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### Subpart A. BOARD OF PARDONS

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## CHAPTER 81. BOARD OF PARDONS

### GENERAL PROVISIONS

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**Authority**

The provisions of this Chapter 81 issued under section 909 of The Administrative Code of 1929 (71 P. S. § 299); and PA. CONST. art. IV, § 9, unless otherwise noted.

**Source**

The provisions of this Chapter 81 amended through March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081, unless otherwise noted. Immediately preceding text appears at serial pages (63514) to (63515), (49236) to (49237), (73159) to (73161), (49240) to (49241), (70883) to (70887), (5195) to (5196), (49244) to (49248), (10844) to (10845) and (87811).

**GENERAL PROVISIONS**

**§ 81.1. [Reserved].**

**Source**

The provisions of this § 81.1 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209800).

**§ 81.2. [Reserved].****Source**

The provisions of this § 81.2 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 990; amended March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209800).

**§ 81.11. [Reserved].****Source**

The provisions of this § 81.11 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209801).

**§ 81.12. [Reserved].****Source**

The provisions of this § 81.12 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 990; amended March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209801).

**§§ 81.21—81.28. [Reserved].****Source**

The provisions of these §§ 81.21—81.28 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial pages (209801) to (209802).

**§ 81.29. [Reserved].****Source**

The provisions of this § 81.29 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 990; amended March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209803).

**§ 81.31. [Reserved].****Source**

The provisions of this § 81.31 amended May 16, 1986, effective May 17, 1986, 16 Pa.B. 1729; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209803).

**§ 81.32. [Reserved].****Source**

The provisions of this § 81.32 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209803).

**§ 81.33. [Reserved].****Source**

The provisions of this § 81.33 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 990; amended March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial pages (209803) to (209804).

**§§ 81.41 and 81.42. [Reserved].****Source**

The provisions of these §§ 81.41 and 81.42 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209804).

**§ 81.43. [Reserved].****§§ 81.51 and 81.52. [Reserved].****Source**

The provisions of these §§ 81.51 and 81.52 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209804).

**§§ 81.53—81.56. [Reserved].****§§ 81.61—81.65. [Reserved].****Source**

The provisions of these §§ 81.61—81.65 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209805).

**§§ 81.71 and 81.72. [Reserved].****Source**

The provisions of these §§ 81.71 and 81.72 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial pages (209805) to (209806).

**§§ 81.73—81.78. [Reserved].****§§ 81.81—81.84. [Reserved].****Source**

The provisions of these §§ 81.81—81.84 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial pages (209806) to (209807).

**§§ 81.91—81.94. [Reserved].****Source**

The provisions of these §§ 81.91—81.94 reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209807).

**§§ 81.101—81.103. [Reserved].****§§ 81.104 and 81.105. [Reserved].****Source**

The provisions of these §§ 81.104 and 81.105 adopted March 15, 1985, effective March 16, 1985, 15 Pa.B. 990; amended March 22, 1985, effective March 16, 1985, 15 Pa.B. 1081; reserved April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929. Immediately preceding text appears at serial page (209808).

**§§ 81.111—81.117. [Reserved].****§§ 81.121—81.124. [Reserved].****§§ 81.131—81.138. [Reserved].****§ 81.201. Scope.**

This chapter is applicable to applications for clemency to the Board, including applications for commutation of capital sentences. This chapter will be liberally construed to secure the fair and just determination of every application for clemency.

**Source**

The provisions of this § 81.201 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.202. Definitions.**

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

*Application*—The official form which shall be used to request a clemency hearing before the Board.

*Board*—The Board of Pardons of the Commonwealth.

*Calendar*—A published schedule of applications listed for public hearings during a particular session.

*Capital case*—A case in which the applicant has requested a commutation of death sentence to life imprisonment.

*Clemency*—The power of the Governor to pardon or commute a criminal sentence based upon recommendations by the Board.

*Commutation*—The reduction of a legal penalty or punishment.

*Crime of violence*—Includes the following:

(i) Murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i),(ii) or (iii) (relating to robbery) or kidnapping.

(ii) An attempt to commit murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1), robbery as defined in 18 Pa.C.S. § 3701 (a)(1)(i),(ii) or (iii) or kidnapping.

(iii) An offense committed while in visible possession of a firearm for which sentencing was imposed under 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms).

*Filing*—The receipt of the application by the Board's office.

*Final adverse decision*—One of the following:

(i) The denial of a public hearing by the Board.

(ii) The Board not recommending an application to the Governor.

(iii) The Governor denying an application.

*Merit review*—The process of reviewing an application by the Board to determine if the application has sufficient merit to hold a public hearing on the matter.

*Merit review vote*—A public vote by the Board to determine if a public hearing will be held on an application.

*Pardon*—Forgiveness; an act of grace from governing power which mitigates the punishment the law demands for the offense and restores the rights and privileges forfeited on account of the offense. The term does not mean expungement of the record.

*Secretary*—The administrator of the Board.

*Vote*—Action on approval or disapproval taken by a quorum of the Board at a public hearing.

#### Source

The provisions of this § 81.202 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**POWERS****§ 81.211. Clemency.**

The Board hears and acts upon applications for:

- (1) Pardon.
- (2) Commutation of sentences including:
  - (i) Death sentence to life imprisonment.
  - (ii) Life imprisonment to life on parole.
  - (iii) Minimum sentence.
  - (iv) Maximum sentence.

**Source**

The provisions of this § 81.211 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.212. Prerelease arbitration.**

In cases when eligibility for prerelease from incarceration is in dispute, the Commissioner or Deputy Commissioner of Corrections shall refer the cases to the Board for hearing and resolution as provided under section 1052(c) of the act of July 16, 1968 (P. L. 351, No. 173) (61 P. S. § 1052(c)).

**Source**

The provisions of this § 81.212 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**APPLICATIONS****§ 81.221. Forms.**

Applications shall be made on forms prescribed by the Board. The forms shall be obtained from the Secretary for a fee as established by Board resolution, except that the fee will be waived by the Board upon evidence satisfactory to the Board that the applicant is unable by reason of indigency to pay the fee. The official form to proceed without payment of costs shall be obtained from the Secretary and filed in place of the fee.

**Source**

The provisions of this § 81.221 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.222. Filing.**

(a) The original application and ten copies shall be filed with the Secretary of the Board, 333 Market Street, 15th Floor, Harrisburg, Pennsylvania 17126-0333.

(b) It is the responsibility of an applicant who is not confined to furnish five passport type photographs with the application.

**Source**

The provisions of this § 81.222 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.223. Limitations on filing.**

(a) Except as provided in § 81.224 (relating to request for early filing), an application may not be filed before the expiration of 12 months from a final adverse decision on any prior application.

(b) If an application receives two consecutive adverse decisions, an application may not be filed before the expiration of 24 months from the last adverse decision.

**Source**

The provisions of this § 81.223 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**Cross References**

This section cited in 37 Pa. Code § 81.224 (relating to request for early filing).

**§ 81.224. Request for early filing.**

(a) A request for permission to file a subsequent application before the time provided in § 81.223 (relating to limitations on filing) may be granted upon prior approval of at least 3 members of the Board.

(b) The Board will respond to the applicant's early filing request within 90 days.

**Source**

The provisions of this § 81.224 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**Cross References**

This section cited in 37 Pa. Code § 81.223 (relating to limitations on filing).

**§ 81.225. Filing fee.**

(a) Except in capital cases, a filing fee to be determined by the Board shall accompany the application.

(b) The Board may waive the filing fee upon proof of indigency. The official form to proceed without payment of the fee shall be obtained from the Secretary and filed in place of the fee.

**Source**

The provisions of this § 81.225 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.226. Use of application.**

(a) A copy of each application will be sent by the Board to the court, to the district attorney of the county from which the applicant was sentenced and to the

correctional institution in which the applicant is confined to obtain expressions of opinions as to the merits of the application, and to the Board of Probation and Parole for its investigation.

(b) When the reports and opinions have been received, the members of the Board will review the case and a merit review vote will be conducted at a public hearing. If a public hearing is denied, the applicant will be notified of the final adverse decision in writing by the Secretary.

(c) If a public hearing is granted, the Board will make every reasonable effort to notify victims or next of kin, including providing notification to victims who are registered with the Office of Victim Advocate, Department of Corrections, Board of Probation and Parole and those whose whereabouts are otherwise known.

(d) Victims will be notified of their opportunity to offer prior comment regarding an application that has been granted a public hearing. Comment may be submitted in writing or presented orally in person. The Board will provide notice to the victims or next of kin of the date, time and place of a public hearing pertaining to their case. Written communications with the Board will be confidential.

#### Source

The provisions of this § 81.226 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

#### Cross References

This section cited in 37 Pa. Code § 81.228 (relating to subsequent use by applicant); and 37 Pa. Code § 81.272 (relating to notice).

### § 81.227. Application to be public.

The application will be available for public inspection.

#### Source

The provisions of this § 81.227 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

### § 81.228. Subsequent use by applicant.

An applicant's representative or any of the persons named in § 81.226 (relating to use of application) may obtain a copy of the last application filed by the applicant, upon payment of the costs of reproduction. The cost of reproduction will be determined by Board resolution. Board resolutions are available for public inspection at the Board's office.

#### Source

The provisions of this § 81.228 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**LISTINGS****§ 81.231. Listing for hearing.**

(a) *Noncapital cases.* Applications are subject to merit review by the Board to determine if a public hearing will be granted. For prisoners serving life sentences or sentences for crimes of violence, a vote by a majority of the Board is required to grant a public hearing. In all other cases, except capital cases, two votes are required for a public hearing to be granted.

(b) *Capital cases.* Applicants seeking commutation of a death sentence will automatically receive a public hearing. Applications for commutation of death sentences shall be filed with the Board within 10 days of the Governor's issuance of a warrant specifying a week for execution.

**Source**

The provisions of this § 81.231 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**Cross References**

This section cited in 37 Pa. Code § 81.271 (relating to request).

**§ 81.232. Interview of the applicant.**

(a) If a public hearing is granted to an applicant who is serving a sentence of death, life or a sentence for murder, voluntary manslaughter, attempt to commit murder or attempt to commit voluntary manslaughter, each member of the Board will interview the applicant prior to the public hearing.

(b) If a member does not interview the applicant, that member may not vote at the public hearing.

(c) The interview will be conducted at a time, place and in a manner that is convenient to the Board. The interview may be conducted by the Board as a group or by an individual member. The interview will be held in private. The applicant's attorney or representative will be permitted to attend. Persons attending an interview are subject to the rules of the Department of Corrections concerning entry into a prison by members of the public. The interview shall be recorded by the Board. Subsequent use of the recording will be at the Board's sole discretion.

**Source**

The provisions of this § 81.232 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**Cross References**

This section cited in 37 Pa. Code § 81.301 (relating to recommendation).

**§ 81.233. Publication.**

(a) For every application to be heard, the Board will publish a notice stating:

- (1) The applicant's true name and other names by which the applicant is or has been known.
- (2) The crimes for which the applicant has applied for clemency.
- (3) The institution, if any, in which the applicant is confined.
- (4) The time and place of the public hearing at which the application will be heard.

(b) Except in capital cases, the notice described in subsection (a) will be made at least 1 week prior to the public hearing on the application. The notice will be published in a newspaper of general circulation in the county where the crimes were committed. If the Board meets in emergency session to consider an application in a capital case, 1 week prior notice may be impossible. If time permits, notice of public hearings in capital cases will be made as provided in subsection (a). Under all circumstances, at least 24 hour notice will be given.

**Source**

The provisions of this § 81.233 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

### CONTINUANCES

**§ 81.241. Granting continuances.**

A continuance may be granted by the Board on its own motion or by the Secretary upon the written request of the applicant or the applicant's representative. Only one continuance will be granted at the applicant's request.

**Source**

The provisions of this § 81.241 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

### CALENDAR

**§ 81.251. Preparation.**

The Secretary will prepare a calendar of the cases to be heard by the Board at each hearing.

**Source**

The provisions of this § 81.251 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.252. Distribution.**

Calendars will be sent to each applicant or applicant's representative, the district attorney of the county from which the applicant was sentenced, the Commissioner of Corrections, the Board of Probation and Parole, victims of the offense for which the applicant has sought a pardon or commutation of sentence, and, at the discretion of the Secretary, to other interested parties.

**Source**

The provisions of this § 81.252 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**HEARINGS****§ 81.261. Time.**

The Board will meet in regular public hearings each month except the months of January, July and August except as may be otherwise determined by the Board. Public hearings may be canceled at the discretion of the Board. Notice of public hearings will be published in accordance with the Sunshine Act (65 P. S. §§ 271—286).

**Source**

The provisions of this § 81.261 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.262. Place.**

Hearings will be held in Harrisburg or at other locations in this Commonwealth the Board may designate.

**Source**

The provisions of this § 81.262 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.263. Nature of hearings.**

Hearings will be public. The hearings are audio-recorded by the Board to preserve a record of the proceedings for use by the Board. Other recordings, including photographs, motion pictures, video recordings and audio recordings are prohibited, unless 24 hours prior notice is given to the Board's Secretary.

**Source**

The provisions of this § 81.263 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**RECONSIDERATION****§ 81.271. Request.**

(a) A request for reconsideration of any decision may be made to the Board. The applicant shall show a change in circumstances since the application was filed, or other compelling reasons, sufficient to justify reconsideration. Dissatisfaction with the Board's decision is not grounds to request reconsideration.

(b) The Board will take action on requests for reconsideration at the next possible public hearing. Meritorious requests may be addressed by the Board upon a public motion by any member. A request for reconsideration will be granted only upon a majority vote of the Board. If the matter to be reconsidered is the denial of a public hearing, another merit review vote will be taken immediately in accordance with § 81.231 (relating to listing for hearing). The date of the original final adverse decision of the Board will be used in calculating eligibility for refiling.

**Source**

The provisions of this § 81.271 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.272. Notice.**

If reconsideration is granted, notice will be made to interested parties by regular mail as set forth in § 81.226 (relating to use of application).

**Source**

The provisions of this § 81.272 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**REPRESENTATION****§ 81.281. Appearance of applicant.**

An applicant, if confined, may not appear at the public hearing, but may designate another person to appear for the applicant. An applicant, if not confined, shall appear personally at the public hearing unless excused by the Board.

**Source**

The provisions of this § 81.281 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.282. Representation of applicant.**

The applicant may be represented by legal counsel or another person designated by the applicant. The applicant may also be represented by a legal guardian, next friend or other person authorized by law to act on behalf of the applicant. If confined, the applicant may request representation from the Department of Corrections.

**Authority**

The provisions of this § 81.282 amended under the act of June 1, 1995 (P. L. 1017, No. 15) (Spec. Sess. No. 1).

**Source**

The provisions of this § 81.282 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929; amended March 31, 2006, effective April 1, 2006, 36 Pa.B. 1495. Immediately preceding text appears at serial page (227814).

**§ 81.283. Commonwealth attorney.**

The attorney for the Commonwealth or a designee has the right, and is encouraged, to appear at the public hearings to offer the Commonwealth's opinion.

**Source**

The provisions of this § 81.283 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**CONDUCT OF HEARINGS AND COMMUNICATIONS****§ 81.291. Call of calendar.**

Applications will be called in the order of their listing on the calendar unless the Board directs otherwise. If there is no answer when a case is called, it will be

passed temporarily and then called at the end of the list. If there is no answer when it is called subsequently, it will not be heard at that session. The application may be relisted for the next possible session if the applicant or the applicant's representative contacts the Secretary and requests a relisting.

**Source**

The provisions of this § 81.291 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.292. Advocacy.**

(a) *Noncapital cases.* Fifteen minutes will be allowed for the entire presentation in support of an application, and 15 minutes will be allowed for the entire presentation in opposition to an application.

(b) *Capital cases.* In capital cases, a maximum of 30 minutes will be allowed for the entire presentation in support of an application, and a maximum of 30 minutes will be allowed for the entire presentation in opposition to an application.

**Source**

The provisions of this § 81.292 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.293. Witnesses.**

The Board may request or subpoena a person to appear at the public hearing as a witness.

**Source**

The provisions of this § 81.293 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.294. Communications with the Board.**

A person who wants to provide information to the Board regarding the merits of an application shall communicate or correspond with the Secretary.

**Source**

The provisions of this § 81.294 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**DISPOSITION**

**§ 81.301. Recommendation.**

(a) An application for pardon, or for remission of fines and forfeitures, and the granting of reprieves, or commutation of sentence, shall be approved by the Board at a public hearing by a majority vote of the members, prior to delivery of the written recommendation to the Governor for a decision. An application for a pardon or commutation of a death or life imprisonment sentence must be approved at a public hearing by a unanimous vote of the members, prior to delivery of the written recommendation to the Governor for a decision.

(b) When the applicant is serving a sentence described in § 81.232 (relating to interview of the applicant), a recommendation and Warrant of Commutation that is presented to the Governor shall include a requirement that the applicant serve at least 1 year in a prerelease center prior to release on parole unless transfer of the applicant to a prerelease center is not appropriate due to a certified terminal illness.

(c) Recommendations made to the Governor for commutation of sentence will be conditioned in subsection (e).

(d) Recommendations for a pardon may be made conditional by a majority vote by the Board.

(e) If it is the Board's desire that the commutation or pardon be conditional, any recommended Warrant of Commutation or Charter of Pardon presented to the Governor shall include the following language:

“Subsequent to this date, if it is determined, upon public hearing by the Board of Pardons, that (name) has committed a probation or parole violation or has been convicted of a new criminal offense, this grant of clemency may be rendered null and void by myself or by my successors in office.”

(f) When notified of a subsequent criminal offense conviction, or probation or parole violation, the Secretary will inform the Board. The Board will then decide, on a case-by-case basis, whether to hold a public hearing regarding the suspected violation of the conditional pardon or commutation. After public hearing, a majority of the Board may recommend to the Governor that clemency be revoked.

#### Source

The provisions of this § 81.301 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929; amended May 29, 1998, effective May 30, 1998, 28 Pa.B. 2500. Immediately preceding text appears at serial pages (227815) to (227816).

### § 81.302. Notification of Board action.

Within 14 days following the public hearing, the applicant and the interested parties will be notified of the action by the Board.

#### Source

The provisions of this § 81.302 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

### § 81.303. Charter and warrant.

If the recommendation of the Board is approved by the Governor, the Secretary will prepare the proper Charter of Pardon or Warrant of Commutation for the signature of the Governor and for the attachment of the Seal of the Commonwealth and the attestation of the Secretary of the Commonwealth.

**Source**

The provisions of this § 81.303 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

**§ 81.304. Record maintenance.**

(a) Records, documents and files maintained by the Board are confidential except as provided in subsection (b).

(b) The following records are public: monthly calendars, minutes of public hearings, vote sheets of public hearings, completed applications and lists of actions taken by the Governor. The Board's written recommendation to the Governor will be made public only after the Governor has acted on an application.

**Source**

The provisions of this § 81.304 adopted April 18, 1997, effective April 19, 1997, 27 Pa.B. 1929.

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