

RULES AND REGULATIONS

Title 28—HEALTH AND SAFETY

DEPARTMENT OF HEALTH

[28 PA. CODE CH. 18]

Certified Lifeguards

The Department of Health (Department) amends § 18.42 (relating to certified lifeguards) to read as set forth in Annex A.

Background and Need for Amendments

Lifeguard certifying authorities provide certification courses designed to ensure that individuals seeking to become lifeguards are properly trained and prepared in the event of a water emergency. The regulation establishes requirements that lifeguard training courses must satisfy. The Department approves lifeguard certifying authorities based on these requirements. In 2022, the Department recognized the following lifeguard certifying authorities: 1) The American Red Cross; 2) Jeff Ellis and Associates; 3) Lifeguard-Pro; 4) YMCA; 5) The Boy Scouts of America; 6) StarGuard ELITE; 7) National Aquatic Safety Company; 8) American Aquatics & Safety Training; 9) United States Lifesaving Association (beach and open water); and 10) World Academy of Safety & Health.

The existing regulation specifically names as recognized lifeguard certifying authorities American Red Cross, YMCA and Jeff Ellis and Associates, Inc. The Department has regularly received requests from lifeguard certifying authorities not listed in the regulation, such as Lifeguard-Pro, to have their names included in the regulation. The lifeguard certifying authorities not included argue that the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. are their competition and that their names in the regulation give them more credibility and a competitive advantage. Additionally, it is argued that the regulation listing the names of some lifeguard certifying authorities can appear to be the Department recommending their services over others.

Prior to drafting the proposed rulemaking, the Department mailed a letter to the lifeguard certifying authorities, including American Red Cross, YMCA and Jeff Ellis and Associates, Inc. asking for feedback, including support, opposition or alternatives, to amending the regulation to remove the names of specific lifeguard certifying authorities. The Department received support for removing the names from StarGuard ELITE and the Chair of the National Certification Committee of the United States Lifesaving Association. The Department did not receive any opposition or alternatives from the lifeguard certifying authorities. Prior to drafting this final-form rulemaking, the Department again mailed a letter to the lifeguard certifying authorities, again asking for feedback regarding the amendments to the regulation. The Department did not receive a response to this letter.

Description of Amendments

§ 18.42. Certified lifeguards

As explained in the proposed rulemaking, the Department deletes the sentence “the Department recognizes the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc. as lifeguard certifying authorities” from

subsection (a) and replaces the words “other organizations” with the word “organizations” in paragraph (1). Removing all named lifeguard certifying authorities from the regulation will alleviate the concerns of those lifeguard certifying authorities that are not specifically named in the existing regulation. There will also be no need for the Department to annually amend the regulation based on the current approved lifeguard certifying authorities and possible changes in names. The Department will continue to follow the process currently outlined in § 18.42 to approve and recognize lifeguard certifying authorities, with publication of the list of approved certifying authorities annually in the *Pennsylvania Bulletin*. The American Red Cross, the YMCA and Jeff Ellis and Associates, Inc. already follow this process, and will not be negatively impacted by the removal of their names from the regulation.

Summary and Response to Comments

Notice of the proposed rulemaking was published at 52 Pa.B. 3587 (June 25, 2022). Publication was followed by a 30-day public comment period, during which the Department received no comments. Additionally, the Independent Regulatory Review Commission (IRRC) indicated that it did not have any objections, comments or recommendations to offer on the regulation. IRRC advised that if the final-form rulemaking is delivered without revisions, and the committees do not take any action, it will be deemed approved. The House Health Committee and the Senate Health and Human Services Committee did not submit comments. The Department has made no changes from the proposed rulemaking to this final-form rulemaking.

Fiscal Impact

Department

The Department approves all lifeguard certifying authorities, including the American Red Cross, the YMCA and Jeff Ellis and Associates, Inc., and after conducting a review of materials submitted under the existing regulation, this amendment will not alter this requirement. The Department will not be fiscally impacted by this amendment.

Regulated community

There will be no fiscal impact on the lifeguard certifying authorities as a result of this amendment. Lifeguard certifying authorities are required to comply with the existing regulation and this amendment will not alter that requirement. In 2022, there were a total of ten approved lifeguard certifying authorities, including the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. The removal of the American Red Cross, YMCA and Jeff Ellis and Associates, Inc. as specifically named entities in the regulation should have no impact on them because they already submit materials annually for approval like other lifeguard certifying authorities.

Local governments

The amendment will not fiscally impact local governments.

General public

The amendment will not fiscally impact the general public.

Paperwork Requirements

The amendment will not impose any new or additional paperwork requirements on any of the previously listed entities. The existing application form and application procedures will continue to be used.

Statutory Authority

The Department's overarching authority to promulgate these regulations is found in the Public Bathing Law (act) (35 P.S. §§ 672—680d). In 1995, under section 501 of the Conservation and Natural Resources Act (71 P.S. § 1340.501), the Department of Environmental Resources (DER) was renamed the Department of Environmental Protection and DER's duties and powers were reorganized. The Department transferred the following powers and duties from DER (emphasis added):

(1) The control of nuisances arising from the sanitary condition of tenements, lodging and boarding houses and management of the sanitary affairs of this Commonwealth related to tenements, lodging and boarding houses, organized camps and public bathing places.

(2) The act of November 10, 1959 (P.L. 1400, No. 497), entitled "An act providing for the annual registration of organized camps for children, youth and adults; defining the duties of the Department of Health of the Commonwealth of Pennsylvania; and prescribing penalties."

(3) *The act of June 23, 1931 (P.L. 899, No. 299), known as the Public Bathing Law. As to the Public Bathing Law, the Department of Health shall have the authority to promulgate rules and regulations to protect the public health and safety at all public bathing places.*

71 P.S. § 1340.505. Certified lifeguards are specifically addressed in section 4.1(b) of the act (35 P.S. § 675.1(b)), which states that "[t]he department shall promulgate regulations to determine the number of lifeguards required at a recreational swimming establishment using objective criteria that take into consideration industry standards." Moreover, under section 4.1(b) of the act, the Department is to develop regulations related to lifeguards while consulting approved certifying authorities and recreational swimming establishments. Section 2(5) of the act (35 P.S. § 673(5)) defines the term "certified lifeguard" as "an individual who has a current certification in lifeguarding from a certifying authority recognized by the department in a notice published in the *Pennsylvania Bulletin*." The Department typically publishes this notice annually in the *Pennsylvania Bulletin* and on its web site.

Effectiveness/Sunset Date

The regulation will become effective upon publication in the *Pennsylvania Bulletin* as a final regulation. A sunset date will not be imposed. The Department will monitor the regulations and update them as necessary.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 9, 2022, the Department submitted notice of this proposed rulemaking, published at 52 Pa.B. 3587, to IRRC and the Chairpersons of the

Senate Health and Human Services Committee and the House Health Committee for review and comment.

The Department did not receive any public, legislative or IRRC comments on the proposed regulation. In preparing the final-form rulemaking, the Department has made no revisions based on the lack of comments.

Under section 5.1(e) of the Regulatory Review Act (71 P.S. § 745.5a(e)), on July 12, 2023, the final-form rulemaking was deemed approved by the Senate Health and Human Services Committee and the House Health Committee. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 13, 2023, and approved the final-form rulemaking.

Contact Person

Additional information regarding this final-form rulemaking may be obtained by contacting Richard A. Pugh, Environmental Health Program Manager, Bureau of Community Health Systems, 30 Kline Plaza, Harrisburg, PA 17104, (717) 736-7393, or by e-mailing RA-DHPUBLICBATHINGPL@pa.gov. Persons with a disability who wish to submit comments, suggestions, or objections regarding the final regulation may do so by using the previously listed number or address. Speech and/or hearing-impaired persons may use the Pennsylvania Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

Findings

The Department finds that:

(1) Public notice of intention to adopt the regulations adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and no comments were submitted.

(3) No amendments were made to this final-form rulemaking and therefore this final-form rulemaking does not enlarge the original purpose of the proposed rulemaking.

(4) The adoption of the regulations is necessary and appropriate for the administration of the Public Bathing Law.

Order

(1) The regulations of the Department, 28 Pa. Code Chapter 18, are amended by amending § 18.42 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(2) The Department shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(3) The Department shall submit this final-form rulemaking to IRRC, the State Health and Human Services Committee and the House Health Committee as required by law.

(4) The Department shall certify this final-form rulemaking, as approved for legality and form, and shall deposit it with the Legislative Reference Bureau as required by law.

(5) This final-form rulemaking shall take effect on publication in the *Pennsylvania Bulletin*.

DR. DEBRA L. BOGEN,
Acting Secretary

(*Editor’s Note:* See 53 Pa.B. 4068 (July 29, 2023) for IRRC’s approval order.)

Fiscal Note: Fiscal Note 10-236 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 28. HEALTH AND SAFETY

PART II. LOCAL HEALTH

CHAPTER 18. PUBLIC SWIMMING AND BATHING PLACES

GENERAL SAFETY

§ 18.42. Certified lifeguards.

(a) *Recognized lifeguard certifying authorities.*

(1) Organizations that intend to qualify as certifying authorities shall submit materials, on an annual basis, to the Department to establish that their lifeguard training courses satisfy the criteria in subsection (b).

* * * * *

[Pa.B. Doc. No. 23-1243. Filed for public inspection September 15, 2023, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Acupuncturists and Practitioners of Oriental Medicine

The State Board of Medicine (Board) hereby amends Chapter 18, Subchapter B (relating to registration and practice of acupuncturists and practitioners of Oriental medicine) to read as set forth in Annex A. Specifically, the Board amends §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 18.18 and adds § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine).

Effective Date

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

Statutory Authority

The primary statutory authority to regulate acupuncturists is granted by the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801—1806.1). Specifically, section 3(b) of the ALA (63 P.S. § 1803(b)) authorizes the Board to promulgate regulations requiring the proper training of individuals, including physicians, before they may be licensed to practice acupuncture in this Commonwealth and further authorizes the Board to promulgate other regulations as may be deemed proper and necessary regarding the practice of acupuncture.

Background and Need for this Final-Form Rulemaking

Beginning in 2018, the Board undertook a comprehensive review of its regulatory scheme for acupuncturists and practitioners of Oriental medicine. As a result of that

review, the Board proposed comprehensive amendments to Chapter 18, Subchapter B to (1) update outdated terminology, (2) delete outdated licensure provisions, (3) conform the regulations to the act of September 24, 2014 (P.L. 2472, No. 134), (4) restructure requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a medical doctor based on the type of license held), (5) expand the list of opportunities to demonstrate English language proficiency, (6) rename the subchapter to reflect the fact that since 2008, acupuncturists are licensed (not registered) and (6) impose a new requirement that acupuncturists obtain and maintain professional liability insurance of at least \$1 million per occurrence or claims made.

Notice of the proposed rulemaking was published at 52 Pa.B. 985 (February 12, 2022). Publication was followed by a 30-day public comment period during which the Board received no public comments. The Independent Regulatory Review Commission (IRRC) submitted comments. Neither the House Professional Licensure Committee (HPLC), nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) submitted comments.

Summary and Responses to Comments

IRRC Comment

IRRC submitted the following five comments on the proposed rulemaking.

1. *Compliance with the Regulatory Review Act*

IRRC commented about the application checklist for initial licensure as a practitioner of Oriental medicine, which details the information required for licensure. IRRC asked the Board to ensure that the terminology in the checklist is consistent with the regulatory language in the final annex. Specifically, IRRC points to the checklist item entitled “Malpractice Insurance” and notes that this checklist item references “acupuncture services,” however, the proposed annex does not define what “acupuncture services” entail. The Board agrees that including the term “services” is confusing and unnecessary. Thus, the Board deletes the term “services” from both this final-form rulemaking, Regulatory Analysis Form (RAF) and both checklists. Additionally, the Board reviewed the remainder of the language used in both checklists and made the language consistent with the regulatory language in the annex.

Next, IRRC suggests that the Practitioner of Oriental Medicine checklist item entitled “Malpractice Insurance” should specify that the insurance must cover claims related to acupuncture and herbal therapy. To address this concern, the Board adds the recommended language indicating that the insurance must cover claims related to acupuncture and herbal therapy under the “malpractice insurance” checklist name on the practitioner of Oriental medicine checklist.

IRRC next refers to the checklist item entitled “Exam Results” and suggests that the Board should include all methods available to the applicant to demonstrate English language proficiency. To address this concern, the Board adds the following language: “If your educational program was not conducted in English, arrange for

TOEFL (Test of English as a Foreign Language), OET (Occupational English Test) or other equivalent English proficiency examinations scores to be submitted directly to the Board to establish English proficiency.” Additionally, the Board noted in the checklist that all Board-approved English proficiency examinations will be listed on the Board’s web site. This way, the applicant is notified of all ways they can establish English proficiency.

The Board also amends the language in both the acupuncture checklist and the practitioner of Oriental medicine checklist entitled “Exam Results” to include “or other examination provider approved by the Board” to allow applicants to seek Board approval of other acupuncture or East Asian herbology examinations. Additionally, the Board noted in the checklists that all Board-approved acupuncture and East Asian herbology examinations will be listed on the Board’s web site. This way, as the Board approves additional examinations, they will be clearly listed for applicants to review prior to applying for licensure.

2. § 18.11. *Definitions.—Clarity*

In its second comment, IRRC questions the definitions of “acupuncture examination” and “East Asian herbology examination” and notes that the definitions for both provide that the Board recognizes the NCAAOM component examinations. IRRC questions whether this language precludes all other examinations that may come along in the future. In this final-form rulemaking, the Board deletes its recognition of the NCAAOM component examination from the definition section. The Board also amends § 18.13(a)(2) (relating to requirements as an acupuncturist) to require the NCAAOM examination component in acupuncture and sterilization procedures, its successor examination or other equivalent Board-approved examination should an examination be presented to the Board at some point in the future. Additionally, the Board amends § 18.13(b)(1) to adopt the NCAAOM examination component in Chinese herbology, its successor examination or other equivalent Board-approved East Asian herbology examination. In both amendments, the Board adds language that all Board-approved examinations will be made available on the Board’s web site.

Next, IRRC commented regarding the Board’s adoption of the NCAAOM examinations for licensure, indicating that the recognition is substantive and should not be included in the definition section, but must instead be in the body of the regulation. To correct this, the Board moves the examination approval language for acupuncturists to § 18.13 in subsection (a)(2) and the examination approval language for the East Asian herbology examination to § 18.13a (relating to requirements for licensure as a practitioner of Oriental medicine) in subsection (b)(1).

In response to IRRC’s final comment under this section, the Board inserts a definition of the “Occupational English Test” in § 18.11 (relating to definitions) of this final-form rulemaking. This definition includes successor examinations.

3. § 18.13. *Requirements for licensure as an acupuncturist.—Clarity and lack of ambiguity; Need for the regulation; and Economic and fiscal impacts of the regulation*

IRRC’s third comment relates to the amendments that updates the list of acceptable methods for demonstrating

English language proficiency for applicants who did not take their acupuncture examination in English. Specifically, IRRC listed three concerns with the Board’s proposed amendments to § 18.13(a)(2)(ii) relating to the phrase “or similar score acceptable to the Board.” First, there is concern that the current language does not account for the TOEFL test variants as described by the Board in the Preamble and RAF. Second, the current language, “or similar score acceptable to the Board” uses nonregulatory language because it is not clear and unambiguous as it is not a binding norm that could be predicted by the regulated community. Third, there is concern that the Board is impermissibly changing a regulatory requirement without a new rulemaking. To address these concerns, the Board amends § 18.13(a)(2)(ii) to provide greater clarity and more regulatory certainty.

In this final-form rulemaking, the Board amends § 18.13(a)(2)(ii) to clarify that an applicant must achieve a scaled score of at least 83 on the TOEFL® IBT (Internet-based test), which is the most recent version of the examination. The Board deletes the phrase “or similar score acceptable to the Board” and replaces it with the acceptable scores for the outdated versions of the TOEFL®. The comparable score for the TOEFL® CBT (computer-based test) is 220 which the Board will accept for that version of the examination. The comparable score for the TOEFL® PBT (paper-based test) is 557—560; however, since the Board’s regulations previously accepted a scaled score of 550 on the PBT, the Board will continue accepting that same score to maintain consistency on this version of the examination. The Board obtained comparable score information from the 2005 *TOEFL Score Comparison Table* which was created by Educational Testing Services (ETS), the company that currently manages the TOEFL. See TOEFL IBT Score Comparison Tables (https://papers.xtremepape.rs/TOEFL/Toefl%20iBT%20Official%20Documents/TOEFL_iBT_Score_Comparison_Tables.pdf). The Board includes the acceptable scores for the outdated versions of the TOEFL. While the CBT and PBT versions of the examination have been discontinued, including these examinations will enable the Board to accept a passing score on these versions of the examination for those individuals who have taken the examination in the past. Finally, this final-form rulemaking adds language that allows the Board to accept future versions of the TOEFL so that when future versions are adopted, the Board’s regulations will recognize those examinations immediately.

IRRC recommends either deleting § 18.13(a)(2)(iv) or explaining why the language is necessary. Instead of deleting this language, the Board amends § 18.13(a)(2)(iv) to allow an applicant to demonstrate English proficiency by achieving a passing score on an English proficiency examination that is deemed equivalent by the Board to either the TOEFL or the OET. This amended language will allow the Board to approve other English proficiency examinations without having to amend its regulations. While there is no equivalent examination known to the Board at this point, the Board does not want to rule out the possibility. To provide greater clarity to the licensed community, the Board includes language that it will make available a list of all Board-approved English language proficiency examinations on its web site should there be any additional examinations deemed equivalent by the Board. This language is important because it gives the Board the authority to review new examinations to determine whether they are equivalent to the TOEFL or OET. This could potentially

save applicants from having to retake an English proficiency examination if the examination they have already taken is deemed equivalent by the Board. It will also eliminate an unnecessary barrier to licensure because the Board will have a mechanism to approve equivalent English proficiency examinations without delay.

IRRC points out that the Board's response to RAF question # 17 notes that applicants will benefit from the expanded options for demonstrating English proficiency but does not discuss the financial impact on individuals. Similarly, the Board's response to RAF question # 19 does not provide a specific estimate of the cost or savings, or both, to the regulated community to comply with the English proficiency provisions in § 18.13(a)(2). To address these concerns, RAF question # 17 is amended to include language explaining the expanded options available to establish English proficiency and the financial impact these different options will have on the applicant. Specifically, the Board adds discussion on cost savings for applicants who would not have to pay for an English proficiency examination if they attended an English-speaking education program, took their examination in English or already took and passed the OET or any version of the TOEFL examination. If the applicant takes the OET examination to meet the English proficiency requirement, there would be an increased cost as compared to taking the TOEFL, which is the examination accepted under the existing regulations. While there may be an increased cost to take the OET, the individual is not required to take this examination. The Board is providing this as an option so that applicants have a variety of ways to show English proficiency.

The Board also amends the response to RAF question # 19 to include the financial costs and savings to the regulated community to comply with the English proficiency requirement. Applicants who did not take their examination in English, but who attended an English-speaking education program would save money on having to take an English proficiency examination. Additionally, applicants will save money on having to take the TOEFL examination, which costs about \$100, if they can establish that they have already taken the OET examination, an older version of the TOEFL or another English proficiency examination that is deemed equivalent by the Board.

IRRC's final concern under the third comment relates to § 18.13(a)(2)(i), which requires that an applicant demonstrate that their acupuncture program was conducted in English by submitting the documents in English or by submitting an official translation. It has been noted by IRRC that there is no mention of this cost in the RAF. The final-form version of the RAF is revised to account for this cost.

4. § 18.15. *Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is a licensed medical doctor.—Clarity*

The fourth comment submitted by IRRC relates to the Board's reference to "acupuncture services" in § 18.15(c) and the fact that "acupuncture services" is not defined. To address this concern, the Board deletes the term "services" throughout this final-form rulemaking so that only the term "acupuncture" remains. As mentioned in response to the first comment, the term "acupuncture" is already defined, so the term "services" is unnecessary.

5. § 18.18. *Disciplinary and corrective measures.—Clarity*

IRRC's fifth and final comment relates to section 3.2(c) of the ALA (63 P.S. § 1803.2(c)), which requires a licensee

to notify the Board within 30 days of their failure to be covered by insurance. A failure to notify the Board is actionable under section 3 and section 5 of the ALA (63 P.S. § 1805). The license to practice will be automatically suspended upon failure to be covered by the required license and will not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance coverage. IRRC suggests that this non-compliance provision be incorporated in this final-form rulemaking. To address this concern, the Board amends § 18.18 (relating to disciplinary and corrective measures) by adding paragraph (6), which provides for disciplinary sanctions for a licensee's failure to notify the Board within 30 days of the licensee's failure to be covered by the required liability insurance. To clarify the disciplinary and corrective measures, the Board adds a cross reference to § 18.20 in § 18.18(a)(4). The Board also amends § 18.20 by adding subsection (e), which provides for automatic suspension for failure to be covered by insurance.

Fiscal Impact and Paperwork Requirements

The costs and additional paperwork associated with this final-form rulemaking are related to the requirement for acupuncturists and practitioners of Oriental medicine to obtain professional liability insurance and to provide proof to the Board, which was imposed by the General Assembly in 2014, and was implemented by the Board at that time. The Board estimates these costs to be approximately \$425 annually per licensee. Additionally, there are costs related to the English proficiency examination if the applicant's examination was not conducted in English. The Board's existing regulations already require that in this scenario, an applicant must take the TOEFL examination to demonstrate English proficiency. This final-form rulemaking provides a new mechanism for applicants to demonstrate English proficiency with no additional cost to the applicant if their educational program was conducted in English. The Board also provides additional alternatives to the TOEFL examination, including the OET examination, which costs \$400. Additionally, the applicant can now demonstrate English proficiency if they have taken an older version of the TOEFL examination or if they have taken another English proficiency examination which, after review by the Board, is deemed equivalent to the TOEFL and OET examinations. While the OET and other Board-approved English proficiency are both now additional options, the Board does not anticipate applicants using these options often. In the last 4 years, there have been no applicants who have had to demonstrate English proficiency through an examination. However, the Board wants to ensure that when an applicant does have to demonstrate English proficiency, they will be able to do so in the easiest way possible. There may be additional cost for applicants to translate their education verification, if the documents are not in English, which can run approximately \$20—\$25 per page.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. 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 January 26, 2022, the Board submitted a copy of the proposed rulemaking published at 52 Pa.B. 985, and a copy of a RAF to IRRC and to the Chairpersons HPLC and the SCP/PLC for review and comment. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments received from IRRC. No public comments were received. The Board received no comments from the HPLC and the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on May 22, 2023, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. On June 2, 2023, the Board withdrew this final-form rulemaking. On June 9, 2023, the Board re-delivered this final-form rulemaking. Under section 5.1(g)(3) and (j.2) of the Regulatory Review Act on July 12, 2023, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 13, 2023, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Saiyad Ali, Board Administrator, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-MEDICINE@pa.gov.

Findings

The State Board of Medicine finds that:

(1) Public notice was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240), (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

(3) The amendments to this final-form rulemaking do not enlarge the original purpose for the proposed regulation published at 52 Pa.B. 985.

(4) These amendments to the regulations of the State Board of Medicine are necessary and appropriate for the regulation of the practice of acupuncturists and practitioners of Oriental medicine in the Commonwealth.

Order

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

(a) The regulations of the State Board of Medicine, 49 Pa. Code Chapter 18, are amended by amending §§ 18.11, 18.13, 18.13a, 18.15, 18.15a and 18.18, and adding § 18.20 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit a copy of this final-form rulemaking to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and shall deposit it with the Legislative Reference Bureau as required by law.

(e) This final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

MARK B. WOODLAND, MS, MD,
Chairperson

(*Editor's Note:* See 53 Pa.B. 4068 (July 29, 2023) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-4956 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

Subchapter B. LICENSURE AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.11. Definitions.

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

* * * * *

Acupuncture examination—An examination recognized by the Board to test whether an individual has accumulated sufficient academic knowledge with respect to the practice of acupuncture to qualify for the privilege of practicing as an acupuncturist in this Commonwealth.

Acupuncture medical program—An academic or clinical program of study in acupuncture which has been given category I continuing medical education credit by an institution accredited or recognized by the Accreditation Council on Continuing Medical Education to conduct category I continuing medical education courses.

Acupuncturist—An individual licensed to practice acupuncture by the Board.

East Asian herbology—The use of herbal preparations and products that contain as active ingredients parts of plants, minerals and other organic materials, or a combination thereof, administered according to East Asian medicine tradition to normalize function.

East Asian herbology examination—An examination recognized by the Board to test whether an acupuncturist has accumulated sufficient academic knowledge with respect to the practice of herbal therapy to qualify for licensure as a practitioner of Oriental medicine in this Commonwealth.

Herbal therapy—The application of East Asian herbology to the treatment of acupuncture patients.

NCCAOM—The National Certification Commission for Acupuncture and Oriental Medicine or its successor organization.

OET—The English language test for healthcare professionals or its successor examination.

Practitioner of Oriental medicine—An acupuncturist who is licensed by the Board to use herbal therapy.

Supplemental techniques—The use of traditional and modern Oriental therapeutics, heat therapy, moxibustion, electrical and low-level laser stimulation, acupressure and other forms of massage, and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

TOEFL[®]—The Test of English as a Foreign Language offered by Educational Testing Service (ETS).

§ 18.13. Requirements for licensure as an acupuncturist.

(a) The Board will license as an acupuncturist a person who satisfies the following requirements:

(1) Has successfully completed an acupuncture educational program which includes a course in needle sterilization techniques.

(2) Has been certified by NCCAOM or has obtained a passing grade on the NCCAOM examination component in acupuncture and sterilization procedures, its successor examination or other equivalent Board-approved examination. The Board will make available a list of successor or other equivalent Board-approved examinations on its web site. If the examination was not taken in English, but is otherwise acceptable and a passing score was secured, the Board will accept the examination result if the applicant has also demonstrated English language proficiency by one of the following methods:

(i) The applicant's acupuncture educational program was conducted in English.

(ii) The applicant has achieved a scaled score of at least 83 on the TOEFL[®] Internet-based test (IBT), a 220 for the TOEFL[®] computer-based test (CBT) or a 550 on the TOEFL[®] paper based test (PBT) or an equivalent score on a successor examination of the TOEFL[®]. The Board will make available a list of Board-approved successor examinations on its web site.

(iii) The applicant has achieved a score of at least 350 on each of the four sub-tests of the OET for any of the health-related professions.

(iv) The applicant has achieved a passing score on an English language proficiency examination, equivalent to the TOEFL[®] or OET, as determined by the Board. The Board will make available a list of equivalent Board-approved English language proficiency examinations on its web site.

(b) The Board will license as an acupuncturist a medical doctor who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs.

(2) Submits an application to register as an acupuncturist accompanied by the required fee as provided under § 16.13 (relating to licensure, certification, examination and registration fees).

(c) [Reserved].

§ 18.13a. Requirements for licensure as a practitioner of Oriental medicine.

(a) An acupuncturist who also intends to use herbal therapy is required to be licensed by the Board as a practitioner of Oriental medicine.

(b) The Board will license an acupuncturist as a practitioner of Oriental medicine if the licensee, in addition to meeting the requirements under § 18.13 (relating to requirements for licensure as an acupuncturist) has fulfilled one of the following:

(1) Successfully completed an acupuncture education program that includes the study of East Asian herbology and has passed an East Asian herbology examination. Board-approved East Asian herbology examinations include the NCCAOM examination component in Chinese herbology, its successor examination or other equivalent Board-approved East Asian herbology examination. The Board will make available a list of successor or other equivalent Board-approved examinations on its web site.

(2) Has obtained NCCAOM certification in Chinese herbology or Oriental medicine, which includes passing the NCCAOM examination component in Chinese herbology.

(c) An acupuncturist registered with the Board prior to April 14, 2007, may obtain a license as a practitioner of Oriental medicine if the acupuncturist can demonstrate one of the following:

(1) Successful completion of an East Asian herbology or Oriental medicine education program recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine and successful completion of an examination in East Asian herbology or Oriental medicine recognized by the licensing authority of another state or United States territory for the practice of herbal therapy or Oriental medicine.

(2) NCCAOM certification in Chinese herbology or Oriental medicine.

(3) The achievement of cumulative qualifications that the Board determines to be equivalent to the standard requirements for registration as a practitioner of Oriental medicine.

(d) This section does not apply to a medical doctor licensed as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of an acupuncturist who is licensed as a medical doctor.

(a) *Responsibilities to patient and public*—*acupuncturist who is not a physician.* An acupuncturist who is not a physician:

(1) Shall perform an acupuncture evaluation and develop an acupuncture treatment plan.

(1.1) May treat an individual presenting with no symptoms of a condition for an unlimited period of time.

(2) May treat an individual presenting with symptoms of a condition for 60 calendar days from the date of the first treatment without the condition being diagnosed by a physician, dentist or podiatrist.

(3) May treat an individual presenting with symptoms of a condition beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall promptly refer the patient presenting with symptoms of a condition to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist determines that further acupuncture treatment is contraindicated for the patient or determines that the patient's symptoms have worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist in regard to the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) May not diagnose a physical or mental ailment or condition or prescribe or dispense a drug. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

(8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with § 16.95 (relating to medical records).

(10) Shall wear a tag or badge with lettering clearly visible to the patient bearing the acupuncturist's name and the title "Acupuncturist." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(b) [Reserved].

(b.1) *Additional responsibilities to patient and public—practitioner of Oriental medicine who is not a physician.* In addition to the responsibilities in subsection (a)(1)—(9), a licensed practitioner of Oriental medicine who provides, or contemplates providing, herbal therapy:

(1) Shall perform an herbal therapy evaluation and, if appropriate, develop an appropriate treatment plan utilizing, in whole or in part, East Asian herbology modalities.

(2) Shall promptly refer a patient presenting with symptoms of a condition to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the practitioner of Oriental medicine determines that further treatment of the patient by East Asian herbology modalities is contraindicated for the patient, may interfere with known drugs prescribed to the patient, or determines that the patient's symptoms have worsened.

(3) Shall wear a tag or badge with lettering clearly visible to the patient bearing the licensee's name, as well as the title "Practitioner of Oriental Medicine." The use of the words doctor, physician or any title or abbreviation implying licensure as a physician on this tag or badge is prohibited.

(c) *Responsibilities to patient and public—acupuncturist who is currently licensed as a medical doctor.* An acupuncturist who also holds a current and active license as a medical doctor in this Commonwealth:

(1) Shall include in the patient's medical records evidence of having performed an acupuncture evaluation and development of an acupuncture treatment plan for patients considered for, or who receive, acupuncture.

(2) Shall comply strictly with sterilization standards relative to aseptic practices when providing acupuncture to patients.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

(a) An acupuncturist may practice acupuncture and use supplemental techniques, including the use of non-prescription topical remedies which contain as active ingredients parts of plants, minerals and other organic materials, but may not use herbal therapy as defined in § 18.11 (relating to definitions) unless licensed by the Board as a practitioner of Oriental medicine.

(b) A practitioner of Oriental medicine may practice acupuncture and use supplemental techniques including herbal therapy. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Federal Food and Drug Administration, unless otherwise prohibited by law or regulation.

(c) This section does not limit the scope of practice of a medical doctor who is licensed as an acupuncturist.

§ 18.18. Disciplinary and corrective measures.

(a) The Board may impose any of the disciplinary sanctions authorized under section 42 of the act (63 P.S. § 422.42) or 63 Pa.C.S. § 3108(b) (relating to civil penalties) for any of the following:

(1) Failing to comply with the duties and requirements in § 18.15 (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a physician; practice responsibilities of medical doctor licensed as an acupuncturist).

(2) Practicing or holding out as being able to practice acupuncture without a current and valid license to practice acupuncture.

(3) Practicing or holding out as being able to practice East Asian herbology without a current and valid license as a practitioner of Oriental medicine.

(4) Practicing acupuncture or East Asian herbology without current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act (63 P.S. § 1803.2) and § 18.20 (relating to professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine).

(5) Engaging in conduct prohibited under section 41 of the act (63 P.S. § 422.41) for Board-regulated practitioners.

(6) Failure to notify the Board within 30 days of licensee's failure to be covered by insurance under as required under section 3.2 of the Acupuncture Licensure Act and § 18.20.

(b) The Board will order the emergency suspension of the license of an acupuncturist or practitioner of Oriental medicine who presents an immediate and clear danger to the public health and safety, as required under section 40 of the act (63 P.S. § 422.40).

(c) The license of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended, as required under section 40 of the act.

§ 18.20. Professional liability insurance coverage for acupuncturists and practitioners of Oriental medicine.

(a) A licensed acupuncturist shall maintain a level of professional liability insurance coverage in the minimum amount of \$1 million per occurrence or claims made, as required under section 3.2 of the Acupuncture Licensure Act (63 P.S. § 1803.2).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from a personally purchased professional liability insurance policy setting forth the effective date, expiration date and dollar amount of coverage.

(2) A certificate of insurance or copy of the declaration page from an employer purchased professional liability insurance policy describing the licensee by name as a covered party under the policy, the effective date, expiration date and dollar amount of coverage.

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

(c) A licensee who does not have current professional liability insurance coverage as required under section 3.2 of the Acupuncture Licensure Act may not practice as an acupuncturist or as a practitioner of Oriental medicine in this Commonwealth.

(d) The professional liability insurance coverage for a licensed practitioner of Oriental medicine shall cover claims related to acupuncture as well as claims related to the provision of herbal therapy.

(e) The license of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended upon failure to be covered by the required professional liability insurance required in this section and shall not be restored until submission to the Board of satisfactory evidence that the licensee has the required professional liability insurance coverage.

[Pa.B. Doc. No. 23-1244. Filed for public inspection September 15, 2023, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OPTOMETRY

[49 PA. CODE CH. 23]

License by Endorsement

The State Board of Optometry (Board) hereby amends Chapter 23 (relating to State Board of Optometry) by adding §§ 23.27, 23.27a and 23.27b (relating to definitions; license by endorsement under 63 Pa.C.S. § 3111; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 3111 of 63 Pa.C.S. (relating to licensure by endorsement) requires licensing boards and commissions to “issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth” provided the applicant meets the following criteria: “[h]olds a current license, certificate, registration or permit from another state, territory or country” whose licensing “requirements are substantially equivalent to or exceed the requirements. . .in this Commonwealth;” “[d]emonstrates competency;” “[h]as not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless the board or commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” “[i]s in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the. . .board or. . .commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” and the applicant “pays any fees established by. . .regulation.” Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to “issue a provisional license, certificate, registration or permit” while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Additionally, section 3(b)(14) of the Optometric Practice and Licensure Act (act) (63 P.S. § 244.3(b)(14)) provides the Board with authority to promulgate all rules and regulations necessary to carry out the purposes of the act.

The act of July 1, 2020, (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41) (Act 41).

Background and Need for the Amendments

This final-form rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license, certificate, registration or permit to applicants who meet the requirements for licensure by endorsement as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111, the Board must determine whether the jurisdiction’s standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111 requires the Board to determine the methods of competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application, and must establish, by regulation, the expiration of a provisional endorsement license. This final-form rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

The Board published a notice of proposed rulemaking at 51 Pa.B. 6046 (September 18, 2021), for 30 days of public comment. The Board did not receive any comments from the public. The House Professional Licensure Committee (HPLC) submitted comments. As part of its review under the Regulatory Review Act (RRA), the Independent

Regulatory Review Commission (IRRC) submitted comments. The Board received no comments from the Senate Consumer Protections and Licensure Committee (SCP/PLC). The following represents a summary of the comments received and the Board's response.

Summary of the HPLC Comments and the Board's Response

The HPLC commented on § 23.27a(a)(1)(i) regarding license by endorsement which requires the applicant to provide a copy of the current law and regulations, including the scope of practice, in the jurisdiction where the applicant holds an active license. The HPLC expressed a concern that this is not a specific statutory requirement and suggested it should be Board Counsel's responsibility to research the laws and regulations of the jurisdiction from which the applicant is applying. For the following reasons the Board disagrees and is not amending § 23.27a(a)(1)(i) in this final-form rulemaking; 1) to date the Board has received only six applications and the applicants have been able to provide the Board with the necessary laws and regulations quickly and easily; 2) it is the applicant's burden to prove to the Board that qualifications for licensure are met; and 3) putting this burden on the Board and its legal counsel unnecessarily puts a financial burden on the Board and to its licensees that finance the Board through biennial renewal fees, or if this cost is applied to application fees, then the cost to apply for a license would have to be increased. Applicants generally have access to the laws and regulations of the jurisdiction where they are licensed. It is of particular concern when an applicant is licensed in another country. This type of research is overly burdensome and could be costly to the Board. While the Board will take steps to verify the laws and regulations of another jurisdiction, having the applicant provide that initial information is the most expedient and fiscally prudent approach.

The HPLC next commented on § 23.27a(a)(4) which on proposed stated that the applicant could not have been disciplined by the jurisdiction that issued the license, certificate, registration or permit. The HPLC suggested clarifying this paragraph by specifying the type of discipline and providing a timeframe. The HPLC suggested that the Board distinguish between formal discipline and a complaint. The Board does not think it is necessary to make this type of distinction. A complaint is not considered to be formal or informal discipline. Additionally, the Board does not believe it is appropriate to predetermine the type of discipline or the timeframe discipline occurred. The Board, instead, believes it is appropriate to evaluate discipline on a case-by-case basis. As indicated in § 23.27a(c), the Board is authorized to determine that discipline is not an impediment to licensure under 63 Pa.C.S. § 3111. In determining whether the discipline is an impediment to licensure, it is dutybound to apply the caselaw and other applicable laws. See *Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973); *Bethea-Tumani v. Bureau of Professional and Occupational Affairs, State Board of Nursing*, 993 A.2d 921 (Pa. Cmwlth. 2010). As part of that analysis, the Board may consider the facts and circumstances surrounding the prohibited act or disciplinary action, increase in age or maturity of the individual since the date of the prohibited act or disciplinary action, disciplinary history or lack of disciplinary history before and after the date of the prohibited act or disciplinary action, successful completion of education and training activities relating to the prohibited act or disciplinary action and any other information relating to the fitness of the individual for licensure. To be consistent with the language in

§ 23.27a(a)(3) and (4), the Board adds the word "discipline" to the title of § 23.27a(c).

The HPLC also commented on § 23.27b(b)(1) regarding provisional endorsement license noting that this provision would allow the Board to issue a provisional license for less than a year and asked why the Board would need to do so. Section 3111(b)(2) of 63 Pa.C.S. requires the Board to establish an expiration date for provisional licenses in its regulations. The Board, along with most other boards and commissions under the Bureau of Professional and Occupational Affairs (Bureau) have determined that expiration of 1 year is generally an appropriate timeframe for most applicants. However, in the interest of public safety, the Board has determined that providing some discretion to the Board is necessary for instances where the remaining licensure requirements do not require a full year to complete the remaining licensure requirements. It is in the public interest to ensure that a licensee becomes qualified or competent as expeditiously as possible. While the Board certainly will provide a full year when the facts warrant it, it wants its licensees to be qualified and competent as soon as practicable. An example would be where an applicant from another jurisdiction only needs to complete 10 more continuing education credits. To allow 12 months to establish competency when competency could be accomplished in a shorter term would not be in the best interest of public safety. This is because the Board believes it is best for applicants to meet the competency requirements within a reasonable time period that is tied to the length of time necessary to meet the specific competency requirement.

The HPLC also commented on subsection (c), noting that the Board did not include the expiration date as a means by which the provisional endorsement license may terminate. The Board agrees with the HPLC and has included the expiration date as means by which the provisional endorsement license may terminate. To clarify this subsection, the Board also included the granting of a license as a means by which the provisional endorsement license would also terminate. Additionally, the Board made non-substantive amendments to subsection (c) to improve clarity and readability.

The HPLC commented that § 23.27b(d) is unintentionally vague and asked the Board to allow applicants to reapply for multiple provisional licenses. The Board does not believe it is necessary or appropriate to allow multiple provisional licenses. A provisional license is an unrestricted license that is issued to an applicant in an effort to provide a short period of time (of up to 1 year) to satisfy remaining licensing requirements. While the Board is reluctant to issue an unrestricted license to an applicant who has not met the licensure standards or who has not proven competency, the General Assembly gave boards the discretion to do so as long as there was an expiration to that provisional license. Thus, the provisional license is meant to be a temporary license, on a short-term basis, to allow an applicant to begin practicing while completing remaining licensing requirements. The Board's regulations do allow for requests for an extension up to 1 additional year; the Board believes this timeframe is more than sufficient. The Board is concerned that allowing for multiple provisional licenses could be used as a mechanism to circumvent licensure standards. An applicant may certainly apply for an optometric license through § 23.27a after a provisional license expires; however, if the applicant does not meet the licensure standards after having a provisional license and having

the option to apply for an extension, the applicant would not be eligible to apply for or receive an additional provisional license.

Summary of IRRC's Comments and the Board's Response

IRRC, in its comment, identified the previously stated HPLC comments. IRRC indicated that it will consider the HPLC comments and the Board's response to the issues raised in determining whether the regulation is in the public interest. The reasons provided previously, in response to the HPLC comments, show that that the regulation is in the public interest.

IRRC commented regarding the Regulatory Analysis Form (RAF) Question 19 and the cost to the regulated community for translation. This final-form rulemaking is amended to include a specific estimate of costs to the regulated community for translation of an applicable law, regulation or rule.

IRRC requested that the RAF be updated to include a list of specific persons or groups, or both, involved in developing and drafting the proposal. The Board has attached a list of stakeholders to the final-form RAF.

Additionally, IRRC asked the Board to provide an updated RAF that includes an estimate of the costs that would be associated with having the regulation or rule be translated by a professional service. The Board has updated the RAF to include an estimate of these costs.

Finally, IRRC requested that the title of Chapter 23 be amended to reflect the proposed content pertaining to licensure by endorsement. The undesignated header "License by Endorsement under 63 Pa.C.S. § 6111" is added as suggested by IRRC.

Miscellaneous Clarifications

Twenty-seven boards under the Bureau are drafting and publishing licensure by endorsement regulations. In an effort to keep language in the regulations as consistent as possible, the Board is amending the regulations based upon comments during the review process of other regulations. The following amendments are stylistic and do not have a substantive impact on the regulations.

Under § 23.27a(a)(2)(i) of the proposed rulemaking, to demonstrate competency by experience, the proposed regulations require active engagement in the practice of optometry for at least 2 of the 5 years immediately preceding the filing of the application with the Board. In drafting the proposed regulation, the Board assumed that the applicable experience would have been obtained in the jurisdiction under which the applicant was applying for licensure, and for which the Board would have determined that jurisdiction's licensure standards were substantially equivalent to the Board's licensure standards. To be more inclusive, the Board amends § 23.27a(a)(2)(i) to clarify that experience must be obtained under a license, certificate, registration or permit in a jurisdiction or jurisdictions that have substantially equivalent licensure standards. Thus, the amendment makes clear that the Board will consider experience accumulated in more than one jurisdiction when calculating the required experience provided that those jurisdictions have substantially equivalent licensure standards.

The Board amends § 23.27a(a)(2)(ii) to clarify that completion of child abuse recognition and reporting training required under paragraph (7) may be attributed to the 30 hours of continuing education required to demonstrate competency. The Board currently allows continuing education in child abuse recognition and reporting to be attributed to the 30 hours of continuing education re-

quired for biennial renewal. Thus, to maintain consistency, the Board decided to allow the child abuse recognition and reporting training to be attributed to the 30 hours of continuing education required under § 23.27a(a)(2)(ii).

The Board makes minor amendments to § 23.27a(a), 23.27a(a)(5)—(7) and 23.27a(d) for stylistic consistency. The revisions do not substantively change the meaning of the provisions. The Board amends § 23.27a(b) to clarify that the Board may require, instead of request, submission of additional information. In § 23.27a(c), to improve clarity, the Board adds the term "discipline" to the heading to clarify that subsection (c) applies to prohibited acts and discipline. The Board also replaces the term "licensure" with "license" in § 23.27b(d) for consistency.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Only minor paperwork requirements are imposed for the Board to develop a form for applying for license by endorsement.

Sunset Date

The Board continually monitors the cost effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the RRA (71 P.S. § 745.5(a)), on September 2, 2021, the Board submitted a copy of the notice of proposed rulemaking, published at 51 Pa.B. 6046 and a copy of a RAF to IRRC and to the HPLC and the SCP/PLC for review and comment. A copy of this material is available to the public upon request.

Under section 5(c) of the RRA (71 P.S. § 745.5(c)), the Board shall submit to IRRC, the HPLC and the SCP/PLC copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board considered comments received from IRRC and the HPLC. No public comments were received. The Board received no comments from the SCP/PLC.

Under section 5.1(a) of the RRA (71 P.S. § 745.5a(a)), on May 22, 2023, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the RRA on July 12, 2023, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the RRA, IRRC met on July 13, 2023, and approved the final-form rulemaking.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).

(2) A public comment period was provided as required by law.

(3) This final-form rulemaking does not include any amendments that would enlarge the scope of proposed rulemaking published at 51 Pa.B. 6046.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of 63 Pa.C.S. § 3111 and the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 23, are amended by adding §§ 23.27, 23.27a and 23.27b to read as set forth in Annex A.

(b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.

(d) The Board shall certify this final-form rulemaking and deposit them with the Legislative Reference Bureau as required by law.

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

LUANNE CHUBB, OD,
Chairperson

(*Editor's Note:* See 53 Pa.B. 4068 (July 29, 2023) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-5218 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS CHAPTER 23. STATE BOARD OF OPTOMETRY

LICENSE BY ENDORSEMENT UNDER 63 PA.C.S. § 3111

§ 23.27. Definitions.

The following word or term, when used in § 23.27a (relating to license by endorsement under 63 Pa.C.S. § 3111) has the following meaning, unless the context clearly indicates otherwise:

Jurisdiction—A state, territory or country.

§ 23.27a. License by endorsement under 63 Pa.C.S. § 3111.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant shall satisfy all of the following conditions:

(1) Have a current license, certification, registration or permit in good standing to practice optometry in another jurisdiction whose standards are substantially equivalent to or exceed those established under section 4 of the act (63 P.S. § 244.4) and §§ 23.11—23.15, 23.202 and 23.205. The following apply:

(i) An applicant must submit a copy of the current applicable law, regulation or other rule governing

licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by one of the following:

(i) Experience in the practice of optometry by demonstrating, at a minimum, that the applicant has actively engaged in the practice of optometry under a license, certificate, registration or permit in a jurisdiction or jurisdictions that have substantially equivalent licensure standards for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(ii) Completion of 30 hours of continuing education that meets the requirements of §§ 23.82 and 23.83 (relating to continuing education hour requirements; continuing education reporting; audit and enforcement; and continuing education subject matter) during the 24 months immediately preceding the date of the application. Completion of child abuse recognition and reporting training under paragraph (7) may be attributed to the 30 hours of continuing education.

(iii) Achieve a passing score on the NBEO Clinical Skills Assessment Examination or its equivalent, as determined by the Board, within 2 years immediately preceding the date of the application.

(3) Have not committed any act prohibited by section 7 of the act (63 P.S. § 244.7) or §§ 23.61—23.65 (relating to unlawful practices).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the license application fee as required by § 23.91 (relating to fees).

(6) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(7) Have completed 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency and experience. The applicant may request the interview to be conducted by video teleconference for good cause shown.

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 7 of the act or §§ 23.61—23.65, or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 23.27b. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under

63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 23.27a (relating to license by endorsement under 63 Pa.C.S. § 3111).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) When the Board completes its assessment of the applicant and grants or denies the license.

(2) When the holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(3) When the provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for license by endorsement under § 23.27a after expiration or termination of a provisional endorsement license, but the individual may not be issued a subsequent provisional endorsement license.

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the board or commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” “[i]s in good standing and has not been disciplined by the jurisdiction that issued the license, certificate, registration or permit, unless the . . . board or . . . commission determines” this conduct is not an impediment to granting the “license, certificate, registration or permit;” and the applicant “pays any fees established by . . . regulation.” Additionally, 63 Pa.C.S. § 3111 authorizes boards and commissions to “issue a provisional license, certificate, registration or permit” while an applicant is satisfying remaining requirements for licensure by endorsement, for which the Board must set by regulation the terms of expiration. Additionally, section 5(b) of the Occupational Therapy Practice Act (63 P.S. § 1505(b)) provides that the Board may adopt rules and regulations consistent with the law as necessary for the performance of its duties and the proper administration of the act.

The act of July 1, 2020 (P.L. 575, No. 53) added 63 Pa.C.S. § 3111 as part of the consolidation of the act of July 2, 1993 (P.L. 345, No. 48) (Act 48) (repealed) into 63 Pa.C.S. Chapter 31 (relating to powers and duties). The text of 63 Pa.C.S. § 3111 was originally added to Act 48 by the act of July 1, 2019 (P.L. 292, No. 41).

Background and Need for the Amendments

This final-form rulemaking is needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to applicants who meet the requirements for licensure by endorsement, as set forth in 63 Pa.C.S. § 3111. Under 63 Pa.C.S. § 3111(a)(1), the Board must determine whether the other jurisdiction’s standards for licensure are substantially equivalent to or exceed those established by the Board. Additionally, 63 Pa.C.S. § 3111(a)(2) requires the Board to determine the methods of measuring competency, including completion of continuing education or experience in the profession or occupation for at least 2 of the 5 years immediately preceding the filing of the application. Under 63 Pa.C.S. § 3111(b)(2), the Board must establish, by regulation, the duration of a provisional endorsement license. This final rulemaking sets forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as requirements for granting a provisional endorsement license.

Summary of Comments to the Proposed Rulemaking and the Response of the Board

Notice of the proposed rulemaking was published at 52 Pa.B. 835 (February 5, 2022). The Board did not receive any comments from the public or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). The Board received comments and recommendations from the House Professional Licensure Committee (HPLC). The Independent Regulatory Review Committee (IRRC) reviewed the proposed rulemaking and provided comments and recommendations.

Comments from the HPLC

The HPLC commented on § 42.9(a)(1)(i), regarding license by endorsement, which requires the applicant to provide a copy of the current law and regulations, including the scope of practice, in the jurisdiction where the applicant holds an active license. The HPLC expressed a concern that this is not a specific statutory requirement and suggested it should be Board counsel’s responsibility to research the laws and regulations of the

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

[49 PA. CODE CH. 42]

Licensure by Endorsement

The State Board of Occupational Therapy Education and Licensure (Board) hereby amends § 42.1 (relating to definitions) and adds §§ 42.9 and 42.10 (relating to licensure by endorsement; and provisional endorsement license) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 3111 of 63 Pa.C.S. (relating to licensure by endorsement) requires licensing boards and commissions to “issue a license, certificate, registration or permit to an applicant to allow practice in this Commonwealth” provided the applicant meets the following criteria: “[h]olds a current license, certificate, registration or permit from another state, territory or country” whose licensing “requirements are substantially equivalent to or exceed the requirements . . . in this Commonwealth;” “[d]emonstrates competency;” “[h]as not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice that profession or occupation in this Commonwealth, unless

jurisdiction from which the applicant is applying. For the following reasons, the Board disagrees and is not amending § 49.9(a)(1)(i) in this final-form rulemaking: 1) to date the Board has received less than five applications annually; 2) applicants, as a practical matter, are in the best position to obtain the laws and rule and have been able to provide the Board with the necessary laws and regulations quickly and easily; 3) applicants have the burden to prove to the Board that qualifications for licensure are met; and 4) putting this burden on the Board and its legal counsel unnecessarily puts a financial burden on the Board and its licensees who finance the Board through biennial renewal fees, or if this cost is applied to application fees, the cost to apply for a license would have to be increased. Applicants generally have access to the laws and regulations of the jurisdiction where they are licensed. Accessibility is of particular concern when an applicant is licensed in another country; this type of research is overly burdensome and could be costly to the Board. While the Board will take steps to verify the laws and regulations of another jurisdiction, having the applicant provide that initial information is the most expedient and fiscally prudent approach. After considering all options, the Board believes requiring an applicant to obtain laws and rules from the applicable state, jurisdiction or country is the most appropriate, efficient and cost-effective manner to supply the Board with the information necessary for the Board to make a substantial equivalency determination.

Second, the HPLC recommends clarifying § 42.9(a)(4) to specify the type of discipline that may preclude licensure and the timeframe when the discipline occurred. The HPLC suggested that the Board clarify by specifying the type of discipline and providing a timeframe when the discipline occurred. The HPLC suggested that the Board distinguish between formal discipline and a complaint. The Board does not think it is necessary to amend the regulations to distinguish between formal discipline and a complaint; a complaint is neither formal nor informal discipline. Additionally, the Board does not wish to specify the timeframe when the discipline occurred. The Board, instead, believes it is appropriate to evaluate discipline on a case-by-case basis. As indicated in § 42.9(c), the Board is authorized to determine that a prohibited act or discipline is not an impediment to licensure under 63 Pa.C.S. § 3111. In determining whether the discipline is an impediment to licensure, it is dutybound to apply the caselaw and other applicable laws. See *Secretary of Revenue v. John's Vending Corp.*, 453 Pa. 488, 309 A.2d 358 (1973); *Bethea-Tumani v. Bureau of Professional and Occupational Affairs, State Board of Nursing*, 993 A.2d 921 (Pa. Cmwlth. 2010). As part of that analysis, the Board may consider the facts and circumstances surrounding the prohibited act or disciplinary action, increase in age or maturity of the individual since the date of the prohibited act or disciplinary action, disciplinary history or lack of disciplinary history before and after the date of the prohibited act or disciplinary action, successful completion of education and training activities relating to the prohibited act or disciplinary action and any other information relating to the fitness of the individual for licensure. To be consistent with the language in § 42.9(a)(3) and (4), the Board adds the word "discipline" to the title of § 42.9(c).

The third comment by the HPLC relates to § 42.10(b)(1) which provides the Board with authority to issue a provisional license for less than 1 year. Section 3111(b)(2) of 63 Pa.C.S. requires the Board to establish an expiration date for provisional licenses in its regulations.

The Board, along with most other boards and commissions under the Bureau of Professional and Occupational Affairs has determined that expiration of 1 year is generally an appropriate timeframe for most applicants. However, in the interest of public safety, the Board has determined that providing some discretion to the Board is necessary for instances where the remaining licensure requirements do not require a full year to complete the remaining licensure requirements. It is in the public interest to ensure that a licensee becomes qualified or competent as expeditiously as possible. While the Board certainly will provide a full year when the facts warrant it, it wants its licensees to be qualified and competent as soon as practicable. The Board anticipates this discretion would be utilized in a situation where an applicant's obligations to meet the licensure or competency requirements are minimal. For example, an applicant who must only complete 2 months of experience to meet the competency requirements may receive a provisional license valid for 4 months. To allow a longer duration, such as 12 months, in all situations opens the door for an individual who has not been deemed competent to practice for 10 months before they even attempt to meet the competency requirements. In the interest of public safety, the Board believes it is best for applicants to meet the competency requirements within a time period closely tied to the length of time necessary to meet the specific competency requirement.

The fourth and final comment by the HPLC suggests an amendment to § 42.10(d) to delete the language precluding the issuance of more than one provisional license. A provisional license is an unrestricted license that is issued to an applicant to provide a short period of time to an applicant to practice while simultaneously working to meet the Board's licensure by endorsement requirements. While the Board is reluctant to issue an unrestricted license to an applicant who has not met the licensure standards or who has not proven competency, the General Assembly gave boards the discretion to do so as long as there was an expiration to that provisional license. Thus, the provisional license is meant to be a temporary license, on a short-term basis, to allow an applicant to begin practicing while completing remaining licensing requirements. The Board's regulations allow for requests for an extension up to 1 additional year; the Board believes this timeframe is more than sufficient. The Board is concerned that allowing for multiple provisional licenses could be used as a mechanism to circumvent licensure standards. An applicant may certainly apply for an occupational therapy license through § 42.9 after a provisional license expires; however, if the applicant does not meet the licensure standards after having a provisional license and having the option to apply for an extension, the applicant would not be eligible to apply for or receive an additional provisional license. Ultimately, the Board determined that protection of the public warrants the limitation of one provisional license per applicant to ensure the citizens of this Commonwealth are receiving services from qualified and competent licensees.

Comments from IRRC

The first comment received from IRRC relates to clarity within § 42.9(a). Specifically, IRRC notes that § 42.9(a)(1) is inconsistent in its identification of types of authorizations to practice. This final-form rulemaking is amended to provide the consistency noted by IRRC. The Board also amends § 42.9(a)(i).

In its second comment, IRRC requested that the Regulatory Analysis Form (RAF) be updated to include the statutory citation to the authority of the Board to promulgate these regulations (63 P.S. § 1505(b)). This is completed as requested.

IRRC also asked the Board to address the cost of the Criminal History Record Check (CHRC) fee in the RAF. The Pennsylvania CHRC fee of \$22 and Federal Bureau of Investigation Fee of \$18 have been included in the RAF where requested. The Board is unable to determine with certainty the CHRC fees that would be assessed by other states, territories or countries.

The third item noted by IRRC references the comments submitted by the HPLC. The Board responded to the HPLC as set forth previously.

Miscellaneous Amendments for Clarity

The Board amends § 42.1. In the proposed rulemaking, the Board made a typographical error by indicating that “the following words and terms, when used in this subchapter have the following meanings, unless the context clearly indicates otherwise.” This paragraph should have referenced “chapter” instead of “subchapter.” Thus, the Board amends this paragraph to reflect “chapter.”

The Board also made a stylistic amendment by changing the term “must” to “shall” in § 42.9(a) and (a)(1)(i). The Board amends § 42.9(a)(2) to clarify the requirement that the experience required for competency must have been obtained under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions. The amendment makes clear that the Board will consider experience accumulated in more than one jurisdiction when calculating the required experience. The Board also amends § 42.9(a)(3) because the Board erroneously cited to § 42.13 (relating to application for licensure). The appropriate correlating provisions are §§ 42.24 and 42.31 (relating to code of ethics; and unprofessional conduct); therefore, the Board replaced § 42.13 with §§ 42.24 and 42.31. In doing so, the Board amends the cross references in § 42.9(a)(3) to include the subject of those provisions in the parentheticals.

The Board makes minor nonsubstantive amendments for clarity by making grammatical amendments in §§ 42.9(a)(6) and (8) and 42.10(d), and by adding § 42.10(c)(3) to clarify that expiration of a provisional license is a terminating event.

Fiscal Impact and Paperwork Requirements

This final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The costs to the Board related to processing applications for licensure by endorsement will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the \$30 application for licensure fee in § 41.17 (relating to fees) as well as the CHRC fee. Applicants must complete child abuse recognition and reporting training, as required by section 6383(b)(3)(i) of 23 Pa.C.S. (relating to education and training) of the Child Protective Services Law. There are free in-person and online child abuse recognition and reporting training options available; therefore, the Board does not anticipate a negative fiscal impact for this statutorily mandated training.

Sunset Date

The Board continuously monitors the cost effectiveness of the Board’s regulations. 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 February 5, 2022, the Board submitted a copy of the Regulatory proposed rulemaking, published at 52 Pa.B. 835 and a copy of a RAF to IRRC and to the Chairpersons of the SCP/PLC and the HPLC. A copy of this material is available to the public upon request.

Under section 5(c) of the Regulatory Review Act (71 P.S. § 745.5(c)), the Board provided IRRC, the SCP/PLC and the HPLC with copies of comments received as well as other documents when requested. In preparing the final-form regulation, the Board considered comments received from IRRC and HPLC. No public comments were received. The Board received no comments from the SCP/PLC.

Under section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)), on June 8, 2023, the Board delivered this final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC on July 12, 2023. Under section 5.1(e) of the Regulatory Review Act, IRRC met on July 13, 2023, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Paul Keller, Board Administrator, State Board of Occupational Therapy Education and Licensure, P.O. Box 2649, Harrisburg, PA 17105-2649, ST-OCCUPATIONAL@PA.GOV.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202), referred to as the Commonwealth Documents Law, and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2 (relating to notice of proposed rulemaking required; and adoption of regulations).
- (2) A public comment period was provided as required by law, and all comments received were considered in drafting this final-form rulemaking.
- (3) The amendments to this final-form rulemaking do not enlarge the original purpose of the proposed rulemaking published at 52 Pa.B. 835.
- (4) This final-form rulemaking is necessary and appropriate for the administration of 63 Pa.C.S. § 3111.

Order

The Board, therefore, orders that:

- (a) The regulations of the Board, 49 Pa. Code Chapter 42, are amended by amending § 42.1 and adding §§ 42.9 and 42.10, to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
- (b) The Board shall submit this final-form rulemaking to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall submit this final-form rulemaking to IRRC, the HPLC and the SCP/PLC as required by law.
- (d) The Board shall certify this final-form rulemaking and deposit it with the Legislative Reference Bureau as required by law.

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

KERRI HAMPLE, OTD, OTR/L,
Chairperson

(*Editor's Note:* See 53 Pa.B. 4068 (July 29, 2023) for IRRC's approval order.)

Fiscal Note: Fiscal Note 16A-6713 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

GENERAL PROVISIONS

§ 42.1. Definitions.

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

* * * * *

Commissioner—The Commissioner of Professional and Occupational Affairs.

Equivalent program—A masters or certificate program in occupational therapy approved by the Board.

Jurisdiction—A state, territory or country.

Licensee—An individual who has been licensed under the act as an occupational therapist or an occupational therapy assistant.

* * * * *

LICENSURE BY ENDORSEMENT

§ 42.9. Licensure by endorsement.

(a) *Requirements for issuance.* To be issued a license by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement), an applicant shall satisfy all of the following conditions:

(1) Have a current license, certificate, registration or permit in good standing to practice as an occupational therapist or an occupational therapy assistant in another jurisdiction whose standards are substantially equivalent to or exceed those established under section 8 of the act (63 P.S. § 1508) and §§ 42.11 and 42.13(a) (relating to licensure examination; and application for licensure). The following apply:

(i) An applicant shall submit a copy of the current applicable law, regulation or other rule governing licensure, certification, registration or permit requirements and scope of practice in the jurisdiction that issued the license, certificate, registration or permit.

(ii) If the applicable law, regulation or other rule is in a language other than English, at the applicant's expense, the applicable law, regulation or other rule shall be translated by a professional translation service and verified to be complete and accurate.

(iii) The copy of the applicable law, regulation or other rule must include the enactment date.

(2) Demonstrate competency by the following:

(i) Experience in the practice of occupational therapy by demonstrating, at a minimum, that the applicant has actively engaged in the licensed practice as an occupational therapist or occupational therapy assistant under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions, for at least 2 of the 5 years immediately preceding the filing of the application with the Board.

(3) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certification, registration or permit to practice as an occupational therapist or occupational therapy assistant under section 16(a) of the act (63 P.S. § 1516(a)) and §§ 42.24 and 42.31 (relating to code of ethics; and unprofessional conduct).

(4) Have not been disciplined by the jurisdiction that issued the license, certificate, registration or permit.

(5) Have paid the application for licensure fee as required by § 41.17 (relating to fees).

(6) Have satisfied the professional liability requirements as required under section 8 of the act and § 42.13(b).

(7) Have applied for licensure in accordance with this chapter in the manner and format prescribed by the Board.

(8) Have completed 3 hours of training in child abuse recognition and reporting from a provider approved by the Department of Human Services as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

(b) *Interview and additional information.* An applicant may be required to appear before the Board for a personal interview and may be required to submit additional information, including supporting documentation relating to competency and experience. The applicant may request an interview by video teleconference for good cause shown.

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(3) and (4), the Board may, in its discretion, determine that an act prohibited under section 16(a) of the act or disciplinary action by a jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 42.10. Provisional endorsement license.

(a) *Provisional endorsement license.* The Board may, in its discretion, issue a provisional endorsement license to an applicant while the applicant is satisfying remaining requirements for licensure by endorsement under 63 Pa.C.S. § 3111 (relating to licensure by endorsement) and § 42.9 (relating to licensure by endorsement).

(b) *Expiration of a provisional endorsement license.*

(1) An individual holding a provisional endorsement license may practice for up to 1 year after issuance of the provisional endorsement license. The Board, in its discretion, may determine that an expiration date of less than 1 year is appropriate.

(2) Upon a written request and a showing of good cause, the Board may grant an extension of no longer than 1 year from the expiration date of the provisional endorsement license.

(c) *Termination of a provisional endorsement license.* A provisional endorsement license terminates if any of the following occurs:

(1) When the Board completes its assessment of the applicant and either denies or grants the license.

(2) When the holder of the provisional license fails to comply with the terms of the provisional endorsement license.

(3) When the provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 42.9 after expiration or termination of a provisional endorsement license; however, the individual may not be issued a subsequent provisional endorsement license.

[Pa.B. Doc. No. 23-1246. Filed for public inspection September 15, 2023, 9:00 a.m.]
