

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE [49 PA. CODE CHS. 16 AND 17] MCARE Amendments

The State Board of Medicine (Board) amends §§ 16.1, 16.18, 16.31—16.35, 17.4, 17.6 and 17.7 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 8 of the Medical Practice Act of 1985 (act) (63 P. S. § 422.8) authorizes the Board to adopt regulations that are reasonably necessary to carry out the purposes of the act.

Omission of Proposed Rulemaking

Under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit proposed rulemaking in sections 201 and 202 of the CDL (45 P. S. §§ 1201 and 1202) if the Board finds that the criteria in section 204 of the CDL are met.

Throughout the Board's regulations are references to the Health Care Services Malpractice Act, which was repealed by the act of March 20, 2002 (P. L. 154, No. 13) (Act 13). Act 13 also enacted the Medical Care Availability and Reduction of Error (MCARE) Act (MCARE Act) (40 P. S. §§ 1303.101—1303.910). Under the authority of section 204(3) of the CDL, notice of proposed rulemaking has been omitted as unnecessary because the amendments are required to delete references to the repealed Health Care Services Malpractice Act and to replace them, as applicable, with references to the MCARE Act.

Background and Need for Amendments

Due to the repeal of the Health Care Services Malpractice Act and enactment of the MCARE Act, the Board's regulations are amended to reference the current applicable law. In addition, because the MCARE Act applies to both physicians and nurse-midwives, the Board is amending references to the requirements of the MCARE Act to include both physicians and nurse-midwives.

Description of Amendments

The Board is amending §§ 16.1, 16.18, 16.31—16.35, 17.4, 17.6 and 17.7 to delete references and citations to the Health Care Services Malpractice Act and replace these references and citations to the applicable sections of the MCARE Act.

The Board is also amending the references to "physicians and surgeons" in these sections by replacing them with references to "physicians and nurse-midwives" because: (1) the Board no longer uses the term "physicians and surgeons" to refer to its physician licensees; and (2) the MCARE Act applies to both physicians and nurse-midwives.

Fiscal Impact

This final-omitted rulemaking will not have fiscal impact on the Board, its licensees, the private sector, the general public or political subdivisions.

Paperwork Requirements

This final-omitted rulemaking will not create additional paperwork for the Board, its licensees, the private sector, the general public or political subdivisions.

Sunset Date

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

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on June 26, 2012, the Board submitted a copy of the final-omitted rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the regulations were submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

Under section 5.1(j.2) of the Regulatory Review Act, on August 1, 2012, the final-omitted rulemaking was deemed approved by the HPLC and SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 2, 2012, and approved the final-omitted rulemaking.

Additional Information

For additional information about the final-omitted rulemaking, submit inquiries to Teresa Lazo, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200.

Findings

The Board finds that:

(1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL has been omitted under the authority of section 204 of the CDL because public comment is unnecessary in that this final-omitted rulemaking deletes references to a repealed statute and replaces them with references to the current statute.

(2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapters 16 and 17, are amended by amending §§ 16.1, 16.18, 16.31—16.35, 17.4, 17.6 and 17.7 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality 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 upon publication in the *Pennsylvania Bulletin*.

JAMES W. FREEMAN, M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 5452 (August 18, 2012).)

Fiscal Note: 16A-4925. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

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Immediate family member—A parent, spouse, child or adult sibling residing in the same household.

MCARE Act—The Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910).

NBME—The National Board of Medical Examiners of the United States, Inc.

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Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.18. Volunteer license.

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(e) *Renewal of license.* A volunteer license shall be renewed biennially on forms provided by the Board. The applicant is exempt from payment of the biennial renewal fee of § 16.13 (relating to licensure, certification, examination and registration fees), and is exempt from the requirements with regard to the maintenance of liability insurance coverage under section 711 of the MCARE Act (40 P. S. § 1303.711) as provided in section 9 of the Volunteer Health Services Act (35 P. S. § 449.49).

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Subchapter D. HEALTH CARE PROFESSIONAL LIABILITY

§ 16.31. Notification.

(a) *Applicants for original licensure.* A physician who has successfully met the qualifications for licensure will be notified by letter that he may enter upon the practice of medicine in this Commonwealth only after complying

with section 711 of the MCARE Act (40 P. S. § 1303.711) by making prompt application for medical liability insurance.

(b) *Licensees applying for biennial renewal.* A licensee applying for biennial renewal will be notified with the renewal application that if he practices in this Commonwealth he is required to furnish satisfactory proof of compliance with the medical professional liability insurance and Medical Care Availability and Reduction of Error Fund provisions in sections 711 and 712 of the MCARE Act (40 P. S. §§ 1303.711 and 1303.712) as a condition of practice.

§ 16.32. Requirements of the MCARE Act.

(a) Except as provided in subsections (b) and (c), a physician or nurse-midwife shall maintain the required amount of professional liability insurance, or have an approved self-insurance plan, and pay the required Medical Care Availability and Reduction of Error (MCARE) Fund assessment as a condition of practice under sections 711 and 712 of the MCARE Act (40 P. S. §§ 1303.711 and 1303.712). Failure to comply with this section subjects the physician or nurse-midwife to disciplinary action by the Board.

(b) A physician or nurse-midwife practicing solely as a Federal employee is not required to participate in the professional liability insurance program, nor is the physician or nurse-midwife required to comply with the MCARE Act.

(c) A physician or nurse-midwife who provides no medical service in this Commonwealth is not required to pay the MCARE Fund assessment or comply with the insurance requirements of the MCARE Act. Proof of nonpractice must be furnished by notarized statement.

§ 16.33. Certification of noncompliers; noncompliance letters.

The Director of the Medical Care Availability and Reduction of Error (MCARE) Fund will furnish the Board office with a certification of the names of those licensed physicians and nurse-midwives who are not in compliance with the MCARE Act or have not demonstrated compliance. Upon receipt of the certification, the Board will forward a letter to the physician or nurse-midwife requiring the physician or nurse-midwife to either furnish sufficient evidence of compliance to the Office of the MCARE Fund or to request a hearing.

§ 16.34. Formal hearings for noncompliance.

A physician or nurse-midwife who has requested a hearing or who has failed to demonstrate compliance with the MCARE Act will be issued a citation and notice of hearing. The formal hearings will be conducted under Subchapter E (relating to medical disciplinary process and procedures).

§ 16.35. Penalty.

Failure to comply with the MCARE Act, the regulations issued thereunder and this subchapter may result in discipline of a licensee after a formal hearing.

CHAPTER 17. STATE BOARD OF MEDICINE—MEDICAL DOCTORS

Subchapter A. LICENSURE OF MEDICAL DOCTORS

§ 17.4. Extraterritorial license.

(a) An extraterritorial license authorizes a medical doctor who possesses a license to practice medicine and surgery without restriction or an equivalent license, in a

state adjoining this Commonwealth, to practice medicine and surgery in this Commonwealth.

(b) An extraterritorial license will be issued under the following circumstances:

(1) The applicant shall satisfy the following:

(i) Possess a license to practice medicine and surgery without restriction or an equivalent license in a state adjoining this Commonwealth.

(ii) Reside in or maintain an office of practice in the adjoining state near its boundary line with this Commonwealth and desire to extend that practice into this Commonwealth.

(iii) Submit evidence with the application that the applicant is in compliance with professional liability insurance responsibilities imposed by the MCARE Act.

(iv) Arrange for the licensing authority of the adjoining state to file a certification with the Board, issued by that licensing authority, attesting to the fact that the applicant is licensed in that state.

(v) Satisfy the qualifications listed in § 16.12 (relating to general qualifications for licenses and certificates).

(2) The licensing authority of the adjoining state shall reciprocate by extending the same privileges to medical doctors licensed in this Commonwealth.

(c) An extraterritorial license is automatically revoked if the licensee relocates a residence or office of practice, the location of which was relevant to the issuance of the license.

(d) If a medical doctor who holds an extraterritorial license intends to change a residence or office of practice, the location of which was relevant to the issuance of the license, the doctor shall advise the Board, in writing, prior to doing so. If the doctor continues to qualify for an extraterritorial license after the change in residence or office of practice, the doctor may apply for a new extraterritorial license by submitting an application provided by the Board and paying the required fee.

§ 17.6. Temporary license.

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(h) Temporary licensees are considered health care providers who conduct 50% or less of their health care business or practice within this Commonwealth for purposes of the MCARE Act.

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§ 17.7. Interim limited license.

(a) A person who holds a graduate license is limited to providing medical services embraced within the graduate medical training program in which the person is participating unless that person also holds an interim limited license or other license issued by the Board, other than a graduate license.

(b) An interim limited license empowers the licensee to provide medical services, other than authorized by the graduate medical training program, for a period of up to 12 consecutive months. The Board may extend the validity of an interim limited license for a period of up to 12 additional consecutive months, but no more than one extension may be granted.

(c) To qualify for an interim limited license, an applicant shall satisfy the following:

- (1) Be a graduate of an accredited medical college.
- (2) Hold a valid graduate license.

(3) Have successfully completed a year of graduate medical training.

(4) Have passed an examination specified in § 17.1(a)(1) (relating to license without restriction).

(5) Provide a detailed written statement of the medical services to be provided beyond the parameters of the graduate medical training program.

(6) Have the written approval of the director of the graduate medical training program to provide the enumerated services.

(7) Present evidence of having made arrangements for professional liability insurance coverage in accordance with the MCARE Act.

(8) Satisfy the qualifications listed in § 16.12 (relating to general qualifications for licenses and certificates).

(9) Be evaluated by the Board as having received ample education and training to perform the specified medical services.

[Pa.B. Doc. No. 12-1636. Filed for public inspection August 24, 2012, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

IV Therapy Functions for Licensed Practical Nurses

The State Board of Nursing (Board) amends §§ 21.141, 21.145 and 21.203 (relating to definitions; functions of the LPN; and specific curriculum requirements for practical nursing programs) and adds §§ 21.145a and 21.145b (relating to prohibited acts; and IV therapy curriculum requirements) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The amendments are authorized by section 17.6 of the Practical Nurse Law (act) (63 P. S. § 667.6), which authorizes the Board to establish rules and regulations for the practice of practical nursing.

Background and Need for the Final-Form Rulemaking

The final-form rulemaking is necessary due to the increased utilization of peripherally inserted central catheters (PICC) and other centrally inserted intravenous access devices in the patient population cared for in hospitals and health systems in this Commonwealth. In addition, patients are being transferred to long-term care facilities with increasing frequency with complex IV access devices in place. Licensed practical nurses (LPNs) in this Commonwealth are being asked to provide services to these patients. This final-form rulemaking standardizes LPN practice regarding IV access devices and provides mandates for the educational program that must be provided for LPNs working with IV access devices to assure patient safety.

Response to Comments

The proposed rulemaking was published at 40 Pa.B. 2276 (May 1, 2010). The Board received comments from Jodi Yenchik, RNC-LRN, BSN, MJ, DL; Chester County Intermediate Unit (Chester County IU); Fresenius Med-

ical Care North America (Fresenius); Kimberly Huff, RN, MSN; Cassandre Conti, LPN; and The Hospital & Healthsystem Association of Pennsylvania (HAP). The Board also received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC).

Dr. Yenchik, a nursing educator, wrote in support of the proposed rulemaking and did not offer revisions. Kimberly Huff asked whether the “patient-controlled administration system” in § 21.145(g)(11) referred to PCA pumps that would be administering narcotic analgesics such as Demerol. The Board intends the term to include PCA pumps that would be administering narcotic analgesics such as Demerol. Kimberly Huff next asked how parenteral nutrition and fat emulsion solutions, referred to in § 21.145(g)(12), are different from total parenteral nutrition. They are not different. Total parenteral nutrition is another term for these types of solutions. Cassandre Conti wrote to express support of the proposed rulemaking in that it will improve the continuity of care for the patient.

Fresenius provides dialysis services for individuals undergoing dialysis due to end stage renal disease. Fresenius asked the Board to consider permitting LPNs in the dialysis setting to administer IV medications via push or bolus routes. The Board considered Fresenius’ comment. To be consistent with practice in other settings, the Board declined to add specific language to allow LPNs to administer IV medications via push or bolus routes.

Chester County IU commented that two provisions in § 21.145 regarding authority to administer total parenteral nutrition are contradictory. The first provision is the current language that prohibits LPNs from administering total parenteral nutrition. The second provision is new language that permits LPNs to perform the administration, maintenance and discontinuance of parenteral nutrition and fat emulsion solutions. Chester County IU suggests amending the second provision to delete “administration.” However, as indicated by the brackets, the first provision referenced by Chester County IU is being deleted from the regulation. This language is being replaced by the second provision, which allows an LPN who has met the education and training requirements in the regulations to perform administration, maintenance and discontinuance of parenteral nutrition and fat emulsion solutions, also known as total parenteral nutrition. The Board intended to permit properly trained LPNs to administer total parenteral nutrition. For this reason, the Board has not made the suggested amendment. Chester County IU also commented that § 21.145(g)(10) should read “patency” instead of “potency.” The Board agrees that it appears that a typographical error was made in the publication of the proposed rulemaking. Therefore, the Board has corrected the term in the final-form rulemaking.

Finally, Chester County IU commented that the term “focused assessment” was not used consistently throughout the proposed rulemaking. The Board reviewed the entire final-form rulemaking and changed terms it believed were inconsistent. HAP also commented and suggested that the Board reconsider the use of the terms “focused assessment” and “assess” throughout the final-form rulemaking. IRRC also questioned whether inclusion of this term expanded the scope of practice of LPNs. HAP noted that many nurse leaders indicated that the act does not allow for assessment. The Board disagrees. While the act does not specifically mention assessment, it also does not prohibit it. The Board believes that “focused assess-

ment,” as defined in § 21.141, is an appropriate function of an LPN and vital in an LPN’s role in the health care team. The definition is consistent with model regulations of the National Council of State Boards of Nursing (NCSBN). The Board is comfortable with the definition and the term’s incorporation into the regulations.

HAP also commented that the Board should add the definition of “venous access device” because the term is used in § 21.145(g). While “venous access device” is not specifically used in § 21.145, the term “IV access device” is used. “IV access device” is defined in § 21.141. The Board notes that the term “venous access device” did appear in § 21.145b as proposed but amendments to the final-form rulemaking deleted that term. HAP further commented that the Board should give examples of “electronic communication” in § 21.145(f)(4). The Board considered this comment but feels that examples are not needed to improve clarity. HAP also commented that the Board should add a definition of “assistance readily available.” The Board believes this term could have different meanings in different practice settings. The Board prefers not to be too prescriptive in its regulations and would instead prefer to allow “assistance readily available” to be determined in accordance with generally accepted standards of practice in each practice setting. Additionally a search of the term “readily available” on Westlaw revealed that the term is used 142 times in State regulations and 1,051 times in Federal regulations. Therefore, the Board believes that health care settings are familiar with what “readily available” means.

HAP next commented that “maintenance” as used in § 21.145(g)(5) should be defined as there was some confusion among nurse leaders as to what they considered to be IV maintenance as opposed to site care. To address HAP’s concerns, the Board added examples of maintenance functions in § 21.145(g)(5). HAP also asked that the Board define what is “therapeutic phlebotomy” as used in § 21.145a(14). The Board believes that the term has a generally accepted meaning in the medical community and does not need to be defined.

HAP believes that an LPN should not be assigned to a patient whose condition is critical, fluctuating, unstable or unpredictable and recommended that § 21.145(f)(5)(i) be deleted. IRRC asked the Board to explain why this provision is needed and how it adequately protects the health, safety and welfare of the patient. The Board notes that in current practice LPNs are assigned to care for patients of this nature. The proposed subparagraph was written to require the LPN’s supervisor to be physically present in the immediate vicinity of the LPN before an LPN may provide IV therapy to these patients. Therefore, the amendment provides an additional measure to protect the public health, safety and welfare in that it permits LPNs to continue to function in this role with a patient of this nature only when immediate assistance is available to intervene in the care of the patient if needed. As this is the current practice and the regulation adds the requirement that the LPN’s supervisor be in the immediate vicinity, the public is better protected under this final-form rulemaking than when this practice was unregulated. Therefore, the Board declines to delete this subparagraph.

HAP commented that nurse leaders were apprehensive about allowing LPNs to perform IV therapy related to central venous lines. However, HAP also noted that nurse leaders recognized the changing health care delivery system and the need to have LPNs care for patients with PICC lines in alternate care settings. The Board notes

that LPNs are currently engaging in this practice as well as teaching families to do some of these tasks. The Board appreciates HAP's concern with this area of LPN practice but notes that in drafting this final-form rulemaking the Board reviewed the regulations of other states as well as the model rules for LPNs and the practical nurse scope of practice white paper published by the NCSBN and found support for allowing LPNs to perform IV therapy related to central venous lines.

HAP noted that the proposed rulemaking permits LPNs to observe and report subjective and objective signs of adverse reactions to IV administration and to initiate appropriate interventions. HAP asked that the Board consider identifying in § 21.145(g)(2) what the appropriate interventions might be. As these interventions could be case, situation or setting specific, the Board declines to add those to the final-form rulemaking. HAP asked that § 21.145(g)(4) be revised and provided suggested language regarding performance of site care. The Board added the suggested language ("observation of the intravenous insertion site and performance of insertion site care") to the final-form rulemaking. HAP also asked that the Board revise § 21.145(g)(10) to be specific about what solutions could be administered to maintain patency and to limit it to "saline and heparin flushes." As practice moves faster than the Board is able to update regulations, the Board does not want to list specific solutions to be used. Additionally, HAP recommended that § 21.145(g)(13) be deleted because nurse leaders believed collecting blood specimens from an IV access device was not a good practice. The Board notes that in long-term care and home care this is done regularly. The Board believes that collection of blood specimens from an IV access device is a legitimate use of these catheters. Therefore, the Board declines to make the change.

HAP commented that § 21.145a(1) should be clarified that LPNs may not accept orders for blood and blood components. The Board notes that orders are addressed in § 21.145. Section 21.145(b)(1) allows an LPN to accept a written order for medication and therapeutic treatment. Section 21.145(b)(4) prohibits an LPN from accepting an oral order which is not within the scope of functions permitted by that section. If an LPN is prohibited from performing a function, it follows that an LPN may not accept either a written or oral order to perform that function. The Board believes that the prohibition on initiating administration of blood, blood components and plasma volume expanders is a strong enough prohibition without having to go further to say that the LPN cannot accept an order to do that prohibited function. HAP further recommended revising § 21.145a(15) to include deaccessing implantable devices. However, the Board believes that deaccessing these devices is less risky than accessing. Therefore, the Board declines to prohibit deaccessing devices.

HAP also commented regarding the IV therapy curriculum requirements and IRRC echoed these comments. HAP recommended including the number of hours and instructor qualifications. However, the Board generally does not specify hours and instructor qualifications for each type of course offered by LPN programs and declines to do so for IV therapy courses. Instead, §§ 21.191—21.194 (relating to administrative and instructional personnel) set out general faculty requirements and §§ 21.201—21.204 (relating to curriculum) set out curriculum requirements. The Board revised the curriculum requirements in the final-form rulemaking to make them general and therefore in line with the rest of the curriculum requirements. These requirements were added to

§ 21.203 where the curriculum requirements for LPN programs are located. The Board also amended the final-form rulemaking to include the requirement that stand-alone IV therapy courses apply for approval from the Board and added § 21.145b(b) detailing what shall be submitted for approval. While not promulgating instructor qualifications, the Board clarified that the instructors shall have knowledge and skill in the course content taught. This has been a requirement informally in effect as long as the Board has approved stand-alone IV therapy courses. The Board does not want to micromanage approved LPN education programs by telling them how many hours each area of the curriculum must encompass; therefore, the Board did not include that requirement in the final-form rulemaking. HAP also recommended a lab practicum in the curriculum requirements. For the reasons previously mentioned, the Board declines to add the requirement for a lab practicum to the final-form rulemaking.

HAP and IRRC next asked whether the Board will approve LPN IV therapy courses or whether the Board will depend on other established groups to review and approve the courses. The Board will approve the stand-alone courses as previously described. The onus is on the LPN to ensure that he has the required knowledge, skill and ability to perform IV therapy. If the LPN decides that further education is needed, it is also incumbent upon the LPN to ensure that the IV therapy course is approved. The Board already approves practical nursing programs through the process in §§ 21.161—21.166 (relating to approval of practical nursing programs). Therefore, the curriculum content would be approved as part of that process for IV therapy courses that are part of a practical nursing program.

HAP also asked whether LPNs currently performing IV therapy would be required to complete an entire course in IV therapy or only selected portions of the curriculum. Section 21.145(g) says that "[a]n LPN who has met the education and training requirements of § 21.145b may perform the following IV therapy functions." Section 21.145b refers to § 21.203 for the education and training requirements. An LPN currently performing IV therapy would not necessarily be required to complete a course if he has education in the topics in § 21.203. HAP also asked that the Board enact some continued competency requirements regarding IV therapy. This is not something the Board believes is necessary as the Board does not require continued competency for other specific aspects of practice for currently licensed LPNs and to date the General Assembly has not required continuing education for LPNs.

The HPLC commented that the final-form rulemaking should consistently use the terms "registered nurse," "RN" and "licensed professional nurse." The Board revised the final-form rulemaking to use only the term "licensed professional nurse." The HPLC next requested that the Board review § 21.203(d)(8) for consistency with the deletion of existing language in § 21.145(f). The Board has done so in the final-form rulemaking, including moving the curriculum requirements to § 21.203. The HPLC also asked whether LPN programs should continue to provide "[t]echnical and clinical aspects of immunization, skin testing, the performance of venipuncture and the administration and withdrawal of intravenous fluid to the extent each function is authorized under this chap-

ter.” The final-form rulemaking does not change this section. The final-form rulemaking only expands on the IV therapy portion of it. For clarity, in the final-form rulemaking the Board moved the curriculum requirements to § 21.203(d)(8) and left the introductory sentence in § 21.203(d)(8) intact.

In addition to comments that echoed some of the concerns of the public commentators previously discussed, IIRC questioned what effect the regulations would have on LPNs currently administering IV therapy that have not met the curriculum requirements of § 21.145b. LPNs who do not currently have the knowledge, skill and ability to perform IV therapy and LPNs who have not completed IV therapy education as specified in the final-form rulemaking will need further education if they wish to continue to provide IV therapy under the final-form rulemaking. IIRC also asked whether the Board considered providing a grandfathering provision to allow LPNs the necessary time to meet the curriculum requirements. The Board does not believe a grandfather clause is in the public interest because LPNs who do not possess the knowledge, skill and ability and who have not been trained should not be performing IV therapy under these regulations. IIRC also recommended that the Board define “IV therapy.” The Board included a definition of the term in the final-form rulemaking.

IIRC asked the Board to clarify who will provide the instruction and supervision required under § 21.145(a)(2) to an LPN implementing new or unfamiliar nursing practices or procedures. The instruction could be provided by any number of people working with the LPN, including a licensed professional nurse working with the LPN or the LPN’s supervisor. This is the current practice; the Board is merely codifying it. The Board declines to make a change to the final-form rulemaking so as not to be too prescriptive regarding nursing practice.

IIRC suggested deleting the phrases “readily available” and “immediate vicinity” in § 21.145(f)(4) and (5), respectively, because IIRC feels these terms are vague. The Board believes these terms to be clear. A Westlaw search revealed that the term “readily available” was used 142 times in State regulations and 1,051 times in Federal regulations. Each practice setting would require a different standard as to what level of assistance is needed and how it may be made readily available. To change this language, the Board would have to list each different practice setting and attempt to define the level of assistance the LPN needs. This is an impossible task for the Board to undertake. The Board likewise believes that “immediate vicinity” is not a vague term. A Westlaw search revealed that the term “immediate vicinity” used 19 times in State regulations and 155 times in Federal regulations. It is a term that has been defined as “near” or “close at hand.” Again, “immediate vicinity” could change based on practice setting. To change this term, the Board would have to list each practice setting and be very prescriptive about how far away the LPN’s supervisor could be at any time. The Board does not believe that the final-form rulemaking could be amended in a way to make these sections more precise.

Finally, IIRC asked whether § 21.203 should be amended to include a cross reference to § 21.145b. The Board amended both sections in the final-form rulemaking to move the IV therapy curriculum requirements to § 21.203.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, 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 April 21, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 2276, to IIRC 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, IIRC, 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 IIRC, 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 June 13, 2012 the final-form rulemaking was approved by the HPLC. On July 18, 2012, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IIRC met on July 19, 2012, and approved the final-form rulemaking.

Additional Information

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

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 made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 40 Pa.B. 2276.

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

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 21, are amended by adding §§ 21.145a and 21.145b and by amending §§ 21.141, 21.145 and 21.203 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor’s Note:* Section 21.203 was not included in the proposed rulemaking published at 40 Pa.B. 2276.)

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

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

(d) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

JOSEPH NAPOLITANO, Ph.D. MPH, RN, CRNP,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4992 (August 4, 2012).)

Fiscal Note: Fiscal Note 16A-5122 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.141. Definitions.

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

Act—The Practical Nurse Law (63 P. S. § § 651—667) which establishes standards for the education of practical nurses and the practice of practical nursing.

Approved—Approved by the Board.

Board—The State Board of Nursing of the Commonwealth.

Bolus—A concentrated medication or solution given rapidly over a short period of time.

Central venous catheter—An intravenous (IV) catheter, the tip of which terminates beyond the peripheral vasculature and may be either tunneled, implanted or percutaneously inserted.

Examination year—The period beginning on October 1st of a year through September 30th of the following year.

Focused assessment—Appraisal of an individual's current status and situation, which contributes to comprehensive assessment by the licensed professional nurse and supports ongoing data collection.

Graduate practical nurse—An individual who has graduated from an approved program of practical nursing in this Commonwealth or a comparable program in another state.

IV access device—A centrally or peripherally inserted catheter used for the purpose of intravenous infusion therapy, including peripheral short catheters, peripheral midline catheters, peripherally inserted central catheters and central catheters, including tunneled, nontunneled catheters and implanted ports.

IV therapy—The administration of fluids, electrolytes, nutrients or medications by the venous route.

LPN—Licensed practical nurse. A nurse licensed under this subchapter to practice in this Commonwealth.

Oral order—A spoken order issued by a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures.

PICC—*Peripherally inserted central catheter*—An IV catheter, the tip of which terminates in the superior vena cava and is confirmed by chest x-ray.

Patient (includes residents and clients)—A person, other than a spouse or immediate family member, who receives professional services from a licensed practical nurse, regardless of whether or not the nurse receives remuneration for the services.

Peripheral midline catheter—A peripherally inserted catheter, the tip of which terminates no further than the axilla and is between 3 inches and 8 inches (7.5 cm and 20 cm) in length.

Peripheral short catheter—A venous access device less than 3 inches (7.5 cm) in length.

Practice of practical nursing—The performance of selected nursing acts in the care of the ill, injured or infirm under the direction of a licensed professional nurse, a licensed physician or a licensed dentist which do not require the specialized skill, judgment and knowledge required in professional nursing.

Professional relationship—The relationship which shall be deemed to exist for a period of time beginning with the first professional contact or consultation between a licensed practical nurse and a patient and ending with the final professional contact between them. The administration of emergency medical treatment or transitory trauma care will not be deemed to establish a professional relationship.

Sexual impropriety—The term includes the following offenses:

(i) Making sexually demeaning or sexually suggestive comments about or to a patient, including comments about a patient's body or undergarments.

(ii) Unnecessarily exposing a patient's body or watching a patient dress or undress, unless for therapeutic purposes or the patient specifically requests assistance.

(iii) Examining or touching genitals without the use of gloves when performing an otherwise appropriate examination.

(iv) Discussing or commenting on a patient's potential sexual performance or requesting details of a patient's sexual history or preferences during an examination or consultation, except when the examination or consultation is pertinent to the issue of sexual function or dysfunction or reproductive health care. Discussion of a patient's sexual practices and preferences shall be fully documented in the patient's chart.

(v) Soliciting a date from a patient.

(vi) Volunteering information to a patient about one's sexual problems, preferences or fantasies.

Sexual violation—The term includes the following offenses:

(i) Sexual intercourse between an LPN and a patient during the professional relationship.

(ii) Genital to genital contact between a nurse and a patient during the professional relationship.

(iii) Oral to genital contact between a nurse and a patient during the professional relationship.

(iv) Touching breasts, genitals or any other body part for any purpose other than appropriate examination or treatment, or using prolonged or improper examination techniques, or after the patient has refused or withdrawn consent.

(v) Encouraging a patient to masturbate in the presence of the nurse or masturbating while the patient is present.

(vi) Providing or offering to provide drugs or treatment in exchange for sexual favors.

(vii) Using or causing the use of anesthesia or any other drug affecting consciousness for the purpose of engaging in any conduct that would constitute a sexual impropriety or sexual violation.

Titration of IV medications—A process by which medication is administered and dosages are adjusted through a continuous medication-containing intravenous infusion (such as vasoactive drugs, anticoagulants, psychotropic drugs, neuromuscular drugs, hormones, and the like) to effect a desired state based upon patient assessment data and prescribed parameters.

§ 21.145. Functions of the LPN.

(a) The LPN is prepared to function as a member of the health-care team by exercising sound nursing judgment based on preparation, knowledge, experience in nursing and competency. The LPN participates in the planning, implementation and evaluation of nursing care using focused assessment in settings where nursing takes place.

(1) An LPN shall communicate with a licensed professional nurse and the patient's health care team members to seek guidance when:

(i) The patient's care needs exceed the licensed practical nursing scope of practice.

(ii) The patient's care needs surpass the LPN's knowledge, skill or ability.

(iii) The patient's condition deteriorates or there is a significant change in condition, the patient is not responding to therapy, the patient becomes unstable or the patient needs immediate assistance.

(2) An LPN shall obtain instruction and supervision if implementing new or unfamiliar nursing practices or procedures.

(3) An LPN shall follow the written, established policies and procedures of the facility that are consistent with the act.

(b) The LPN administers medication and carries out the therapeutic treatment ordered for the patient in accordance with the following:

(1) The LPN may accept a written order for medication and therapeutic treatment from a practitioner authorized by law and by facility policy to issue orders for medical and therapeutic measures.

(2) The LPN may accept an oral order if the following conditions are met:

(i) The practitioner issuing the oral order is authorized by law and by facility policy to issue oral orders for medical and therapeutic measures.

(ii) The LPN has received instruction and training in accepting an oral order in an approved nursing education

program or has received instruction and training in accepting an oral order in accordance with the established policies and protocols of the facility.

(iii) The policy of the facility permits an LPN to accept an oral order.

(iv) The regulations governing the facility permit an LPN to accept an oral order.

(3) The LPN shall question any order which is perceived as unsafe or contraindicated for the patient or which is not clear and shall raise the issue with the ordering practitioner. If the ordering practitioner is not available, the LPN shall raise the issue with a registered nurse or other responsible person in a manner consistent with the protocols or policies of the facility.

(4) The LPN may not accept an oral order which is not within the scope of functions permitted by this section or which the LPN does not understand.

(5) An oral order accepted by the LPN shall be immediately transcribed by the LPN in the proper place on the medical record of the patient. The transcription shall include the prescriber's name, the date, the time of acceptance of the oral order and the full signature of the LPN accepting the oral order. The countersignature of the ordering practitioner shall be obtained in accordance with applicable regulations of the Department of Health governing the licensed facility.

(c) The LPN participates in the development, revision and implementation of policies and procedures designed to insure comfort and safety of patients in collaboration with other health care personnel.

(d) The Board recognizes codes of behavior as developed by appropriate practical nursing associations as the criteria for assuring safe and effective practice.

(e) The LPN may administer immunizing agents and do skin testing only if the following conditions are met:

(1) The LPN has received and satisfactorily completed a Board approved educational program which requires study and supervised clinical practice intended to provide training necessary for administering immunizing agents and for performing skin testings.

(2) A written order has been issued by a licensed physician pertaining to an individual patient or group of patients.

(3) Written policies and procedures under which the LPN may administer immunizing agents and do skin testing have been established by a committee representing the nurses, the physicians and the administration of the agency or institution employing or having jurisdiction over the LPN. A current copy of the policies and procedures shall be provided to the LPN at least once every 12 months. The policies and procedures shall provide for:

(i) Identification of the immunizing and skin testing agents which the LPN may administer.

(ii) Determination of contraindications for the administration of specific immunizing and skin testing agents.

(iii) The listing, identification, description and explanation of principles, including technical and clinical indications, necessary for the identification and treatment of possible adverse reactions.

(iv) Instruction and supervised practice required to insure competency in administering immunizing and skin testing agents.

(f) An LPN may perform only the IV therapy functions for which the LPN possesses the knowledge, skill and ability to perform in a safe manner, except as limited under § 21.145a (relating to prohibited acts), and only under supervision as required under paragraph (1).

(1) An LPN may initiate and maintain IV therapy only under the direction and supervision of a licensed professional nurse or health care provider authorized to issue orders for medical therapeutic or corrective measures (such as a CRNP, physician, physician assistant, podiatrist or dentist).

(2) Prior to the initiation of IV therapy, an LPN shall:

- (i) Verify the order and identity of the patient.
- (ii) Identify allergies, fluid and medication compatibilities.
- (iii) Monitor the patient's circulatory system and infusion site.
- (iv) Inspect all equipment.
- (v) Instruct the patient regarding the risk and complication of therapy.

(3) Maintenance of IV therapy by an LPN shall include ongoing observation and focused assessment of the patient, monitoring the IV site and maintaining the equipment.

(4) For a patient whose condition is determined by the LPN's supervisor to be stable and predictable, and rapid change is not anticipated, the supervisor may supervise the LPN's provision of IV therapy by physical presence or electronic communication. If supervision is provided by electronic communication, the LPN shall have access to assistance readily available.

(5) In the following cases, an LPN may provide IV therapy only when the LPN's supervisor is physically present in the immediate vicinity of the LPN and immediately available to intervene in the care of the patient:

- (i) When a patient's condition is critical, fluctuating, unstable or unpredictable.
- (ii) When a patient has developed signs and symptoms of an IV catheter-related infection, venous thrombosis or central line catheter occlusion.
- (iii) When a patient is receiving hemodialysis.

(g) An LPN who has met the education and training requirements of § 21.145b (relating to IV therapy curriculum requirements) may perform the following IV therapy functions, except as limited under § 21.145a and only under supervision as required under subsection (f):

- (1) Adjustment of the flow rate on IV infusions.
- (2) Observation and reporting of subjective and objective signs of adverse reactions to any IV administration and initiation of appropriate interventions.
- (3) Administration of IV fluids and medications.
- (4) Observation of the IV insertion site and performance of insertion site care.
- (5) Performance of maintenance. Maintenance includes dressing changes, IV tubing changes, and saline or heparin flushes.
- (6) Discontinuance of a medication or fluid infusion, including infusion devices.
- (7) Conversion of a continuous infusion to an intermittent infusion.
- (8) Insertion or removal of a peripheral short catheter.

(9) Maintenance, monitoring and discontinuance of blood, blood components and plasma volume expanders.

(10) Administration of solutions to maintain patency of an IV access device via direct push or bolus route.

(11) Maintenance and discontinuance of IV medications and fluids given via a patient-controlled administration system.

(12) Administration, maintenance and discontinuance of parenteral nutrition and fat emulsion solutions.

(13) Collection of blood specimens from an IV access device.

§ 21.145a. Prohibited acts.

An LPN may not perform the following IV therapy functions:

- (1) Initiate administration of blood, blood components and plasma volume expanders.
- (2) Administer tissue plasminogen activators, immunoglobulins, antineoplastic agents or investigational drugs.
- (3) Access a central venous route access device used for hemodynamic monitoring.
- (4) Administer medications or fluids via arterial lines.
- (5) Administer medications via push or bolus route.
- (6) Administer fibrinolytic or thrombolytic agents to declot any IV access device.
- (7) Administer medications requiring titration.
- (8) Insert or remove any IV access device, except a peripheral short catheter.
- (9) Access or program an implanted IV infusion pump.
- (10) Administer IV medications for the purpose of procedural sedation or anesthesia.
- (11) Administer fluids or medications via an epidural, intrathecal, intraosseous or umbilical route, or via a ventricular reservoir.
- (12) Administer medications or fluids via an arteriovenous fistula or graft, except for dialysis.
- (13) Perform repair of a central venous route access device or PICC.
- (14) Perform therapeutic phlebotomy.
- (15) Direct access of implantable devices.

§ 21.145b. IV therapy curriculum requirements.

(a) An IV therapy course provided as part of the LPN education curriculum in § 21.203 (relating to specific curriculum requirements for practical nursing programs) or as a stand-alone course offered by a provider shall include instruction of the topics in § 21.203(d)(8). An instructor of a stand-alone course shall have knowledge and skill in the aspect of the course content taught.

(b) Providers of stand-alone courses shall apply for approval from the Board before offering an IV therapy course. The request for approval must include the following:

- (1) A course outline that includes the components of the IV therapy course required under § 21.203(d)(8).
- (2) A description of the methods of instruction and the clinical learning experiences provided.
- (3) A description of specific methodologies and tools that evaluate the learner's achievement of the objectives.

(4) A list of faculty membership and verification that the instructors have knowledge and skill in the aspect of the content taught.

CURRICULUM

§ 21.203. Specific curriculum requirements for practical nursing programs.

* * * * *

(d) The curriculum shall provide instruction in the following areas:

(1) Physical and biological sciences, including appropriate content from basic human anatomy and physiology as well as elementary principles of chemistry, microbiology, physics and normal nutrition.

(2) Social and behavioral sciences including psychosocial facts and principles basic to personal adjustment and to nursing practice as well as appropriate content on the family and development stages from birth to senescence.

(3) Concurrent or sequential theory and clinical experience in:

- (i) The care of patients with simple nursing needs.
- (ii) The care of patients with short-term nursing needs.
- (iii) The care of patients with long-term nursing needs.

(4) Clinical experience, as provided in paragraph (3), in the care of men, women and children in a variety of age groups with health problems characteristic of the age group involved.

(5) Theory, as required in paragraph (3), including appropriate knowledge from diet therapy and pharmacology, as well as scientific facts and selected clinical concepts which are essential as a basis for nursing action and are applicable to patient care.

(6) Learning experiences, as required in paragraph (3), providing opportunities for the student to:

- (i) Develop an awareness of the needs of patients.
- (ii) Learn to plan and give nursing care to selected individuals in various nursing situations that are relatively free of complexity.
- (iii) Learn to plan and give nursing care to a group of selected patients.
- (iv) Learn to assist the professional nurse in more complex nursing situations.

(7) Content, as required in paragraph (3), drawn from information about ethical, moral and legal responsibilities of the practical nurse, current trends in nursing and health delivery systems and vocational development.

(8) Technical and clinical aspects of immunization, skin testing, the performance of venipuncture and the administration and withdrawal of intravenous fluids to the extent each function is an authorized function of an LPN under this chapter. An IV therapy course must include instruction in the following topics:

- (i) Definition of IV therapy and indications.
- (ii) Types of vascular access delivery devices.

- (iii) Age-related considerations.
- (iv) Legal implications for IV therapy.
- (v) Anatomy and physiology.
- (vi) Fluid and electrolyte balance.
- (vii) Infusion equipment used in IV therapy.
- (viii) Parenteral solutions and indications.
- (ix) Infection control and safety.
- (x) Insertion of peripheral short catheters.
- (xi) Administration, maintenance and monitoring of peripheral IV therapy.
- (xii) Complications and nursing interventions.
- (xiii) Central and peripheral vascular devices.
- (xiv) Administration, maintenance and monitoring of central and peripheral IV therapy.
- (xv) Documentation.
- (xvi) Patient education.

* * * * *

[Pa.B. Doc. No. 12-1637. Filed for public inspection August 24, 2012, 9:00 a.m.]

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
[49 PA. CODE CH. 43b]

Schedule of Civil Penalties—Engineers, Land Surveyors and Geologists

The Commissioner of Professional and Occupational Affairs (Commissioner) amends § 43b.13a (relating to schedule of civil penalties—engineers, land surveyors and geologists) to read as set forth in Annex A.

Description and Need for the Final-Form Rulemaking

Section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) authorizes agents of the Bureau of Professional and Occupational Affairs (Bureau) to issue citations and impose civil penalties under schedules adopted by the Commissioner in consultation with the Bureau's licensing boards. It further provides that a penalty may not exceed \$1,000 per violation. Act 48 citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, a licensee who receives an Act 48 citation has the right to a hearing and retains his due process right of appeal prior to the imposition of discipline. The State Registration Board for Professional Engineers, Land Surveyors and Geologists (Board) has had an Act 48 schedule of civil penalties since 2001. See 31 Pa.B. 1227 (March 3, 2001).

The Board reviewed its entire Act 48 schedule following the decision in *Evans v. State Reg. Bd. for Prof. Engineers, Land Surveyors and Geologists*, 15 A.3d 99

(Pa. Cmwlth. 2011). The court reversed the Board's order sustaining a citation issued to Timothy Evans under section 4(e) of the Engineer, Land Surveyor and Geologist Registration Law (act) (63 P.S. § 151(e)) for practicing geology on a lapsed license, including by holding himself out as a licensee. Section 3(a) of the act (63 P.S. § 150(a)) makes it "unlawful for any person to practice or to offer to practice engineering in this Commonwealth, unless he is licensed and registered under the laws of this Commonwealth as a professional engineer" and similarly prohibits the unlicensed practice of land surveying and geology. Section 3(b) of the act provides that a person is construed to practice or offer to practice engineering, land surveying or geology if the person, among other things, "by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be an engineer, land surveyor or geologist, or through the use of some other title implies that he is an engineer, land surveyor or geologist or that he is registered under this act." The prohibition against unlicensed practice applies also to practicing while one's license is lapsed, that is, the license was not renewed upon expiration. See § 37.18(3) (relating to reactivation of licensure status) (which provides that a licensee whose license has lapsed due to failure to register biennially with the Board is prohibited from the practice of that profession in this Commonwealth unless the licensure status is reactivated). Section 4(e) of the act authorizes the Board, among other things, to require licensees to register biennially with the Board and to collect the biennial registration fee, to issue biennial registration to those licensees who renew, to suspend the licenses of persons who do not renew and to reinstate the licenses of those persons who thereafter renew and pay the registration fees. Because section 4(e) of the act empowers the Board to do many tasks but does not impose any duties on licensees, the court held that a licensee cannot be disciplined for "violating" this section of the act. The court also noted that a licensee can no more "violate" a section of the act providing a definition (as does section 3(b) of the act) than "violate" a section of the act that provides the Board's authority (as does section 4(e) of the act). The court opined that, based upon allegations of practicing on a lapsed license by holding oneself out as a licensee, the Commonwealth should have charged under section 3(a) of the act that generally prohibits unlicensed practice, as section 3(b) of the act construes holding oneself out as a licensee to be, and in light of the Board's authority under section 4(e) of the act. The court further noted its understanding that the Commonwealth issued the citation referencing section 4(e) of the act because the Board's Act 48 schedule did not mention section 3(a) of the act, but only provided for sections 3(b) and 4(e) of the act for unlicensed practice by holding out and for practice on a lapsed license, respectively.

As previously indicated, the Board's Act 48 schedule of civil penalties formerly authorized issuance of a citation under section 4(e) of the act for first offense of "biennial renewal—practicing on a lapsed license or registration." In accordance with the holding in *Evans*, the Board deletes this provision. In its place, the Board provides for a citation for violating § 37.18(3) by practicing on a lapsed license for less than one renewal cycle while in compliance with the continuing education requirements. The Board did not include a provision for practicing on a lapsed license while not in compliance with the continuing education requirements.

The schedule formerly authorized issuance of a citation under section 3(b) of the act for "representing oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, without being licensed or registered." This schedule provides that the penalty for a first offense is a civil penalty of \$1,000 and for a subsequent offense is formal action. Following the holding in *Evans*, the Board is amending this description to make clear that the citation is for violating section 3(a) of the act as construed by section 3(b) of the act and not simply for "violating" section 3(b) of the act.

Summary of Comments and Responses to Proposed Rule-making

The Commissioner published a notice of proposed rule-making at 41 Pa.B. 4538 (August 20, 2011) with a 30-day public comment period. The Board did not receive written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC). The Independent Regulatory Review Commission (IRRC) notified the Board that it did not have comments. The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC recommended either deleting the § 37.18 provision or adding another provision to address practicing on a lapsed license without being in compliance with the continuing education requirements along with a harsher penalty for this violation. The Board agrees that a licensee who has not completed the continuing education requirements and continues to practice despite not renewing (for which completion of continuing education is a condition) generally merits a harsher sanction than a licensee who has completed the required continuing education and continues to practice despite simply failing to complete the necessary paperwork and pay the fee. For this reason, the Board intends that licensees who are charged with practicing on a lapsed license while not in compliance with the continuing education requirements should not simply receive a citation with a maximum civil penalty of \$1,000. Instead, charges should be addressed through formal action for which the maximum sanction would be the suspension or revocation of the license and a civil penalty of \$10,000. See section 4(g) of the act (the Board may suspend or revoke the license of a licensee who commits misconduct in the practice of the profession, including violating a provision of the act or Board regulations); section 11(b) of the act (63 P.S. § 158(b)) (the Board may levy a civil penalty on a licensee who violates a the act or on a person who practices the profession without being properly licensed to do so); and section 5(b)(4) of Act 48 (a licensing board may levy civil penalty of up to \$10,000 on a licensee who violates a provision of the applicable licensing act or board regulation). Because this remedy is available by means of formal action for anything not on the Act 48 schedule of civil penalties, the Board has not revised its schedule in response to this comment.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Effective Date

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

Statutory Authority

This final-form rulemaking is authorized by section 5(a) of Act 48.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 8, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 4538, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on June 13, 2012, the final-form rulemaking was approved by the HPLC. On July 18, 2012, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective July 18, 2012.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to the Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7049, st-engineer@pa.gov.

Findings

The Commissioner finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968

(P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

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

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 41 Pa.B. 4538.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the authorizing act set forth in this preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by amending § 43b.13a to read as set forth in Annex A.

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

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

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

KATIE TRUE,
Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 4992 (August 4, 2012).)

Fiscal Note: Fiscal Note 16A-54 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.13a. Schedule of civil penalties—engineers, land surveyors and geologists.

STATE REGISTRATION BOARD FOR PROFESSIONAL ENGINEERS, LAND SURVEYORS AND GEOLOGISTS

*Violation Under
63 P. S.*

Title/Description

Penalties

Section 150(a)

Offering to practice engineering, land surveying or geology in this Commonwealth by representing oneself as an engineer, land surveyor or geologist on sign, advertisement, letterhead or card, as construed by 63 P. S. § 150(b), without being licensed or registered

1st offense—\$1,000
2nd offense—formal action

Section 151.5(a)

Failure to complete the required amount of continuing education

First offense—\$50 per hour of deficiency, not to exceed \$1,000

Subsequent offense—formal action

*Violation Under
49 Pa. Code
Chapter 37*

Section 37.111(f)

Title/Description

Failure to respond to continuing education
audit request within 30 days or other time
period in audit request

Penalties

First offense—\$100

Second offense—\$250

Third offense—\$500

Subsequent offense—formal action

Section 37.18(3)

Practicing engineering, land surveying or
geology in this Commonwealth after license and
registration have lapsed (while in compliance
with continuing education requirements)

One renewal cycle or less—\$50 per month
lapsed, not to exceed \$1,000

More than one renewal cycle—formal action

[Pa.B. Doc. No. 12-1638. Filed for public inspection August 24, 2012, 9:00 a.m.]