio for each biennial period and retain it for 4 years following the last day of the biennial period during which the continued competency activities were completed.

(2) Verify completion of the required contact hours of continued competency activities when the license is renewed. A licensed occupational therapist who has not completed the required hours of continued competency activities will not be eligible for renewal until the hours are completed, unless a waiver or extension has been granted or a plan to cure the deficiency has been approved by the Board under this section.

(3) Provide a copy of the professional continued competence portfolio to the Board within 30 days of notification of an audit.

**§ 42.58. Disciplinary action.**

A licensed occupational therapist who fails to comply with the continued competency activity requirements or the audit requirements or submits false documents in connection with the continued competency requirement will be subject to disciplinary action under section 16 of the act (63 P. S. § 1516).

[Pa.B. Doc. No. 11-606. Filed for public inspection April 8, 2011, 9:00 a.m.]