

PROPOSED RULEMAKING

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA CODE CH. 25]

Licensure Requirements

The State Board of Osteopathic Medicine (Board) proposes to amend Chapter 25 (relating to State Board of Osteopathic Medicine) by amending §§ 25.1, 25.231(a), 25.241, 25.242, 25.244, 25.251, 25.254, 25.262—25.264 and 25.303, and adding §§ 25.248 and 25.249 (relating to licensure by endorsement under 63 Pa.C.S. § 3111; and provisional endorsement license under 63 Pa.C.S. § 3111) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

Section 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 “[p]lays any fees established by . . . regulation.” Additionally, 63 Pa.C.S. § 3111(b) 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.

Section 16 of the Osteopathic Medical Practice Act (act) (63 P.S. § 271.16) and section 3 of the Acupuncture Licensure Act (ALA) (63 P.S. § 1803) provide the Board with broad authority to adopt regulations as are reasonably necessary to carry out the purposes of the act and the ALA.

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) (Act 41).

Background and Need for the Amendments

This proposed rulemaking is needed for several purposes. Amendments are necessary as a result of the transition of the American Osteopathic Association (AOA)

and the Accreditation Council for Graduate Medical Education (ACGME) into a single accreditation system. The transition was completed effective July 1, 2020. Under the new system, graduates of osteopathic medical schools (DOs) and allopathic medical schools (MDs) complete their postgraduate training in ACGME-accredited programs. To address the foregoing, this proposed rulemaking seeks to delete the definitions of “approved graduate osteopathic medical training,” “approved internship” and “approved residency” in § 25.1 (relating to definitions) and to provide more specificity relating to internships and graduate training programs at §§ 25.262 and 25.263 (relating to approved internships; and other approved graduate training programs), respectively. Instead, the Board proposes a new definition of “graduate medical training” to encompass either an approved internship or an approved residency.

Next, the Board proposes amendments to the licensure requirements for an unrestricted license by examination as set forth in § 25.241 (relating to unrestricted license by examination). The proposed regulations reflect the current status of National examination and licensure. First, beginning in 2023, the National Board of Osteopathic Medical Examiners (NBOME) no longer require a practical examination for passage of the NBOME series of examinations. Thus, it is necessary to remove this requirement as it relates to licensure by examination. Second, the proposed regulation updates the training requirement for licensure to include both an approved internship and an approved residency. This proposed amendment is consistent with the series of graduate training years undertaken by osteopathic medical school graduates. Third, the Board proposes to add an allowance for an NBOME successor to be accepted for licensure by examination purposes.

In keeping with the proposed amendments to § 25.241 pertaining to approved internships and residencies, a corresponding amendment is needed for the Board’s existing licensure-by-endorsement pathway. Specifically, with the elimination of the practical examination by the NBOME in 2023, the Board determined that its own regulatory requirement that calls for passage of a practical examination to obtain a license by endorsement, as set forth in § 25.242(4) (relating to unrestricted license by endorsement), is inconsistent with the national standards for licensure. Furthermore, the practical examination requirement for a license by endorsement under § 25.241 is only applicable to a minute segment of the applicant population, most of whom have practiced for decades prior to submitting a licensure application to the Board. Rather than serve its initial purpose of ensuring competency to engage in the holistic practice of osteopathic medicine, the practical examination requirement has evolved into an unnecessary burden on otherwise experienced and qualified applicants seeking to practice in this Commonwealth. To remove this burden, the Board proposes to delete the practical examination requirement from § 25.241.

Next, the Board proposes to amend § 25.244 (relating to temporary license). The amendments to the title and body of this section change the license type from a “temporary license” to a “temporary graduate training license” because these licenses are used by graduates of osteopathic medical colleges to practice within the confines of graduate training programs. Generally, graduate training programs consist of more than 1 year of training;

therefore, the Board also proposes to amend this section to specifically allow for renewal of the license upon the payment of the required fee. The Board's fee schedule at § 25.231(a) (relating to schedule of fees) is proposed to be amended to reflect the revised nomenclature "temporary graduate training license."

This proposed rulemaking is further needed to effectuate 63 Pa.C.S. § 3111, which requires the Board to issue a license to an applicant who is licensed in another jurisdiction and meets 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 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 demonstrating competency, including completion of continuing education or experience in the profession or occupation for at least 2 years 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 expiration of the provisional endorsement license. This proposed rulemaking would include two new sections to set forth the criteria for eligibility for licensure by endorsement under 63 Pa.C.S. § 3111, namely, § 25.248 which sets forth the specific methods required for an applicant to demonstrate competency, and § 25.249 which sets forth the requirements for granting a provisional endorsement license.

The Board proposes to amend § 25.251 (relating to general requirements), pertaining to unrestricted licensure by examination, to delete references to the practical examination because the practical examination will not be a required component of the National Board Examination beginning in 2023. The Board also proposes to include a successor to the NBOME examination, to avoid future need for regulatory clarification or confusion should the NBOME merge with another organization or become defunct. In keeping with other proposed amendments set forth herein, the Board also proposes to add completion of an approved residency as a method for an applicant to satisfy the training prerequisite to unrestricted licensure.

The Board proposes to delete § 25.254 (relating to frequency and content of examinations). The frequency of examinations is addressed in section 8(a) and (f) of the act (63 P.S. § 271.8(a) and (f)). The content of the examinations is obsolete given that the National Board Examination will no longer contain a practical examination component. Deletion of § 25.254 is also consistent with the Board's proposed removal of the practical examination as a requirement for issuance of a license by endorsement under § 25.242.

The Board further proposes to amend §§ 25.262 and 25.263 (relating to approved internships; and other approved graduate training programs). The current regulations require an applicant for licensure as an osteopathic physician to complete an AOA-approved internship. The reasons for revising this requirement are two-fold. First, as a result of the new single accreditation system, the AOA no longer approves postgraduate training programs. Second, with the single accreditation system now in place, graduates of osteopathic medical schools can be matched into an ACGME-accredited program with osteopathic recognition, an ACGME-accredited rotating internship, an ACGME-approved residency, or a specialty or subspecialty residency. Without changes to the prerequisite graduate training, the Commonwealth will have difficulty retaining osteopathic medical school graduates of schools located

within the Commonwealth. Likewise, it will be difficult to attract students from other states to train within this Commonwealth. Furthermore, the current regulations direct the Board to work with the AOA to evaluate and approve internships and other graduate training programs, which is no longer possible given that the AOA is no longer the graduate training approval body.

For those reasons, the Board proposes to amend § 25.262(a) to list the types of approved internships. The Board believes this list reflects the current internship landscape and provides the clarity needed for the graduate and applicant population. Relating to subsection (b), the AOA Board of Trustees does not approve internship programs occurring after June 30, 2022; thus, an amendment is proposed to allow for the continuation of Board discretion in approving graduate training programs that are not specifically identified in the regulations without dependence on AOA action.

Similarly, the Board proposes to amend § 25.263 to remove the AOA reference and dependence and provide a list of residencies and other graduate training programs that are approved by the Board to satisfy the requirements of licensure. As with the approved internships, the amendments to this section provide a conciseness and clarity relating to the types of approved programs, thus negating any need for a separate definition.

The Board also proposes to amend § 25.264 (relating to approval dates) to delete subsection (a), which relates to applications occurring between July 1, 1992, and June 30, 1993, as it is no longer relevant. Subsection (b), as amended, is sufficiently specific to encompass the training completed by all applicants for licensure.

Finally, to maintain consistency with § 25.248, the Board proposes to amend § 25.303 (relating to requirements for registration as an acupuncturist and an acupuncturist supervisor) so that the means by which an acupuncturist applicant can establish English language proficiency are the same for all applicants, not just those applying for licensure by endorsement under 63 Pa.C.S. § 3111.

Description of Proposed Amendments

The Board proposes to amend § 25.1 to add, delete and amend several terms and definitions. The Board adds and defines the acronyms "ABMS (American Board of Medical Specialties)", "ACGME (Accreditation Council for Graduate Medical Education)" and "PGY (post-graduate year)". The Board deletes the term "approved graduate osteopathic medical training" and adds the simpler term "graduate medical training," which is defined to encompass the various graduate training options available. The terms "approved internship" and "approved residency" are deleted because the definitions are unnecessary in view of the substantive provisions relating to internships and residencies that are delineated in amended §§ 25.262 and 25.263, respectively. The term "jurisdiction" is added and defined. The term "National Board Examination" is amended to identify the exam provider referenced throughout the regulations, and to include the possibility of a successor to the examination.

The Board proposes to amend § 25.241 to remove specific reference to the numbered parts of the National Board Examination, clarify to whom examination fees should be paid, remove reference to the practical examination, and include the option of completing an approved residency to satisfy licensure requirements. The Board is also deleting references to the Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006) which

has been repealed and replaced with the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910).

Section 25.242 sets forth the Board's existing licensure by endorsement requirements. Paragraph (4) is proposed to be deleted in its entirety to remove the requirement that an applicant for a license by endorsement receive a passing score on the osteopathic diagnosis and manipulative therapy examination administered by the Board or a professional testing organization. Paragraph (5) is amended to include the successful completion of an approved residency as an acceptable form of training prerequisite to licensure.

The Board proposes to amend § 25.244, changing "temporary graduate training licenses" to "temporary graduate training licenses." The section would further be amended to specifically allow for renewal of the license upon application and payment of the required fee. Corresponding amendments are proposed to the Board's fee schedule in § 25.231(a) to reflect the revised nomenclature "temporary graduate training license."

The Board proposes to add § 25.248, which requires an applicant to satisfy nine criteria required for licensure by endorsement. Under subsection (a)(1), an applicant shall have a current license, certificate, registration or permit in good standing to practice as an osteopathic physician and surgeon, acupuncturist, physician assistant, respiratory therapist, athletic trainer, perfusionist or genetic counselor, as applicable, in another jurisdiction whose standards for licensure are substantially equivalent to or exceed those under the act, or the ALA.

Proposed subsection (a)(1)(ii) would also require the standards for licensure to be substantially equivalent to standards set forth in the Board's regulations, including, as applicable, the regulatory requirements under §§ 25.161, 25.241, 25.303, 25.507, 25.704, 25.803, 25.903 or 25.904, pertaining to licensure as a physician assistant, an osteopathic physician, an acupuncturist, a respiratory therapist, an athletic trainer, a perfusionist or a genetic counselor, respectively.

Proposed subsection (a)(2) would require an applicant to submit a copy of the current applicable law, regulation or other rule governing licensure and scope of practice in the jurisdiction that issued the license. Subsection (a)(2)(i) would be applicable to countries where the applicable law, regulation or other rule is in a language other than English. The Board proposes to require, at the applicant's expense, translation of the applicable law, regulation or other rule by a professional translation service. Subsection (a)(2)(ii) would also require that the copy of the applicable law, regulation or other rule include the enactment date. The purpose of this section is to allow the Board to evaluate the licensure requirements of the other jurisdiction to determine whether their licensure standards are substantially equivalent to those of this Commonwealth.

In proposed subsection (a)(3), the Board would set forth the requirements to demonstrate competency. Under this provision, an applicant for a license by endorsement under 63 Pa.C.S. § 3111 to practice as an osteopathic medical physician and surgeon, acupuncturist, physician assistant, respiratory therapist, athletic trainer, perfusionist or genetic counselor must provide proof of competency by demonstrating experience in the practice of the applicable profession. To demonstrate competency by experience, an applicant must demonstrate the licensed practice of the profession for at least 2 years of the

5 years immediately preceding the filing of the application, under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions. This means that the individual must establish to the Board that they practiced for any 2 years of the preceding 5 years while holding the license, certificate, registration or permit in the profession for which the applicant is applying.

Proposed subsection (a)(4) and (5) would incorporate the statutory prohibitions in 63 Pa.C.S. § 3111(a)(3) and (4) pertaining to conduct that would constitute grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice the profession or occupation, and prior discipline by the jurisdiction that issued the license, respectively.

Proposed subsection (a)(6) would require payment of an application fee, as required by 63 Pa.C.S. § 3111(a)(5). The applicable fee for licensure by endorsement is the same application fee already set forth in § 25.231 for each of the professions licensed by the Board.

Next, proposed subsection (a)(7) would require that applicants meet the malpractice insurance requirements under the act, section 3.2 of the ALA (63 P.S. § 1803.2) and this chapter. Similarly, proposed subsection (a)(8) would require applicants to satisfy application requirements, as set forth in the act and this chapter. In subsection (a)(9), the Board proposes to include the requirement that an applicant complete 3 hours of training in child abuse recognition and reporting, which is mandated continuing education under 23 Pa.C.S. § 6383(b)(3)(i) (relating to education and training).

Finally, proposed subsection (a)(10) would require that applicants for an acupuncturist license by endorsement demonstrate English proficiency. This subsection is consistent with § 25.303. To demonstrate English proficiency, an applicant for an acupuncturist license by endorsement may take an English proficiency examination, including the Test of English as a Foreign Language (TOEFL®), the Occupational English Test (OET) or an English proficiency examination equivalent to the TOEFL® or OET, as approved by the Board. In following the spirit of 63 Pa.C.S. § 3111, which encourages elimination of unnecessary barriers to licensure, the Board also offers other options that allow an applicant to demonstrate English proficiency, including the following: the applicant's professional education program was in English; the applicant's professional training was in an English-speaking facility; the applicant's entry examination to practice in the profession was in English; or the applicant was required to demonstrate English language proficiency to be issued a license in the jurisdiction in which the applicant is licensed. The Board will make available a list of Board-approved English language proficiency (or any successor examinations) on its web site.

In proposed subsection (b), the Board may require a personal interview or additional information to assist the Board in determining eligibility and competency. When a personal interview is necessary, the applicant may request the interview to be conducted by video conference or teleconference for good cause shown. Consistent with 63 Pa.C.S. § 3111(a)(4) and (5), proposed subsection (c) authorizes the Board, in its discretion, to determine that an act prohibited under section 15 of the act (63 P.S. § 271.15) or disciplinary action imposed by another jurisdiction are not impediments to the granting of a license, certificate, registration or permit under 63 Pa.C.S. § 3111.

Consistent with 63 Pa.C.S. § 3111(b), proposed § 25.249 would set forth the parameters of a provisional endorsement license). Proposed subsection (a) provides that the Board, in its discretion, may issue a provisional endorsement license while an applicant is satisfying remaining requirements under 63 Pa.C.S. § 3111 and § 25.248. Proposed subsection (b) sets the expiration of a provisional endorsement license at 1 year, unless the Board determines that an expiration date of less than 1 year is appropriate. Additionally, upon a written request, the Board may extend the term of the license upon a showing of good cause. Proposed subsection (c) sets forth reasons for which a provisional endorsement license will be terminated by the Board, including: upon the granting or denial of a license by the Board; upon the failure of the provisional endorsement licensee to comply with the terms of the provisional endorsement license; or upon the expiration of the provisional endorsement license. Finally, proposed subsection (d) clarifies that while an individual may reapply for a license by endorsement under proposed § 25.248, the Board will not issue a subsequent provisional endorsement license to an applicant who previously held a provisional endorsement license that expired or was terminated.

Section 25.251 relates to the general requirements for licensure by examination. The Board proposes to amend subsection (a) to simply require passage of all parts of the National Board Examination. Subsection (b) would be amended to allow for an NBOME successor. To maintain consistency with several other changes proposed in this rulemaking, subsection (c) is proposed to be deleted. The Board proposes to amend subsection (d) to remove the requirement relating to eligibility for admission to the practical examination after graduation and to allow an approved residency to satisfy the licensure training prerequisite. Subsection (e) is proposed to be deleted because it relates to applications for the practical examination. As previously set forth relating to the proposed amendments to the unrestricted license by examination and unrestricted license by endorsement requirements, a practical examination will not be part of the National examination standards beginning in June 2023. Therefore, retention of information relating to application for the practical examination is unnecessary.

The Board proposes to delete § 25.254 in its entirety. The frequency of examinations is addressed in section 8(a) and (f) of the act. Additionally, the National Board Examination will no longer contain a practical examination component.

The Board proposes to amend § 25.262 to remove reliance upon the AOA for approved internships. The section is specifically amended to allow for a graduate of an osteopathic medical training program to satisfy the internship prerequisite in one of several ways. The amendment further allows for the Board to exercise discretion in approving internships, without limiting said discretion to exigent circumstances caused by the AOA.

The Board is also proposing amendments to § 25.263 to include approved residencies as graduate training programs. The section provides a list of approved residencies that will satisfy the residency prerequisite and also provides the Board with discretion to approve other graduate training programs not specifically identified in the list.

The Board proposes to amend § 25.264 to delete subsection (a) which relates to graduate training occurring

between 1992 and 1993. Subsection (b) is amended to include approved residencies as acceptable training prerequisite to licensure.

Finally, to maintain consistency with the English language proficiency provisions proposed in § 25.248(10)(i)—(vii), the Board proposes to amend § 25.303 so that the means by which an acupuncturist applicant can establish English language proficiency are the same for all applicants, not just those applying for licensure by endorsement under 63 Pa.C.S. § 3111.

Fiscal Impact and Paperwork Requirements

This proposed 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 under 63 Pa.C.S. § 3111 will be recouped through fees paid by applicants. Applicants who apply for licensure by endorsement will be impacted by the initial application fees in § 25.231. Applicants will have to pay the same initial application fee as all other applicants for a license in each profession (osteopathic physician \$185, physician assistant \$125, acupuncturist \$110, respiratory therapist \$110, athletic trainer \$110, perfusionist \$130, genetic counselor \$130). All applicants must complete child abuse recognition and reporting training, as required under 23 Pa.C.S. § 6383(b)(3)(i). Applicants may avail themselves of free in-person and online child abuse recognition and reporting training courses; therefore, the Board does not anticipate a negative fiscal impact for this statutorily mandated training. If an acupuncturist applicant is unable to establish English proficiency by demonstrating that their education, training or examination was in English or by establishing that they were required to demonstrate English language proficiency to become licensed in their jurisdiction, they must take the TOEFL® examination or another examination, with a cost to the applicant of approximately \$200.

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 May 7, 2024, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC), the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.56) which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to the Board Counsel, State Board of

Osteopathic Medicine, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference “16A-5336 (Licensure by Endorsement and Licensure Requirements)” when submitting comments.

JOHN B. BULGER, DO,
Chairperson

Fiscal Note: 16A-5336. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter A. GENERAL PROVISIONS

§ 25.1. Definitions.

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

ABMS—The American Board of Medical Specialties.

ACCME—The Accreditation Council on Continuing Medical Education.

ACGME—The Accreditation Council for Graduate Medical Education.

AMA PRA—American Medical Association Physician’s Recognition Award.

* * * * *

Approved activity—A continuing medical education activity accepted for AOA credit, ACCME credit or AMA PRA credit.

[Approved graduate osteopathic medical training—An approved internship or an approved residency.

Approved internship—An osteopathic rotating internship program approved by the AOA and the Board.

Approved residency—A training program approved by the AOA and the Board leading toward certification in a specialty or subspecialty.]

Board—State Board of Osteopathic Medicine.

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Category 2 activities—Continuing medical education activities approved for AOA Category 2 credit, ACCME Category 2 credit or AMA PRA Category 2 credit.

COMLEX—Comprehensive Osteopathic Medical Licensing Examination.

Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P.S. §§ 6921–6938).

FLEX—The uniform written examination of the Federation of State Medical Boards of the United States, Inc.

Graduate medical training—An approved internship in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs).

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

Jurisdiction—A state, territory or country.

NBOME—The National Board of Osteopathic Medical Examiners.

National Board Examination—[The uniform written examination of the NBOME] The NBOME COMLEX, or its successor examination.

PGY—Post-Graduate Year.

Subchapter F. FEES

§ 25.231. Schedule of fees.

(a) An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

		<i>Effective August 15, 2020</i>	<i>Effective July 1, 2022</i>	<i>Effective July 1, 2024</i>
(1) <i>Osteopathic Physician</i>				
	Application for unrestricted license to practice as an osteopathic physician—original reciprocal, boundary or by endorsement	\$170	\$185	\$205
	Application for short-term camp license as an osteopathic physician	\$100	\$110	\$120
	Temporary graduate training license or graduate training certificate	\$115	\$125	\$140
	Annual renewal of temporary graduate training license or graduate training certificate	\$25	\$25	\$25
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Subchapter G. LICENSING, EDUCATION AND
GRADUATE TRAINING

LICENSURE REQUIREMENTS

§ 25.241. Unrestricted license by examination.

To secure an unrestricted license for the practice of osteopathic medicine and surgery by examination, the applicant shall meet the following educational and professional requirements. The applicant shall have:

(1) Graduated from an approved osteopathic medical college.

(2) Received [**passing scores on Parts I, II and III of**] a **passing score** on the National Board Examination. The applicant shall pay the required examination fee at the direction of the National Board **Examination provider**.

(3) [**Received a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board or a designated professional testing organization**] [**Reserved**].

(4) Successfully completed an approved internship **in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs)**.

(5) Complied with the malpractice insurance requirements of the [**Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)**] **Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910)** and regulations thereunder.

(6) Completed an application obtained from the Board detailing education and experience and indicating compliance with the applicable provisions of the act and this chapter, submitted with the required fees.

§ 25.242. Unrestricted license by endorsement **under section 9 of the act**. To secure an unrestricted license for the practice of osteopathic medicine and surgery by endorsement, the applicant shall meet the following educational and professional requirements. The applicant shall have:

(1) Provided evidence of a valid license in good standing to practice osteopathic medicine and surgery in another state or territory of the United States or Canada whose standards are substantially equivalent to those established by the Board and who reciprocate with the Commonwealth.

(2) Graduated from an approved osteopathic medical college.

(3) Received a passing score on the National Board Examination, FLEX or a written state or territorial examination developed by the NBOME or otherwise acceptable to the Board.

(4) [**Received a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board or a designated professional testing organization**] [**Reserved**].

(5) Successfully completed an approved internship **in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance**

with § 25.263 (relating to approved residencies and other approved graduate training programs).

(6) Complied with the malpractice insurance requirements of the [**Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)**] **Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910)** and regulations thereunder.

(7) Completed an application obtained from the Board detailing education and experience and indicating compliance with the applicable provisions of the act and this chapter, submitted with the required fees.

§ 25.244. Temporary **graduate training** license.

(a) A temporary **graduate training** license is required of an osteopathic medical college graduate for permission to participate in an approved graduate [**osteopathic or**] medical training program in this Commonwealth.

(b) Specific requirements for temporary **graduate training** [**licensure**] **license** are as follows. The applicant shall have:

(1) Graduated from an approved osteopathic medical college.

(2) Submitted an application obtained from the Board, together with the required fee.

(c) The temporary **graduate training** license permits the graduate to train only within the complex of the hospital and its affiliates where the graduate is engaged in an approved graduate [**osteopathic or**] medical training program.

(d) The temporary **graduate training** license is valid for 1 year, [**after which it shall be surrendered to the Board. The Board may extend the validity of the temporary training license within its discretion**] **but may be renewed annually by the filing of a renewal form obtained from the Board and payment of the required fee**.

(Editor's Note: Sections 25.248 and 25.249 are proposed to be added and are printed in regular type to enhance readability.)

§ 25.248. Licensure 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, certificate, registration or permit in good standing in another jurisdiction whose standards for licensure are substantially equivalent to or exceed those established under the following:

(i) The act or the Acupuncture Licensure Act (ALA) (63 P.S. §§ 1801—1806.1).

(ii) Regulations of the Board at one of the following sections, as applicable:

(A) Section 25.161 (relating to criteria for licensure as a physician assistant).

(B) Section 25.241 (relating to unrestricted license by examination).

(C) Section 25.303 (relating to requirements for licensure as an acupuncturist and registration as an acupuncturist supervisor).

(D) Section 25.507 (relating to criteria for licensure as a respiratory therapist).

(E) Section 25.704 (relating to application for licensure).

(F) Section 25.803 (relating to application for perfusionist license).

(G) Section 25.903 or § 25.904 (relating to application for genetic counselor license; or application for genetic counselor license by noncertified persons).

(2) 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.

(i) 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.

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

(3) Demonstrate competency in the practice of the profession by establishing, at a minimum, that the applicant has actively engaged in the licensed practice of the profession under a license, certificate, registration or permit in a substantially equivalent jurisdiction or jurisdictions, for at least 2 years of the 5 years immediately preceding the filing of the application with the Board.

(4) Have not committed any act that constitutes grounds for refusal, suspension or revocation of a license, certificate, registration or permit to practice prohibited by section 15 of the act (63 P.S. § 271.15).

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

(6) Have paid the applicable application fee as required by § 25.231 (relating to schedule of fees).

(7) Have satisfied the professional liability insurance coverage requirements as required under the act or section 3.2 of the ALA (63 P.S. § 1803.2) and this chapter.

(8) Have applied for a license, certificate, registration or permit in accordance with this chapter in the manner and format prescribed by the Board.

(9) 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).

(10) For applicants for an acupuncturist license by endorsement, demonstrate English language proficiency by demonstrating one of the following:

- (i) The applicant's educational program was in English.
- (ii) The applicant's training was at an English-speaking facility.
- (iii) The applicant's entry examination was taken in English.

(iv) The applicant has achieved a scaled score of 83 on the Test of English as a Foreign Language (TOEFL®) internet-based test, 220 on the TOEFL® computer-based test or 550 on the TOEFL® paper-based test, 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.

(v) The applicant has achieved a score of 350 in each of the four sub-tests of the Occupational English Test.

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

(vii) The applicant was required to demonstrate English language proficiency to be issued a license in the applicant's jurisdiction.

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

(c) *Prohibited acts and discipline.* Notwithstanding subsection (a)(4) and (5), the Board may, in its discretion, determine that an act prohibited under section 15 of the act or a disciplinary action taken by another jurisdiction is not an impediment to licensure under 63 Pa.C.S. § 3111.

§ 25.249. Provisional endorsement license under 63 Pa.C.S. § 3111.

(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 § 25.248 (relating to licensure 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 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) The Board completes its assessment of the applicant and denies or grants the license.

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

(3) The provisional endorsement license expires.

(d) *Reapplication.* An individual may reapply for licensure by endorsement under § 25.248 after expiration or termination of a provisional endorsement license. The individual may not be issued a subsequent provisional endorsement license.

LICENSURE EXAMINATIONS

§ 25.251. General requirements.

(a) An applicant is eligible for unrestricted licensure **by examination** only if the applicant has passed [**the required written examination and the practical examination**] **the National Board Examination**.

(b) An applicant shall apply directly to the NBOME, or its successor, for admission to the required parts of the National Board Examination and shall pay the required fees at the direction of the NBOME or its successor.

(c) [An applicant for admission to the practical examination in osteopathic diagnosis and manipulative therapy shall be a graduate of an approved osteopathic medical college and shall fulfill the requirements of the act and this chapter] [Reserved].

(d) An applicant [is eligible for admission to the practical examination after graduation from an approved osteopathic medical college, but] is not eligible for unrestricted licensure until the applicant has completed either an approved internship in accordance with § 25.262 (relating to approved internships) or an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs).

(e) [An applicant for the practical examination and State written, if applicable, may obtain an application form by contacting the Board office at the following address: State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649] [Reserved].

§ 25.254. [Frequency and content of examinations] [Reserved].

[(a) A minimum of two written examinations shall be administered each year.

(b) The practical examination in osteopathic diagnosis and manipulative therapy shall test diagnostic and therapeutic techniques applicable to the entire body.]

EDUCATION AND GRADUATE TRAINING PROGRAMS

§ 25.262. Approved internships.

(a) [The Board will work cooperatively with the AOA under standards established by the Committee on Post-Doctoral Training of the AOA to evaluate and approve internship programs prerequisite to unrestricted licensure in this Commonwealth. AOA-approved programs are approved by the Board, but the Board may conduct or cause to be conducted inspections it deems necessary to assure educational quality.] An approved internship program prerequisite to unrestricted licensure in this Commonwealth must be one of the following:

(1) An AOA-approved internship.

(2) An ACGME-accredited training program that has received ACGME Osteopathic Recognition.

(3) An ACGME-accredited training program that includes 24 weeks of rotations in internal medicine, general surgery, pediatrics, family medicine, emergency medicine and obstetrics/gynecology.

(b) [Internship programs which have not been approved by the AOA Board of Trustees may be approved by the Board at its discretion in the event] The Board, in its discretion, and upon a showing of exigent circumstances [wherein a sufficient number of AOA-approved internship positions are not available], may approve other internship

programs to accommodate osteopathic medical school graduates desiring to obtain licensure in this Commonwealth.

§ 25.263. [Other] Approved residencies and other approved graduate training programs.

[The Board will work cooperatively with the AOA under standards established by the Committee on Post-Doctoral Training of the AOA to evaluate and approve other supervised graduate training programs leading to certification in a medical specialty by the appropriate specialty board of the AOA. AOA-approved programs are approved by the Board, but the Board may conduct or cause to be conducted inspections it deems necessary to ensure educational quality.] An approved residency program prerequisite to unrestricted licensure in this Commonwealth must be one of the following:

(1) An AOA-approved or accredited residency program.

(2) An ACGME-approved or accredited residency program.

(3) A training program provided by a hospital accredited by the Joint Commission on Accreditation of Hospitals which is acceptable to the AOA or ABMS toward the training it requires for certification in a specialty or subspecialty.

(4) A graduate training program otherwise approved by the Board.

§ 25.264. Approval dates.

(a) [On and after July 1, 1992, internships prerequisite to unrestricted licensure shall have been approved in accordance with § 25.262 (relating to approved internships)] [Reserved].

(b) A candidate for unrestricted licensure [applying on or after July 1, 1993,] shall have completed an [AOA-approved] approved internship in accordance with § 25.262 (relating to approved internships), an approved residency in accordance with § 25.263 (relating to approved residencies and other approved graduate training programs), or an internship or residency which had been approved by the Board at the time the candidate participated in the program.

Subchapter I. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS

§ 25.303. Requirements for licensure as an acupuncturist and registration as an acupuncturist supervisor.

(a) The Board will register as an acupuncturist a nonosteopathic physician who satisfies the following requirements:

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

(i) If the acupuncture education program is taken within the United States, the applicant shall complete 2 academic years of acupuncture training and shall complete 2 academic years of a college level educational program.

(ii) If the educational program is taken outside of the United States, an applicant shall graduate from a college

with a program of study including Oriental medicine and document 300 class hours of study in acupuncture training.

(2) Has obtained a passing grade on an acupuncture examination or has been certified by NCCA by credential review. The Board accepts the passing grade on the certifying examination of the NCCA as determined by the NCCA, and accepts a passing grade on any state's acupuncture examination taken prior to January 1, 1987, as determined by the licensing or registering authority in the other state. 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 secured a passing score on the test of English as a Foreign Language (TOEFL®).] can demonstrate English language proficiency by one of the following:**

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

(ii) The applicant's training was at an English-speaking facility.

(iii) The applicant's entry examination was taken in English.

(iv) The applicant has achieved a scaled score of 83 on the Test of English as a Foreign Language (TOEFL®) internet-based test, 220 on the TOEFL® computer-based test or 550 on the TOEFL® paper-based test 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.

(v) The applicant has achieved a score of 350 in each of the four sub-tests of the Occupational English Test.

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

(vii) The applicant was required to demonstrate English language proficiency to be issued a license in another jurisdiction.

(2.1) Completes at least 3 hours of mandatory training in child abuse recognition and reporting in accordance with § 25.417(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(3) Submits an application for licensure as an acupuncturist accompanied by the required fee.

(b) The Board will license as an acupuncturist an osteopathic physician who satisfies the following requirements:

(1) Has successfully completed 200 hours of training in acupuncture medical programs including examinations required by those programs or has engaged in clinical acupuncture practice for at least 3 years prior to January 1, 1987, documented to the satisfaction of the Board.

(1.1) Completes at least 3 hours of mandatory training in child abuse recognition and reporting in accordance with § 25.417(a) (relating to child abuse recognition and reporting—mandatory training requirement).

(2) Submits an application for licensure as an acupuncturist accompanied by the required fee.

* * * * *

[Pa.B. Doc. No. 24-723. Filed for public inspection May 17, 2024, 9:00 a.m.]

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Broker Price Opinions

The State Real Estate Commission (Commission) proposes to amend Chapter 35 (relating to State Real Estate Commission) by deleting the current temporary regulations in Subchapter I (relating to broker price opinions—temporary regulations) and adding permanent regulations in Subchapter J (relating to broker price opinions). The proposed permanent regulations are set forth in Annex A.

Effective Date

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

Statutory Authority

The act of June 29, 2018 (P.L. 500, No. 75) (Act 75 of 2018) amended the Real Estate Licensing and Registration Act (act) (63 P.S. §§ 455.101—455.902) and authorizes the Commission to promulgate regulations for the implementation of section 608.6 of the act (63 P.S. § 455.608f) regarding broker price opinions. Section 404 of the act (63 P.S. § 455.404) also authorizes the Commission to promulgate rules or regulations to administer and effectuate the purposes of the act.

Background and Need for the Amendment

Act 75 of 2018 made two major changes to the act. It increased the minimum amount of education necessary for licensure as a salesperson and it allowed for broker price opinions to be performed by licensed brokers, associate brokers and salespersons. Broker price opinions are considered another form of valuation for a property. Act 75 of 2018 amended section 201 of the act (63 P.S. § 455.201) to define a broker price opinion as “[a]n estimate prepared by a broker, associate broker or salesperson that details the probable selling price of a particular parcel of real property and provides a varying level of detail about the property's condition, market and neighborhood, and information on comparable sales, but does not include an automated valuation model. . . .” Until the amendments were made to the act, a broker price opinion was considered an appraisal under Pennsylvania law which could be performed only by a certified real estate appraiser. Broker price opinions are most frequently used by banks to determine an approximate value of the bank's real estate inventory. Prior to Act 75 of 2018, banks would have to either obtain a formal appraisal or a comparative market analysis. Banks find it cost prohibitive to pay for a full appraisal when they only want a quick opinion as to the value. The purpose of a comparative market analysis is for a real estate licensee to give an opinion of value for the purpose of listing a property for sale or aiding a buyer to determine the offering price. A comparative market analysis would not help a bank for its needs concerning valuation of its inventory. A broker price opinion creates a viable alternative for those consumers that would just like an estimate of value for their

property without having to pay for an expensive appraisal or to have the property listed for sale. The trend across the country is to allow broker price opinions. The amendments to the act keep this Commonwealth current with practices in other states.

Act 75 of 2018 also authorized the Commission to promulgate temporary regulations to facilitate the prompt implementation of the practice of broker price opinions by brokers, associate brokers and salespersons. This proposed rulemaking will make the temporary regulations permanent.

Description of the Proposed Amendments

This proposed rulemaking replaces Subchapter I with Subchapter J which proposes limitations and requirements for broker price opinions, including required disclosures, signature requirements, permissible uses and required experience and education for brokers, associate brokers and salespersons.

Definitions

The Commission proposes to amend § 35.201 (relating to definitions) to add the following terms, which are defined in the act: “broker price opinion” and “short sale.” The definition of “comparative market analysis” is proposed to be amended to comport with the act. In addition, “automated valuation model” is defined in accordance with section 1125(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. § 3354(d)). The definitions for “broker price opinion,” “short sale” and “automated valuation model” are identical to the definitions provided in § 35.401 of the temporary regulations. The amended definition of “comparative market analysis” was not included in the temporary regulations. For the sake of clarity, all of the foregoing definitions have been consolidated in § 35.201 rather than defining terms separately in Subchapter J. Section 35.401 of the temporary regulations is proposed to be reserved.

Broker price opinion

Section 35.501 (relating to broker price opinion) lists the requirements of a broker price opinion. Under subsection (a), a broker price opinion is required to have a specific statement displayed indicating that the broker price opinion was not prepared in accordance with the Uniform Standards of Professional Appraisal Practice and that it is not to be construed as an appraisal. Subsection (b) requires a signature by the person who prepares the broker price opinion and lists the information that must be on every broker price opinion, as required by section 608.6(c) of the act. Based on the suggestion of one of the comments received from stakeholders during the drafting of the temporary regulations, the Commission added “cost data” to subsection (b)(4) as another way of basing a conclusion as to price. Subsection (b)(9) requires the license numbers of the preparer and any broker or associate broker reviewing the broker price opinion because the Commission believes it is important to identify all licensees involved with a broker price opinion.

Consistent with the act, subsection (c) requires that any compensation for preparing a broker price opinion be paid directly to the employing broker of the licensee who prepared the broker price opinion. This mirrors section 608.6(d) of the act but adds the word “employing” in front of broker. The Commission believes that adding the word “employing” in front of broker clarifies that only the broker can be compensated by a consumer and is consistent with section 604(a)(12) of the act (63 P.S. § 455.604(a)(12)), which prohibits an associate broker or

salesperson from accepting a commission or other valuable consideration from anyone other than the employing broker. Subsections (d) and (e) set forth the minimum requirements for a salesperson to prepare a broker price opinion, which includes experience, education and required review and signature by the employing broker or designated associate broker as set forth in section 608.6(j) of the act.

Section 35.501 is nearly identical to § 35.402 of the temporary regulations. The lone differences are proposed amended subsection (c) begins “[a]ny fee . . .” rather than “[a] fee . . .”; and the cross-reference in subsection (d) to “§ 35.404” is proposed to be amended to “35.503.”

Use of broker price opinions

Section 35.502 (relating to use of broker price opinion) is identical to § 35.403 of the temporary regulations. Subsection (a) lists the permissible uses of a broker price opinion as set forth in section 608.6(e) of the act. Subsection (b) lists the prohibited uses of a broker price opinion as set forth in section 608.6(f) of the act.

Broker price opinion education

Section 35.503 (relating to broker price opinion education) sets forth the educational requirements a licensee must complete prior to preparing a broker price opinion. Subsection (a) requires brokers, associate brokers and salespersons to complete a Commission-approved initial education course in the preparation of broker price opinions. Subsection (b) requires a broker or associate broker to complete the Commission-approved initial education course in the preparation of broker price opinions prior to signing a broker price opinion prepared by a salesperson. Subsection (c) requires brokers, associate brokers and salespersons to complete at least 3 hours of Commission-approved continuing education in broker price opinion topics prior to preparing a broker price opinion. Subsection (d) requires brokers, associate brokers and salespersons to retain the transcript or certificate of instruction and provide a copy to the Commission upon request. Under subsection (e), the Commission pre-approves four broker preclicensure courses in the topics of valuation of residential property, valuation of income-producing property, basic appraisal principles and basic appraisal procedures for the initial educational requirement.

Section 35.503 is substantially similar to § 35.404 of the temporary regulations. Amended subsection (d) in this proposed rulemaking deletes the language “who has completed a Commission-approved initial education course, a broker preclicensure course listed in subsection (e) or continuing education referenced in subsection (c)” from the temporary regulation and adds “for all required broker price opinion courses.” The phrase “Commission has approved the” is proposed to be added to subsection (e).

Fiscal Impact and Paperwork Requirements

This proposed rulemaking should have no adverse fiscal impact on the Commonwealth or its political subdivisions. The Commission will not incur any additional costs due to the review and approval of the educational courses because those costs are paid for through application fees paid by the education providers. Those brokers, associate brokers and salespersons who want to perform broker price opinions will incur minimal costs associated with obtaining the necessary initial education if they have not already done so. On average, education providers are charging approximately \$10 per credit hour for broker price opinion education. These costs are minimal and not prohibitive to obtain the education to perform a broker

price opinion. This proposed rulemaking does not increase the initial education or continuing education hour requirements. Costs to the licensee are included in what is already required for licensure and retention of the license. Also, licensees who complete the initial education requirement will be required to retain the transcript or certificate of instruction for as long as the licensees are performing broker price opinions.

Sunset Date

The Commission 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 May 7, 2024, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the chairperson of the Consumer Protection and Professional Licensure Committee of the Senate and the chairperson of the Professional Licensure Committee of the House of Representatives. A copy of this material is available to the public upon request.

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

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Marc Farrell, Counsel, State Real Estate Commission, P.O. Box 69523, Harrisburg, PA 17106-9523, RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin. Reference "No. 16A-5626 (Broker Price Opinions)" when submitting comments.

GAETANO PICCIRILLI,
Chairperson

Fiscal Note: 16A-5626. No fiscal impact; recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

* * * * *

Associate broker—An individual broker who is employed by another broker.

Automated valuation model—A computerized model used by mortgage originators and secondary

market issuers to determine the collateral worth of a mortgage secured by a consumer's principal dwelling.

Branch office—Any fixed location in this Commonwealth, other than the main office, maintained by a broker or cemetery broker, devoted to the transaction of real estate business.

* * * * *

Broker of record—The individual broker responsible for the real estate transactions of a partnership, association or corporation that holds a broker's license.

Broker—An individual or entity holding either a standard or reciprocal license, that, for another and for a fee, commission or other valuable consideration, does one or more of the following:

- (i) Negotiates with or aids a person in locating or obtaining for purchase, lease or acquisition of interest in real estate.
(ii) Negotiates the listing, sale, purchase, exchange, lease, time share and similarly designated interests, financing or option for real estate.
(iii) Manages real estate.
(iv) Represents himself or itself as a real estate consultant, counsellor or house finder.
(v) Undertakes to promote the sale, exchange, purchase or rental of real estate. This subparagraph does not apply to an individual or entity whose main business is that of advertising, promotion or public relations.
(vi) Undertakes to perform a comparative market analysis.
(vii) Attempts to perform one of the actions listed in subparagraphs (i)–(vi).

Builder-owner salesperson—An individual holding either a standard or reciprocal license, who is a full-time employee of a builder-owner of single-family and multi-family dwellings located in this Commonwealth and who is authorized, for and on behalf of, the builder-owner, to do one or more of the following:

- (i) List for sale, sell or offer for sale real estate of the builder-owner.
(ii) Negotiate the sale or exchange of real estate of the builder-owner.
(iii) Lease or rent, or offer to lease, rent or place for rent, real estate of the builder-owner.
(iv) Collect or offer, or attempt to collect, rent for real estate of the builder-owner.

* * * * *

Comparative market analysis—A written analysis, opinion or conclusion by a [contracted buyer's agent, transactional licensee or an actual or potential seller's agent] broker, associate broker or salesperson relating to the probable sale or rental price of a specified [piece of real estate] parcel of real property in an identified real estate market at a specified time, [offered either for the purpose of determining the asking/offering price for the property by a specific actual or potential consumer or for the purpose of securing a listing agreement with a seller] which is prepared for any of the following:

- (i) An existing or potential seller, buyer, lessor or lessee of the parcel of real property.

(ii) A person making decisions or performing due diligence related to the potential listing, offering, sale, option, lease or acquisition price of the parcel of real property.

Consumer—An individual or entity who is the recipient of any real estate service.

* * * * *

Seller agent—A licensee who enters into an agency relationship with a seller/landlord.

Short sale—A sale of real property in which the seller's proceeds are less than the amount required to pay off all liens secured by the property.

Standard license—A license, other than a reciprocal license, issued to an individual or entity who has fulfilled the education/experience and examination requirements of the act.

* * * * *

Subchapter I. [**BROKER PRICE OPINIONS—TEMPORARY REGULATIONS**]
[Reserved.]

§§ 35.401—35.404. [Reserved].

(Editor's Note: The following subchapter is proposed to be added and is printed in regular type to enhance readability.)

Subchapter J. BROKER PRICE OPINIONS

Sec.	
35.501.	Broker price opinion.
35.502.	Use of broker price opinion.
35.503.	Broker price opinion education.

§ 35.501. Broker price opinion.

(a) A broker price opinion must contain the following statement displayed conspicuously and without change:

This analysis has not been prepared in accordance with the Uniform Standards of Professional Appraisal Practice which require valuers to act as unbiased, disinterested third parties with impartiality, objectivity and independence and without accommodation of personal interest. It is not to be construed as an appraisal and may not be used as such for any purpose.

(b) A broker price opinion must be signed manually or electronically by the person who prepared it and must contain all of the following information:

- (1) An identification of the intended users and intended uses of the broker price opinion, if known.
- (2) A brief description of the subject property.
- (3) A brief description of the property interest to be priced.
- (4) The basis for the conclusion as to the price, including applicable market data, cost data or capitalization computation.
- (5) Each assumption or limiting condition.
- (6) Each existing or contemplated interest of the licensee who prepared the broker price opinion.
- (7) The effective date of the broker price opinion.
- (8) The date that the document is signed.
- (9) The real estate license number of the preparer and, if applicable, the reviewing broker or associate broker.

(c) A fee or valuable consideration for a broker price opinion, if any, shall be paid directly to the employing broker.

(d) A salesperson may not prepare a broker price opinion unless the salesperson has held an active license for the 3 years immediately preceding the effective date of the broker price opinion and has satisfied the educational requirements in § 35.503 (relating to broker price opinion education).

(e) A broker price opinion prepared by a salesperson must be signed by the salesperson and reviewed and signed by the employing broker or a designated associate broker.

§ 35.502. Use of broker price opinion.

(a) A broker price opinion may be prepared by a broker, associate broker or salesperson only for use in conjunction with any of the following:

- (1) A property owned by a lender after an unsuccessful sale at a foreclosure auction.
- (2) A modification of a first or junior mortgage or equity line of credit.
- (3) A short sale of a property.
- (4) An evaluation or monitoring of a portfolio of properties.

(b) A broker price opinion may not be prepared by a broker, associate broker or salesperson for use:

- (1) As the basis to determine the value of a parcel of real property for a mortgage loan origination, including a first or junior mortgage, refinancing or equity line of credit.
- (2) In connection with any of the following:
 - (i) An eminent domain proceeding.
 - (ii) A Federal, State or local tax appeal.
 - (iii) A bankruptcy or insolvency proceeding.
 - (iv) An action or proceeding involving divorce or equitable distribution of property.
 - (v) Any other action or proceeding before a court of record.
 - (vi) The distribution of a decedent's estate.

§ 35.503. Broker price opinion education.

(a) A broker, associate broker or salesperson may not prepare a broker price opinion unless the broker, associate broker or salesperson has completed a Commission-approved initial education course in the preparation of broker price opinions.

(b) A broker or associate broker may not sign a broker price opinion prepared by a salesperson unless the broker or associate broker has completed a Commission-approved initial education course in the preparation of broker price opinions.

(c) A broker, associate broker or salesperson may not prepare a broker price opinion unless the broker, associate broker or salesperson has completed at least 3 hours of Commission-approved continuing education in broker price opinion topics during the current or immediately preceding 2-year license period.

(d) A broker, associate broker or salesperson shall retain the transcript or certificate of instruction for all required broker price opinion courses and shall provide a copy to the Commission upon request.

(e) The Commission has approved the following broker prelicensure courses to satisfy the initial education requirement in subsections (a) and (b):

- (1) Valuation of residential property.
- (2) Valuation of income-producing property.
- (3) Basic appraisal principles.
- (4) Basic appraisal procedures.

[Pa.B. Doc. No. 24-724. Filed for public inspection May 17, 2024, 9:00 a.m.]

END OF ISSUE

