

PROPOSED RULEMAKING

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Orthotic Fitter Temporary Permits and Training

The State Board of Medicine (Board) proposes to amend §§ 18.841 and 18.842 (relating to temporary practice permit; and orthotic fitting care experience) 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

The act of July 5, 2012 (P.L. 873, No. 90) (Act 90) amended the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.1—422.53), to require the Board to issue licenses to prosthetists, orthotists, pedorthists and orthotic fitters and to regulate the practice of these professions. In 2014, the act of July 2, 2014 (P.L. 941, No. 104) amended provisions of the act regarding orthotists, orthotic fitters, prosthetists and pedorthists. Section 13.5 of the act (63 P.S. § 422.13e(a)) sets forth licensing qualifications for orthotic fitters and the other professions. Section 13.5(a)(2)(iv) of the act requires successful completion of a board-approved, entry-level education program specific to orthotic fitting and requires a minimum of 1,000 hours of documented patient care. Additionally, section 13.5(a)(3) of the act requires fulfillment of education and training required for certification by an orthotic fitting credentialing organization recognized by the Institute for Credentialing Excellence (ICE) and accredited by the National Commission for Certifying Agencies (NCCA) and approved by the Board. Section 8 of the act (63 P.S. § 422.8) authorizes the Board to adopt regulations as are reasonably necessary to carry out the purposes of the act.

Background and Need for Amendments

In 2016, the Board promulgated regulations to effectuate Act 90. Section 18.841(d) of the Board's regulations authorize an individual to practice as an orthotic fitter trainee for a period of up to 12 months prior to passing the orthotic fitter certification examination by means of a temporary practice permit. The Board's regulations do not allow renewal of a temporary practice permit. At their meeting on July 24, 2017, the Board's Allied Health Committee (Committee) met with stakeholders, including representatives from the Pennsylvania Orthotic and Prosthetic Society (POPS), the Pennsylvania Medical Society (Pa Med Soc), the Pennsylvania Society of Physician Assistants (PSPA) and The Winter Group to consider a proposal made by a licensed pedorthist, Sofia Tamarkin, to extend the period of time for the holder of an orthotic fitter temporary practice permit from 12 months to 24 months. According to Sofia Tamarkin, the 12-month period is insufficient to allow temporary practice permit holders to prepare for the examination. Sofia Tamarkin also proposed that temporary practice permits be made renewable every 24 months with no limitation on how many times a temporary practice permit could be renewed.

Under the Board's regulations, an orthotic fitter temporary practice permit may be issued to an individual who has completed an orthotic fitter educational program.

Completion of the 1,000 hours of patient fitting experience is a prerequisite to be eligible to take either the Board of Certification (BOC) or American Board of Certification (ABC) orthotic fitter certification examination. Thus, assuming an individual completes the 1,000 hours of experience within the first 25 weeks of the 1-year temporary practice permit, the individual would have 27 weeks to prepare for and pass the examination. Currently, based upon examination requirements, if an individual fails the examination five times, the individual is required to repeat the orthotic fitter education course before attempting to pass the examination for a sixth time.

The examination is offered during 1 week in each of the following months: January, March, May, July, September and November. The BOC examination is offered in Allentown, Bristol, Cranberry Township, Erie, Greensburg, Harrisburg, King of Prussia, Philadelphia, Pittsburgh and Scranton, PA. The ABC examination is offered in Allentown, Conshohocken, Harrisburg, Lancaster, Monroeville, Philadelphia, Pittsburgh and Scranton, PA. The examination is computer based with 115 multiple choice questions and time allowed of 2 and 1/2 hours.

Sofia Tamarkin argued that the 27-week period after an individual completes the patient fitting experience is insufficient to allow temporary practice permit holders to adequately prepare to take the examination, which has resulted in all of her employees failing the examination multiple times and expiration of their temporary practice permits. POPS expressed concern that extending the 12-month period to 24 months would result in substandard care to patients. Sofia Tamarkin countered that patient care would not be jeopardized because temporary practice permit holders are limited to practicing only under direct supervision, as required by § 18.842 of the Board's regulations. Representatives from Pa Med Soc, PSPA and The Winter Group took no position on the proposal.

In reviewing this issue, the Board determined that its original intent had been to allow temporary practice permit holders to take the examination up to the five times allowed by the two certification organizations, ABC and BOC. Extending the period that an individual can hold a temporary practice permit from 12 months to 18 months would be consistent with the Board's original intent to allow the temporary practice permit holders to take the test up to five times. The extension from 12 months to 18 months would also be consistent with other states that license orthotic fitters and the National certification standards. Extending the temporary practice permit to 18 months would provide permit holders with an additional 6 months to test before expiration of the initial temporary practice permit which addresses concerns raised by Sofia Tamarkin by providing additional time to study for and take the examination. Accordingly, the Committee recommended that the Board initiate the process to amend its regulations to extend the period on which the Board voted and approved.

The Committee further considered a proposal to permit an individual to apply for a second temporary practice permit. However, the Committee was concerned that temporary practice permit holders may attempt to secure

a second temporary permit without first attempting to take the licensure examination. This would allow the temporary practice permit holder to continue to work without meeting the State licensure requirements. The Committee concluded that the best way to ensure that this would not occur would be to only offer the second temporary permit to those individuals who had unsuccessfully attempted the examination at least three times. The Board decided further that prior to securing a second permit, the individual must retake a precertification education program. The Board concluded that this advances public safety by ensuring that unsuccessful examinees demonstrate a second successful completion of the educational program, ensuring that their education is up to date and that previously missing knowledge could be remediated.

Finally, in conjunction with reviewing the issues raised by Sofia Tamarkin, the Committee reviewed the Board's existing regulations and made recommendations to clarify and improve the regulations set forth as follows.

Description of Proposed Amendments

The Board proposes to amend § 18.841(b)(2) to streamline the approval of precertification education programs. Currently, the Board accepts ABC-approved or BOC-approved orthotic fitter precertification education programs, which are programs recognized by ICE and accredited by the NCCA. The Committee recommended, and the Board agreed, that the Board's regulations identifying acceptable precertification education programs should be amended to include programs recognized by ICE and accredited by the NCCA so that the Board would not have to amend its regulations for existing programs that merge into one program or new precertification education programs that become recognized by ICE and accredited by the NCCA. The proposed amendments are consistent with section 13.5(a)(2)(iv) and (a)(3) of the act, which requires successful completion of a board-approved entry-level education program and fulfillment of education and training required for certification by an orthotic fitting credentialing organization recognized by ICE and accredited by the NCCA and approved by the Board. In approving educational programs under this section, the Board will consider and verify the criteria set forth in this proposed rulemaking which requires recognition by ICE and accreditation by the NCCA.

The Board proposes to amend § 18.841(d) to extend from 1 year to 18 months the period that a temporary practice permit is valid. The Board further proposes to allow an individual who has failed the certification examination at least three times, and whose permit has expired, to apply for a second permit after completing a second approved precertification education program. This would provide additional time to take the examination, as discussed previously.

The Board proposes to amend § 18.841(e) to set forth parameters of the second permit. Under subsection (e), the second permit would be valid for 12 months to allow the individual two additional attempts at passing the certification examination. No further permits would be issued to the individual. In making this proposed amendment, the Board renumbered former subsection (e) to subsection (f).

The Board also proposes to amend § 18.842(b) by requiring orthotic fitting care experience to include all facets of orthotic fitting care which ensures that temporary practice permit holders are exposed to the full range

of orthotic fitting practice during their fitting experience. Experiential learning of the full range of practice as a permit holder while under direct supervision of a licensee will ensure that examination candidates have been able to put their education into practice. By adding this provision, the Board hopes that permit holders will have a better chance of passing the examination.

Fiscal Impact and Paperwork Requirements

This proposed rulemaking will allow individuals to apply for a second temporary orthotic fitter permit. The application fee for the permit will remain unchanged at \$25. This proposed rulemaking will not have any other fiscal impact on licenses. Because the application fee was set to cover the cost of processing the application, it will not have a fiscal impact on the Board. There is no fiscal impact to government generally. Applicants who choose to apply for a second permit will be required to file an application; therefore, additional paperwork will be required for those applicants.

Sunset Date

The Board continuously monitors its regulations; therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(f) of the Regulatory Review Act (71 P.S. § 745.5(f)), on December 22, 2020, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC). A copy of this material is available to the public upon request. On the same date, the Board submitted this proposed rulemaking to the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*. The Board will submit this proposed rulemaking and required material to the standing committees of the House and Senate no later than the second Monday after the date by which both committee designations have been published in the *Pennsylvania Bulletin*.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the Board, the General Assembly, and the Governor.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to the Regulatory Counsel, Department of State, P.O. Box 69523, Harrisburg, PA 17106-9523, or e-mail to RA-STRegulatoryCounsel@pa.gov, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be identified as pertaining to rulemaking 16A-4947 (Orthotic Fitter Temporary Permits and Training).

MARK B. WOODLAND, MS, MD,
Chairperson

Fiscal Note: 16A-4947. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

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

Subchapter L. PROSTHETISTS, ORTHOTISTS, PEDORTHISTS AND ORTHOTIC FITTERS

QUALIFICATIONS FOR LICENSURE AS AN ORTHOTIC FITTER

18.841. Temporary practice permit.

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

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

(1) Is of good moral character.

(2) Has successfully completed an ABC-approved or BOC-approved orthotic fitter precertification education program **or other precertification education program whose credentialing is recognized by the ICE, accredited by the NCCA and approved by the Board.** An applicant shall demonstrate completion of an ABC-approved or BOC-approved orthotic fitter precertification education program **or other orthotic fitter precertification education program whose credentialing is recognized by ICE, accredited by the NCCA and approved by the Board** by having the educational institution submit, directly to the Board, verification of completion.

(c) The Board may deny an application for a temporary practice permit upon the grounds for disciplinary action in section 41 of the act (63 P.S. § 422.41), § 16.61 or § 18.853 (relating to unprofessional and immoral conduct) or other applicable law, such as 18 Pa.C.S. § 9124 (relating to use of records by licensing agencies).

(d) A temporary practice permit is valid for a maximum of **[1 year and is nonrenewable] 18 months. An individual who has failed the certification examination three times and whose temporary practice permit has expired may apply for a second temporary practice permit after retaking one of the following:**

(1) ABC-approved or BOC-approved orthotic fitter precertification education program.

(2) A precertification education program whose credentialing is recognized by ICE, accredited by the NCCA and approved by the Board.

(e) The second temporary practice permit is valid for a maximum of 12 months. An individual may not receive a third or subsequent temporary practice permit.

[e] (f) An individual holding a temporary practice permit may use the title “orthotic fitter trainee” and shall inform patients that the individual is completing a training program and is not fully licensed.

§ 18.842. Orthotic fitting care experience.

(a) An orthotic fitter trainee with a temporary practice permit shall practice only under the direct supervision of an orthotist or orthotic fitter licensed by the Board. For purposes of this section, “direct supervision” means the supervisor is available for consultation throughout the patient care process and is able to visually assess the care being provided. The supervisor shall review the results of care and the documentation of the services rendered by the orthotic fitter trainee and is responsible for counter-signing within 15 days the entries in the patient’s clinical record.

(b) The orthotic fitting care experience shall be obtained subsequent to education **and shall include all facets of orthotic fitting care.**

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