

# PROPOSED RULEMAKING

## FISH AND BOAT COMMISSION

[ 58 PA. CODE CHS. 95, 109, AND 111 ]

### Boating

The Fish and Boat Commission (Commission) proposes to amend Chapters 95, 109 and 110 (relating to manufacturer installed equipment; specialty boats and waterskiing activities; and special regulations counties). The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

#### A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect on January 1, 2015.

#### B. *Contact Person*

For further information on the proposed rulemaking, contact Wayne Melnick, Esq., P.O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This proposed rulemaking is available on the Commission's web site at [www.fish.state.pa.us](http://www.fish.state.pa.us).

#### C. *Statutory Authority*

The proposed amendments to §§ 95.3, 109.2 and 109.4 (relating to lights for boats; paddleboards and sailboards; and waterskiing, aquaplaning, kiteskiing and similar activities) are published under the statutory authority of section 5123 of the code (relating to general boating regulations). The proposed amendment to § 111.49 (relating to Northumberland County) is published under the statutory authority of section 5124 of the code (relating to particular areas of water).

#### D. *Purpose and Background*

The proposed rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the proposed amendments is described in more detail under the summary of proposals. On March 6, 2014, the Boating Advisory Board considered these proposals and recommended that the Commission approve the publication of a proposed rulemaking containing the proposed amendments.

#### E. *Summary of Proposals*

(1) Section 95.3 provides boaters with information on the requirements for types, configurations and locations of navigation lights on boats. These provisions are within the actual wording of the regulation and by reference to Appendix A (relating to lights required on boats less than 20 meters in length; inland and international waters) and the Inland Navigation Rules Act of 1980 (repealed).

Based on a recent review of § 95.3, the Commission determined that it should be amended for a number of reasons. While there is a reference in § 95.3 to the the Inland Navigation Rules Act of 1980, Pennsylvania courts have found there is not explicit language within the regulation that states a boater must comply with these specific Federal rules. In addition, the Inland Navigation Rules Act of 1980 was moved in 2010 to 33 CFR Part 83 (relating to rules).

Section 95.3 also does not specifically incorporate the language of 33 CFR 83.20(b) (relating to application), also referred to as Rule 20, which states:

Rules concerning lights complied with from sunset to sunrise; other lights. The Rules concerning lights shall be complied with from sunset to sunrise, and during such times no other lights shall be exhibited, except such lights as cannot be mistaken for the lights specified in these Rules or do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout.

Pennsylvania courts have strictly construed the language of § 95.3 and have not interpreted it to mean that a boater must refrain from using other lights or if other lights are used they may not impair the visibility or distinctive character of the required lights. The Commission's waterways conservation officers have encountered challenges with successfully prosecuting more severe violations such as boating under the influence when lighting deficiencies have been cited as probable cause to conduct a boarding.

For these reasons, the Commission proposes to amend § 95.3 to more closely reflect the lighting requirements in 33 CFR Part 83 and eliminate the reference to Appendix A. The Commission further proposes to delete Appendix A and rely solely on the narrative. These amendments are not a substantive change to lighting requirements for recreational boaters.

The Commission proposes to amend § 95.3 to read as set forth in Annex A.

(2) In recent years, paddleboarding has been gaining popularity. Paddleboards were traditionally used to surf in the ocean but are now being used in lakes and rivers. Paddleboards resemble oversized surfboards and models are designed for use on various water conditions. Paddleboards are primarily operated by a person standing on the board using a paddle in a manner similar to a canoe.

The United States Coast Guard, in a decisional memo dated October 3, 2008, classified paddleboards as vessels in accordance with 1 U.S.C.A. § 3. This classification means that when used beyond the narrow limits of a swimming, surfing or bathing area, a person may not use a paddleboard unless in compliance with 33 CFR Part 83 and applicable carriage requirements for this type of vessel. This includes a United States Coast Guard approved wearable life jacket for each person on board, a sound producing device, visual distress signals (if operating on Lake Erie) and proper navigation lights. An athletic coach's whistle and flashlight comply with these requirements. In addition, a Commission use permit, boat registration, or Pennsylvania State Parks launch permit or mooring permit is required if launching or retrieving a paddleboard at a Commission-owned or Commonwealth-controlled lake or access area, or State park or forest.

To address safety issues and concerns, and to provide clarity for operators regarding legal requirements for paddleboards, the Commission proposes to amend § 109.2 to read as set forth in Annex A.

(3) Several hydro flying devices have been designed and are available for consumer purchase and rental within recent years. These flying devices use pressurized water through jet ports to provide "lift" and allow the operator to become airborne to speeds of 30 miles per hour and heights up to 40 feet, or dive under the water's surface, while attached to a boat that may or may not be occupied by an operator. Trade names for these products include Jetlev, Aquaboard, Aquaflyer and Flyboard®.

The Jetlev is a device which straps to the operator and is attached by a hose to an independent power source that is pulled behind and pumps water to the actual device. Pressurized water supplied by the power source is forced out of several jets on the device and propels the operator through, under or over the surface of the water. Due to the configuration of the flying device's connection to its power source, the power source does not have the ability to be independently maneuvered. Under § 109.4(d), the Jetlev system is prohibited on Commonwealth waters. This subsection states that a "person may not operate a device which is controlled by a person connected to the power source by means of an umbilical or remote control, or both, which tows the person on or through the water."

The Flyboard® is a similar device that straps onto the operator's feet much like a snow board. The device is attached by a 55-foot hose to the rear of a personal watercraft (PWC) which may have an operator onboard for controlling the power. Pressurized water supplied by the PWC is forced out of two jets attached to the operator's feet and two more handheld jets which allow for directional movement through or under the water, or in the air. The Flyboard® is offered for sale with an optional electronic management kit which allows the throttle of the PWC to be remotely controlled by the airborne operator, thereby eliminating the need for an operator to be onboard the PWC for the flying device to be functional. Again, due to the configuration of the flying device's connection to its power source, the power source does not have the ability to be independently maneuvered. Under the Commission's regulations, the Flyboard® system is considered a towed watersport and is not prohibited on Commonwealth waters when the power source is a PWC with a capacity of at least three persons with an operator and competent observer onboard. All other provisions of waterskiing and PWC operation apply to this activity.

The Commission and boating safety professionals from across the Nation have safety concerns regarding these devices. The United States Coast Guard has not provided a determination regarding the definition of these flying devices and has advised states to manage their use within state laws or regulations.

To address safety issues and concerns with these specialized devices, the Commission proposes to amend § 109.4 to read as set forth in Annex A.

(4) Section 111.49 currently designates a slow, no wake zone on the southeastern shore of Packer's Island (incorrectly referred to as Packard's Island) in the Susquehanna River adjacent to Shikellamy State Park in Sunbury. The river at Sunbury is dammed by an inflatable structure controlled by the Department of Conservation and Natural Resources. The water impounded by this dam forms a 3,060-acre lake known as Lake Augusta. The lake extends several miles up both the West Branch and the main stem of the Susquehanna River and provides a variety of angling and boating opportunities. Shikellamy State Park is located on the tip of Packer's Island, which is also the location of a number of homes, cottages, campsites, a boat club and an airport.

The current slow, no wake zone is approximately 1/3 mile in length and was established by regulation in 1995 due to the number and activity of motorboats in this area and the resulting congestion problem around the State Park launch ramp and boat club. The presence of two bridges immediately upstream of the State Park launch ramp limits visibility for boaters and provided additional

justification for the slow, no wake designation. Buoys mark the upper and lower limits of the control zone, and appropriate intermediate points. The lengthy nature of this control zone results in boater confusion and unnecessarily inhibits use of a significant segment of the boating pool in this area.

The Commission proposes reducing the limits of the slow, no wake zone to be more easily identifiable, provide adequate protection for boaters and property owners, and reduce impediments to boating in this area. The State Park boat launch would remain the lower limit of the zone. The upper limit would be 200 feet above the Route 147 bridge, or the furthest upstream overhead power line. The State Park manager is supportive of this proposed amendment. Property owners outside of the limits of the modified slow, no wake zone may seek additional protections through the use of the Application for Permit to Install Floating Structures and Private Aids to Navigation (PFBC-277) rather than the rulemaking process to establish specific control zones.

In addition to the modification to the control zone, the Commission proposes correcting the name of the island.

The Commission proposes to amend § 111.49 to read as set forth in Annex A.

F. Paperwork

The proposed amendments will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The proposed amendments will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed amendments will not impose new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically by completing the form at [www.fishandboat.com/regcomments](http://www.fishandboat.com/regcomments). If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt. Electronic comments submitted in any other manner will not be accepted.

JOHN A. ARWAY,  
*Executive Director*

**Fiscal Note:** 48A-258. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 58. RECREATION**

**PART II. FISH AND BOAT COMMISSION**

**Subpart C. BOATING**

**CHAPTER 95. MANUFACTURER INSTALLED EQUIPMENT**

**§ 95.3. Lights for boats.**

[ (a) *General rule.* A boat from sunset to sunrise and during periods of restricted visibility shall carry and exhibit the lights prescribed by the Inland Navigation Rules Act of 1980 (33 U.S.C.A.

§§ 2001—2073). A boat owner may elect to carry and exhibit the lights prescribed by the International Rules in lieu of the Inland Rules but, in that event, the boat owner shall comply in all respects with those standards. See Appendix A.

(b) *Boats less than 12 meters (39 feet 4.4 inches) in length while underway.*

(1) Motorboats and sailboats using power may use the lighting arrangement in Appendix A, Figure 1, 2 or 3.

(2) Sailboats using sail alone may use the lighting arrangement in Appendix A, Figure 4, 5 or 6.

(3) A motorboat or sailboat using power underway on the Great Lakes may use the lighting arrangement in Appendix A, Figure 7D instead of the arrangements in Appendix A, Figure 1 and 2.

(4) A sailboat using sail alone, less than 7 meters (22 feet 11.6 inches) in length if impractical to display lights in Appendix A, Figure 4, 5 or 6, may display a single white light in time to prevent a collision. See Appendix A, Figure 7C.

(c) *Boats 12 meters (39 feet 4.4 inches) but less than 20 meters (65 feet 7.4 inches) in length while underway.*

(1) Motorboats and sailboats using power may use the lighting arrangements in Appendix A, Figure 1 or 2.

(2) Sailboats using sail alone may use the lighting arrangement in Appendix A, Figure 4, 5 or 6.

(d) *Rowing or paddle boats while underway.* One hand held or permanent all-around white light shall be ready to display in time to prevent a collision. Appendix A, Figure 7, A or B.

(e) *Boat at anchor.*

(1) A boat must display anchor lights when it is anchored where other vessels normally navigate. See Appendix A, Figure 7E.

(2) Exception: Anchor lights are not required on boats anchored in special anchorage areas.

(f) *Locations of lights.* Lights shall be located and have the characteristics as shown in Appendix A.

(1) The masthead light (forward white light in Appendix A, Figures 1, 2 and 7D) shall be at least 1 meter (3 feet 3.4 inches) higher than the colored lights on a boat less than 12 meters (39 feet 4.4 inches) and at least 2.5 meters (8 feet 2.4 inches) above the gunwale on a boat 12 meters (39 feet 4.4 inches) in length but less than 20 meters (65 feet 7.4 inches) in length. The after masthead light (Appendix A, Figure 1 only), if used, shall be higher than the forward masthead light so as to be seen as a separate, distinct light at a distance of 1,000 meters (1,093 yards 1.8 feet) ahead of the boat.

(2) The all-around white lights shown in Appendix A, Figures 3 and 7D shall be 1 meter (3 feet 3.4 inches) higher than the colored lights.

(3) An anchor light shall be displayed where it can best be seen.

(g) *Docking lights.* It is unlawful for a boat operator to use docking lights while underway except when docking and the boat is traveling at slow, no wake speed and is within 100 feet of approaching a dock, a mooring buoy or the shoreline. For pur-

poses of this subsection, a docking light is a flood or spotlight type of light permanently installed or permanently mounted on a motorboat that is used to illuminate a boat's forward course of travel.]

(a) *General rule.* The navigation lights requirements in this section shall be complied with in all weather from sunset to sunrise on the waters of this Commonwealth. During these times other lights may not be exhibited, except lights that cannot be mistaken for the lights specified in this section, lights that do not impair their visibility or distinctive character, or interfere with the keeping of a proper lookout. The lights prescribed in this section must, if carried, be exhibited from sunrise to sunset in restricted visibility and may be exhibited in all other circumstances when it is deemed necessary. The lights specified in this section must comply with United States Coast Guard specifications.

(b) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

*All-round light*—A light showing an unbroken light over an arc of the horizon of 360°.

*Docking light*—A flood or spotlight type of light permanently installed or permanently mounted on a motorboat that is used to illuminate a boat's forward course of travel.

*Flashing light*—A light flashing at regular intervals at a frequency of 120 flashes or more per minute.

*Masthead light*—A white light placed over the fore and aft centerline of the boat showing an unbroken light over an arc of the horizon of 225° and fixed as to show the light from right ahead to 22.5° abaft the beam on either side of the boat, except that on a boat of less than 39.4 feet (12 meters) in length, the masthead light must be placed as nearly as practicable to the fore and aft centerline of the boat.

*Restricted visibility*—A condition in which visibility is restricted by fog, mist, falling snow, heavy rainstorms, sandstorms or other similar causes.

*Sailboat*—A boat under sail provided that propelling machinery, if fitted, is not being used.

*Sidelights*—A green light on the starboard (right) side and a red light on the port (left) side, each showing an unbroken light over an arc of the horizon of 112.5° and fixed as to show the light from right ahead to 22.5° abaft the beam on its respective side. On a boat of less than 65.6 feet (20 meters) in length, the side lights may be combined in one lantern carried on the fore and aft centerline of the boat. On a boat of less than 39.4 feet (12 meters) in length, the sidelights when combined in one lantern must be placed as nearly as practicable to the fore and aft centerline of the boat.

*Special flashing light*—A yellow light flashing at regular intervals at a frequency of 50 to 70 flashes per minute, placed as far forward and as nearly as practicable on the fore and aft centerline of the tow and showing an unbroken light over an arc of the horizon of not less than 180° nor more than 225° and fixed as to show the light from right ahead to abeam and no more than 22.5° abaft the beam on either side of the boat.



**Sternlight**—A white light placed as nearly as practicable at the stern showing an unbroken light over an arc of the horizon of 135° and fixed as to show the light 67.5° from right aft on each side of the boat.

**Underway**—A boat that is not at anchor, made fast to the shore or aground.

(c) **Visibility of lights.**—The lights prescribed in this section must have an intensity as specified by the United States Coast Guard so as to be visible at the following minimum ranges:

(1) In a boat of 164 feet (50 meters) or more in length: a masthead light, 6 miles; a sidelight, 3 miles; a sternlight, 3 miles; a towing light, 3 miles; a white, red, green or yellow all-round light, 3 miles; and a special flashing light, 2 miles.

(2) In a boat of 39.4 feet (12 meters) or more in length but less than 164 feet (50 meters) in length: a masthead light, 5 miles; except that when the length of the boat is less than 65.6 feet (20 meters), 3 miles; a sidelight, 2 miles; a sternlight, 2 miles; a towing light, 2 miles; a white, red, green or yellow all-round light, 2 miles; and a special flashing light, 2 miles.

(3) In a boat of less than 39.4 feet (12 meters) in length: a masthead light, 2 miles; a sidelight, 1 mile; a sternlight, 2 miles; a towing light, 2 miles; a white, red, green or yellow all-round light, 2 miles; and a special flashing light, 2 miles.

(4) In an inconspicuous, partly submerged boat or object being towed: a white all-round light, 3 miles.

(d) **Motorboats underway.**

(1) A motorboat underway must exhibit the following lights:

- (i) A masthead light forward.
- (ii) A second masthead light abaft of and higher than the forward one. A boat of less than 164 feet (50 meters) in length may exhibit this light.
- (iii) Sidelights.
- (iv) A sternlight.

(2) An air-cushion boat when operating in the nondisplacement mode must, in addition to the lights prescribed in paragraph (1), exhibit an all-round flashing yellow light where it can best be seen.

(3) A motorboat of less than 39.4 feet (12 meters) in length may, instead of the lights prescribed in paragraph (1), exhibit an all-round white light and sidelights.

(e) **Sailboats underway and unpowered boats.**

(1) A sailboat underway must exhibit the following lights:

- (i) Sidelights.
- (ii) A sternlight.

(2) In a sailboat of less than 65.6 feet (20 meters) in length, the lights prescribed in paragraph (1) may be combined in one lantern carried at or near the top of the mast where it can best be seen.

(3) A sailboat underway may, in addition to the lights prescribed in paragraph (1), exhibit at or near the top of the mast, where they can best be

seen, two all-round lights in a vertical line, the upper being red and the lower green. These lights may not be exhibited in conjunction with the combined lantern permitted by paragraph (2).

(4) A sailboat of less than 23 feet (7 meters) in length must, if practicable, exhibit the lights prescribed in paragraph (1) or (2). If these lights are not exhibited, the sailboat must have ready at hand an electric torch or lighted lantern showing a white light that must be exhibited in sufficient time to prevent collision.

(5) A unpowered boat may exhibit the lights prescribed in this subsection for sailboats. If these lights are not exhibited, the unpowered boat must have ready at hand an electric torch or lighted lantern showing a white light that must be exhibited in sufficient time to prevent collision.

(f) **Anchored boats and boats aground.**

(1) A boat at anchor must exhibit an all-round white light where it can best be seen:

- (i) In the fore part.
- (ii) At or near the stern and at a lower level than the light prescribed in subparagraph (i).

(2) A boat of less than 164 feet (50 meters) in length may exhibit an all-round white light where it can best be seen instead of the lights prescribed in paragraph (1).

(3) A boat aground must exhibit the lights prescribed in paragraph (1) where they can best be seen.

(4) A boat of less than 65.6 feet (20 meters) in length, when at anchor in a special anchorage area designated by the United States Coast Guard, is not required to exhibit the anchor lights and shapes required under this subsection.

(g) **Boats being towed.** When, for any sufficient cause, it is impracticable for a boat or object being towed to exhibit the lights prescribed in this section, all possible measures shall be taken to light the boat or object towed or at least to indicate the presence of the unlighted boat or object.

(h) **Docking lights.** It is unlawful for a boat operator to use docking lights while underway except when docking and the boat is traveling at slow, no wake speed and is within 100 feet of approaching a dock, a mooring buoy or the shoreline.

*(Editor's Note: As part of this proposed rulemaking, the Commission is proposing to delete Appendix A which appears in 58 Pa. Code page 95-8, serial page (213852).)*

Appendix A. (Reserved)

#### CHAPTER 109. SPECIALTY BOATS AND WATERSKIING ACTIVITIES

§ 109.2. [ Sailboards ] Paddleboards and sailboards.

(a) [ *Definition. A* ] **Paddleboards.** For purposes of this subsection, a paddleboard is a boat with no freeboard propelled by a paddle, oar, pole or other device. It is unlawful for a person to operate or attempt to operate a paddleboard on waters of this Commonwealth without having a United States Coast Guard approved wearable personal flotation device on board for each person, unless otherwise required to be worn in accordance with § 97.1

(relating to personal flotation devices). This prohibition does not apply to persons operating or attempting to operate a paddleboard in designated swimming, surfing or bathing areas.

(b) **Sailboards.** For purposes of this subsection, a sailboard is a type of single or double hulled boat equipped with an articulating mast and designed to be operated by a person standing on the board and maneuvering through the trim of the hand-held sail and distribution of body weight on the board.

[ (b) **Personal flotation devices.** ] It is unlawful for a person to operate or attempt to operate a sailboard on waters of this Commonwealth unless the person is wearing a [ **Type I, II, III or V** ] United States Coast Guard approved **wearable** personal flotation device. Inflatable personal flotation devices may not be used to meet this requirement.

§ 109.4. **Waterskiing, aquaplaning, kiteskiing and similar activities.**

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(k) **Wake surfing.** Boats engaged in the activity of wake surfing are limited to slow, no wake speed when within 200 feet of the following:

\* \* \* \* \*

(8) Other marked areas.

(l) **Use of airborne devices prohibited.** A person, while being towed by or otherwise attached to a watercraft, may not use a device, except for a parasail, for the purpose of becoming airborne over the waters of this Commonwealth. While operating a watercraft, a person may not tow behind or have attached to the watercraft a person using a device except for a parasail for the purpose of becoming airborne over the waters of this Commonwealth. This subsection does not apply to traditional aquaplaning activities when the aquaplaner momentarily leaves the water while jumping wakes or doing specialty tricks.

CHAPTER 111. SPECIAL REGULATIONS  
COUNTIES

§ 111.49. **Northumberland County.**

**Susquehanna River.** Boats are limited to slow, no wake speed from the vicinity of the Shikellamy State Park boat launch on the south side of [ **Packard's** ] **Packer's** Island upriver a distance of [ **1/3 mile** ] **200 feet above the Route 147 bridge.**

[Pa.B. Doc. No. 14-1428. Filed for public inspection July 11, 2014, 9:00 a.m.]

STATE BOARD  
OF MEDICINE

[ 49 PA. CODE CHS. 16 AND 18 ]

**Prosthetists, Orthotists, Pedorthists and Orthotic Fitters**

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and add Chapter 18, Subchapter L

(relating to prosthetists, orthotists, pedorthists and orthotic fitters) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

The act of July 5, 2012 (P.L. 873, No. 90) (Act 90) amended the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.51a) to require the Board to issue licenses to prosthetists, orthotists, pedorthists and orthotic fitters, to regulate the practice of these professions and to discipline licensees. Section 8 of the act (63 P.S. § 422.8) authorizes the Board to adopt regulations as are reasonably necessary to carry out the purposes of the act.

*Background and Need for Amendments*

Act 90 was introduced to provide licensure for and regulatory oversight of prosthetists, orthotists, pedorthists and orthotic fitters. Act 90 became effective immediately and instructed the Board to promulgate regulations within 18 months of the effective date, or by January 5, 2014. Act 90 further provided that it would become effective upon publication of the final-form rulemaking or 24 months from the effective date, whichever occurred first.

Following enactment of Act 90, a draft rulemaking was prepared. On August 14, 2012, the Board provided the draft to stakeholders, including the following: members of the regulated community and their association representatives; representatives from the University of Pittsburgh's prosthetic and orthotic educational program; representatives from the Temple University School of Podiatry, which operates a pedorthic education program; the Pennsylvania Medical Society and a physician specialty organization in orthopedics; representatives from the House Professional Licensure Committee and the Independent Regulatory Review Commission (IRRC); and the two National credentialing bodies for the profession, the American Board for Certification in Orthotics, Prosthetics & Pedorthics (ABC) and the Board of Certification/Accreditation (BOC). The Board also invited these stakeholders and interested parties to a meeting on September 10, 2012. The meeting was announced on the Board's web site to invite other interested parties.

Extensive discussions were held with the stakeholders regarding the draft rulemaking at the meeting on September 10, 2012. After making amendments to the draft based on comments received during and after that meeting, the Board provided another draft of the draft rulemaking to the stakeholders on November 27, 2012. On December 4, 2012, the Board again met with stakeholders regarding the draft rulemaking. Additional amendments were made based on input from the stakeholders. At its February 6, 2013, meeting, the Board approved the draft rulemaking for publication as proposed rulemaking.

*Description of Proposed Amendments*

The proposed rulemaking would amend § 16.11 to add prosthetists, orthotists, pedorthists and orthotic fitters to the list of individuals licensed by the Board. In addition, the Board proposes to issue the following permits which apply to individuals who have completed their educational program but have not yet completed all requirements for full licensure (such as, residency, practice requirement or examination): graduate prosthetist permit; provisional prosthetist license; graduate orthotist permit; provisional orthotist license; temporary practice permit—pedorthist; and temporary practice permit—

orthotic fitter. The proposed rulemaking would also amend § 16.13 to provide for fees for the various applications for initial licensure and for biennial renewal of prosthetist, orthotist, pedorthist and orthotic fitter licenses as well as for the application for reactivation. The fees are based on estimates of the cost of processing each of the application types, with consideration given to the average salary of the new licensees in each licensing category.

The proposed rulemaking would add Chapter 18, Subchapter L. Section 18.801 (relating to purpose) would state the purpose of the subchapter, which is to implement the amendments to the act related to licensure of prosthetists, orthotists, pedorthists and orthotic fitters. Section 18.802 (relating to definitions) would set forth definitions of terms used in the subchapter.

Sections 18.811—18.815 address the requirements for licensure of prosthetists. Section 18.811 (relating to graduate permit) provides the information necessary for an applicant to apply for a graduate permit to practice as a prosthetist during the individual's clinical residency following graduation from the individual's education program. A graduate permit would be valid for practice during the clinical residency and would remain valid for up to 90 days after successful completion of the clinical residency or until a temporary license is granted. A graduate permit is nonrenewable. Should an individual fail to complete the clinical residency and later re-enroll in a clinical residency, the individual would be required to obtain a new graduate permit.

Section 18.812 (relating to clinical residency) sets forth criteria for a clinical residency, including the nature of supervision that shall be provided to a graduate permit holder, that the clinical residency shall be accredited by the National Commission on Orthotic and Prosthetic Education (NCOPE) and that the clinical residency shall be obtained subsequent to meeting the education requirement and be at all levels of prosthetic care.

Section 18.813 (relating to provisional prosthetist license) provides the information necessary for an applicant to apply for a provisional prosthetist license, which is the license that will allow an individual to provide direct patient care after completion of the clinical residency. This license allows the individual to practice while completing the three-step examination process that will qualify the individual for full licensure. A provisional license is valid for a maximum of 2 years and is nonrenewable. Should an individual fail to successfully complete the examinations in a 2-year period, the individual would be required to reapply for a provisional license to continue practicing.

Section 18.814 (relating to prosthetist license) provides the information necessary for an applicant to apply for a prosthetist license. The qualifications for licensure are in section 13.5(a) of the act (63 P. S. § 422.13e(a)). This section of the act provides that applicants must have "two years (3,800 hours) of experience to qualify for licensure." However, section 13.5(f) of the act, regarding license without examination, refers instead to "two years or 3,800 hours" of experience. Because the licensure scheme is intended to ensure that only qualified individuals provide services to the public, the Board interprets both of these sections to require applicants to demonstrate a minimum of 3,800 hours of experience over a 2-year period. To interpret the act otherwise could result in an absurd result. For example, an individual who provided 3,800 hours of professional services sporadically over a 20-year period, without ever developing competence in the profes-

sion, could qualify for licensure. The Board does not believe this could have been the intent of the General Assembly.

Section 18.815 (relating to alternate pathway for prosthetist license) provides the information necessary for an applicant to apply for a prosthetist license without examination. The act allows for a "grandfathering" period ending July 7, 2014, for individuals who have been in practice prior to the requirement that prosthetists be educated at the master's degree level. This section will expire at 5 p.m. on July 7, 2014. The Board will make applications for licensure, including licensure without examination, available at least 6 months prior to that date.

Section 18.816 (relating to demonstration of qualifications) would give applicants information about the type of documentation that will be required by the Board for an applicant to demonstrate the qualifications in the act and this chapter.

Section 18.821—18.825 contain provisions relevant to orthotists. Section 18.821 (relating to graduate permit) provides the information necessary for an applicant to apply for a graduate permit to practice as an orthotist during the individual's clinical residency following graduation from the individual's education program. A graduate permit is valid only for practice during the clinical residency and is nonrenewable. Should an individual fail to complete the clinical residency and later re-enroll in a clinical residency, the individual would be required to obtain a new graduate permit.

Section 18.822 (relating to clinical residency) sets forth criteria for a clinical residency, including the nature of supervision that shall be provided to a graduate permit holder, that the clinical residency shall be accredited by NCOPE and that the clinical residency shall be obtained subsequent to education and be at all levels of orthotic care.

Section 18.823 (relating to provisional orthotist license) provides the information necessary for an applicant to apply for a provisional orthotist license, which is the license that will allow an individual to provide direct patient care after completion of the clinical residency. This license allows the individual to practice while completing the three-step examination process that will qualify the individual for full licensure. A provisional license is valid for a maximum of 2 years and is nonrenewable. Should an individual fail to successfully complete the examinations in a 2-year period, the individual would be required to reapply for a provisional license to continue practicing.

Section 18.824 (relating to orthotist license) provides the information necessary for an applicant to apply for an orthotist license. This section includes the statutory requirements for licensure in section 13.5(a) of the act. The Board interprets the experience requirement in the act regarding orthotists the same as the experience requirement for prosthetists, as discussed in the description to § 18.814.

Section 18.825 (relating to alternate pathway for orthotist license) provides the information necessary for an applicant to apply for an orthotist license without examination. The act allowed for a "grandfathering" period ending July 7, 2014, for individuals who have been in practice prior to the requirement that orthotists be educated at the master's degree level. This section will expire at 5 p.m. on July 7, 2014. The Board will make



applications for licensure, including licensure without examination, available at least 6 months prior to that date.

Section 18.826 (relating to demonstration of qualifications) would give applicants information about the type of documentation that will be required by the Board for an applicant to demonstrate the qualifications in qualifications in the act and this chapter.

Sections 18.831—18.834 contain provisions relevant to pedorthists. Section 18.831 (relating to temporary practice permit) provides the information necessary for an applicant to apply for a temporary practice permit to provide pedorthic patient care after completion of the pedorthic education program. The temporary permit allows the individual to obtain the 1,000 hours of supervised patient fitting experience necessary for full licensure.

Section 18.832 (relating to patient fitting experience) sets forth the requirements of the patient fitting experience that a pedorthist shall complete after completing the pedorthic education program and prior to applying for licensure.

Section 18.833 (relating to pedorthist license) provides the information necessary for an applicant to apply for a pedorthist license. This section includes the statutory requirements for licensure.

Section 18.834 (relating to alternate pathway for pedorthist license) provides the information necessary for an applicant to apply for a pedorthist license without examination, as provided in the act. This section will expire at 5 p.m. on July 7, 2014. The Board will make applications for licensure, including licensure without examination, available at least 6 months prior to that date.

Section 18.835 (relating to demonstration of qualifications) would give applicants information about the type of documentation that will be required by the Board for an applicant to demonstrate the qualifications in the act and this chapter.

Sections 18.841—18.844 contain provisions relevant to orthotic fitters. Section 18.841 (relating to temporary practice permit) provides the information necessary for an applicant to apply for a temporary practice permit to provide orthotic fitting patient care after completion of the orthotic fitter education program. The temporary permit allows the individual to obtain the 1,000 hours of patient fitting experience necessary for full licensure.

Section 18.842 (relating to orthotic fitting care experience) sets forth the requirements of the patient fitting experience that an orthotic fitter shall complete after completing the orthotic fitter education program and prior to applying for licensure.

Section 18.843 (relating to orthotic fitter license) provides the information necessary for an applicant to apply for an orthotic fitter license. This section includes the statutory requirements for licensure.

Section 18.844 (relating to alternate pathway for orthotic fitter license) provides the information necessary for an applicant to apply for an orthotic fitter license without examination, as provided in the act.

Section 18.845 (relating to demonstration of qualifications) would give applicants information about the type of documentation that will be required by the Board for an applicant to demonstrate the qualifications in the act and this chapter.

Section 18.851 (relating to scope and standards of practice) sets forth scope and standards of practice for prosthetists, orthotists, pedorthists and orthotic fitters. Subsections (a) and (b) echo requirements in the act that licensees review the prescription and referral or order of the prescribing practitioner and understand any restrictions placed on the course of treatment that the licensee will provide and that licensees review the relevant clinical notes provided by the prescribing practitioner. Subsection (c) requires the licensee to retain a copy of the prescription, clinical notes and results of the patient's medical examination. Subsection (d) forbids a licensee from accepting a prescription when the licensee knows that he cannot furnish the device within a reasonable period of time. In these cases, subsection (d) requires the licensee to consult with the prescribing practitioner and notify the patient of the problem. Subsection (e) provides the minimum content of the clinical notes of the medical diagnostic examination that a licensee shall review before accepting a prescription.

Section 18.852 (relating to delegation) provides rules for licensed prosthetists, orthotists and pedorthists regarding delegating tasks to unlicensed assistive personnel. According to individuals involved in these professions, assistants are employed to provide support services and to complete simple tasks that do not require the education and training of a licensee. These individuals would need to be under the direct, onsite supervision of the delegating practitioner.

Section 18.853 (relating to unprofessional and immoral conduct) provides notice to licensees regarding the disciplinary process and defines conduct that is prohibited as unprofessional or immoral.

Section 18.861 (relating to biennial renewal of license) provides for the biennial renewal of the four license categories, and effectuates the provisions regarding continuing education and required professional liability insurance. Subsection (b)(5) requires a licensee to verify that the licensee has completed the continuing education mandated by the act as a condition of biennial renewal and that the licensee is, or will be, covered by the required professional liability insurance.

Section 18.862 (relating to continuing education) sets forth the continuing education requirements for active licensees and those requesting reactivation. In addition, provisions regarding requesting a waiver of the continuing education requirements, discipline for noncompliance, approved continuing education sources and the documentation of continuing education completion that licensees shall maintain are in this section.

Section 18.863 (relating to inactive and expired status of licenses; reactivation of inactive or expired license) provides information to licensees about how a license becomes inactive, that a licensee whose license is inactive is not permitted to practice and how to reactivate an inactive or expired license. Subsection (d) provides that a licensee whose license has been inactive for 2 years or more will be required to demonstrate continued competence to practice by showing current certification by the ABC or BOC. The interested parties who provided input to the Board on this proposed rulemaking agreed that the 2-year period was the appropriate period after which the Board should require demonstration of continued competence through current certification. Late fees are addressed in § 18.863(e).

Section 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, ped-

orthist or orthotic fitter) repeats section 13.5(i) of the act, which requires liability insurance for all licensees. Subsection (b) will provide licensees with guidance regarding acceptable proof of coverage. Subsection (c) informs licensees that they are prohibited from practicing until proof of insurance has been provided.

*Fiscal Impact and Paperwork Requirements*

The statutory requirements for licensure, completion of mandatory continuing education and maintenance of professional liability insurance will have a fiscal impact on the regulated community. However, because these are statutory requirements, it is the act, and not the Board's proposed rulemaking, that will impose a fiscal requirement on licensees. The proposed rulemaking will also have a fiscal impact on State government, through impact on the Board, which will incur costs associated with administering and enforcing the act and the regulations. Fiscal impact on local governments is not anticipated. The proposed rulemaking will require additional paperwork by the regulated community and by the Board in issuing licenses, tracking licenses and maintaining proof of compliance with the statutory and regulatory requirements. Fiscal impact on local governments is not anticipated.

Estimates of the costs associated with the statutory requirements and this proposed rulemaking are in the Regulatory Analysis Form, which is available upon request.

*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 June 30, 2014, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

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

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Teresa Lazo, Board Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ANDREW J. BEHNKE, MD,  
*Chairperson*

*(Editor's Note:* Numbering for § 16.11 will be addressed upon publication of final-form rulemaking. See the proposed rulemaking published at 43 Pa.B. 6212 (October 19, 2013) for proposed additions to § 16.13 and Chapter 18. In Annex A, proposed subsections in § 16.13

and regulations in Chapter 18 are numbered in accordance with the proposed rulemaking published at 43 Pa.B. 6212.)

**Fiscal Note:** 16A-4943. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS**

**Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS**

**§ 16.11. Licenses, certificates and registrations.**

\* \* \* \* \*

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

\* \* \* \* \*

- (9) Respiratory therapist license.
- (10) **Prosthetist license.**
- (11) **Orthotist license.**
- (12) **Pedorthist license.**
- (13) **Orthotic fitter license.**
- (14) **Graduate prosthetist permit.**
- (15) **Provisional prosthetist license.**
- (16) **Graduate orthotist permit.**
- (17) **Provisional orthotist license.**
- (18) **Temporary practice permit—pedorthist.**
- (19) **Temporary practice permit—orthotic fitter.**

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

\* \* \* \* \*

- (12) Biennial registration of a perfusionist license.
- (13) **Biennial renewal of a prosthetist.**
- (14) **Biennial renewal of an orthotist.**
- (15) **Biennial renewal of a pedorthist.**
- (16) **Biennial renewal of an orthotic fitter.**

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

\* \* \* \* \*

- (n) **Prosthetists.**
- Application for prosthetist license ..... \$50**
- Application for prosthetist license without examination ..... \$100**
- Biennial renewal of prosthetist license..... \$75**
- Application for reactivation of prosthetist license ..... \$50**
- Application for graduate prosthetist permit... \$50**
- Application for provisional prosthetist license ..... \$50**



**(o) Orthotist License.**

- Application for orthotist license..... \$50
- Application for orthotist license without examination .....\$100
- Biennial renewal of orthotist license..... \$75
- Application for reactivation of orthotist license ..... \$50
- Application for graduate orthotist permit..... \$50
- Application for provisional orthotist license .. \$50

**(p) Pedorthists.**

- Application for pedorthist license ..... \$25
- Application for pedorthist license without examination ..... \$25
- Biennial renewal of pedorthist license ..... \$75
- Application for reactivation of pedorthist license ..... \$25
- Application for pedorthist temporary permit . \$25

**(q) Orthotic Fitters.**

- Application for orthotic fitter license ..... \$25
- Application for orthotic fitter license without examination..... \$25
- Biennial renewal of orthotic fitter license..... \$75
- Application for reactivation of orthotic fitter license ..... \$25
- Application for orthotic fitter temporary permit ..... \$25

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

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

**Subchapter L. PROSTHETISTS, ORTHOTISTS,  
PEDORTHISTS AND ORTHOTIC FITTERS**

**GENERAL PROVISIONS**

- 18.801. Purpose.
- 18.802. Definitions.

**QUALIFICATIONS FOR LICENSURE AS A PROSTHETIST**

- 18.811. Graduate permit.
- 18.812. Clinical residency.
- 18.813. Provisional prosthetist license.
- 18.814. Prosthetist license.
- 18.815. Alternate pathway for prosthetist license.
- 18.816. Demonstration of qualifications.

**QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIST**

- 18.821. Graduate permit.
- 18.822. Clinical residency.
- 18.823. Provisional orthotist license.
- 18.824. Orthotist license.
- 18.825. Alternate pathway for orthotist license.
- 18.826. Demonstration of qualifications.

**QUALIFICATIONS FOR LICENSURE AS A PEDORTHIST**

- 18.831. Temporary practice permit.
- 18.832. Patient fitting experience.
- 18.833. Pedorthist license.
- 18.834. Alternate pathway for pedorthist license.
- 18.835. Demonstration of qualifications.

**QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIC FITTER**

- 18.841. Temporary practice permit.
- 18.842. Orthotic fitting care experience.
- 18.843. Orthotic fitter license.
- 18.844. Alternate pathway for orthotic fitter license.
- 18.845. Demonstration of qualifications.

**REGULATION OF PRACTICE**

- 18.851. Scope and standards of practice.
- 18.852. Delegation.
- 18.853. Unprofessional and immoral conduct.

**BIENNIAL RENEWAL AND REACTIVATION**

- 18.861. Biennial renewal of license.
- 18.862. Continuing education.
- 18.863. Inactive and expired status of licenses; reactivation of inactive or expired license.
- 18.864. Professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter.

**GENERAL PROVISIONS**

**§ 18.801. Purpose.**

This subchapter implements section 13.5 of the act (63 P. S. § 422.13e), regarding prosthetists, orthotists, pedorthists and orthotic fitters.

**§ 18.802. Definitions.**

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

*ABC*—American Board for Certification in Orthotics, Prosthetics & Pedorthics, Inc., an organization with certification programs accredited by the NCCA. The term includes a successor organization.

*Accommodative*—Designed with a primary goal of conforming to an individual’s anatomy.

*BOC*—Board of Certification/Accreditation International, Inc., an organization with certification programs accredited by the NCCA. The term includes a successor organization.

*CAAHEP*—Commission on Accreditation of Allied Health Education Programs, recognized by the Council for Higher Education Accreditation to accredit prosthetic and orthotic education programs.

*Custom-designed device*—A prosthesis, orthosis or pedorthic device that is designed to comprehensive measurements or a mold for use by a patient in accordance with a prescription and which requires substantial clinical and technical judgment in its design.

*Custom-fabricated device*—A prosthesis, orthosis or pedorthic device that is fabricated to comprehensive measurements or a patient model or mold for use by a patient in accordance with a prescription and which requires substantial clinical and technical judgment in its design, fabrication and fitting.

*Custom-fitted or custom-modified device*—A prefabricated prosthesis, orthosis or pedorthic device to accommodate the patient’s measurement that is sized or modified for use by the patient in accordance with a prescription and which requires substantial clinical judgment and substantive alteration in its design for appropriate use.

*Hour of continuing education*—At least 50 minutes of instruction, including relevant question and answer sessions, in an approved course of continuing education or an equivalent time that an online or correspondence course would be presented live.

*ICE*—The Institute for Credentialing Excellence, previously known as the National Organization for Competency Assurance.

*Licensed prescribing practitioner*—A physician, podiatrist, certified registered nurse practitioner or physician assistant, licensed by the practitioner’s respective licensing board, who may issue orders and prescriptions to a prosthetist, orthotist, pedorthist or orthotic fitter.

*NCCA*—The National Commission for Certifying Agencies or its successor.

*NCOPE*—National Commission on Orthotic and Prosthetic Education, an organization that approves precertification education courses for pedorthists and orthotic fitters and accredits residency programs for prosthetists and orthotists.

*Orthosis*—A custom-designed, custom-fabricated, custom-fitted or custom-modified device designed to externally provide support, alignment or prevention to the body or a limb for the purposes of correcting or alleviating a neuromuscular or musculoskeletal disease, injury or deformity.

*Orthotic fitter*—An individual who is licensed by the Board to practice orthotic fitting.

*Orthotic fitting*—The fitting, dispensing and adjusting pursuant to a written prescription of a licensed prescribing practitioner of prefabricated orthotic devices.

*Orthotic and prosthetic assistant*—An unlicensed individual who, under the direct, onsite supervision of the orthotist or prosthetist, assists an orthotist or prosthetist with patient care and who may fabricate, repair and maintain devices to provide maximum fit and function.

*Orthotic and prosthetic technician*—An unlicensed individual who, under the direct onsite supervision of an orthotist or prosthetist, provides technical support to an orthotist or prosthetist and who may fabricate, repair and maintain devices.

*Orthotics*—The practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or servicing an orthosis for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury or deformity as provided in the act.

*Orthotist*—An individual who is licensed by the Board to practice orthotics pursuant to a written prescription of a licensed prescribing practitioner.

*Over-the-counter orthoses and pedorthic devices*—Prefabricated, mass-produced items that are prepackaged and do not require professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports and elastic hose.

*Pedorthic device*—

(i) Therapeutic shoes, shoe modifications made for therapeutic purposes, partial foot prostheses, foot orthoses and below-the-knee pedorthic modalities.

(ii) The term does not include the following:

(A) Nontherapeutic, accommodative inlays and nontherapeutic accommodative footwear, regardless of method of manufacture.

(B) Unmodified, nontherapeutic over-the-counter shoes.

(C) Prefabricated, unmodified or unmodifiable foot care and footwear products.

*Pedorthic support personnel*—An unlicensed individual who, under the direct onsite supervision of a pedorthist, assists a pedorthist in the provision of pedorthic care. Pedorthic support personnel may not practice prosthetics, orthotics, pedorthics or orthotic fitting.

*Pedorthics*—The practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or servicing necessary to accomplish the application of a pedorthic device for the prevention or amelioration of painful or disabling conditions related to the lower extremities.

*Pedorthist*—An individual licensed under the act to practice pedorthics pursuant to a written prescription of a licensed prescribing practitioner.

*Podiatrist*—An individual licensed under the Podiatry Practice Act (63 P. S. §§ 42.1—42.21c) to practice podiatry.

*Prefabricated orthotic devices*—

(i) A brace or support designed to provide for alignment, correction or prevention of neuromuscular or musculoskeletal dysfunction, disease, injury or deformity.

(ii) The term does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hose, canes, crutches, soft cervical collars, dental appliances or other similar devices carried in stock and sold as over-the-counter items.

*Prosthesis*—

(i) A custom-designed, custom-fabricated, custom-fitted or custom-modified device to replace an absent external limb for purposes of restoring physiological function that is not surgically implanted.

(ii) The term does not include the following:

(A) Artificial eyes, ears, fingers or toes.

(B) Dental appliances.

(C) Cosmetic devices such as breast prostheses, eyelashes or wigs.

(D) Other devices that do not have a significant impact on the musculoskeletal functions of the body.

*Prosthetics*—The practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting or servicing a prosthesis.

*Prosthetist*—An individual, other than a licensed physical therapist or occupational therapist, licensed under the act to practice prosthetics pursuant to a written prescription of a licensed prescribing practitioner.

### QUALIFICATIONS FOR LICENSURE AS A PROSTHETIST

#### § 18.811. Graduate permit.

(a) Prior to providing direct patient care during a clinical residency, an individual shall submit an application, on forms made available by the Board, for a graduate permit that authorizes the individual to work as a graduate prosthetist. The Board may grant a graduate permit to an individual who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(n) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may issue a graduate permit to practice as a prosthetist to an applicant who:

(1) Is of good moral character.

(2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in prosthetics or prosthetics/orthotics.

(3) Has registered with NCOPE as a prosthetist or prosthetist/orthotist resident.

(4) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(5) Otherwise satisfies the requirements for a graduate permit and is not barred from licensure.

(c) The Board may deny an application for a graduate permit upon the grounds for disciplinary action in section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A graduate permit is valid during the clinical residency and for up to 90 days after successful completion of the clinical residency or until a provisional license is issued, whichever occurs first. A graduate permit is nonrenewable.

**§ 18.812. Clinical residency.**

(a) A graduate prosthetist shall practice only under the direct supervision of a licensed prosthetist, ABC-certified prosthetist or BOC-certified prosthetist within the clinical residency. For purposes of this section, "direct supervision" means the supervisor is available for consultation throughout the patient care process and is able to visually assess the care being provided. The supervisor shall review the results of care and the documentation of the services rendered by the supervised individual and is responsible for countersigning within 15 days the entries in the patient's clinical record.

(b) The clinical residency shall be accredited by NCOPE.

(c) The clinical residency shall be obtained subsequent to education and be at all levels of prosthetic care.

**§ 18.813. Provisional prosthetist license.**

(a) An individual shall submit an application, on forms made available by the Board, for a provisional license which will authorize the individual to provide direct patient care, under direct supervision as defined in § 18.812(a) (relating to clinical residency), as a provisionally-licensed prosthetist following completion of a clinical residency. The Board may grant a provisional license to an individual who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(n) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may grant a provisional license to an individual who:

- (1) Is of good moral character.
- (2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in prosthetics or prosthetics/orthotics.
- (3) Has completed an NCOPE-accredited clinical residency in prosthetics or prosthetics/orthotics.
- (4) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).
- (5) Otherwise satisfies the requirements for a provisional license is not barred from licensure.

(c) The Board may deny an application for a provisional license upon the grounds for disciplinary action in section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A provisional license is valid for a maximum of 2 years and is nonrenewable.

**§ 18.814. Prosthetist license.**

(a) An applicant for a license to practice as a prosthetist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents and pay the applica-

tion fee in § 16.13(n) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a prosthetist to an applicant who:

- (1) Is of good moral character.
- (2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in prosthetics or prosthetics/orthotics.
- (3) Has completed a minimum of 3,800 hours of experience in providing direct patient care services in prosthetics or in prosthetics and orthotics over a 2-year period. In meeting the requirement of this paragraph, an applicant may present documentation from the applicant's employer or supervisor and the director of the applicant's clinical residency in prosthetics or prosthetics/orthotics.
- (4) Has met the qualifications for certification and received certification from a prosthetic credentialing organization whose certification program is accredited by NCCA.
- (5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).
- (6) Otherwise satisfies the requirements for licensure and is not barred from licensure.

(c) The Board may deny an application for licensure as a prosthetist or upon the grounds for disciplinary action in section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

**§ 18.815. Alternate pathway for prosthetist license.**

(a) Through July 7, 2014, an individual may apply for licensure as a prosthetist without examination by submitting an application for licensure without examination, paying the application fee in § 16.13(n) (relating to licensure, certification, examination and registration fees) and providing documentation acceptable to the Board to demonstrate that the applicant meets the qualifications in section 13.5(a)(8), (f) and (i) of the act (63 P. S. § 422.13e(a)(8), (f) and (i)), as set forth in this section.

(b) The Board may issue a license under this section to an applicant for prosthetist licensure who complies with this section and demonstrates the qualifications in section 13.5(a)(1) and (5)—(8) and (f) of the act.

(c) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant shall have a combination of at least 4 years of education, training and work experience, consisting of one of the following:

- (1) A bachelor's degree with a major in prosthetics or prosthetics/orthotics and, if the bachelor's degree was completed in less than 4 academic years, additional training or work experience in providing direct patient care to total 4 years.
- (2) An associate's degree in prosthetics or prosthetics/orthotics and a minimum of 3,800 hours of experience in providing direct patient services in prosthetics or in prosthetics and orthotics over a 2-year period, to total at least 4 years of education, training and work experience.
- (3) At least 2 years or more of education, training or work experience in the field of prosthetics and a minimum of 3,800 hours of experience in providing direct patient care services in prosthetics or in prosthetics and orthotics over a 2-year period, to total at least 4 years of education, training and work experience.



(d) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant shall demonstrate current National certification from an organization approved by the Board as a prosthetist or prosthetist and orthotist.

(e) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant shall demonstrate that the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012.

(f) The Board may deny an application for licensure as a prosthetist without examination upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(g) This section expires at 5 p.m. on July 7, 2014. An application for licensure without examination received after July 7, 2014, will be returned to applicant.

#### § 18.816. Demonstration of qualifications.

An applicant for prosthetist licensure shall demonstrate:

(1) The degree or other education and training by having the educational institution submit, directly to the Board, verification of the degree and official transcript or certificates of attendance at other training.

(2) Direct patient care by having the applicant's supervisor, employer or a referral source file an attestation on a form provided by the Board. If attestation is from a referral source, it must include a copy of the applicant's Federal EIN and evidence of the date the applicant received the EIN.

(3) National certification by having the National certification body send verification of National certification directly to the Board.

(4) Compliance with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter) by verification and, if requested, a copy of an insurance binder, certificate, policy, declarations page or other documentation acceptable to the Board.

(5) That the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012, by attestation and one of the following:

(i) The applicant's Federal tax returns from 2009—2012 listing the applicant's occupation as prosthetist or orthotist, as appropriate.

(ii) Attestation from the applicant's employer or health care referral source, including the Federal EIN information in paragraph (2) demonstrating that the applicant has been in active, continuous practice.

#### QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIST

##### § 18.821. Graduate permit.

(a) Prior to providing direct patient care during a clinical residency, an individual shall submit an application, on forms made available by the Board, for a graduate permit that authorizes the individual to work as a graduate orthotist. The Board may grant a graduate permit to an individual who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(o) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may issue a graduate permit to practice as an orthotist to an applicant who:

(1) Is of good moral character.

(2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in orthotics or prosthetics/orthotics.

(3) Has registered with NCOPE as an orthotist or prosthetist/orthotist resident.

(4) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(5) Otherwise satisfies the requirements for a graduate permit and is not barred from licensure.

(c) The Board may deny an application for licensure as an orthotist upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A graduate permit is valid during the clinical residency and for up to 90 days after successful completion of the clinical residency or until a provisional license is issued, whichever occurs first. A graduate permit is nonrenewable.

##### § 18.822. Clinical residency.

(a) A graduate orthotist shall practice only under the direct supervision of a licensed orthotist, ABC-certified orthotist or BOC-certified orthotist within the clinical residency. For purposes of this section, "direct supervision" means the supervising licensed individual is available for consultation throughout the patient care process and is able to visually assess the care being provided. The supervisor shall review the results of care and the documentation of the services rendered by the supervised individual and is responsible for countersigning within 15 days the entries in the patient's clinical record.

(b) A clinical residency shall be accredited by NCOPE.

(c) A clinical residency shall be obtained subsequent to education and be at all levels of orthotic care.

##### § 18.823. Provisional orthotist license.

(a) Following completion of the clinical residency, an individual may submit an application, on forms made available by the Board, for a provisional license which will authorize the individual to provide direct patient care under supervision as defined in § 18.822(a) (relating to clinical residency). The Board may grant a provisional license to an individual who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(o) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may grant a provisional license to an individual who:

(1) Is of good moral character.

(2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in orthotics or prosthetics/orthotics.

(3) Has completed an NCOPE-accredited clinical residency in orthotics or prosthetics/orthotics.

(4) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(5) Otherwise satisfies the requirements for a provisional license and is not barred from licensure.

(c) The Board may deny an application for a provisional license as an orthotist upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A provisional license is valid for a maximum of 2 years and is nonrenewable.

**§ 18.824. Orthotist license.**

(a) An applicant for a license to practice as an orthotist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(o) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as an orthotist to an applicant who:

- (1) Is of good moral character.
- (2) Has earned a bachelor's degree, post-baccalaureate certificate or higher degree from a CAAHEP-accredited education program with a major in orthotics or prosthetics/orthotics.
- (3) Has completed a minimum of 3,800 hours of experience in providing direct patient care services in orthotics or in prosthetics and orthotics over a 2-year period.

(4) Has met the qualifications for certification and received certification from an orthotic credentialing organization whose certification program is accredited by NCCA.

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthotist or orthotic fitter).

(6) Otherwise satisfies the requirements for licensure and is not barred from licensure.

(c) The Board may deny an application for licensure as an orthotist upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

**§ 18.825. Alternate pathway for orthotist license.**

(a) Through July 7, 2014, an individual may apply for licensure as an orthotist without examination by submitting an application for licensure without examination, paying the application fee in § 16.13(o) (relating to licensure, certification, examination and registration fees), and providing documentation acceptable to the Board to demonstrate that the applicant meets the qualifications of section 13.5(a)(8), (f) and (i) of the act (63 P.S. § 422.13e(a)(8), (f) and (i)), as set forth in this section.

(b) The Board may issue a license under this section to an applicant for orthotist licensure who complies with this section and demonstrates the qualifications in section 13.5(a)(1) and (5)—(8) and (f) of the act.

(c) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant must have a combination of at least 4 years of education, training and work experience, consisting of one of the following:

- (1) A bachelor's degree with a major in orthotics or prosthetics/orthotics and, if the bachelor's degree was completed in less than 4 academic years, additional training or work experience in providing direct patient care to total 4 years.
- (2) An associate's degree in orthotics or prosthetics/orthotics and a minimum of 3,800 hours of experience in

providing direct patient care in orthotics or in prosthetics and orthotics over a 2-year period, to total at least 4 years of education, training and work experience.

(3) At least 2 years or more of education, training or work experience in the field of orthotics and a minimum of 3,800 hours of experience in providing direct patient care in orthotics or in prosthetics and orthotics over a 2-year period, to total at least 4 years of education, training and work experience.

(d) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant shall demonstrate current National certification from an organization approved by the Board as a orthotist or prosthetist and orthotist.

(e) To meet the qualifications for licensure in section 13.5(f) of the act, an applicant shall demonstrate that the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012.

(f) The Board may deny an application for licensure as an orthotist without examination upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(g) This section expires at 5 p.m. on July 7, 2014. An application for licensure without examination received after July 7, 2014, will be returned to the applicant.

**§ 18.826. Demonstration of qualifications.**

An applicant for orthotist licensure shall demonstrate:

(1) The degree or other education and training by having the educational institution submit, directly to the Board, verification of the degree and official transcript or certificates of attendance at other training.

(2) Direct patient care by having the applicant's supervisor, employer or a referral source file an attestation on a form provided by the Board. If attestation is from a referral source, it must include a copy of the applicant's Federal EIN and evidence of the date the applicant received the EIN.

(3) National certification by having the National certification body send verification of National certification directly to the Board.

(4) Compliance with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter) by verification and, if requested, a copy of an insurance binder, certificate, policy, declarations page or other documentation acceptable to the Board.

(5) That the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012, by attestation and one of the following:

(i) The applicant's Federal tax returns from 2009—2012 listing the applicant's occupation as prosthetist or orthotist, as appropriate.

(ii) Attestation from the applicant's employer or health care referral source, including the Federal EIN information in paragraph (2) demonstrating that the applicant has been in active, continuous practice.

**QUALIFICATIONS FOR LICENSURE AS A PEDORTHIST**

**§ 18.831. Temporary practice permit.**

(a) Prior to providing pedorthic patient care and after completion of an approved pedorthic education program, an individual shall submit an application for a temporary practice permit authorizing the individual to work as a graduate pedorthist on forms made available by the

Board. The Board may grant a temporary practice permit to an applicant who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(p) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may issue a temporary practice permit to an applicant who:

(1) Is of good moral character.

(2) Has successfully completed an NCOPE-accredited precertification education program or its equivalent as determined by the Board.

(3) Otherwise satisfies the requirements for a temporary practice permit and is not barred from licensure.

(c) The Board may deny an application for a temporary practice permit as a graduate pedorthist upon the grounds for disciplinary action in section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A temporary practice permit is valid for a maximum of 1 year and is nonrenewable. A temporary practice permit automatically expires if the permit holder fails the examination.

#### § 18.832. Patient fitting experience.

(a) A graduate pedorthist with a temporary practice permit shall practice only under the direct supervision of a licensed pedorthist within the work experience. For purposes of this section, "direct supervision" means the supervisor is available for consultation throughout the patient care process and is able to visually assess the care being provided. The supervisor shall review the results of care and the documentation of the services rendered by the supervised individual and is responsible for counter-signing within 15 days the entries in the patient's clinical record.

(b) The supervised patient fitting experience must be obtained subsequent to education and must encompass all aspects of pedorthic care.

#### § 18.833. Pedorthist license.

(a) An applicant for a license to practice as a pedorthist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(p) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a pedorthist to an applicant who:

(1) Is of good moral character.

(2) Has successfully completed an NCOPE-accredited pedorthic education program or its equivalent as determined by the Board.

(3) Has completed a minimum of 1,000 hours of supervised patient fitting experience.

(4) Holds current National certification from the ABC or the BOC.

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(6) Otherwise satisfies the requirements for licensure and is not barred from licensure.

(c) The Board may deny an application for licensure as a pedorthist upon the grounds for disciplinary action in

section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

#### § 18.834. Alternate pathway for pedorthist license.

(a) Through July 7, 2014, an individual may apply for licensure as a pedorthist without examination by submitting an application for licensure without examination, paying the application fee in § 16.13(p) (relating to licensure, certification, examination and registration fees) and providing documentation acceptable to the Board to demonstrate that the applicant meets the qualifications of section 13.5(a)(8), (f), (i) of the act (63 P. S. § 422.13e(a)(8), (f) and (i)).

(b) The Board may issue a license under this section to an applicant for pedorthist licensure without examination who complies with this section and:

(1) Meets the qualifications of section 13.5(a)(1) and (5)—(8) of the act.

(2) Has successfully completed an NCOPE-accredited pedorthic education program or its equivalent as determined by the Board.

(3) Has completed a minimum of 1,000 hours of supervised patient fitting experience.

(4) Holds current National certification as a pedorthist from a certification organization recognized by the Board.

(5) Has been in active continuous practice for the 3-year period between July 5, 2009, and July 5, 2012.

(6) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(c) The Board may deny an application for licensure as a pedorthist without examination upon the grounds for disciplinary action in section 41 of the act (63 P. S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) This section expires at 5 p.m. on July 7, 2014. An application for licensure without examination received after July 7, 2014, will be returned to the applicant.

#### § 18.835. Demonstration of qualifications.

An applicant for pedorthist licensure shall:

(1) Demonstrate compliance with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter) by verification and, if requested, a copy of an insurance binder, certificate, policy, declarations page or other documentation acceptable to the Board.

(2) Demonstrate National certification by having the National certification body send verification of National certification directly to the Board.

(3) Demonstrate completion of an NCOPE accredited pedorthic education program by having the educational institution submit, directly to the Board, verification of completion or demonstrate completion of an equivalent educational program by submitting an official transcript, course syllabi or other information to demonstrate equivalence as requested by the Board.

(4) Demonstrate 1,000 hours of supervised patient fitting experience by having the applicant's supervisor, employer or a referral source file an attestation on a form provided by the Board. If attestation is from a referral source, it must include a copy of the applicant's Federal EIN and evidence of the date the applicant received the EIN.



(5) Demonstrate that the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012, by attestation and one of the following:

(i) The applicant's Federal tax returns from 2009—2012 listing the applicant's occupation as pedorthist.

(ii) Attestation from the applicant's employer or health care referral source, including the Federal EIN information in paragraph (4) demonstrating that the applicant has been in active, continuous practice.

#### QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIC FITTER

##### § 18.841. Temporary practice permit.

(a) Prior to providing orthotic fitting care, an individual shall obtain a temporary practice permit authorizing the individual to work as a graduate orthotic fitter. An individual shall submit an application for a temporary practice permit on forms made available by the Board. The Board may grant a temporary practice permit to an individual who submits a completed application including the necessary supporting documents, pays the application fee in § 16.13(q) (relating to licensure, certification, examination and registration fees) and meets the qualifications in subsection (b).

(b) The Board may grant a temporary practice permit to an individual who:

(1) Is of good moral character.

(2) Has successfully completed an NCOPE-approved orthotic fitter education program or its equivalent as determined by the Board.

(3) Otherwise satisfies the requirements for a temporary practice permit and is not barred from licensure.

(c) The Board may deny an application for a temporary practice permit upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) A temporary practice permit is valid for a maximum of 1 year and is nonrenewable. A temporary practice permit automatically expires if the permit holder fails the examination.

##### § 18.842. Orthotic fitting care experience.

(a) A graduate orthotic fitter with a temporary practice permit shall practice only under the direct supervision of an orthotist or orthotic fitter licensed by the Board or an orthotist or orthotic fitter certified by the ABC or the BOC. For purposes of this section, "direct supervision" means the supervising licensed individual is available for consultation throughout the patient care process and is able to visually assess the care being provided. The supervisor shall review the results of care and the documentation of the services rendered by the supervised individual and is responsible for countersigning within 15 days the entries in the patient's clinical record.

(b) The orthotic fitting care experience must be obtained subsequent to education.

##### § 18.843. Orthotic fitter license.

(a) An applicant for a license to practice as an orthotic fitter shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(q) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as an orthotic fitter to an applicant who:

(1) Is of good moral character.

(2) Has successfully completed a BOC-approved or NCOPE-approved orthotic fitter education program or its equivalent as determined by the Board.

(3) Has completed a minimum of 1,000 hours of documented supervised orthotic fitting care experience.

(4) Holds current National certification from the ABC or the BOC.

(5) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(6) Otherwise satisfies the requirements for licensure and is not barred from licensure.

(c) The Board may deny an application for licensure as an orthotic fitter upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

##### § 18.844. Alternate pathway for orthotic fitter licensure.

(a) Through July 7, 2014, an individual may apply for licensure as an orthotic fitter without examination by submitting an application for licensure without examination, paying the application fee in § 16.13(q) (relating to licensure, certification, examination and registration fees) and providing documentation acceptable to the Board to demonstrate that the applicant meets the qualifications of section 13.5(a)(8), (f) and (i) of the act (63 P.S. § 422.13e(a)(8), (f) and (i)).

(b) The Board may issue a license under this section to an applicant for orthotic fitter licensure without examination who complies with this section and:

(1) Meets the qualifications of section 13.5(a)(1), (5)—(8) of the act.

(2) Has successfully completed a Board-approved entry level orthotic fitter education program.

(3) Has completed a minimum of 1,000 hours of supervised orthotic fitting care experience.

(4) Holds current National certification as an orthotic fitter from a certification organization recognized by the Board.

(5) Has been in active continuous practice for the 3-year period between July 5, 2009, and July 5, 2012.

(6) Has complied with § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

(c) The Board may deny an application for licensure as an orthotic fitter without examination upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41) or § 18.853 (relating to unprofessional and immoral conduct).

(d) This section expires at 5 p.m. on July 7, 2014. An application for licensure without examination received after July 7, 2014, will not be accepted and will be returned to the applicant.

##### § 18.845. Demonstration of qualifications.

An applicant for orthotic fitter licensure shall:

(1) Demonstrate compliance with § 18.864 (relating to professional liability insurance coverage for licensed

prosthetist, orthotist, pedorthist or orthotic fitter) by verification and, if requested, a copy of an insurance binder, certificate, policy, declarations page or other documentation acceptable to the Board.

(2) Demonstrate National certification by having the National certification body send verification of National certification directly to the Board.

(3) Demonstrate completion of a Board-approved entry level orthotic fitter education program by having the educational institution submit, directly to the Board, verification of completion.

(4) Demonstrate 1,000 hours of supervised orthotic fitting care experience by having the applicant's supervisor, employer or a referral source file an attestation on a form provided by the Board. If attestation is from a referral source, it must include a copy of the applicant's Federal EIN and evidence of the date the applicant received the EIN.

(5) Demonstrate that the applicant has been in active, continuous practice for the 3-year period between July 5, 2009, and July 5, 2012, by attestation and one of the following:

(i) The applicant's Federal tax returns from 2009—2012 listing the applicant's occupation as pedorthist.

(ii) Attestation from the applicant's employer or health care referral source, including the Federal EIN information in paragraph (4) demonstrating that the applicant has been in active, continuous practice.

#### REGULATION OF PRACTICE

##### § 18.851. Scope and standards of practice.

(a) Prior to providing services to a patient, a prosthetist, orthotist, pedorthist or orthotic fitter shall review the prescription and referral or valid order of the licensed prescribing practitioner and understand conditions or restrictions placed on the course of treatment by the licensed prescribing practitioner.

(b) Prior to providing services to a patient, a prosthetist, orthotist, pedorthist or orthotic fitter shall ensure the patient has undergone a medical diagnostic examination or has had the results of a recently performed medical diagnostic examination reviewed by a licensed prescribing practitioner by obtaining a copy of the prescription and relevant clinical notes.

(c) A prosthetist, orthotist, pedorthist or orthotic fitter shall retain a copy of the prescription and referral or valid order, clinical notes and results of the relevant medical diagnostic examination in the patient's file.

(d) A prosthetist, orthotist, pedorthist or orthotic fitter may not accept a prescription and referral or order when the prosthetist, orthotist, pedorthist or orthotic fitter knows, or has good cause to believe, that the device cannot be furnished within a reasonable period of time. In these instances, the prosthetist, orthotist, pedorthist or orthotic fitter shall consult with the licensed prescribing practitioner who wrote the prescription and referral or order and disclose the issue to the patient.

(e) For purposes of this section, the results of the medical diagnostic examination must include, at a minimum, diagnosis, prognosis, medical necessity and duration of need relevant to the practice of the prosthetist, orthotist, pedorthist or orthotic fitter.

##### § 18.852. Delegation.

(a) A prosthetist or orthotist may delegate to an orthotic and prosthetic assistant or orthotic and pros-

thetic technician, and a pedorthist may delegate to pedorthic support personnel, the performance of tasks if the following conditions are met:

(1) The delegation is consistent with the standards of acceptable prosthetic, orthotic and pedorthic practice embraced by the prosthetic, orthotic and pedorthic community in this Commonwealth.

(2) The practitioner delegating the task has knowledge that the delegatee has education, training, experience and competency to safely perform the task being delegated.

(3) The practitioner delegating the task has determined, by reviewing the case, that the delegation to the delegatee does not create an undue risk to the particular patient.

(4) The nature of the task and the delegation of the task has been explained to the patient by the practitioner delegating the task, and the patient does not object to the performance by the delegatee.

(5) The practitioner delegating the task assumes the responsibility for the delegated task, including the performance of the task, and is available to the delegatee for additional direction or assistance.

(6) The practitioner provides direct, onsite supervision of the tasks performed by a delegatee.

(7) The practitioner delegating the task assumes the responsibility for ensuring that the delegatee does not state or in any way imply, including through the use of titles, that the delegatee is licensed to practice orthotics, prosthetics, pedorthics or orthotic fitting.

(b) A prosthetist, orthotist or pedorthist may not delegate a task if the performance of the task is restricted by law to performance by a prosthetist, orthotist, pedorthist or orthotic fitter, or if the performance of the task requires knowledge and skill not ordinarily possessed by assistive personnel, including knowledge of complications and risks associated with the delegated task.

(c) A prosthetist, orthotist or pedorthist is responsible for the delegated task and may be disciplined for improperly delegating a task, for improperly supervising a delegatee and for the improper performance of a delegated task performed by the delegatee.

##### § 18.853. Unprofessional and immoral conduct.

(a) A licensee under this subchapter is subject to refusal of license or permit or disciplinary action under sections 22 and 41 of the act (63 P.S. §§ 422.22 and 422.41). Following a final determination subject to the right of notice, hearing and adjudication, and the right of appeal therefrom in accordance with 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), this chapter and 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure), the Board may refuse licensure or impose any of the corrective actions in section 42 of the act (63 P.S. § 422.42).

(b) Unprofessional conduct includes:

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

(2) Performing an act in a health care profession in a fraudulent, incompetent or negligent manner.

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

(4) Engaging in health care practice beyond the licensee's authority to practice.

(5) Representing oneself to be a physician or other health care practitioner whose profession the licensee is not licensed to practice.

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

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

(8) Misconduct in the practice of the licensee's profession or performing tasks fraudulently, incompetently or negligently, or by use of methods of treatment which are not in accordance with treatment processes accepted by a reasonable segment of the profession.

(9) The promotion of the sale of services and devices in a manner as to exploit the patient or client for the financial gain of the practitioner or a third party.

(10) Directly or indirectly offering, giving, soliciting or receiving, or agreeing to receive a fee or other consideration to or from a third party for the referral of a patient or client.

(11) Delegating professional services contrary to § 18.852 (relating to delegation).

(12) Over-utilizing services by providing excessive evaluation or treatment procedures not warranted by the condition of the patient or by continuing treatment beyond the point of possible benefit.

(13) Making gross or deliberate misrepresentations or misleading claims as to professional qualifications or of the efficacy or value of the treatments or remedies given or recommended or those of another practitioner.

(14) Overcharging for professional services, including filing false statements for collection of fees for which services are not rendered.

(15) Failing to maintain a record for each patient that accurately reflects the evaluation and treatment of the patient.

(16) Advertising or soliciting for patronage in a manner that is fraudulent or misleading. Examples of advertising or soliciting which is considered fraudulent or misleading include:

(i) Advertising by means of testimonials, anecdotal reports of orthotics, prosthetics or pedorthics practice successes, or claims of superior quality of care to entice the public.

(ii) Advertising which contains false, fraudulent, deceptive or misleading materials, warranties or guarantees of success, statements which play upon vanities or fears of the public, or statements which promote or produce unfair competition.

(c) Immoral conduct includes:

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

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

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

## BIENNIAL RENEWAL AND REACTIVATION

### § 18.861. Biennial renewal of license.

(a) The license of a prosthetist, orthotist, pedorthist or orthotic fitter will expire biennially on December 31 of each even-numbered year in accordance with § 16.15 (relating to biennial registration; inactive status and unregistered status). A prosthetist, orthotist, pedorthist or orthotic fitter may not practice after December 31 of an even-numbered year unless the prosthetist, orthotist, pedorthist or orthotic fitter has completed the biennial renewal process and the Board has issued a current license.

(b) As a condition of biennial registration, a prosthetist, orthotist, pedorthist or orthotic fitter shall:

(1) Submit a completed application, including payment of the biennial renewal fee in § 16.13 (relating to licensure, certification, examination and registration fees) for application for biennial renewal of prosthetist, orthotist, pedorthist or orthotic fitter license.

(2) Disclose on the application a license to practice as a prosthetist, orthotist, pedorthist or orthotic fitter in another state, territory, possession or country.

(3) Disclose on the application disciplinary action pending before or taken by an appropriate health care licensing authority in another jurisdiction or the licensee's National credentialing body since the most recent application for biennial renewal, whether or not licensed to practice in that other jurisdiction.

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

(5) Verify on the application that the licensed prosthetist, orthotist, pedorthist or orthotic fitter has completed the continuing education mandated by section 13.5(g)(1) of the act (63 P. S. § 422.13e(g)(1)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 18.862 (relating to continuing education).

(6) Verify on the application that the licensee maintains professional liability insurance coverage in accordance with section 13.5(i) of the act and § 18.864 (relating to professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter).

### § 18.862. Continuing education.

(a) *Credit hour requirements.* A licensed prosthetist, orthotist, pedorthist or orthotic fitter shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial renewal, a prosthetist shall complete at least 24 hours of ABC-approved or BOC-approved continuing education applicable to the practice of prosthetics and an orthotist shall complete at least 24 hours of continuing education applicable to the practice of orthotics.

(2) As a condition for biennial renewal, a pedorthist shall complete at least 13 hours of continuing education applicable to the practice of pedorthics and an orthotic fitter shall complete at least 13 hours of continuing education applicable to the practice of orthotic fitting.

(3) Credit for continuing education will not be given for courses in office management or practice building.

(4) A licensee is not required to complete continuing education during the biennium in which the licensee was



first licensed if licensure occurred within 3 years of completion of the approved educational program.

(5) Except when reactivating an inactive license, when the Board has granted a waiver, or when ordered by the Board, continuing education credits may be used to satisfy the continuing education credit hour requirements only for the biennial period in which the credits were earned. An hour of continuing education may not be used to satisfy the requirements of paragraph (1) or (2) for more than one biennium.

(6) A licensee may request a waiver of the continuing education credit hour requirements because of serious illness, emergency, military service or other demonstrated hardship by submitting a request for waiver with supporting documentation to the Board at least 90 days prior to the end of the biennial renewal period for which the waiver is sought. The Board may grant the waiver request in whole or in part and may extend the deadline by which the credit hour requirements must be met.

(b) *Disciplinary action.* A licensee may be subject to disciplinary action if the licensee submits false information to the Board regarding completion of the continuing education credit hour requirements to complete biennial renewal or fails to complete the continuing education hour requirements and practices as a prosthetist, orthotist, pedorthist or orthotic fitter after the end of the biennial period.

(c) *Documentation of continuing education.* A licensee shall maintain documentation of completion of continuing education by maintaining the certificate of attendance or completion issued by the course provider. A licensee shall maintain the certificates for at least 5 years after the end of the biennial renewal period in which the continuing education was completed. A certificate must include the name of the course provider, the name and date of the course, the name of the licensee, the number of credit hours based on a 50-minute hour and the category of continuing education, if applicable.

**§ 18.863. Inactive and expired status of licenses; reactivation of inactive or expired license.**

(a) A prosthetist, orthotist, pedorthist or orthotic fitter license will become inactive if the licensee requests in writing that the Board place the license on inactive status. The Board will provide written confirmation of inactive status to the licensee at the licensee's last known address on file with the Board.

(b) A prosthetist, orthotist, pedorthist or orthotic fitter license will be classified as expired if the licensee fails to renew the license by the expiration of the biennial renewal period on December 31 of each even-numbered year. The Board will provide written notice to a licensee who fails to make biennial renewal by sending a notice to the licensee's last known address on file with the Board.

(c) A prosthetist, orthotist, pedorthist or orthotic fitter whose license has become inactive or expired may not practice in this Commonwealth until the license has been reactivated.

(d) To reactivate an inactive or expired license, the licensee shall apply on forms made available by the Board and fully answer the questions. The licensee shall:

(1) Include the documentation required under § 18.862(c) (relating to continuing education) for the immediately preceding biennium. Unless waived by the Board under section 13.5(g)(7) of the act (63 P.S. § 422.13e(g)(7)), the Board will not reactivate a license until the required continuing education for the preceding biennium has been successfully completed.

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

(3) Verify that the licensee did not practice as a prosthetist, orthotist, pedorthist or orthotic fitter in this Commonwealth while the license was inactive or expired except as provided in subsection (e).

(e) A licensee who has practiced with an inactive or expired license and who cannot make the verification required under subsection (d)(3) shall also pay the fees required under section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225), as described in this subsection. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a prosthetist, orthotist, pedorthist or orthotic fitter without a currently renewed license.

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

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

(f) A licensee whose license has been inactive for more than 2 years and who has not been engaged in practice in another jurisdiction shall demonstrate continued competence by passing the certification examinations offered by either the ABC or the BOC. For prosthetists or orthotists, the applicable examinations are the ABC or BOC examinations required for initial certification. For pedorthists or orthotic fitters, the applicable examinations are the ABC or BOC pedorthist or orthotic fitter examination required for initial certification.

**§ 18.864. Professional liability insurance coverage for licensed prosthetist, orthotist, pedorthist or orthotic fitter.**

(a) A licensed prosthetist, orthotist, pedorthist or orthotic fitter shall maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made as required under section 13.5(i) of the act (63 P.S. § 422.13e(i)) and provide proof of coverage upon request.

(b) Proof of professional liability insurance coverage includes:

(1) A certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage.

(2) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(c) A licensee who does not have professional liability insurance coverage as required under section 13.5(i) of the act may not practice as a prosthetist, orthotist, pedorthist or orthotic fitter in this Commonwealth.

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