

# RULES AND REGULATIONS

## Title 28—HEALTH AND SAFETY

### DEPARTMENT OF HEALTH

[ 28 PA. CODE CH. 53 ]

#### Photo Identification Badges

The Department of Health (Department) is adopting interim regulations to facilitate implementation of section 809.2 of the Health Care Facilities Act (act) (35 P. S. § 448.809b), regarding photo identification badge regulations, enacted by the act of November 23, 2010 (P. L. 1099, No. 110) (Act 110). Through these interim regulations, the Department is adding Chapter 53 (relating to photo identification badges) to read as set forth in Annex A. Chapter 53 contains the standards applicable to entities licensed as health care facilities under the act and to the private practice of a physician.

#### A. *Scope and Purpose of the Interim Regulations*

Act 110 requires that the Department adopt interim regulations within 90 days of the effective date to facilitate its implementation. Act 110 establishes a staggered implementation process wherein certain provisions of the act apply to employees that deliver direct care to a consumer outside of a health care facility or employment agency and to employees of the private practice of a physician with the publication of the interim regulations. Those same provisions do not apply to employees that deliver direct care to a consumer at a health care facility until June 1, 2015. Several provisions do not apply to employees until June 1, 2015, regardless of whether the direct care is provided at the health care facility, outside of the health care facility or at the private practice of a physician. The interim regulations only deal with those requirements that apply now to employees that deliver direct care to a consumer outside of a health care facility or employment agency and to employees of the private practice of a physician. Until adoption of regulations regarding employees that deliver direct care at a health care facility, § 51.6 (relating to identification of personnel) remains in effect and applies to those individuals.

Section (b) of Act 110 exempts the interim regulations from review under the Regulatory Review Act (71 P. S. §§ 745.1—745.12) and sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202), known as the Commonwealth Documents Law. Act 110 went into effect on January 22, 2011, and states that the interim regulations are to be adopted within 90 days thereafter following at least one public hearing.

Act 110 requires that the Department conduct a public hearing prior to the publication of interim regulations. The Department held a public meeting on Act 110 on January 14, 2011. The following groups were represented and provided testimony: Pennsylvania Medical Society, Hospital and Healthsystem Association of Pennsylvania, Montgomery Home Care and Hospice and Palliative Care, Pennsylvania Academy of Dermatology and Dermatologic Surgery, SUN Home Health and Hospice, Pennsylvania Home Care Association, Pennsylvania Association of Non Profit Homes for the Aging, the Pennsylvania Health Care Association and the County Commissioners Association of Pennsylvania. Subsequently, letters were received from the Pennsylvania Athletic Trainer's Society and the

Pennsylvania Association of Certified Nurse-Midwives. These groups were generally supportive of the requirements in Act 110.

Section 803(1) of the act (35 P. S. § 448.803(1)) requires that the Department consult with the Health Policy Board prior to the promulgation of regulations issued under the authority of the act.

Act 110 also requires that following the Department's adoption of interim regulations, the Department will adopt final regulations in accordance with customary rulemaking procedures by July 22, 2012. The Department will propose regulations before adopting final regulations by that date.

#### B. *Summary*

##### § 53.1. *Legal basis, scope and definitions*

This section describes the purpose of Chapter 53, which is to implement section 809.2 of the act. This section also includes definitions used throughout Chapter 53. "Direct care" is defined as "the actual delivery of health care services or assistance with activities of daily living to a consumer or patient." This definition clarifies that Chapter 53 applies to individuals involved in face-to-face, hands on care of patients and consumers. "Outside of the health care facility or employment agency" is defined as "health care services that are provided to patients and consumers at a location other than a health care facility or employment agency, such as the patient or consumer's residence." This definition clarifies that most of the requirements in the interim regulations apply to individuals who are not working in or at a health care facility but are providing services to patients and consumers away from a health care facility. "Private practice of a physician" is defined as "a circumstance in which a health care practitioner or an employee under a health care practitioner's supervision provides direct care to a patient or consumer" and "this does not include a physician practice group which is owned and operated by a health care provider." This definition includes a "health care practitioner" which is defined in section 103 of the act (35 P. S. § 448.103) as "an individual who is authorized to practice some component of the healing arts by a license, permit, certificate or registration issued by a Commonwealth licensing agency or board." While the term "health care practitioner" captures most of the individuals who work in the private practice of a physician, the Department believes that it may not account for all of the individuals in this setting who may provide direct care to a patient or consumer. For example, medical technicians often provide direct care, but they do not necessarily receive a Commonwealth-issued license, permit, certificate or registration. By including those employees who work under a health care practitioner's supervision, these individuals will be encompassed by this definition. The second sentence of the definition was added to exclude those physician practice groups which are owned and operated by a health care provider. Act 110 does not apply to individuals who work "at a health care facility" until June 2015. Under regulations that have been in effect since 1999, individuals who work in a health care facility shall wear identification badges. Generally, these badges are encrypted with codes which provide access to secure units, medication storage units and other areas associated with a health care facility. It appears that the General Assembly believed it was appropriate to delay implemen-

tation of Act 110 to give these facilities time to transition to the photo identification badges requirement in Act 110. It is the Department's understanding that most of the individuals who work at physician practice groups owned and operated by health care providers possess these badges so that there is not a necessity to make the requirements in Act 110 instantly applicable. Act 110 will become applicable to these physician practice groups in 2015.

#### § 53.2. Requirements

This section sets forth the applicability of Chapter 53. Act 110 establishes a staggered implementation mechanism. Subsection (a) states that this chapter applies to employees that deliver direct care outside of a health care facility, employees that deliver direct care in a health care facility and employees that deliver direct care at the private practice of a physician. Subsection (b) states that employees that deliver direct care outside of a health care facility or at the private practice of a physician shall wear photo identification badges that meet the requirements in § 53.3 (relating to contents of photo identification badge). Subsection (c) states that employees that deliver direct care in a health care facility shall wear an identification badge that meet the requirements in § 51.6. Section 809.2(d) of the act does not apply to employees that deliver direct care in a health care facility until June 1, 2015.

#### § 53.3. Contents of photo identification badge

This section lists the items that must be on the photo identification badge. Subsection (a)(1) requires that the badge contain a recent photograph of the employee. Subsection (c) requires that these photographs shall be updated every 4 years. This is consistent with the requirements for photographic driver's licenses issued by the Department of Transportation. See 67 Pa. Code § 73.4(a) (relating to expiration). Subsection (a)(2) and (3) requires that the employee's full name and title appear on the badge.

Subsection (b) requires that the badge issued by an employment agency for an employee who is providing direct care for a health care facility must include all of the items in subsection (a). Also, the health care facility where the employee of the employment agency is working shall issue the employee an identification badge that contains the name of the health care facility, the employee's title and the employment status of the employee at that facility, such as temporary contract employee. Under this process, the primary employer of the employee shall issue the photo identification badge that complies with the requirements in this section. As the badge issued by the health care facility will only have to contain the facility's name and the employee's title and employment status, this badge can be easily prepared and provided to the employee. In this way, patients at the health care facility shall be provided with the necessary information to verify identification of the individual and also verify that the individual is authorized to work in the health care facility.

#### § 53.4. (Reserved)

Act 110 requires that titles must be in a specific size, type and location on the badge. Also, other than four designated professional titles set forth by the General Assembly, the Department is required to determine the titles to be used on the identification badges under section 809.2(a)(3)(v) of the act. However, these requirements do not take effect until June 1, 2015. The Department is reserving this section to address these requirements at a future date.

#### § 53.5. Exceptions

This section provides exceptions to the general requirements that individuals who fall within the requirements of Act 110 shall wear photo identification badges. Subsections (a) and (b) discuss an individual whose religion or religious beliefs would be violated by the taking of a photograph of the individual. In the event that an employee raises this concern, the employer is required to obtain a signed and notarized statement from the employee that the taking of a photograph would violate the employee's religion or religious beliefs and to ensure that the employee does wear an identification badge that contains the remainder of the requirements in § 53.3. This requirement is also similar to that for individuals claiming exemption from a photographic driver's license. See 67 Pa. Code § 73.3(d)(4) (relating to application). In the absence of the employee's photograph, the identification badge must contain the employee's height and eye color. This information is contained on a nonphotographic driver's license and will provide assistance in verifying the employee's identity. Subsection (c) states that an individual may not be required to wear a photo identification badge while delivering direct care if it is not clinically feasible. This is consistent with section 809.2(c)(1) of the act. Subsection (d) states that the last name of an employee may be omitted or concealed when delivering direct care to a patient or consumer who exhibits symptom of irrationality or violence. This is consistent with section 809.2(c)(2) of the act. Subsection (e) requires that the employing health care facility, health care provider, employment agency or private practice of a physician shall establish a policy and procedure for employees who require exceptions under subsection (d) which must, at a minimum, describe the process to be followed and describe how employees with the same first name will be differentiated.

#### C. Affected Persons

The interim regulations will affect employees who work for health care facilities, health care providers or employment agencies who provide direct care to a patient or consumer outside of the health care facility. The interim regulations will also affect health care practitioners and employees who provide direct care to a patient or consumer under the supervision of a health care practitioner. These individuals will be required to wear photo identification badges that comply with these interim regulations.

#### D. Cost and Paperwork Estimate

*Commonwealth*—There will not be additional costs to the Commonwealth resulting from these interim regulations associated with the Department's responsibility to enforce the interim regulations. The Department's surveyors perform the function of surveying and inspecting health care facilities and check for compliance with the regulations when at the facilities. The Department's surveyors will also respond and investigate complaints regarding employees of health care facilities. The Department of State has jurisdiction to inspect complaints regarding allegations pertaining to health care practitioners. Complaints concerning health care practitioners not employed by health care facilities will be referred to the Department of State for their review and action.

*Local government*—There will not be additional cost to local government.

*Regulated community*—There will be additional costs to some health care facilities and to all private practices of physicians. These interim regulations apply to employees that deliver direct care outside of a health care facility or

employment agency. In the health care facility setting, this requirement will mainly apply to those individuals employed by home health care agencies, home care agencies and registries and hospices. Most of these individuals provide care to patients and consumers outside of the health care facility, usually in the patient or consumer's home. The Department licenses all of these health care facilities. The number of individuals employed by these facilities or employed by employment agencies and providing this type of care is estimated to be 81,700.

The Department does not have the ability to obtain an accurate number of the individuals who are employed at the private practice of a physician. However, the total number of licensed physicians with an address in this Commonwealth is 39,060 (33,439 medical physicians and 5,621 osteopathic physicians). The Department estimates each physician employs three individuals who provide direct care for a total number of 117,180.

As for the cost of a photo identification badge, this amount could vary depending on the type and quality of the badge. Testimony at the public hearing on January 14, 2011, indicated that forms for these badges were available on web sites for downloading. Inserting a digital photograph with the required information is all that would be necessary to comply with the interim regulations.

*General public*—There will not be additional costs to the general public. In fact, since the interim regulations require employees who provide direct care to patients and consumers to wear photo identification badges, there will be a benefit to the general public as they will be able to identify the name and title of the person who is providing their care and to match the photograph on the badge with that individual.

#### E. Statutory Authority

Section 803(2) of the act authorizes the Department to promulgate, after consultation with the Health Policy Board, regulations necessary to carry out the purposes and provision of the act. Section 809.2 of the act directs the Department to adopt interim regulations to implement the provisions of this addition to the act.

#### F. Effectiveness/Sunset Dates

The interim regulations will become effective upon publication in the *Pennsylvania Bulletin*. Under section 809.2(b) of the act, the interim regulations will expire 18 months following the effective date or upon promulgation of final regulations by the Department, whichever occurs first.

#### G. Regulatory Review

Under section 809.2(b) of the act, after the conclusion of one public hearing and within 90 days of the effective date of Act 110, the Department is to publish interim regulations regarding implementation of Act 110. The interim regulations are not subject to the Regulatory Review Act. Under section 809.2(b) of the act, the Department is to adopt final regulations within 18 months of the effective date of Act 110.

In accordance with section 803(1) of the act, the Department consulted with the Health Policy Board on May 5, 2011.

The Office of Attorney General reviewed the interim regulations and approved these regulations on October 26, 2011.

#### H. Contact Person

Interested persons are invited to submit comments, suggestions or objections to the interim regulations to

Susan Coble, Director, Bureau of Community Program Licensure and Certification, Department of Health, 132 Kline Plaza, Suite A, Harrisburg, PA 17104, (717) 783-8665 within 30 days after publication of these interim regulations in the *Pennsylvania Bulletin*. Persons with a disability may submit questions in alternative format such as audio tape or Braille or by using V/TT (717) 783-6514 or the Pennsylvania AT&T Relay Service, (800) 654-5984 (TT). Persons who require an alternative format of this document should contact Susan Coble at the previous address or telephone number so that necessary arrangements can be made. The Department will consider the comments it receives in developing proposed regulations that will be published in advance of the Department adopting final regulations by July 22, 2012.

#### I. Findings

The Department finds that:

(1) Proposed rulemaking in advance of the interim regulations is not required under section 809.2(b) of the act.

(2) A public hearing was held on January 14, 2011, prior to the adoption of the interim regulations as required under section 809.2(b) of the act and comments received by the Department were considered.

(3) The adoption of the interim regulations in the manner provided for by this order is necessary and appropriate for the administration of the act.

#### J. Order

The Department, under the authorizing statute, orders that:

(a) The regulations of the Department, 28 Pa. Code, are amended by adding §§ 53.1—53.3 and 53.5 and by reserving § 53.4 to read as set forth in Annex A.

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

(c) The Secretary of Health 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*.

ELI N. AVILA, MD, JD, MPH, FCLM,  
Secretary

**Fiscal Note:** 10-192. No fiscal impact; (8) recommends adoption.

#### Annex A

### TITLE 28. HEALTH AND SAFETY

#### PART IV. HEALTH FACILITIES

#### Subpart A. GENERAL PROVISIONS

### CHAPTER 53. PHOTO IDENTIFICATION BADGES

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| Sec.  |   |
| 53.1. | Legal basis, scope and definitions.     |
| 53.2. | Requirements.                           |
| 53.3. | Contents of photo identification badge. |
| 53.4. | (Reserved).                             |
| 53.5. | Exceptions.                             |

#### § 53.1. Legal basis, scope and definitions.

(a) This chapter implements section 809.2 of the act (35 P. S. § 448.809b).

(b) This chapter contains standards which are applicable to the following:

(1) All entities licensed as health care facilities under the act.

(2) The private practice of a physician.

(c) The following words and terms, when used in this chapter, have the following meanings:

*Direct care*—The actual delivery of health care services or assistance with activities of daily living to a consumer or patient.

*Employee*—An employee or a physician of any of the following who delivers direct care to a consumer:

- (i) A health care facility.
- (ii) A health care provider.
- (iii) The private practice of a physician.
- (iv) An employment agency.

*Employment agency*—A public or private organization that provides employment services for persons seeking employment and for potential employers seeking employees who provide direct care to consumers.

*Employment status*—Full-time, part-time, temporary, contractual or other classification of work that indicates the relationship between the employee and the health care facility, health care provider or employment agency.

*Health care facility*—A facility licensed by the Department under the act.

*Health care provider*—An individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), the Commonwealth or a political subdivision or instrumentality (including a municipal corporation or authority) thereof, that operates a health care facility.

*Outside of the health care facility or employment agency*—Health care services that are provided to patients and consumers at a location other than a health care facility or employment agency, such as at the patient or consumer's residence.

*Private practice of a physician*—

(i) A circumstance in which a health care practitioner or an employee under a health care practitioner's supervision provides direct care to a patient or consumer.

(ii) This does not include a physician practice group which is owned and operated by a health care provider.

*Title*—A license, certification or registration held by the employee.

**§ 53.2. Requirements.**

(a) This chapter applies to an employee who delivers direct care as follows:

- (1) Outside of a health care facility or employment agency.
- (2) In a health care facility.
- (3) At the private practice of a physician.

(b) An employee who delivers direct care outside of a health care facility or employment agency or at the private practice of a physician shall wear a photo identification badge that meets the requirements in § 53.3 (relating to contents of photo identification badge).

(c) An employee who delivers direct care in a health care facility shall wear an identification badge that meets the requirements in § 51.6 (relating to identification of personnel).

**§ 53.3. Contents of photo identification badge.**

(a) An employee's photo identification badge must include the following:

- (1) A recent photograph of the employee, updated as provided for in subsection (c).
- (2) The employee's full name to include, at a minimum, the full first and last name.
- (3) The employee's title.
- (4) The name of the employee's health care facility or employment agency.

(b) The identification badge issued by an employment agency for an employee who is providing direct care for a health care facility must include the items in subsection (a). In addition, the health care facility where the employee of the employment agency is working shall issue the employee an identification badge that contains the name of the health care facility, the employment status of the employee at that facility and the employee's title.

(c) Photographs shall be updated at least every 4 years.

**§ 53.4. (Reserved).**

**§ 53.5. Exceptions.**

(a) *Photograph.* A health care facility, health care provider, employment agency or private practice of a physician may permit an employee to wear an identification badge without a photograph if having a photograph taken would violate the tenets of the employee's religion or religious beliefs.

(b) *Policies and procedures for exemption.* A health care facility, health care provider, employment agency or private practice of a physician shall establish policies and procedures in the event that an employee requests an exception under subsection (a), which, at a minimum:

- (1) Require the employee to submit a signed and notarized statement that the taking of a photograph would violate the employee's religion or religious beliefs.
- (2) Ensure that the employee wears an identification badge that contains the information in § 53.3(a)(2)—(4) (relating to contents of photo identification badge).
- (3) Contain the employee's height and eye color.

(c) *Use of identification badge not clinically feasible.* An employee may not be required to wear an identification badge while delivering direct care to a patient or consumer if not clinically feasible.

(d) *Employee safety.* The last name of the employee may be omitted or concealed when delivering direct care to a patient or consumer who exhibits symptoms of irrationality or violence.

(e) *Policies and procedures for exemption.* A health care facility, health care provider, employment agency or private practice of a physician shall establish policies and procedures in the event that an employee requires an exception under subsection (d), which, at a minimum describe:

- (1) The process to be followed in the event that an employee requires an exception.
- (2) How employees with the same first name will be differentiated.

[Pa.B. Doc. No. 11-2107. Filed for public inspection December 9, 2011, 9:00 a.m.]

# Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

## STATE BOARD OF VETERINARY MEDICINE

[ 49 PA. CODE CH. 31 ]

### License Renewal; Continuing Education

The State Board of Veterinary Medicine (Board) amends §§ 31.11, 31.13, 31.15, 31.16, 31.40 and 31.41 and rescinds § 31.12 to read as set forth in Annex A. This final-form rulemaking updates the Board's regulations with regard to licensure applications and renewal, temporary permits, continuing education and existing fees for duplicate licenses.

#### *Effective Date*

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

#### *Statutory Authority*

Section 8 of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.8) authorizes the Board to determine the educational requirements for licensure. Section 18 of the act (63 P. S. § 485.18) authorizes the Board to approve all continuing education programs and to promulgate standards to ensure that the programs meet the educational and professional requirements of the profession and are designed to keep the members of the profession abreast of current learning and scholarship. Section 27.1 of the act (63 P. S. § 485.27a) requires the Board to promulgate regulations setting forth recordkeeping standards. Section 5(2) of the act (63 P. S. § 485.5(2)) authorizes the Board to promulgate regulations to effectuate the act. Section 11 of the act (63 P. S. § 485.11) authorizes the Board to promulgate regulations related to the practice of veterinary technicians.

#### *Summary of Comments to Proposed Rulemaking*

Notice of proposed rulemaking was published at 40 Pa.B. 4154 (July 24, 2010) with a 30-day public comment period. No public comments were received. On September 13, 2010, the Board received comments from the House Professional Licensure Committee (HPLC). On September 20, 2010, the Independent Regulatory Review Commission (IRRC) submitted its comments under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The following is a summary of those comments and the Board's response.

The HPLC noted that in the preamble to the proposed rulemaking the Board referred to "jurisdictions states" and asked what was meant. This was essentially a typographical error. The sentence should have read as follows: "The AAVSB presented information to the Board regarding the program, which has approved over 400 candidates and is now accepted in 29 jurisdictions and states, including New York and Virginia." Both words are used because the Program for the Assessment of Veterinary Education Equivalence (PAVE) is accepted for veterinary licensure in United States territories as well as states. As of March 2011, there are 34 jurisdictions and states that accept PAVE, including the United States Virgin Islands and Puerto Rico. However, because the proposed preamble is not republished, the error cannot be corrected.

The HPLC next noted a typographical error in the preamble to the proposed rulemaking where the statutory

citation was given as "53 P. S. § 485.10" rather than "63 P. S. § 485.10" and asked that the error be corrected. Because the Board does not republish the proposed preamble, the error cannot be corrected. The HPLC also noted a typographical error in § 31.13 (relating to licensure renewal). A "d" was erroneously added to the word "receive." This error has been corrected in the final-form rulemaking.

The HPLC asked whether the District of Columbia was included in the reference in § 31.13(b) to "another state, territory, country, or by a Federal authority in the United States." The Board intended the word "state" to include the District of Columbia. This interpretation comports with the definition of "state" in 1 Pa.C.S. § 1991 (relating to definitions), which provides, in part, "[w]hen used in reference to the different parts of the United States, includes the District of Columbia. . . ."

The HPLC requested an explanation for the use of the term "licensee" in § 31.13(e)(1) when other paragraphs in the subsection referenced a "veterinarian." Subsection (e) provides for licensees who may not use the § 31.13 renewal provisions because they have been practicing on an expired license, either in this Commonwealth or in another state, or because they have not been practicing veterinary medicine even though they have a currently-renewed license in another state. Although the HPLC suggested using "veterinarian" consistently in subsection (e), the Board finds that the more accurate term is "licensee" because individuals affected by this section would be licensees of the Board. The Board has made this amendment to the final-form rulemaking.

The HPLC next questioned the term used for a veterinarian who fails to renew a license and asked if the term "holder of an expired license" or "licensee" is the "technical status." The Board does not see a difference between the two terms. Once an individual is granted a license, the individual is a licensee. Individuals have a constitutionally-protected property interest in their professional licenses. If an individual fails to renew the license, the individual retains the property interest and remains a licensee, with all of the constitutional protections afforded the individual's right in the property. Only if the license is surrendered or revoked does the individual cease to be a licensee. In response to the HPLC's inquiry, the Board amended the existing language in subsection (d), which refers to a "holder of an expired license to practice veterinary medicine" to refer instead to a "licensee whose license to practice veterinary medicine is expired."

The HPLC also noted that when the proposed rulemaking was published by the Legislative Reference Bureau, an uppercase heading caption "Veterinary Technicians and Noncertified Employees" was added. The HPLC pointed out that the term "noncertified employee" has not been used since the 2002 amendments to the act. The Board believed that references to "noncertified employees" were previously deleted and replaced with "veterinary assistant," the term used in the 2002 statutory amendments. Apparently, the reference in the subheading was not amended at that time. The Board made this correction to the final-form rulemaking.

IRRC asked why the Board was deleting the provisions and fee related to temporary practice permits while the underlying statutory provision regarding temporary permits was still in place. Section 10 of the act (63 P. S. § 485.10) provides that the Board may issue a temporary permit to a graduate of a Board-approved school of veterinary medicine that permits the permit holder to

practice veterinary medicine in association with a licensee and under the supervision of the licensee. Section 10 of the act further requires the permit holder to “present himself or herself for examination at the next scheduled examination of the board” and provides that the permit will immediately terminate if the holder fails the examination. From 1954 to 1970, the National Board Examination in Veterinary Medicine was given in June and graduates of schools and colleges of veterinary medicine took the examination following graduation. Temporary permits were necessary at that time to permit a graduate to work under the supervision of a veterinarian while waiting for the exam results and issuance of a license. Beginning in 1976, the National examination was offered in December and June, and third and fourth year veterinary students were permitted to sit for examination. As a result, fewer temporary permits were issued because many students took and passed the examination while still in school. In approximately 1979, the National examination dates were changed to December and May; a year or so later the dates were changed to December and April and the examination was limited to fourth year veterinary students. Since that time and continuing to the present, fourth year students test in December and, if they are unsuccessful, retest in April—both testing dates are prior to graduation. Because the act provides that “[n]o temporary permit shall be issued to any applicant if he or she has previously failed the examination,” a graduate who has failed the exam is not eligible for the issuance of a temporary permit. For these reasons, the Board has not had an applicant for a temporary permit for more than 30 years. Therefore, the provisions regarding a temporary permit are not needed. Because section 10 of the act does not mandate that the Board shall issue temporary permits, but rather provides the Board with discretion (by use of the term “may”), the Board believes that deleting these outdated, unnecessary provisions from the regulations is reasonable. The Board will consider putting forth a legislative initiative seeking to have the General Assembly amend the act in like fashion.

IRRC next asked for clarification of the Board’s amendments to § 31.13, specifically, what type of documentation would evidence completion of continuing education requirements. Certificates of attendance, which are provided to licensees upon completion of a continuing education course under § 31.16(c) (relating to continuing education provider approval), are the standard documentation that licensees submit to verify completion with continuing education requirements. The Board amended § 31.13(d) by changing “documentation” to “submission of certificates of attendance demonstrating” that the licensee has completed the required continuing education.

IRRC recommended maintaining existing language in § 31.15 (relating to continuing education) “so that it is clear to licensees that a license cannot be renewed if the licensee fails to complete continuing education credits as required by statute.” The Board amended § 31.15 in the final-form rulemaking in light of IRRC’s suggestion.

Finally, IRRC noted that the Board stated that the amendments would not have adverse effect and that there are no costs or savings associated with the amendments, yet the Board proposed three amendments to its fees. The three amendments to the fees in § 31.41 (relating to schedule of fees) are as follows: add a \$5 fee for a duplicate license for veterinarians, add a \$5 fee for a duplicate license for veterinary technicians and delete the \$35 fee for a temporary permit for veterinarians. The \$5 fee for a duplicate license is a Bureau of Professional and Occupational Affairs-wide fee set forth in section 226 of

the Bureau of Professional and Occupational Affairs Fee Act (63 P. S. § 1401-226), originally established in 1978. This fee has been charged to licensees of the Board for more than 30 years. Therefore, there are no costs or savings associated with the amendment, which merely provides additional notice to licensees of the fee associated with the printing of a duplicate license. The Board does not anticipate any savings from deleting the \$35 fee for a temporary permit because, as previously discussed, the Board has not issued temporary permits since approximately the late 1970s.

#### *Description of Amendments to the Final-Form Rulemaking*

Section 31.13(d) is amended to refer to a licensee whose license to practice veterinary medicine is expired and to clarify the documentation needed to demonstrate continuing education for the biennial period preceding renewal consists of certificates of attendance. Section 31.13(e) is amended for simplification to require a licensee who either practiced on an expired license or did not practice at all for a 5-year period to re-examine to establish competence to practice.

Section 31.15 is amended to clarify that veterinarians shall certify completion of the required continuing education as a condition of licensure renewal. In addition, while reviewing the proposed amendments to subsection (c), the Board determined that it would be more beneficial to licensees to retain proof of continuing education attendance for a minimum of 5 years, rather than 3 years as proposed. In considering this change, the Board noted that a majority of other health-related boards require proof of continuing education be maintained for no less than 4 or 5 years.

#### *Fiscal Impact and Paperwork Requirements*

The Board believes that the final-form rulemaking should have little or no fiscal impact on licensees, approved continuing education providers, the Board or other Commonwealth entities. The requirement to maintain documentation of continuing education for 5 years will have a minor effect on licensees’ paperwork/recordkeeping requirements.

#### *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 July 14, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 4154, 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 September 28, 2011, the final-form rulemaking was approved by HPLC. On October 19, 2011, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 20, 2011, 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) (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 purpose of proposed rulemaking published at 40 Pa.B. 4154.

(4) 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 deleting § 31.12 and by amending §§ 31.11, 31.13, 31.15, 31.16, 31.40 and 31.41 to read as set forth in Annex A.

(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 Review Commission relating to this document, see 41 Pa.B. 6057 (November 5, 2011).)*

**Fiscal Note:** Fiscal Note 16A-5724 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 31. STATE BOARD OF VETERINARY MEDICINE****LICENSURE****§ 31.11. Application for licensure.**

(a) *Application forms.* Application forms for original or reciprocal licensure may be obtained from the Administrative Office of the Board by contacting the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, [veterina@pados.dos.state.pa.us](mailto:veterina@pados.dos.state.pa.us), or by accessing the Board's web page at [www.dos.state.pa.us/bpoa/vetbd/mainpage.htm](http://www.dos.state.pa.us/bpoa/vetbd/mainpage.htm). Application forms shall be returned to the Board at least 60 days prior to the first day of the NAVLE testing period.

(b) *Original licensure.* As a prerequisite to original licensure as a veterinarian, an applicant shall submit the following documentation to the Board:

(1) Evidence of graduation from an approved school or college of veterinary medicine or certification of equivalence sent directly from the American Veterinary Medical Association, Educational Commission for Foreign Veterinary Graduates or the American Association of Veterinary State Boards, Program for the Assessment of Veterinary Education Equivalence.

(2) North American Veterinary Licensing Examination (NAVLE) results as furnished through a National examination grade reporting service.

(3) A letter of good standing from the licensure board of each state where the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

(4) A statement from the applicant that the applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144), or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country unless the following apply:

(i) At least 10 years have elapsed from the date of conviction.

(ii) The applicant satisfactorily demonstrates to the Board that the applicant has made significant progress in personal rehabilitation since the conviction so that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations.

(iii) The applicant otherwise satisfies the qualifications contained in the act.

(c) *Reciprocal licensure.* An applicant for licensure by reciprocity who has held a valid license from another state and has been actively engaged in clinical practice in that state for 5 years immediately preceding application for licensure in this Commonwealth, may be granted a license to practice veterinary medicine in this Commonwealth after having paid the fee required by § 31.41 (relating to schedule of fees), and submitted the following documentation to the Board:

(1) An application form under subsection (a).

(2) A verification of clinical practice, completed by the applicant, describing in detail the applicant's clinical practice during the immediately preceding 5 years.

(3) A letter from the licensure board of the state wherein the applicant has been actively engaged in clinical practice during the immediately preceding 5 years, certifying 5 years of continued licensure in that state.

(4) Two certificates of recommendation from licensed veterinarians regarding the applicant's character and competence and attesting to the fact that the applicant has been in active clinical practice during the immediately preceding 5 years.

(5) A letter of good standing from each board office in which the applicant has held a license to practice veterinary medicine, reporting the outcome of disciplinary actions taken against the applicant, if any, in that state.

**§ 31.12. (Reserved).****§ 31.13. Licensure renewal.**

(a) Licenses expire on November 30 of each even-numbered year, regardless of the date of issuance. Li-

censes are renewable for a 2-year period beginning December 1 of each even-numbered year. The fee for biennial renewal is as set forth in § 31.41 (relating to schedule of fees). Upon renewing their licenses, licensees will receive a blue 5 x 7 wall certificate and wallet-size license card which show the next expiration date of the license.

(b) A licensee who is also licensed to practice veterinary medicine in another state, territory or country shall report this information on the biennial registration form. Disciplinary action taken by the veterinary licensing authority or other authority that authorizes a licensee to the practice of veterinary medicine or that is related to veterinary medicine in another state, territory, country or by a Federal authority in the United States, shall be reported to the Board on the biennial registration application or within 90 days of final disposition, whichever is sooner. Criminal convictions shall be reported to the Board on the biennial registration application or within 90 days of sentencing, including acceptance into an Accelerated Rehabilitative Disposition program, whichever is sooner.

(c) Licensed veterinarians who fail to renew their license shall cease from the practice of veterinary medicine in this Commonwealth on the last day of November of the renewal year. A licensee who continues to practice on an expired license will be subject to disciplinary action by the Board. Late fees as prescribed by the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. §§ 1401-101—1401-501) will be added to the renewal fee of a licensee who practiced on an expired license. The licensee will be required to pay the current biennial renewal fee as set forth in § 31.41 and the fees that would have been paid had the license been maintained in good standing. The licensee will be required to submit continuing education certificates of attendance for the current and any past biennial renewal periods during which the licensee practiced on an expired license.

(d) A licensee whose license to practice veterinary medicine is expired who did not practice veterinary medicine in this Commonwealth while the licensee's license was expired may reactivate and renew the license upon application to and approval of the Board and upon payment of the current biennial renewal fee as set forth in § 31.41 and submission of certificates of attendance demonstrating that the licensee has complied with § 31.15 (related to continuing education) for the biennial period preceding renewal. The application for renewal shall also be accompanied by an Affidavit of Non-Practice, verifying the period of time in which the licensee abstained from the practice of veterinary medicine in this Commonwealth. A licensee will not be assessed a late renewal fee under the Bureau of Professional and Occupational Affairs Fee Act for the preceding biennial periods in which the licensee abstained from the practice of veterinary medicine in this Commonwealth.

(e) A licensee will be required to reactivate the license in accordance with section 9 of the act (63 P.S. § 485.9) to resume practicing veterinary medicine if the licensee practiced veterinary medicine on an expired license in this Commonwealth or another state, territory or country for more than 5 years or if the licensee did not practice veterinary medicine for more than 5 years.

**§ 31.15. Continuing education.**

(a) Veterinarians shall complete 30 clock hours of continuing education courses approved by the Board during the 24 months preceding the renewal date. Veteri-

narians shall certify completion of the required continuing education as a condition of licensure renewal.

(b) A maximum of 25% of the hours may be earned by taking individual study or written or computer-based correspondence courses for which third-party verification of satisfactory completion is provided.

(c) Veterinarians shall maintain a list of all continuing education courses attended and certificates of attendance for a minimum of 5 years.

(d) Courses in office management or practice building may not be used to meet the 30-hour continuing education requirement.

**§ 31.16. Continuing education provider approval.**

(a) Subject to § 31.15 (relating to continuing education), the Board will approve without application to the Board and the fee required under § 31.41 (relating to schedule of fees), continuing education courses offered by the following providers so long as the programs increase the skills, knowledge and competency of veterinarians in the practice of the profession:

- (1) The American Veterinary Medical Association (AVMA).
- (2) Approved schools.
- (3) Allied organizations of the AVMA.
- (4) AVMA-approved major regional veterinary organizations.
- (5) Specialty boards of the AVMA.
- (6) The Pennsylvania Veterinary Medical Association and its constituent associations.
- (7) Other states' veterinary medical associations.
- (8) Providers listed on the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB).
- (9) The Department of Veterinary and Biomedical Sciences, College of Agricultural Sciences, Pennsylvania State University.

(b) Continuing education courses which are offered by providers not covered under subsection (a) shall receive prior approval of the Board. An application for approval of continuing education programs may be obtained from the Administrative Office of the Board by writing or telephoning the State Board of Veterinary Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389. A request for approval shall be filed with the Board at least 60 days prior to the date of the proposed program, and shall be accompanied by the fee required by § 31.41.

(c) Organizations approved under subsections (a) and (b) shall provide certificates of attendance to the veterinarian which includes the name of the provider, the name of the licensee, the title of the course, the date of the course, the number of credit hours and the signature of the person authenticating attendance. If a certificate of attendance covers a program with more than one course, organizations approved under subsections (a) and (b) shall require some method by which attendees verify attendance at individual courses. Organizations approved under subsection (b) shall also provide the Pennsylvania approval number.

(d) Instructors of continuing education programs may include:

- (1) Members of the faculties of approved schools of veterinary medicine.



(2) Licensed doctors of veterinary medicine in this Commonwealth or in another state who are not faculty members of the schools covered under paragraph (1) if, by virtue of their professional activities and achievements in a particular field, the doctors are determined by the Board to be qualified to speak on subjects of pertinent value to the profession.

(3) Other lecturers or instructors who are not licensed to practice veterinary medicine, if the Board determines that they are qualified to speak upon a subject which will be of value to the profession.

(e) A resume of the qualifications of instructors of continuing education programs under subsection (d)(2) and (3) shall be included with the application for approval of continuing education programs. This subsection does not apply to providers enumerated under subsection (a).

**CERTIFIED VETERINARY TECHNICIANS AND VETERINARY ASSISTANTS**

**§ 31.40. Continuing education provider approval.**

(a) The Board will approve without application to the Board and the fee required under § 31.41 (relating to schedule of fees), continuing education courses offered by the following providers so long as the programs are specifically designed to increase the skills, knowledge and competency of certified veterinary technicians:

- (1) The American Veterinary Medical Association (AVMA).
- (2) Approved schools.
- (3) Allied organizations of the AVMA.
- (4) Major regional veterinary organizations approved by the AVMA.
- (5) The Pennsylvania Veterinary Medical Association and its constituent associations.
- (6) Other states' veterinary medical associations.
- (7) The Veterinary Technicians and Assistants Association of Pennsylvania (VTAAP).
- (8) Specialty boards of the AVMA.
- (9) Providers listed on the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards (AAVSB) to offer courses for certified veterinary technicians.

(10) The Department of Veterinary and Biomedical Sciences, College of Agricultural Sciences, Pennsylvania State University.

(b) Continuing education courses which are offered by providers not covered under subsection (a) shall receive prior approval of the Board. An application for approval of continuing education programs may be obtained from the Administrative Office of the Board, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (717) 783-1389. A request for approval shall be filed with the Board at least 60 days prior to the date of the proposed program, and shall be accompanied by the fee required by § 31.41.

(c) Organizations approved under subsections (a) and (b) shall provide certification of attendance to the certified veterinary technician which includes the name of the sponsor, the name of the licensee, the title of the course, the date of the course, the number of credit hours and the signature of the person authenticating attendance. Organizations approved under subsection (b) shall also provide the Pennsylvania approval number.

(d) Instructors of continuing education programs may include:

- (1) Members of the faculties of approved schools.
- (2) Licensed doctors of veterinary medicine in this Commonwealth or in another state who are not faculty members of those schools covered under paragraph (1) if, by virtue of their professional activities and achievements in a particular field, the doctors are recognized by the Board as qualified to speak on subjects of pertinent value to veterinary technicians.

(3) Other lecturers or instructors who are not licensed to practice veterinary medicine, if the Board determines that they are qualified to speak upon a subject which will be of value to the profession.

(e) A resume of the qualifications of instructors of continuing education programs under subsection (d)(3) shall be included with the application for approval of continuing education programs. This subsection does not apply to providers enumerated under subsection (a).

**FEES**

**§ 31.41. Schedule of fees.**

An applicant for a license, certificate or service shall submit a payment at the time of the request under the following fee schedule:

*Veterinarian fees for services:*

|  |      |
|--|------|
| Application to original, reactivated, reissued or reciprocal license ..... | \$35 |
| Application for continuing education program approval .....                | \$35 |
| Verification of licensure .....  | \$15 |
| Certification of scores or hours .....                                     | \$25 |
| Duplicate license .....  | \$5  |
| Late renewal fee per month or part of month .....                          | \$5  |

*Veterinarian biennial renewal:*

|  |       |
|--|-------|
| Biennial renewal fee for biennial period |       |
| December 1, 2010—November 30, 2012 ..... | \$345 |
| Biennial renewal fee for biennial period |       |
| December 1, 2012—November 30, 2014 ..... | \$360 |

*Veterinary technician fees for services:*

|   |      |
|---|------|
| Application for certification .....                         | \$35 |
| Application for continuing education program approval ..... | \$35 |
| Verification of certification .....                         | \$15 |
| Certification of scores or hours .....                      | \$25 |
| Late renewal fee per month or part of month .....           | \$5  |
| Duplicate license .....                                     | \$5  |

*Veterinarian technician biennial renewal:*

|  |       |
|--|-------|
| Biennial renewal fee for biennial period |       |
| December 1, 2010—November 30, 2012 ..... | \$85  |
| Biennial renewal fee for biennial period |       |
| December 1, 2012—November 30, 2014 ..... | \$100 |

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