

PROPOSED RULEMAKING

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

Child Abuse Reporting Requirements

The State Board of Optometry (Board) proposes to amend §§ 23.1, 23.11, 23.21, 23.26, 23.81—23.83, 23.111—23.116, and add §§ 23.117 and 23.118 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 3(b)(14) of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.3(b)(14)) sets forth the Board's general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Purpose

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related Boards to require training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015, and were implemented as of that date. These amendments are required to update the Board's existing regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL, and to incorporate the mandatory training requirements required by Act 31.

Description of the Proposed Amendments

The Board proposes to amend § 23.1 (relating to definitions) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to define the terms "bodily injury," "child," "ChildLine," "parent," "program, activity or service" and "serious physical neglect" and to amend the definitions of "child abuse," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions" and "sexual abuse or exploitation" to comport with amendments made to the CPSL. The Board has also added a definition for the terms "Bureau" and "mandated reporter" for ease of reference. The Board also proposes to delete definitions for "individual residing in the same home as the child" and "serious physical injury" because these terms have been deleted from the CPSL. Additionally, the Board proposes to amend, where necessary throughout this proposed rulemaking, the name of the Department of Public Welfare, as the name of that agency has changed to the Department of Human Services.

The Board proposes to amend §§ 23.11 and 23.21 (relating to qualifications for license by examination; and reciprocal application) to incorporate the requirement

that applicants for licensure complete at least 3 hours of approved training in child abuse recognition and reporting as required under section 6383(b)(3)(i) of the CPSL. The Board also proposes to amend § 23.26 (relating to volunteer license) to incorporate the mandatory training requirements for applicants for a volunteer license in subsection (c) and for biennial renewal of a volunteer license in subsection (e).

The Board is also proposing to amend the Board's continuing education regulations at §§ 23.81—23.83 (relating to coverage; continuing education hour requirements; and continuing education subject matter) to incorporate the 2 hours of mandatory continuing education in child abuse recognition and reporting required under section 6383(b)(3)(ii) of the CPSL. Specifically, § 23.81 would be amended to make it clear that applicants for reactivation are required to complete at least 2 hours of approved courses in child abuse recognition and reporting and to provide for gender neutrality. Section 23.82 would be amended to incorporate the requirement that licensees seeking to renew a license complete at least 2 hours of approved courses in child abuse recognition and reporting as required under section 6383(b)(3)(ii) of the CPSL. Finally, § 23.83 would be amended to clarify that, notwithstanding the existing approval process for Board approval of optometric continuing education, courses in child abuse recognition and reporting are an exception and must be approved by the Bureau of Professional and Occupational Affairs (Bureau), in consultation with the Department of Human Services, as required by the CPSL in accordance with § 23.118.

The Board next proposes comprehensive amendments to the child abuse reporting requirements. First, the Board is proposing to amend § 23.111 (relating to suspected child abuse—mandated reporting requirements) to provide the general rule that all licensed optometrists are considered mandated reporters, and to update the mandated reporting requirements and reporting procedures as set forth in sections 6311 and 6313 of the CPSL (relating to persons required to report suspected child abuse; and reporting procedure), as amended. The Department of Human Services has implemented an electronic reporting process for mandated reporters, and the Board finds it necessary to propose amendments to § 23.112 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement to submit documentation relating to photographs, medical tests and X-rays to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL (relating to photographs, medical tests and X-rays of child subject to report), and to include the requirement that medical summaries or reports of the photographs, X-rays and relevant medical tests be made available to law enforcement officials in the course of investigation of cases under section 6340(a)(9) or (10) of the CPSL (relating to release of information in confidential reports).

The Board is proposing to amend § 23.113 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL (relating to mandatory reporting and postmortem investigation of deaths) to permit such a report to be made to the medical examiner of the county where the death occurred, or of the county where the injuries were sustained. Further, the Board is proposing to amend and restructure § 23.114 (relating to immunity from liability) to incorporate amendments made

to section 6318 of the CPSL (relating to immunity from liability) in subsection (a) and to clarify in subsection (b) that the Board will uphold the same good faith presumption in any disciplinary proceedings that may be brought for violations of the duties imposed upon licensees that are set forth in §§ 23.111—23.113. The Board also proposes to amend § 23.115 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL (relating to privileged communications). Likewise, the Board proposes to amend § 23.116 (relating to noncompliance) to update the criminal penalties for failure to make a report or referral required by the CPSL, which have been increased in recent years from a summary offense for a first violation and a misdemeanor for a second or subsequent violation to a misdemeanor of the second degree for most offenses, except under certain enumerated circumstances where the offense is graded as a felony.

The Board proposes to add two sections to incorporate the mandatory training requirements set forth in section 6383(b)(3)(i) and (ii) of the CPSL. Section 23.117 would set forth the requirement that all individuals applying to the Board for an initial license shall complete at least 3 hours of approved training in child abuse recognition and reporting in subsection (a); and that all licensees seeking renewal are required to complete at least 2 hours of approved continuing education in child abuse recognition and reporting as a requirement of renewal in subsection (b). The Board would also provide notice that these 2 hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6383(b)(3)(ii) of the CPSL. The Board is also clarifying that a license will not be issued or renewed unless the Bureau has received an electronic report from an approved course provider documenting the attendance or participation by the licensee in an approved course or the applicant or licensee has obtained an exemption under subsection (c). The proposal would also clarify that, for purposes of renewal, the course must be completed within the applicable biennial renewal period, and that if a licensee also holds a license from another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

Subsection (c) would include the process for applying for an exemption from the mandatory training requirements, as set forth in section 6383(b)(4) and (6) of the CPSL, for individuals who have already completed similar training or who otherwise should be exempt from the training requirements. Specifically, paragraph (1) provides an exemption for individuals who have already completed similar training required under section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6). Paragraph (2) provides an exemption for individuals who have completed comparable training under section 6383(c) of the CPSL. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required by the Human Services Code (62 P.S. §§ 101—1503) (formerly known as the Public Welfare Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is no provision in the Human Services Code that requires such training. Instead, section 6383(c) of the CPSL, which is in 23 Pa.C.S. (relating to Domestic Relations Code), sets forth the requirement that certain individuals and entities regulated by the

Department of Human Services complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for a licensee who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c). For example, if an optometrist happened to be a foster parent and, therefore, was required to complete the training under section 6383(c), there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b). In addition, section 6383(b)(6) permits the Board to exempt a licensee from the training requirement if the licensee “submits documentation acceptable to the licensing board that the licensee should not be subject to the training or continuing education requirement.” The Board believes that this section also provides authority to the Board to determine that those licensees who are required to complete comparable training under section 6383(c) should be exempt from the training requirement under section 6383(b), provided they submit acceptable documentation to the Board evidencing completion of comparable training. Paragraph (3) would further implement section 6383(b)(6) of the CPSL by providing an exemption for an individual who submits documentation acceptable to the Board demonstrating why they should not be subject to the training or continuing education requirement. The Board also proposes to clarify the standards for granting an exemption under paragraph (3) by explaining that the Board will not grant an exemption based solely upon proof that children are not a part of the applicant’s or licensee’s practice and that each request for an exemption will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education is duplicative or unnecessary under the circumstances.

In subsection (d), the Board proposes to clarify that exemptions which are granted are applicable only to the biennial renewal period in which the exemption is requested. In addition, this subsection will also clarify the process for notifying an applicant or licensee of the Board’s decision to grant or deny the exemption.

Finally, the Board proposes to add § 23.118 to set forth the administrative process developed by the Bureau, in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver the training required under section 6383(b)(3) of the CPSL. Subsection (a) requires the individual, entity or organization to apply simultaneously to the Department of Human Services and the Bureau. Subsection (b) sets forth the required course materials to be submitted. In addition to the materials to be submitted relating to the content of the training itself for review by the Department of Human Services, the Bureau has established a requirement that to be approved to provide the mandatory training in child abuse recognition and reporting, an individual, entity or organization must be able to report participation or attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the individual’s record with the Board at the time the course is completed. Then, at the time of application or renewal, the system verifies that the training was completed as required prior to issuing or renewing the license. Thus, the Board will not issue or renew a license unless an electronic report has been received from an approved course provider or the individual has received an exemption from the mandatory training requirement. Finally, subsection (c) clarifies that the Bureau will notify the

individual, entity or organization in writing upon approval of the course and will post the list of approved providers on the Bureau's and the Board's web site.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees are already required to complete mandatory continuing education, and these 2 hours in child abuse recognition and reporting are incorporated in the existing requirement, there would be no increased burden. Only applicants for licensure would incur an additional requirement, and as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because all approved training providers of the mandatory training in child abuse recognition and reporting are required to report attendance or participation electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 14, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House 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 in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523 or by e-mail to RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-5215 (Child Abuse Reporting Requirements).

LUANNE K. CHUBB, OD, FAAO,
Chairperson

Fiscal Note: 16A-5215. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 23. STATE BOARD OF OPTOMETRY
GENERAL PROVISIONS

§ 23.1 Definitions.

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

Act—The Optometric Practice and Licensure Act (63 P.S. §§ 244.1—244.12).

Board—The State Board of Optometry of the Commonwealth.

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—The Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.]

Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of these acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of [**Public Welfare**] **Human Services**, which operates a 24-hour a day Statewide [**toll free**] **toll-free** telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

Clinical skills assessment examination—A clinical skills competency examination developed, prepared, administered and scored by the NBEO, which the Board adopts as the State clinical examination for licensure.

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Inactive status—The status of not having one's license currently registered.

[*Individual residing in the same home as the child*—An individual who is 14 years of age or older and who resides in the same home as the child.]

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For the purposes of this chapter, the term includes all licensed optometrists.

NBEO—The National Board of Examiners in Optometry.

National Board Examination—A written academic examination developed, prepared, administered and scored by the NBEO, which the Board adopts as the National uniform written examination for licensure.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent] A person who has committed child abuse as defined in this section. The following apply:

(i) This term includes only the following:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.

(E) An individual 14 years of age or older who resides in the same home as the child.

(F) An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

(G) An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000.

(ii) Only the following may be considered a perpetrator for failing to act, as provided in this section:

(A) A parent of the child.

(B) A spouse or former spouse of the child's parent.

(C) A paramour or former paramour of the child's parent.

(D) A person responsible for the child's welfare who is 18 years of age or older.

(E) A person 18 years of age or older who resides in the same home as the child.

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a

child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

- (i) A youth camp or program.
- (ii) A recreational camp or program.
- (iii) A sports or athletic program.
- (iv) A community or social outreach program.
- (v) An enrichment or educational program.
- (vi) A troop, club or similar organization.

Recent [acts or omissions—Acts or omissions] **act or failure to act**—An act or failure to act committed within 2 years of the date of the report to the Department of [Public Welfare] Human Services or county agency.

Retired practitioner—One who is no longer engaged in the practice of optometry as defined in section 2 of the act (63 P.S. § 244.2) (see definition of “practice of optometry”).

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

- (i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child’s life or safety is threatened.
- (ii) Seriously interferes with a child’s ability to accomplish age-appropriate developmental and social tasks.

[**Serious physical injury**—An injury that causes a child severe pain or significantly impairs a child’s physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child’s life or health, threatens a child’s well-being, causes bodily injury or impairs a child’s health, development or functioning:

- (i) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child’s developmental age and abilities.
- (ii) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, ad-

cent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.]
Any of the following:

(i) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:

(A) Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

(B) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

(C) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

(D) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child’s age.

TMOD—Treatment and Management of Ocular Disease Examination—An examination developed, prepared, administered and scored by the NBEO, which the Board adopts as the examination for certification in pharmaceutical agents for therapeutic purposes.

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LICENSE BY EXAMINATION

§ 23.11. Qualifications for license by examination.

To obtain a license by examination, a candidate shall meet the following requirements:

(1) A Doctor of Optometry degree from an accredited optometric educational institution in the United States or Canada. A graduate of an unaccredited school of optometry shall also meet the requirements of § 23.14 (relating to graduates of unaccredited schools).

(2) Passing scores on Parts I, II Stage a and II Stage b of the National Board Examination, which the Board adopts as the written examination for licensure.

(3) Satisfaction of the general qualifications of section 4 of the act (63 P.S. § 244.4) and of this chapter.

(4) Passing scores of the Clinical Skills Assessment Examination. A candidate for license by examination will not be eligible to sit for the Clinical Skills Assessment Examination unless the candidate has met the requirements of [**this section**] paragraphs (1)—(3).

(5) Completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 23.117(a) (relating to child abuse recognition and reporting—mandatory training requirement).

LICENSE BY RECIPROCITY AND INTERSTATE CERTIFICATION

§ 23.21. Reciprocal application.

(a) An applicant for licensure by reciprocity to practice optometry in this Commonwealth shall submit or cause to be submitted the following to the Board:

(1) A completed application which has been filed with the Board together with the fee required by § 23.91 (relating to fees) [, **in the form of a check or money order, made payable to “Commonwealth of Pennsylvania—OE.”**] .

(2) A certificate of preprofessional education issued by the Department, showing that the preliminary education requirements are satisfied.

(3) A transcript of subjects and grades from the college or school of optometry from which the applicant has graduated.

(4) Proof of having completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 23.117(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(b) Any school or college of optometry from which the applicant for reciprocity has graduated shall be one approved by the Board at the time [**he was**] the applicant graduated.

(c) An applicant for licensure by reciprocity who is a graduate of an unaccredited school shall comply with the requirements of § 23.14 (relating to graduates of unaccredited schools).

VOLUNTEER LICENSE

§ 23.26. Volunteer license.

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(c) *Applications*. An applicant for a volunteer license shall complete an application obtained from the Board. In addition to providing information requested by the Board, the applicant shall provide, or cause to be provided:

(1) An executed verification on forms provided by the Board certifying that the applicant intends to practice optometry exclusively:

(i) Without personal remuneration for professional services.

(ii) In an approved clinic.

(2) A letter signed by the director or chief operating officer of an approved clinic that the applicant has been authorized to provide volunteer services in the named clinic by the governing body or responsible officer of the clinic.

(3) Evidence of completion of at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 23.117(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(d) *Validity of license*. A volunteer license shall be valid for the biennial period for which it is issued, subject to biennial renewal. During each biennial renewal period, the licensee shall notify the Board of any change in clinic or volunteer status within 30 days of the date of a change, or at the time of renewal, whichever occurs first.

(e) *Biennial renewal*. A volunteer license shall be renewed biennially on forms provided by the Board.

(1) As a condition of biennial renewal, the applicant shall satisfy the same continuing education requirements as the holder of an active, unrestricted license, including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 23.117(b).

(2) The applicant shall be exempt from payment of the biennial renewal fee of § 23.91 (relating to fees).

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CONTINUING EDUCATION

§ 23.81. Coverage.

(a) This section and §§ 23.82—23.89 apply to all optometrists who are required to be licensed under the act; however, [**any**] an applicant, upon successful completion of the optometric examination for licensure, shall be exempt from the requirements of continuing education for only the biennial period during which the applicant successfully completed [**such**] the examination if the applicant takes [**such**] the examination within [**two**] 2 years from [**his**] the applicant's graduation from an accredited college or school of optometry.

(b) [**Any**] An individual who is in an inactive status or is a retired practitioner is not required to meet the continuing education requirements as outlined in this section and §§ 23.82—23.89 except to the extent that, upon application for reactivation, [**such**] the individual shall be required to show proof of continuing education for the biennial period immediately preceding [**such**] the request for reactivation, including at least 2 hours of approved courses in child abuse recognition and

reporting as required under § 23.117(b) (relating to child abuse recognition and reporting—mandatory training requirement).

§ 23.82. Continuing education hour requirements; continuing education reporting; audit and enforcement.

(a) An applicant for biennial license renewal or reactivation of license is required to complete, during the 2 years immediately preceding renewal or reactivation, a minimum of 30 hours of continuing education, **including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 23.117(b) (relating to child abuse recognition and reporting—mandatory training requirement).** A licensee whose license is not renewed by the expiration of the biennial renewal period may not engage in the practice of optometry until the continuing education requirements are satisfied and the license has been renewed or reactivated.

(1) For licensees certified in accordance with 4.1 of the act (63 P.S. § 244.4a), regarding certification to prescribe and administer pharmaceutical agents for therapeutic purposes, at least 6 of the required 30 hours shall concern the prescription and administration of pharmaceutical agents for therapeutic purposes.

(2) For licensees certified in accordance with section 4.2 of the act (63 P.S. § 244.4b), regarding additional requirements to prescribe and administer pharmaceutical agents for the treatment of certain types of glaucoma, at least 4 of the 30 hours shall concern the prescription and administration of pharmaceutical agents for the treatment of glaucoma. No more than 4 hours taken in the treatment of glaucoma may be applied toward the 6 hours required to maintain therapeutic certification; however, all licensees shall complete at least 30 total hours.

(3) Completion of a Board-approved course described in section 4.1(a)(2) of the act or continuing education described in section 4.2 of the act shall satisfy the continuing education requirement for the biennial renewal period in which it is completed including the 6-hour requirement in therapeutics and the 4-hour requirement in glaucoma.

(b) Licensees shall certify completion of the required continuing education on the biennial renewal application as a condition of renewal. False certifications will be ground for disciplinary action under section 7(a)(3) of the act (64 P.S. § 244.7(a)(3)).

* * * * *

§ 23.83. Continuing education subject matter.

(a) **[Acceptable] Except as provided in subsection (d), acceptable** courses of study are limited to those pertaining to the use or means or methods for examination, diagnosis and treatment of conditions of the human visual system and may include examination for and adapting and fitting of all types of lenses. The Board will not accept courses of study which do not relate to the actual practice of optometry such as studies in office management and financial procedures.

(b) Courses that will meet the requirements for certification in the prescription and administration of pharmaceutical agents for therapeutic purposes in accordance with section 4.1 of the act (63 P.S. § 244.4a) shall concern the treatment and management of ocular or oculo-systemic disease.

(c) Courses that will meet the requirements for certification to treat glaucoma in accordance with section 4.2 of the act (63 P.S. § 244.4b) shall concern the treatment and

management of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.

(d) At least 2 hours of continuing education shall be completed in child abuse recognition and reporting as required under 23 Pa.C.S. § 6383(b)(3)(ii) (relating to education and training) in accordance with § 23.117(b) (relating to child abuse recognition and reporting—mandatory training requirement). Notwithstanding the requirements for Board approval of optometric continuing education programs in §§ 23.84—23.86 (relating to provider and program registration; standards for providers; and sources of continuing education hours), courses in child abuse recognition and reporting must be approved in accordance with § 23.118 (relating to child abuse recognition and reporting course approval process).

CHILD ABUSE REPORTING REQUIREMENTS

§ 23.111. Suspected child abuse—mandated reporting requirements.

(a) *General rule.*

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), optometrists [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.] are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to take steps to identify the person responsible for the child abuse, if unknown, in order for the mandated reporter to make a report of suspected child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [**Optometrists who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d)] Whenever an optometrist is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that optometrist shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.**

(c) *Reporting procedure.* [**Reports of suspected child abuse shall be made by telephone and by written report.**

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.]

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (relating to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) *Written or electronic reports.* [**Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:] A written or electronic report of suspected child abuse, shall include the following information, if known:**

(1) The names and addresses of the child [**and**], the **child's** parents [**or**] **and any** other person responsible for the [**care of the child, if known**] **child's welfare.**

(2) Where the suspected **child** abuse occurred.

(3) The age and sex of [**the subjects**] **each subject** of the report.

(4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or [**siblings**] **any sibling** of the child.

(5) The name and relationship of [**the persons**] **each individual** responsible for causing the suspected abuse[, **if known,**] and any evidence of prior abuse by [**those persons**] **each individual.**

(6) Family composition.

(7) The source of the report.

(8) The **name, telephone number and e-mail address of the** person making the report [**and where that person can be reached**].

(9) The actions taken by the [**reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner**] **person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.**

(10) Other information which the Department of [**Public Welfare**] **Human Services** may require by regulation.

(11) Other information required by Federal law or regulation.

§ 23.112. Photographs, medical tests and X-rays of child subject to report.

An optometrist **required to report suspected child abuse** may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, **or within 48 hours after an electronic report is made under § 23.111(c)(2) (relating to suspected child abuse—mandated reporting requirements),** or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. **Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).**

§ 23.113. Suspected death as a result of child abuse—mandated reporting requirement.

An optometrist who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner **or medical examiner** of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner **or medical examiner** of the county where the injuries were sustained.

§ 23.114. Immunity from liability.

(a) Under 23 Pa.C.S. § 6318 (relating to immunity from liability), an optometrist who participates in good faith in the making of a report **of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team**, testifying in a proceeding arising out of an instance of suspected child abuse **or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317** shall have immunity from civil and criminal liability that might otherwise result by reason of the optometrist's actions. For the purpose of any civil or criminal proceeding, the good faith of the optometrist shall be presumed.

(b) The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of an optometrist's actions **[in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs] under §§ 23.111—23.113 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).**

§ 23.115. Confidentiality—waived.

To protect children from abuse, the reporting requirements of this chapter take precedence over provisions of the act as defined in § 23.1 (relation to definitions) and other ethical principles or professional standards that might otherwise apply to optometrists. **In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between a mandated reporter and a patient do not apply to a situation involving child abuse and do not relieve the mandated reporter of the duty to make a report of suspected child abuse.**

§ 23.116. Noncompliance.

(a) *Disciplinary action.* An optometrist who willfully fails to comply with the reporting requirements in §§ 23.111—23.113 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 7(8), (10) and (11) of the act (63 P.S. § 244.7(8), (10) and (11)).

(b) *Criminal penalties.* **[Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), an optometrist who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.] Under 23 Pa.C.S. § 6319 (relating to penalties), a mandated reporter who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:**

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report continues while the mandated reporter knows or has reasonable cause to suspect a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

(Editor's Note: Sections 23.117 and 23.118 are proposed to be added and are printed in regular type to enhance readability.)

§ 23.117. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license shall have completed at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 23.118 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance or participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial license renewal or reactivation set forth in § 23.82 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement). For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 23.118. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance or participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee also holds a license issued by another licensing board within the

Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not a part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant an exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a discrepancy notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for exemption.

§ 23.118. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education

and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include the following:

(1) Contact information, including mailing address, e-mail address and telephone number, for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) Course-related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of the authorized representative of the provider. The signature may be an electronic signature.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation/attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

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STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

[49 PA. CODE CH. 45]

Child Abuse Reporting Requirements

The State Board of Examiners in Speech-Language Pathology and Audiology (Board) proposes to amend §§ 45.12, 45.13, 45.401—45.407 and 45.501—45.503 and to add §§ 45.408 and 45.409 (relating to child abuse recognition and reporting—mandatory training requirement; and child abuse recognition and reporting course approval process) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 5(2) of the Speech-Language Pathologists and Audiologists Licensure Act (act) (63 P.S. § 1705(2)) sets forth the Board's general rulemaking authority. Under 23 Pa.C.S. Chapter 63 (relating to Child Protective Services Law) (CPSL), specifically section 6383(b)(2) of the CPSL (relating to education and training), the Board is required to promulgate regulations to implement the mandatory reporting requirements for licensees of the Board.

Background and Purpose

Since 2014, the General Assembly has made numerous amendments to the CPSL, including the requirement imposed by the act of April 15, 2014 (P.L. 411, No. 31) (Act 31) on all health-related boards requiring training in child abuse recognition and reporting for licensees who are considered "mandated reporters" under the CPSL. Section 2 of Act 31 provided that these training requirements would apply to all persons applying for a license, or applying for renewal of a license, on or after January 1, 2015, and were implemented as of that date. This proposed rulemaking is required to update the Board's existing regulations on the subject of child abuse reporting to comport to the numerous amendments made to the CPSL.

Description of the Proposed Amendments

The Board proposes to amend § 45.12 (relating to licensure and application procedures) to incorporate the requirement for all applicants to complete, as a condition of licensure, at least 3 hours of training in child abuse recognition and reporting as required by section 6383(b)(3)(i) of the CPSL. Similarly, the Board proposes to amend § 45.13 (relating to renewal of license; inactive status of license; required continuing education) to set forth the requirement that licensees applying for biennial renewal complete at least 2 hours of continuing education in approved courses in child abuse recognition and reporting as a condition of renewal as required by section 6383(b)(3)(ii) of the CPSL.

The Board is also proposing comprehensive amendments to the Board's existing child abuse reporting requirements to comport to the amendments to the CPSL. The Board proposes to amend § 45.401 (relating to definitions) to update the definitions of terms used in the CPSL. Specifically, the Board finds it necessary to define the terms "bodily injury," "child," "parent," "program, activity or service" and "serious physical neglect" and to amend the definitions of "child abuse," "perpetrator," "person responsible for the child's welfare," "recent acts or omissions" and "sexual abuse or exploitation" to comport with amendments made to the CPSL. The Board has also added a definition for the terms "Bureau," "licensee" and "mandated reporter" for ease of reference. The Board also proposes to delete the definitions for "individual residing in the same home of the child" and "serious physical injury" because these terms have been deleted from the CPSL. The Board also proposes to amend, where necessary throughout this proposed rulemaking, the name of the Department of Public Welfare, as the name of that agency has changed to the Department of Human Services.

The Board is proposing to amend § 45.402 (relating to suspected child abuse—mandated reporting requirements) to provide the general rule that all licensees of the Board are considered mandated reporters, and update the mandated reporting requirements and reporting procedures as set forth in section 6311 and 6313 of the CPSL, as amended. The Department of Human Services has implemented an electronic reporting process for mandated reporters, and the Board finds it necessary to propose amendments to § 45.403 (relating to photographs, medical tests and X-rays of child subject to report) to set forth the requirement for licensees to submit documentation relating to photographs, medical tests and X-rays to the county children and youth social service agency within 48 hours of making an electronic report in accordance with section 6314 of the CPSL, and to include the requirement that medical summaries or reports of the photographs, X-rays and relevant medical tests be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).

The Board is proposing to amend § 45.404 (relating to suspected death as a result of child abuse—mandated reporting requirement) to incorporate an amendment made to section 6317 of the CPSL to permit such a report to be made to the medical examiner of the county where the death occurred or of the county where the injuries were sustained. Further the Board is proposing to amend and restructure § 45.405 (relating to immunity from liability) to incorporate amendments made to section 6318 of the CPSL in subsection (a) and to clarify in subsection (b) that the Board will uphold the same good faith presumption in any disciplinary proceedings that may be brought for violations of the duties imposed upon licensees that are set forth in §§ 45.402—45.404. The Board also proposes to amend § 45.406 (relating to confidentiality—waived) to incorporate the provisions of section 6311.1 of the CPSL. Likewise, the Board proposes to amend § 45.407 (relating to noncompliance) to update the criminal penalties for failure to make a report or referral required by the CPSL, which have been increased in recent years from a summary offense for a first violation and a misdemeanor for a second or subsequent violation to a misdemeanor of the second degree for most offenses, except under certain enumerated circumstances where the offense is graded as a felony.

The Board proposes to add two new sections to incorporate the mandatory training requirements set forth in section 6383(b)(3)(i) and (ii) of the CPSL. Section 45.408 (relating to child abuse recognition and reporting—mandatory training requirement) would set forth the requirements that all individuals applying for an initial license are required to complete at least 3 hours of approved training in child abuse recognition and reporting in subsection (a), and that all licensees seeking renewal are required to complete at least 2 hours of approved continuing education courses in child abuse recognition and reporting as a requirement of biennial renewal in subsection (b). The Board would also provide notice that these 2 hours of training would be accepted as a portion of the total continuing education required for biennial renewal, and not an additional requirement, as provided in section 6382(b)(3)(ii) of the CPSL. The Board is also clarifying that a license will not be issued or renewed unless the Bureau has received an electronic report from an approved course provider documenting attendance or participation by the licensee in an approved course or the licensee has been granted an exemption under subsection (c). The proposal would also clarify that for purposes of renewal, the course must be completed within the applicable biennial renewal period, and that if a licensee holds more than one license issued by the Board or also holds a license from another licensing board within the Bureau that required mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

Subsection (c) would include the process for applying for an exemption from the mandatory training requirements as set forth in section 6383(b)(4) and (6) of the CPSL for individuals who have already completed similar training or who otherwise should be exempt from the training requirements. Specifically, paragraph (1) provides an exemption for individuals who have already completed comparable training under section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6). Paragraph (2) provides an exemption for individuals who have completed comparable training under section 6383(c) of the CPSL. The Board notes that section 6383(b)(4)(ii)(B) of the CPSL provides an exemption for individuals who have already completed child abuse recognition training required under the Human Services Code (formerly known as the Public Welfare Code), and the training was approved by the Department of Human Services. However, the Department of Human Services has confirmed that there is not a provision in the Human Services Code that requires such training. Instead, section 6383(c) of the CPSL sets forth the requirement that certain individuals and entities regulated by the Department of Human Services complete mandated reporter training. Therefore, the Board believes it is appropriate to include an exemption for an applicant or licensee who has already completed comparable training in child abuse recognition and reporting required by the Department of Human Services under section 6383(c) of the CPSL. For example, if an audiologist happened to be a foster parent and was, therefore, required to complete the training under section 6383(c), there would be no need to repeat the training as a condition of licensure or license renewal under section 6383(b). In addition, section 6383(b)(6) of the CPSL permits the Board to exempt a licensee from the training requirement “if the licensee submits documentation acceptable to the licensing board that the licensee should not be subject to the training or continuing education requirement.” The Board believes that this section also provides the authority of the Board to determine that

those licensees who are required to complete comparable training under section 6383(c) should be exempt from the training requirement under section 6383(b), provided they submit acceptable documentation to the Board evidencing completion of comparable training. Finally, paragraph (3) would further implement section 6383(b)(6) of the CPSL by providing an exemption for an individual who submits acceptable documentation demonstrating why they should not be subject to the training or continuing education requirement. The Board also proposes to clarify the standards for granting an exemption under paragraph (3) by explaining that the Board will not grant an exemption based solely upon proof that children are not a part of the applicant’s or licensee’s practice and that each request for an exemption will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

The Board is also proposing subsection (d), which will clarify that exemptions which are granted are applicable only to the biennial renewal period in which the exemption is requested. Subsection (d) will also set forth the process for notifying an applicant or licensee of the Board’s decision to grant or deny the exemption.

Additionally, the Board proposes to add § 45.409 (relating to child abuse recognition and reporting course approval process) to set forth the administrative process developed by the Bureau, in conjunction with the Department of Human Services, for individuals, entities and organizations to apply for approval to deliver the mandatory training in child abuse recognition and reporting. Subsection (a) requires an individual, entity or organization to apply simultaneously to the Bureau and the Department of Human Services. Subsection (b) sets forth the required course materials to be submitted. In addition to the materials that are required to be submitted relating to the content of the training itself for review by the Department of Human Services, the Bureau has established a requirement that to be approved to provide the mandatory training in child abuse recognition and reporting, an individual, entity or organization must be able to report participation or attendance electronically to the Bureau. In this manner, the completion of the training is automatically imported into the applicant’s or licensee’s record with the Board at the time the course is completed. Then, at the time of application or renewal, the system verifies that the training was completed as required prior to issuing or renewing the license. Thus, the Board will not renew a license unless an electronic report has been received from an approved course provider or the licensee has received an exemption from the mandatory training requirement. Finally, subsection (c) clarifies that the Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau’s and the Board’s web site.

The Board further proposes amendments to Subchapter G (relating to continuing education). Section 45.501 (relating to credit hour requirements) is proposed to be amended to incorporate the 2 hours of child abuse recognition and reporting training as part of the existing requirement for licensees to complete 20 clock hours of continuing education, and not as an additional requirement. Section 45.502 (relating to exemption and waiver) is proposed to be amended to clarify that these 2 hours of mandatory training are an exception to the rule that licensees are not required to complete continuing education during the first biennial period in which first li-

censed. Finally, § 45.503 (relating to continuing education requirement for reactivation of inactive and lapsed licenses) is likewise proposed to be amended to incorporate the mandatory training in child abuse recognition and reporting as a condition of reactivation of an inactive or lapsed license.

Fiscal Impact and Paperwork Requirements

The Board does not anticipate any significant fiscal impact or paperwork requirements relating to these amendments. Because licensees are already required to complete mandatory continuing education requirements, and these 2 hours in child abuse recognition and reporting are incorporated into the existing requirement, there would not be an increased burden. Only applicants for licensure will incur an additional requirement and, as there are many low-cost and free options available to complete the training, the Board anticipates this impact to also be minimal. Because approved training providers of the mandatory training in child abuse recognition and reporting are required to report participation or attendance electronically, there are no additional paperwork requirements imposed on licensees. In addition, the implementation of an electronic reporting system for mandated reporters of child abuse under the CPSL by the Department of Human Services has decreased the paperwork requirements related to the mandatory reporting requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 14, 2023, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House 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 any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) 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.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Regulatory Counsel, State Board of Examiners in Speech-Language Pathology and Audiology, P.O. Box 69523, Harrisburg, PA 17106-5923 or RA-STRegulatoryCounsel@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6805 (child abuse reporting requirements) when submitting comments.

PATRICK MURPHY, AuD,
Chairperson

Fiscal Note: 16A-6805. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 45. STATE BOARD OF EXAMINERS IN SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

Subchapter B. LICENSURE AND CERTIFICATION

§ 45.12. Licensure and application procedures.

(a) The applicant for licensure shall submit to the Board, along with required fees as provided by § 45.1 (relating to fees), a completed, signed and dated application and applicable documentation.

(b) Excluding applicants who fall within the exclusions in section 6(b) of the act (63 P.S. § 1706(b)), the applicant for licensure shall file, or cause to be filed, with the Board evidence that the applicant has:

(1) *Speech-language pathologists.*

(i) Met the educational requirements of § 45.17(a) (relating to education requirements).

(ii) Completed 9 months of supervised professional experience requirements of § 45.20 (relating to supervised professional experience required for licensure as a speech-language pathologist).

(iii) Passed an examination approved by the Board.

(iv) Demonstrated that the applicant is of good moral character.

(v) Completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 45.408(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) *Audiologists.*

(i) Met the educational requirements of § 45.17(b).

(ii) Passed an examination approved by the Board.

(iii) Demonstrated that the applicant is of good moral character.

(iv) Completed at least 3 hours of approved training in child abuse recognition and reporting in accordance with § 45.408(a).

(c) An applicant who wishes to apply for more than one Board-issued license or provisional license specified in § 45.11 (relating to licenses and certifications) shall submit a separate application for each license or provisional license.

§ 45.13. Renewal of license; inactive status of license; required continuing education.

* * * * *

(f) A licensee who fails to renew a license or who requests to be placed on inactive status will not be sent Board notifications until the license is renewed or reactivated.

(g) An application for renewal of a license will not be granted unless the licensee has certified that the licensee has completed the required continuing education hours under § 45.501 (relating to credit hour requirements), **including at least 2 hours of approved continuing education in child abuse recognition and reporting**

in accordance with § 45.408(b) (relating to child abuse recognition and reporting—mandatory training requirement). If requested by the Board, an application for renewal shall also include the documentation required under § 45.504 (relating to reporting completion of continuing education).

(h) An application for reactivation of an inactive or lapsed license shall also include the documentation required under § 45.504 for the preceding biennial period.

Subchapter F. CHILD ABUSE REPORTING REQUIREMENTS

§ 45.401. Definitions.

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

Bodily injury—Impairment of physical condition or substantial pain.

Bureau—The Bureau of Professional and Occupational Affairs within the Department of State of the Commonwealth.

Child—An individual under 18 years of age.

Child abuse—[A term meaning any of the following:

(i) A recent act or failure to act by a perpetrator which causes nonaccidental serious physical injury to a child under 18 years of age.

(ii) An act or failure to act by a perpetrator which causes nonaccidental serious mental injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iii) A recent act, failure to act or series of acts or failures to act by a perpetrator which creates an imminent risk of serious physical injury to or sexual abuse or sexual exploitation of a child under 18 years of age.

(iv) Serious physical neglect by a perpetrator constituting prolonged or repeated lack of supervision or the failure to provide the essentials of life, including adequate medical care, which endangers a child's life or development or impairs the child's functioning.] Intentionally, knowingly or recklessly doing any of the following:

(i) Causing bodily injury to a child through any recent act or failure to act.

(ii) Fabricating, feigning or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to the child through any recent act.

(iii) Causing or substantially contributing to serious mental injury to a child through any act or failure to act or a series of these acts or failures to act.

(iv) Causing sexual abuse or exploitation of a child through any act or failure to act.

(v) Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act.

(vi) Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act.

(vii) Causing serious physical neglect of a child.

(viii) Engaging in any of the following recent acts:

(A) Kicking, biting, throwing, burning, stabbing or cutting a child in a manner that endangers the child.

(B) Unreasonably restraining or confining a child, based on consideration of the method, location or duration of the restraint or confinement.

(C) Forcefully shaking a child under 1 year of age.

(D) Forcefully slapping or otherwise striking a child under 1 year of age.

(E) Interfering with the breathing of a child.

(F) Causing a child to be present at a location while a violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement.

(G) Leaving a child unsupervised with an individual, other than the child's parent, who the actor knows or reasonably should have known:

(I) Is required to register as a Tier II or Tier III sexual offender under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), when the victim of the sexual offense was under 18 years of age when the crime was committed.

(II) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.24 (relating to assessments) or any of its predecessors.

(III) Has been determined to be a sexually violent delinquent child as defined in 42 Pa.C.S. § 9799.12 (relating to definitions).

(IV) Has been determined to be a sexually violent predator under 42 Pa.C.S. § 9799.58 (relating to assessments) or has to register for life under 42 Pa.C.S. § 9799.55(b) (relating to registration).

(ix) Causing the death of the child through any act or failure to act.

(x) Engaging a child in a severe form of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000 (Division A of Pub.L. No. 106-386).

ChildLine—An organizational unit of the Department of Human Services, which operates a 24-hour a day Statewide toll-free telephone system for receiving reports of suspected child abuse, referring reports for investigation and maintaining the reports in the appropriate file.

[**Individual residing in the same home as the child**—An individual who is 14 years of age or older and who resides in the same home as the child.]

Licensee—An audiologist or speech-language pathologist licensed by the Board.

Mandated reporter—A person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. For purposes of this subchapter, the term includes all audiologists and speech-language pathologists licensed by the Board.

Parent—A biological parent, adoptive parent or legal guardian.

Perpetrator—[A person who has committed child abuse and is a parent of the child, a person responsible for the welfare of a child, an individual residing in the same home as a child or a paramour of a child's parent.] A person who has committed child abuse as defined in this section. The following apply:

(i) **This term includes only the following:**

(A) **A parent of the child.**

(B) **A spouse or former spouse of the child's parent.**

(C) **A paramour or former paramour of the child's parent.**

(D) **An individual 14 years of age or older who is a person responsible for the child's welfare or who has direct contact with children as an employee of child-care services, a school or through a program, activity or service.**

(E) **An individual 14 years of age or older who resides in the same home as the child.**

(F) **An individual 18 years of age or older does not reside in the same home as the child but is related, within the third degree of consanguinity or affinity by birth or adoption, to the child.**

(G) **An individual 18 years of age or older who engages a child in severe forms of trafficking in persons or sex trafficking, as those terms are defined under section 103 of the Trafficking Victims Protection Act of 2000.**

(ii) **Only the following may be considered a perpetrator for failing to act, as provided in this section:**

(A) **A parent of the child.**

(B) **A spouse or former spouse of the child's parent.**

(C) **A paramour or former paramour of the child's parent.**

(D) **A person responsible for the child's welfare who is 18 years of age or older.**

(E) **An individual 18 years of age or older who resides in the same home as the child.**

Person responsible for the child's welfare—A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment, training or control of a child in lieu of parental care, supervision and control. [The term does not include a person who is employed by or provides services or programs in a public or private school, intermediate unit or area vocational-technical school.]

Program, activity or service—Any of the following in which children participate and which is sponsored by a school or a public or private organization:

(i) **A youth camp or program.**

(ii) **A recreational camp or program.**

(iii) **A sports or athletic program.**

(iv) **A community or social outreach program.**

(v) **An enrichment or educational program.**

(vi) **A troop, club or similar organization.**

Recent [acts or omissions—Acts or omissions] act or failure to act—An act or failure to act committed within 2 years of the date of the report to the Department of Human Services or county agency.

Serious mental injury—A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that does one or more of the following:

(i) Renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened.

(ii) Seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

[Serious physical injury—An injury that causes a child severe pain or significantly impairs a child's physical functioning, either temporarily or permanently.]

Serious physical neglect—Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:

(i) **A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.**

(ii) **The failure to provide a child with adequate essentials of life, including food, shelter or medical care.**

Sexual abuse or exploitation—[The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in sexually explicit conduct or a simulation of sexually explicit conduct for the purpose of producing a visual depiction, including photographing, videotaping, computer depicting or filming, of sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.]
Any of the following:

(i) **The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes the following:**

(A) **Looking at sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.**

(B) **Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.**

(C) **Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.**

(D) **Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.**

(ii) Any of the following offenses committed against a child:

(A) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

(B) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

(C) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

(D) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(E) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(F) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(G) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(H) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(I) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(J) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(K) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(L) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(M) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(iii) For the purposes of subparagraph (i), the term does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within 4 years of the child's age.

§ 45.402. Suspected child abuse—mandated reporting requirements.

(a) General rule.

(1) Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), licensees [who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare and to the appropriate county agency when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.] of the Board are considered mandated reporters. A mandated reporter shall make a report of suspected child abuse in accordance with this section if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:

(i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of the profession or through a regularly scheduled program, activity or service.

(ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.

(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this subsection shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this subsection shall require the mandated reporter to take steps to identify the person responsible for the child abuse, if unknown, in order for the mandated reporter to make a report of suspected child abuse.

(b) Staff members of public or private agencies, institutions and facilities. [Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the Board regulated practitioner, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).] Whenever a licensee is required to make a report under subsection (a) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that licensee shall report immediately in accordance with subsection (c) and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge.

(c) Reporting procedure. [Reports of suspected child abuse shall be made by telephone and by written report.

(1) Oral reports. Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) Written reports. Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.]

A mandated reporter shall immediately make a report of suspected child abuse to the Department of Human Services by either:

(1) Making an oral report of suspected child abuse by telephone to ChildLine at (800) 932-0313, followed by a written report within 48 hours to the Department of Human Services or the county agency assigned to the case in a manner and format prescribed by the Department of Human Services. The written report submitted under this subparagraph may be submitted electronically.

(2) Making an electronic report of suspected child abuse in accordance with 23 Pa.C.S. § 6305 (related to electronic reporting) through the Department of Human Service's Child Welfare Information Solution self-service portal at www.compass.state.pa.us/cwis. A confirmation by the Department of Human Services of the receipt of a report of suspected child abuse submitted electronically relieves the mandated reporter of the duty to make an additional oral or written report.

(d) Written or electronic reports. [Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:] A written or electronic report of suspected child abuse, shall include the following information, if known:

(1) The names and addresses of the child [and], the child's parents [or] and any other person responsible for the [care of the child, if known] child's welfare.

(2) Where the suspected child abuse occurred.

(3) The age and sex of [the subjects] each subject of the report.

(4) The nature and extent of the suspected child abuse, including any evidence of prior abuse to the child or [siblings] any sibling of the child.

(5) The name and relationship of [the persons] each individual responsible for causing the suspected abuse [, if known,] and any evidence of prior abuse by [those persons] each individual.

(6) Family composition.

(7) The source of the report.

(8) The name, telephone number and e-mail address of the person making the report [and where that person can be reached].

(9) The actions taken by the [reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner] person making the report, including actions taken under 23 Pa.C.S. §§ 6314—6317.

(10) Other information which the Department of [Public Welfare] Human Services may require by regulation.

(11) Other information required by Federal law or regulation.

§ 45.403. Photographs, medical tests and X-rays of child subject to report.

A licensee **required to report suspected child abuse** may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and

other medical tests on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent, **or within 48 hours after an electronic report is made under § 45.402(c)(2) (relating to suspected child abuse—mandated reporting requirements)**, or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request. **Medical summaries or reports of the photographs, X-rays and relevant medical tests shall be made available to law enforcement officials in the course of investigating cases under 23 Pa.C.S. § 6340(a)(9) or (10) (relating to release of information in confidential reports).**

§ 45.404. Suspected death as a result of child abuse—mandated reporting requirement.

A licensee who has reasonable cause to suspect that a child died as a result of child abuse shall report that suspicion to the coroner **or medical examiner** of the county where death occurred or, in the case where the child is transported to another county for medical treatment, to the coroner **or medical examiner** of the county where the injuries were sustained.

§ 45.405. Immunity from liability.

(a) Under 23 Pa.C.S. § 6318 (relating to immunity from liability) a licensee who participates in good faith in the making of a report of suspected child abuse, making a referral for general protective services, cooperating or consulting with an investigation including providing information to a child fatality or near fatality review team, testifying in a proceeding arising out of an instance of suspected child abuse or general protective services or [the taking of photographs] engaging in any action authorized under 23 Pa.C.S. §§ 6314—6317, shall have immunity from civil and criminal liability that might otherwise result by reason of the licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the licensee shall be presumed.

(b) The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a licensee's actions [in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.] under §§ 45.402—45.404 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement).

§ 45.406. Confidentiality—waived.

To protect children from abuse, the reporting requirements of §§ 45.402—45.404 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) take precedence over the provisions § 45.103(ii) (relating to unprofessional conduct) and any client confidentiality, ethical principle or professional standard that might otherwise apply. **In accordance with 23 Pa.C.S. § 6311.1 (relating to privileged communications), privileged communications between**

a mandated reporter and a patient do not apply to a situation involving child abuse and do not relieve the mandated reporter of the duty to make a report of suspected child abuse.

§ 45.407. Noncompliance.

(a) *Disciplinary action.* A licensee who willfully fails to comply with the reporting requirements in §§ 45.402—45.404 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 10 of the act (63 P.S. § 1710).

(b) *Criminal penalties.* [**Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), a licensee who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.**] **Under 23 Pa.C.S. § 6319 (relating to penalties), a mandated reporter who is required to report a case of suspected child abuse or to make a referral to the appropriate authorities and who willfully fails to do so commits a criminal offense, as follows:**

(1) An offense not otherwise specified in paragraphs (2), (3) or (4) is a misdemeanor of the second degree.

(2) An offense is a felony of the third degree if all of the following apply:

(i) The mandated reporter willfully fails to report.

(ii) The child abuse constitutes a felony of the first degree or higher.

(iii) The mandated reporter has direct knowledge of the nature of the abuse.

(3) If the willful failure to report an individual suspected of child abuse continues while the mandated reporter knows or has reasonable cause to suspect that a child is being subjected to child abuse by the same individual, or while the mandated reporter knows or has reasonable cause to suspect that the same individual continues to have direct contact with children through the individual's employment, program, activity or service, the mandated reporter commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the mandated reporter commits a felony of the second degree.

(4) A mandated reporter who, at the time of sentencing for an offense under 23 Pa.C.S. § 6319, has been convicted of a prior offense under 23 Pa.C.S. § 6319, commits a felony of the third degree, except that if the child abuse constitutes a felony of the first degree or higher, the penalty for the second or subsequent offense is a felony of the second degree.

(*Editor's Note:* Sections 45.408 and 45.409 are proposed to be added and are printed in regular type to enhance readability.)

§ 45.408. Child abuse recognition and reporting—mandatory training requirement.

(a) Except as provided in subsection (c), individuals applying to the Board for an initial license shall complete

at least 3 hours of training in child abuse recognition and reporting requirements which has been approved by the Department of Human Services and the Bureau, as set forth in § 45.409 (relating to child abuse recognition and reporting course approval process). The applicant shall certify on the application that the applicant has either completed the required training or has been granted an exemption under subsection (c). The Board will not issue a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance or participation by the applicant or the applicant has obtained an exemption under subsection (c).

(b) Except as provided in subsection (c), licensees seeking renewal of a license issued by the Board shall complete, as a condition of biennial renewal of the license, at least 2 hours of approved continuing education in child abuse recognition and reporting, as a portion of the total continuing education required for biennial renewal. For credit to be granted, the continuing education course or program must be approved by the Bureau, in consultation with the Department of Human Services, as set forth in § 45.409. The Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting the attendance or participation by the licensee in an approved course within the applicable biennial renewal period or the licensee has obtained an exemption under subsection (c). If a licensee holds more than one license issued by the Board, or holds a license issued by another licensing board within the Bureau that requires mandatory training in child abuse recognition and reporting, credit for completion of an approved course will be applied to both licenses.

(c) An applicant or licensee may apply in writing for an exemption from the training/continuing education requirements set forth in subsections (a) and (b) provided the applicant or licensee meets one of the following:

(1) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training as required by section 1205.6 of the Public School Code of 1949 (24 P.S. § 12-1205.6).

(ii) The training was approved by the Department of Education in consultation with the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(2) The applicant or licensee submits documentation demonstrating that:

(i) The applicant or licensee has already completed child abuse recognition training required by 23 Pa.C.S. § 6383(c) (relating to education and training).

(ii) The training was approved by the Department of Human Services.

(iii) The amount of training received equals or exceeds the amount of training or continuing education required under subsection (a) or (b), as applicable.

(iv) For purposes of licensure renewal, the training must have been completed during the relevant biennial renewal period.

(3) The applicant or licensee submits documentation acceptable to the Board demonstrating why the applicant

or licensee should not be subject to the training or continuing education requirement. The Board will not grant an exemption based solely upon proof that children are not a part of the applicant's or licensee's practice. Each request for an exemption under this paragraph will be considered on a case-by-case basis. The Board may grant the exemption if it finds that completion of the training or continuing education requirement is duplicative or unnecessary under the circumstances.

(d) Exemptions granted under subsection (c) are applicable only for the biennial renewal period for which the exemption is requested. If an exemption is granted, the Board will issue or renew the license, as applicable. If an exemption is denied, the Board will e-mail the applicant or licensee a notice notifying them of the need to either complete an approved course or, if warranted, to submit additional documentation in support of their request for an exemption.

§ 45.409. Child abuse recognition and reporting course approval process.

(a) An individual, entity or organization may apply for approval to provide mandated reporter training as required under 23 Pa.C.S. § 6383(b) (relating to education and training) by submitting the course materials set forth in subsection (b) simultaneously to the Department of Human Services, Office of Children, Youth and Families, and to the Bureau at the following addresses:

(1) Department of Human Services, Office of Children, Youth and Families, Health and Welfare Building, 625 Forster Street, Harrisburg, PA 17120; or electronically at RA-PWOCYFCPSL@pa.gov.

(2) Bureau of Professional and Occupational Affairs, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649; or electronically at RA-stcpsl_course_app@pa.gov.

(b) Submissions shall include all of the following:

(1) Contact information, including mailing address, e-mail address and telephone number, for the agency/course administrator.

(2) General description of the training and course delivery method.

(3) Title of the course.

(4) Timed agenda and estimated hours of training.

(5) Learning objectives.

(6) Intended audience.

(7) Course-related materials, including as applicable:

(i) Handouts.

(ii) Narrated script or talking points.

(iii) Interactive activities or exercises.

(iv) Videos and audio/visual content.

(v) Knowledge checks, quizzes or other means of assessing participant's understanding of the material.

(vi) For online courses, a transcript or recording of audio training.

(8) Citation of sources, including written permission to use copyrighted material, if applicable.

(9) Anticipated credentials or experience of the presenter, or biography of presenter, if known.

(10) Printed materials used to market the training.

(11) Evaluation used to assess participants' satisfaction with the training.

(12) Sample certificate of attendance/participation, which shall include all of the following:

(i) Name of participant.

(ii) Title of training.

(iii) Date of training.

(iv) Length of training (2 or 3 hours).

(v) Name and signature of an authorized representative of the approved provider. An electronic signature is acceptable.

(vi) Statement affirming the participant attended the entire course.

(13) Verification of ability to report participation or attendance electronically to the Bureau in a format prescribed by the Bureau.

(c) The Bureau will notify the individual, entity or organization in writing upon approval of the course and will post a list of approved courses on the Bureau's web site and the Board's web site.

Subchapter G. CONTINUING EDUCATION

§ 45.501. Credit hour requirements.

(a) Each speech-language pathologist or audiologist shall have completed 20 clock hours of continuing education per license during each preceding biennial renewal period, **including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 45.408(b) (relating to child abuse recognition and reporting—mandatory training requirement)**. Excess clock hours may not be carried over to the next biennium.

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§ 45.502. Exemption and waiver.

(a) **[A] With the exception of the 2 hours of mandatory training in child abuse recognition and reporting required under § 45.408(b) (relating to child abuse recognition and reporting—mandatory training requirement), a licensee is not required to complete continuing education during the biennial period in which the licensee was first licensed to renew for the next biennium.**

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§ 45.503. Continuing education requirement for re-activation of inactive and lapsed licenses.

A licensee seeking to reactivate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennial period, **including at least 2 hours of approved courses in child abuse recognition and reporting in accordance with § 45.408(b) (relating to child abuse recognition and reporting—mandatory training requirement)**. Only continuing education obtained during the 24-month period immediately preceding application for reactivation may be used to justify reactivation. This continuing education is in addition to continuing education required to subsequently renew the license under § 45.501(c) (relating to credit hour requirements).

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