

PROPOSED RULEMAKING

GAME COMMISSION

[58 PA. CODE CH. 141]

Special Regulations Areas

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission) at its June 21, 2000 meeting, proposed the following amendment to Chapter 141:

Amend § 141.1 (relating to special regulations areas) to allow the use of muzzleloading pistols in the Southeast and Southwest Special Regulations Areas to remain consistent with the Commission's intent to expand hunting opportunities.

This amendment to § 141.1 will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposal is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

This proposal was made public at the June 21, 2000, meeting of the Commission, and comments on this proposal can be sent to the Executive Director of the Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until September 22, 2000.

Proposed Amendment to § 141.1

1. Introduction

To more effectively manage the wildlife resources of this Commonwealth, the Commission at its meeting held on June 21, 2000, proposed changing § 141.1 to allow the use of any muzzleloading firearm with single projectile ammunition for deer hunting in special regulation areas. This will allow more flexibility for muzzleloaders in special regulation areas and create more hunting opportunities. These changes are adopted under authority contained in section 2102 of the code (relating to regulations).

2. Purpose and Authority

Because of excessive deer populations within the established special regulations areas, the Commission has decided to encourage deer hunting as much as possible. One way in which this can be done is by allowing the use of muzzleloading pistols with appropriate ammunition during the applicable season. The proposed change will allow this.

Section 2102(a) of the code directs the Commission to "... promulgate such regulations as it deems necessary and appropriate concerning ... the ways, manner, methods, and means of hunting or furtaking..." Section 2102(d) also directs the Commission to promulgate regulations stipulating "... the type of firearms and ammunition and other devices which may be used..." The change was adopted under this authority.

3. Regulatory Requirements

The amendment will relax current requirements.

4. Persons Affected

Individuals wishing to hunt deer in special regulations areas with muzzleloading firearms using single projectile ammunition will be affected by the proposals.

5. Cost and Paperwork Requirements

The proposed change should not result in any additional cost or paperwork.

6. Effective Date

The proposed change will be effective on final publication in the *Pennsylvania Bulletin* and will remain in effect until changed by the Commission.

7. Contact Person

For further information on the change contact David E. Overcash, Acting Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS,
Executive Director

Fiscal Note: 48-123. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 141. HUNTING AND TRAPPING

Subchapter A. GENERAL

§ 141.1. Special regulations areas.

* * * * *

(d) *Permitted acts.* It is lawful to:

(1) Hunt and kill deer through the use of a muzzleloading [long gun] firearm or a shotgun, at least .410 gauge (rifled barrels permitted), including semiautomatics which, upon discharge, propel a single projectile.

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[Pa.B. Doc. No. 00-1386. Filed for public inspection August 11, 2000, 9:00 a.m.]

MILK MARKETING BOARD

[7 PA. CODE CH. 151]

Calculation of Bonding Obligation

The Milk Marketing Board (Board) proposes to amend § 151.9 (relating to calculation of bonding obligation) to read as set forth in Annex A.

Purpose of Proposed Amendment

The purpose of the amendment is to adjust the calculation of milk dealers' bonding obligations to reflect more accurately the volume of producer purchases during a 12-month period—thus providing greater economic protection for dairy farmers. The proposed amendment also updates the regulation by replacing a citation to the repealed Milk Producers' and Cooperative Security Funds Act with a citation to the successor act. The Board recognizes that other provisions in Chapter 151 have been superseded or otherwise affected by statutory changes and is preparing a comprehensive amendatory package. Section 151.9 has been given priority so that the adjusted bond calculation is in place for the 2000-01 license year.

Summary of Proposed Amendment

Section 7(c) of the Milk Producers' Security Act (act) (31 P. S. § 626.7(c)), provides that a milk dealer's bonding obligation is based on "the highest aggregate amount owed by the dealer to producers for a 40-day period during the preceding 12 months." Under the existing regulation, the Board uses the highest amount owed in any month during the preceding license year, adds the amount owed in the succeeding month, divides the sum by the number of days in those 2 months and multiplies the quotient by 40. This methodology is not entirely satisfactory since the highest volume month may be succeeded by one of the lowest volume months.

Under the proposed amendment, the Board would use the 2 consecutive months in which the sum of the amounts owed was the highest and then perform the division and multiplication operations described previously. The 2 consecutive months would be drawn from the preceding calendar year instead of the preceding license year. The license year for milk dealers runs from July 1—June 30. License renewal applications, accompanied by bond calculations, shall be mailed several weeks before a new license year begins. It is therefore not possible to base the bond calculation on the preceding license year. Using the preceding calendar year allows time for the auditing and administrative work associated with license renewal.

The amendment also adds a subsection (b) which sets out the two meanings of "amount owed." The amount owed for milk regulated by the Board is the Board-established minimum price, even though the dealer may have paid the producer a higher price—for example, a quality premium. The amount owed for milk not regulated by the Board is the actual amount the milk dealer lawfully paid the producer. For example, if the milk is priced under a Federal milk marketing order, the Federal minimum price is the lawful price.

Statutory Authority

Section 8 of the act (31 P. S. § 626.8) requires milk dealers to file bonds before the beginning of each license year. Section 7(c) of the act provides that the bond be based on the highest amount a dealer owed for milk for a 40-day period during the preceding 12 months.

Public Hearing

On August 3, 1999, the Board, after due notice, conducted a public hearing to receive comments on the proposed amendment. The attendees included representatives of the Pennsylvania Farm Bureau, the Pennsylvania Association of Milk Dealers, the Middle Atlantic Milk Marketing Agency (a group of dairy cooperatives), the Pennsylvania Farmers Union and the Pennsylvania Food Merchants Association. The only person to offer comments was the chief of the Board's Support Services Division, who manages licensing and bonding. This commentator spoke in favor of the proposed amendment as a means of providing greater protection to dairy farmers. No objections to the amendment were received.

Fiscal Impact

The use of the two highest consecutive months may result in higher bonding obligations for some milk dealers. The exact dollar impact will not be known until bonds are calculated for the 2000-01 license year. As part of her testimony at the August 3 hearing, however, the Board's Chief of Support Services reported the results of an analysis of a random selection representing 15% of bonded milk dealers. The analysis compared bond calculations

based on the proposed amendment with calculations under the existing regulations. The analysis covered two license periods: July 1, 1998—June 30, 1999, and July 1, 1999—June 30, 2000. For the 1998-99 license year, 40% of the dealers in the survey would have experienced no change in their bonding obligation, 40% would have experienced bonding increases ranging from 1—10%, and 20% would have experienced bonding decreases of less than 4%. For the 1999-00 license year, 80% would have experienced no change in their bonding obligation, and 20% would have experienced increases of less than 4%. The negligible impact of the proposed amendment on bonds for the 1999-00 license year is owing to exceptionally high milk prices in November and December 1998. For most milk dealers, those 2 months would have been the basis for bonding calculations under both the existing regulation and the amended regulation.

Paperwork Requirements

There are no paperwork requirements.

Effective Date; Sunset Date

The amendment will become effective upon publication in the *Pennsylvania Bulletin* as final rulemaking. There is no sunset date.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on June 27, 2000, a copy of this proposal was submitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees on Agriculture and Rural Affairs. In addition to submitting the proposed amendment, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendment, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review by the Board, the General Assembly and the Governor of objections raised before final publication of the regulation.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections concerning the proposed amendment to Chief Counsel, Pennsylvania Milk Marketing Board, 2301 North Cameron Street, Harrisburg, PA 17110, within 30 days following publication in the *Pennsylvania Bulletin*.

BEVERLY R. MINOR,
Chairperson

Fiscal Note: 47-7. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 7. AGRICULTURE

PART VI. MILK MARKETING BOARD

CHAPTER 151. SECURITY FUNDS, BONDING AND ALTERNATIVE SECURITY

§ 151.9. [Number of days for bond in lieu of payment to Security Fund] Calculation of bonding obligation.

[For the purpose of section 9(d) of the Milk Producers' and Cooperative Security Funds Act (31

P. S. § 625.9(d)) (Repealed), the highest aggregate amount owed for milk by a dealer or handler to producers means the highest amount owed for milk in any 1 month during the preceding licensing year plus the amount owed for milk in the next succeeding month divided by the number of days in those 2 months and multiplied by 40.]

(a) Under sections 7(c) and 8 of the Milk Producers' Security Act (Security Act) (31 P. S. §§ 626.7(c) and 626.8), the bond a milk dealer shall file before the beginning of each license year is based on "the highest aggregate amount owed by the dealer to producers for a 40-day period during the preceding 12 months." The Board will ascertain the highest aggregate amount owed for the applicable period by:

(1) Reviewing the amount owed by the milk dealer to all its producers for each month in the preceding calendar year.

(2) Identifying the 2 consecutive months in which the sum of the amounts owed was the highest.

(3) Dividing the sum of the amounts owed from paragraph (2) by the total number of days in the 2 consecutive months.

(4) Multiplying the quotient from paragraph (3) by 40.

(b) As used in sections 7(c) and 8 of the Security Act and in subsection (a), the term "amount owed" has the following meanings:

(1) For a purchase subject to minimum pricing fixed by the Board, "amount owed" means the amount the milk dealer was required to pay the producer under the applicable Board order, even though the actual amount paid exceeded the Board-established minimum price.

(2) For a purchase not subject to minimum pricing fixed by the Board, "amount owed" means the actual amount the milk dealer lawfully paid the producer.

[Pa.B. Doc. No. 00-1387. Filed for public inspection August 11, 2000, 9:00 a.m.]

STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

**[49 PA. CODE CH. 42]
General Revisions**

The State Board of Occupational Therapy Education and Licensure (Board) proposes general revisions to its regulations governing occupational therapists and occupational therapy assistants in Chapter 42 (relating to State Board of Occupational Therapy Education and Licensure) to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The Board is authorized to promulgate and adopt regulations not inconsistent with law as it deems necessary for the performance of its duties and the proper administration of its enabling statute under section 5(b) of the Occupational Therapy Practice Act (act) (63 P. S. § 1505(b)). Section 16(a)(2) of the act (63 P. S. § 1516(a)(2)) anticipates that the Board will adopt a code of ethics in that this provision authorizes the Board to take disciplinary action against a licensee for violating a code of ethics adopted by the Board.

C. Background and Purpose

The proposed amendments result from the Board's systematic review of its regulations in accordance with Executive Order 1996-1 of February 6, 1996. The Executive Order directs executive agencies to evaluate existing regulations and amend and repeal regulations as necessary to comply with the order. In accordance with the Executive Order, a draft of this proposal was sent on May 18, 1999, to 21 agencies, associations and individuals who have been identified as interested parties or who have expressed an interest in this proposed rulemaking. The Board received comments as a result of this mailing and reviewed them at its meeting of June 19, 1999. The Board made a number of changes to the draft proposal as a result of the comments.

These revisions eliminate provisions which are outdated or have been rendered invalid, to standardize and simplify language in provisions that maintain their validity, and to adopt the most recent code of ethics in the profession.

D. Description of Amendments

These revisions would make editorial changes to 12 sections (§§ 42.3, 42.11, 42.12, 42.14, 42.15, 42.21, 42.31, 42.42—42.45 and 42.47), make substantive changes to two sections (§§ 42.1 and 42.24), delete three sections (§§ 42.18, 42.32 and 42.33) and add one new section (§ 42.19). Throughout the proposed rulemaking, the phrase "currently licensed occupational therapist or currently licensed occupational therapy assistant" is replaced with "licensee." This is the only change proposed for §§ 42.42—42.45 and 42.47.

§ 42.1. Definitions.

The proposed rulemaking would replace the definition of "AOTCB" with "NBCOT," National Board for Certification in Occupational Therapy, Inc. The NBCOT is the current name of the National certifying agency which prepares the certifying examination and screens examination candidates to determine that they have met educational and fieldwork requirements. Throughout this proposed rulemaking "AOTCB" is replaced with "NBCOT."

The definitions section would also be amended to include definitions of "service recipient" and "surrogate." These terms are used in the 1994 revisions to the Occupational Therapy Code of Ethics which the Board proposes to adopt in § 42.24.

§ 42.3. Meetings of the Board.

The proposed rulemaking would delete § 42.3(a) which relates to the frequency of Board meetings. This subsection paraphrases the first sentence in section 4(e) of the act (63 P. S. § 1504(e)) which requires the Board to meet at least twice a year and authorizes the Board to hold additional meetings whenever necessary. Section 42.3(a) is not serving a useful purpose in the Board's regulations. It neither interprets the act nor reflects the actual

frequency of Board meetings. The Board has been meeting approximately six times a year for more than a decade.

§ 42.14. Foreign-trained applicants.

The proposed rulemaking would make three changes to this section. As already indicated, "AOTCB" is replaced with "NBCOT." Second, here and throughout the proposal, the word "trained" is replaced with "educated." The Board makes this change to avoid confusion. The NBCOT uses the word "educated" in all information and instructions that it provides to persons who received their instruction in occupational therapy outside of the United States, its territories and Canada and seek an NBCOT credentials evaluation. The term educated is equivalent to the term training used in sections 3 and 10 of the act (63 P. S. §§ 1503 and 1510) Moreover, the Board believes that the word "educated" is consistent with the professional nature of the preparation of occupational therapists and assistants.

Third, the Board proposes to delete § 42.14(a)(3). The credentialing evaluation performed by the NBCOT assures that the applicant has completed a period of supervised fieldwork that meets the requirements of section 8(3) of the act (63 P. S. § 1508(3)) and is at least equivalent to the minimum fieldwork required for applicants educated in the United States under § 42.13(3). The NBCOT requires at least 1,000 hours of fieldwork in order to establish eligibility to take the certification examination. Therefore, § 42.14(a)(3) is unnecessary and potentially confusing.

§ 42.18. Licensure requirement.

The Board proposes to delete this section as it duplicates the substance of section 6(a) of the act (63 P. S. § 1506(a)) without adding anything to assist in understanding that section and does not contain section 6(b) and (c) of the act.

§ 42.19. Licensee's change of name or address; service of process and legal papers.

The proposed rulemaking would add this new section which is intended to put licensees on notice that they are responsible for notifying the Board in writing of changes in name and address and that they will bear the responsibility for any consequences if they do not tell the Board of changes. The proposed rulemaking further puts licensees on notice that their most recent name and address on file with the Board will be deemed their official name and address for the purpose of service of process and other legal papers. It is consistent with law governing service of process that if a document is sent to a licensee's last known address on file with the Board, that constitutes reasonable service. *Kobylski v. Commonwealth, Milk Marketing Board*, 516 A.2d 75 (Pa. Cmwlth. 1986).

§ 42.24. Code of Ethics.

The current code of ethics was promulgated by the American Occupational Therapy Association (AOTA) in 1988. The AOTA is a Nationwide professional association for occupational therapists and occupational therapy assistants. In promulgating its code of ethics, the AOTA seeks to promote and maintain high standards of behavior in occupational therapy.¹ The AOTA revised its code in July 1994.² The proposed rulemaking updates the Board's code so that it will reflect the AOTA revised code. The Board proposes to adopt this code because it both reflects

the Board's own view of ethical practice and will keep the Commonwealth's ethical standards consistent with the National standard. While much of the content of the proposed code is contained in the 1988 version, the proposed code contains a number of noteworthy changes. First, the proposed code contains six core principles rather than four. The principles include concern for the well-being of the recipients of services, respect for the rights of recipients of services, maintenance of high standards of competence, compliance with relevant law and regulations, provision of accurate information about occupational therapy services, and fair and discreet treatment of colleagues.

Several of the new provisions are noteworthy. The revised code requires licensees to provide services in an equitable manner for all individuals. (Principle 1(i)) This simple statement replaces a list of ten prohibited bases for discrimination found in the current Principle (1)(i).

The revised code explicitly prohibits a licensee from maintaining a relationship which exploits the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. (Principle 1(ii)) The same provision of the revised code directs licensees to avoid relationships or activities that interfere with professional judgment and objectivity. The current code requires a licensee to maintain a professional and goal-directed relationship with the recipient of services (Principle 1(v)) and to take all reasonable precautions to avoid harm to the recipient of services (Principle 1(vii)).

The revised code requires a licensee to "collaborate" with recipients of services in determining goals and priorities and to fully inform the recipients of services about the nature, risks and potential outcomes of any intervention. (Principles 2(i) and 2(ii)) The current code requires a licensee to "include" the recipient of services in the treatment planning process and to fully inform the recipient of the nature and potential outcome of treatment and to respect the recipient's right to refuse treatment. (Principles 1(iv) and 1(ii)) The revised code has a separate provision requiring a licensee to respect an individual's right to refuse services or involvement in research. (Principle 2(iv))

The revised code requires a licensee to obtain "written informed consent" from subjects involved in research activities. (Principle 2(iii)) The current code requires a licensee to secure "the informed consent of potential subjects of education or research activities." (Principle 1(iiii))

The revised code requires a licensee to "protect the confidential nature of information gained from educational, practice, research and investigational activities." (Principle 2(v)) The current code requires a licensee, except as otherwise required by law, to "protect the confidential nature of information gained from educational, practice and investigational activities unless sharing the information could reasonably be deemed necessary to protect an identifiable third party from harm." (Principle 1(vi))

The revised code requires licensees to "use procedures that conform to the standards of acceptable and prevailing occupational therapy practice." (Principle 3(i)) The current code requires the licensee to "function within the parameters of the licensee's competence and the standards of the profession." (Principle 2(i))

§ 42.31. Unprofessional conduct.

The Board proposes to amend § 42.31(1) to include among the enumerated examples of unprofessional con-

¹ See, www.aota.org, Practice and Ethics, Occupational Therapy Code of Ethics.

² "Occupational Therapy Code of Ethics," *American Journal of Occupational Therapy*, 48(11), 1037-1038.

duct sexually harassing, abusing or intimidating a patient. While sexually harassing or abusing a patient is universally condemned by the various health care professions, the Board believes that an explicit statement linking sexual misconduct with unprofessional conduct will be useful to inform licensees that this conduct is incompatible with the professionalism expected of occupational therapists and assistants.

§§ 42.32 and 42.33. Complaint process and formal hearings.

The Board proposes to delete these sections. They are similar to the regulations of the State Board of Medicine which the Pennsylvania Supreme Court declared invalid in *Lyness v. State Board of Medicine*, 529 Pa. 535, 605 A.2d 1024 (1992). The Board does not believe that substitute regulations are necessary. The Board's procedures are adequately governed by section 16(b) of the act which requires that actions of the Board be taken subject to the right of notice, hearing and adjudication and the right of appeal in accordance with 2 Pa.C.S. (relating to administrative law and procedure); and 1 Pa. Code Part II (relating to the General Rules of Administrative Practice and Procedure) which the Board has adopted in § 42.2 (relating to applicability of general rules).

E. Fiscal Impact and Paperwork Requirement

The proposed rulemaking should not have any fiscal impact on the Commonwealth, its subdivisions, the regulated community or the residents of this Commonwealth. It is unlikely that the proposed rulemaking will impose additional paperwork on anyone. The revised code of ethics requires a licensee to obtain "written informed consent" from subjects involved in research activities. It is likely that those engaged in research activities already do this.

F. Sunset Date

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

G. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 28, 2000, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Professional Licensure and to the Senate Consumer Protection and Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided the Committees and IRRC with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify that regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review of the objections prior to final publication of the regulation by the Board, the General Assembly and the Governor.

H. Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Herbert Abramson, Counsel, State Board of Occupational Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of the

proposed rulemaking in the *Pennsylvania Bulletin*. Please reference (16A-674) General Revisions when submitting comments.

HANNA GRUEN,
Chairperson

Fiscal Note: 16A-674. 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 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

GENERAL PROVISIONS

§ 42.1. Definitions.

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

* * * * *

[AOTCB—American Occupational Therapy Certification Board.]

* * * * *

Certification—Recognition by the [AOTCB] NBCOT that an individual is a registered occupational therapist or a certified occupational therapy assistant.

* * * * *

Licensure examination—The Certification Examination for Occupational Therapist, Registered, or the Certification Examination for Occupational Therapy Assistant prepared and administered by the [AOTCB] NBCOT.

NBCOT—The National Board for Certification in Occupational Therapy, Inc.

Service recipient—The patient or client who directly receives care or services from the licensee.

Surrogate—The spouse, parent or guardian of the service recipient.

§ 42.3. Meetings of the Board.

[(a) The Board will meet at least twice each year, and may hold special meetings with the approval of the Commissioner whenever necessary to discharge its duties.

(b)] * * *

LICENSURE

§ 42.11. Licensure examination.

(a) The licensure examinations will be scheduled at least twice each year at times and places designated by the [AOTCB] NBCOT.

(b) The applicant shall apply to [AOTCB] NBCOT for admission to the licensure examination and shall pay the required fee at the direction of [AOTCB] NBCOT.

(c) The applicant is responsible for directing that [AOTCB] NBCOT send the applicant's examination results and other information requested to the Board.

(d) The passing score shall be that established by the [AOTCB] NBCOT for each administration of the licensure examination.

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§ 42.12. Waiver of licensure examination.

An applicant may be licensed without examination who presents one of the following to the Board:

* * * * *

(2) Satisfactory evidence that the applicant has successfully completed the [AOTCB] NBCOT Certification Examination and is currently certified by [AOTCB] NBCOT as a registered occupational therapist or an occupational therapy assistant.

* * * * *

§ 42.14. Foreign-[trained] educated applicants.

(a) To apply for licensure, the foreign-[trained] educated applicant shall, before examination, submit evidence satisfactory to the Board, on forms provided by the Board, that the applicant meets the following requirements:

* * * * *

(2) Has completed educational requirements substantially equal to § 42.13(2) (relating to application for licensure). The Board will accept a credentials evaluation done by the [Division of Credentialing of AOTA] NBCOT as proof that the foreign-[trained] educated applicant has completed the educational requirements.

[(3) Has completed up to 1 year of supervised fieldwork experience, as prescribed by the Board. The Board will accept supervised fieldwork experience approved by the World Federation of Occupational Therapists.]

(b) The foreign-[trained] educated applicant may be licensed by the Board, if he has complied with subsection (a) and has met one of the following criteria:

* * * * *

§ 42.15. Application for temporary license.

* * * * *

(c) The Board may also issue a temporary license to an applicant who:

* * * * *

(3) Submits evidence to the Board that the applicant is either licensed under the laws of the District of Columbia or of a state or territory of the United States which has licensure requirements substantially equal to the requirements of the act or has met the requirements for certification, as an occupational therapist registered or a certified occupational therapy assistant, established by [AOTCB] NBCOT.

* * * * *

§ 42.18. [Licensure requirement] (Reserved).

[Only individuals who are occupational therapists or occupational therapy assistants licensed by the Board may practice or represent themselves as able to practice occupational therapy in this Commonwealth. Except as provided in section 7 of the act (63 P. S. § 1507), it is unlawful for unlicensed

individuals to practice or represent themselves as able to practice occupational therapy.]

§ 42.19. Licensee's change of name or address; service of process and legal papers.

(a) A licensee's name and address on file with the Board shall be deemed the licensee's official name and address for the purpose of service of process and other legal papers.

(b) A licensee's name on file with the Board shall be the name that appears on the license unless that name is legally changed, in which case the licensee shall report the change and the reason for the change to the Board in writing within 10 days of the change.

(c) A licensee who changes an address on file with the Board shall notify the Board in writing within 10 days. Licensees who do not comply with this subsection shall bear full responsibility for failure to receive correspondence from the Board, including biennial renewal notification.

MINIMUM STANDARDS OF PRACTICE

§ 42.21. Delegation of duties to aides and other unlicensed personnel.

(a) A [currently licensed occupational therapist or a currently licensed occupational therapy assistant] licensee may delegate to aides and other unlicensed personnel duties associated with nontreatment aspects of occupational therapy services if the following conditions are met:

* * * * *

§ 42.24. Code of Ethics.

Purpose. The Board adopts the following Code of Ethics to establish and maintain a high standard of integrity and dignity in the profession and to protect the public against unprofessional conduct on the part of [occupational therapists and occupational therapy assistants] licensees. The Code of Ethics is adapted with permission from the "Occupational Therapy Code of Ethics" of the American Occupational Therapy Association (revised [April 1988] July 1994).

[(1) Principle 1. Beneficence/autonomy. A licensee shall demonstrate a concern for the welfare and dignity of the recipients of services, including patients/clients and subjects involved in education and research activities.

(i) A licensee shall provide services without discriminating on the basis of race, creed, national origin, sex, age, handicap, disease, social status, financial status or religious affiliation.

(ii) A licensee shall inform patients/clients of the nature and potential outcomes of treatment and shall respect the right of potential patients/clients to refuse treatment.

(iii) A licensee shall secure the informed consent of potential subjects of education or research activities and shall respect their right to withdraw from participation.

(iv) A licensee shall include patients/clients in the treatment planning process.

(v) A licensee shall maintain professional and goal-directed relationships with patients/clients and with subjects involved in education or research activities.

(vi) Except as otherwise required by law, a licensee shall protect the confidential nature of information gained from educational, practice and investigational activities unless sharing the information could reasonably be deemed necessary to protect an identifiable third party from harm.

(vii) A licensee shall take all reasonable precautions to avoid harm to patients/clients and to subjects involved in education or research activities, or detriment to their property.

(2) *Principle 2. Competence.* A licensee shall actively maintain high standards of professional competence.

(i) A licensee shall function within the parameters of the licensee's competence and the standards of the profession.

(ii) A licensee shall refer patients/clients to other service providers or consult with other service providers when additional knowledge and expertise is required.

(iii) A licensee shall accurately record and report information related to occupational therapy services provided to patients/clients.

(iv) A licensee shall require those whom the licensee supervises in the provision of occupational therapy services to adhere to this Code of Ethics.

(3) *Principle 3. Public information.* A licensee shall provide accurate information about occupational therapy services.

(i) A licensee shall accurately represent the licensee's competence and training.

(ii) A licensee may not use or participate in the use of a form of communication that contains a false, misleading, or deceptive statement or claim.

(4) *Principle 4. Professional relationships.* A licensee shall function with discretion and integrity in relations with colleagues and other professionals.

(i) A licensee shall report illegal, incompetent or unethical practice by colleagues or other professionals to the appropriate authority.

(ii) Except as otherwise required by law, a licensee may not disclose confidential information when participating in reviews of peers, programs or systems.

(iii) A licensee who employs or supervises colleagues shall provide appropriate supervision as described in §§ 42.22 and 42.23 (relating to supervision of occupational therapy assistants; and supervision of applicants with temporary licenses).]

(1) *Principle 1.* Licensees shall demonstrate a concern for the well-being of the recipients of their services. (beneficence)

(i) Licensees shall provide services in an equitable manner for all individuals.

(ii) Licensees shall maintain relationships that do not exploit the recipient of services sexually, physically, emotionally, financially, socially or in any other manner. Licensees shall avoid those relationships or activities that interfere with professional judgment and objectivity.

(iii) Licensees shall take all reasonable precautions to avoid harm to the recipient of services or to his property.

(2) *Principle 2.* Licensees shall respect the rights of the recipients of their services. (autonomy, privacy, confidentiality)

(i) Licensees shall collaborate with service recipients or their surrogates, or both, in determining goals and priorities throughout the intervention process.

(ii) Licensees shall fully inform the service recipients or their surrogates, or both, of the nature, potential risks and outcomes of any interventions.

(iii) Licensees shall obtain written informed consent from subjects involved in research activities indicating they have been fully advised of the potential risks and outcomes.

(iv) Licensees shall respect the individual's right to refuse professional services or involvement in research or educational activities.

(v) Licensees shall protect the confidential nature of information gained from educational, practice, research and investigational activities.

(3) *Principle 3.* Licensees shall achieve and continually maintain high standards of competence. (duties)

(i) Licensees shall use procedures that conform to the standards of acceptable and prevailing occupational therapy practice.

(ii) Licensees shall take responsibility for maintaining competence by participating in professional development and education activities.

(iii) Licensees shall perform their duties on the basis of accurate and current information.

(iv) Licensees shall protect service recipients by ensuring that duties assumed by or assigned to other licensees are commensurate with their qualifications and experience.

(v) Licensees shall provide appropriate supervision to individuals for whom the licensees have supervisory responsibility.

(vi) Licensees shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required.

(4) *Principle 4.* Licensees shall comply with laws and regulations governing the practice of occupational therapy in this Commonwealth. (justice)

(i) Licensees shall understand and abide by applicable local, State and Federal laws.

(ii) Licensees shall inform employers, employees and colleagues about those laws and regulations that apply to the profession of occupational therapy.

(iii) Licensees shall require those they supervise in occupational therapy related activities to adhere to this chapter.

(iv) Licensees shall accurately record and report all information related to professional activities.

(5) *Principle 5.* Licensees shall provide accurate information about occupational therapy services. (veracity)

(i) Licensees shall accurately represent their qualifications, education, experience, training and competence.

(ii) Licensees shall disclose any affiliations that may pose a conflict of interest.

(iii) Licensees shall refrain from using or participating in the use of any form of communication that contains false, fraudulent, deceptive or unfair statements or claims.

(6) *Principle 6.* Licensees shall treat colleagues and other professionals with fairness, discretion and integrity. (fidelity, veracity)

(i) Licensees shall safeguard confidential information about colleagues and staff members.

(ii) Licensees shall accurately represent the qualifications, views, contributions and findings of colleagues.

(iii) Licensees shall report any breaches of the Board's law and this chapter to the Board.

DISCIPLINARY PROCEEDINGS

§ 42.31. Unprofessional conduct.

[An occupational therapist] A licensee who engages in unprofessional conduct is subject to disciplinary action under section 16 of the act (63 P.S. § 1516). Unprofessional conduct includes[, but is not limited to,] the following:

(1) Harassing, abusing or intimidating a patient[, either] physically [or], verbally or sexually.

* * * * *

§ 42.32. [Complaint process] (Reserved).

[(a) A person, firm, corporation or public office may submit a written complaint to the complaints officer of the Bureau of Professional and Occupational Affairs charging a licensee with a violation under section 16(a) of the act (63 P.S. § 1516) or unprofessional conduct as set forth in § 42.31 (relating to unprofessional conduct) specifying the grounds.

(b) The complaints officer will forward the complaint to the Board prosecutor who, together with consultants or investigators who may be required, will make a preliminary determination as to whether the complaint merits consideration. If the complaint on its face establishes a violation of the act, the Board prosecutor will order a reasonable inquiry or investigation that the prosecutor deems necessary to determine the truth and validity of the allegations.

(c) The Board prosecutor will provide reports to the Board at its regular meetings on the number, nature, procedure and handling of complaints received and will give to the Board a recommendation for the disposition of a complaint. The prosecutor's recommendations to the Board and information, documents, records and other materials obtained during the course of an investigation will be considered confidential unless admitted as evidence during the course of a formal disciplinary hearing, except that information and documents classified under statute as public information or public documents will be made available for public inspection.

(d) After consideration of the prosecutor's recommendation, the Board will authorize the disposition of the complaint. If the Board authorizes dismissal, the complainant will be so notified in writing. If the Board authorizes the prosecutor to proceed with a formal hearing, the Board will determine whether the hearing will be held before Board members or a Board member, or before a designated hearing examiner.

(e) At any stage of the handling of a complaint, the Board prosecutor may request authorization from the Board to enter into negotiations with the respondent or his counsel to facilitate the disposition of a case by a stipulation and consent agreement. If the Board approves the stipulation and consent agreement, it will then issue an order adopting the terms and conditions, subject to approval as to legality by the Office of General Counsel. Unless the stipulation and consent agreement is accepted by the Board and an order issued, the agreement and the terms of the agreement will be confidential. Admissions made by a respondent in a stipulation and consent agreement or during the course of the negotiations may not be used against him in a formal disciplinary proceeding if a prehearing settlement cannot be reached.

(f) Prior to the approval of a stipulation and consent agreement, the Board may hold an informal conference, which will be confidential and not open to the public, to review the suggested disposition. Admissions made by a respondent at the informal conference before the Board will not be used against him in formal disciplinary proceedings. The Board prosecutor may introduce evidence other than the respondent's admissions to prove factual matters disclosed during the informal conference or in the course of negotiating a stipulation and consent agreement.

(g) Prior to authorization of a formal hearing, the Board prosecutor may arrange an investigatory conference to gather factual data and to facilitate an eventual hearing. This conference will be confidential and will not be open to the public. The Board counsel and the consultant or investigator assigned to the case will be required to be present. The Board prosecutor will give timely notice of the conference to the licensee involved. The notice will include a statement of the nature of the issues to be discussed and will inform the licensee that he has the right to be represented by counsel at the conference. Statements made at the conference may not be introduced at a hearing on the merits without the consent of all parties to the hearing. Complaints may be resolved at a conference through an agreed order only if the order is ratified by the Board and approved as to legality by the Office of General Counsel. The Board will authorize the Board counsel to set a formal hearing in the matter, either before the Board or a designated hearing examiner, if it determines, based upon the Board prosecutor's summary of fact and law, that such hearing is warranted.

(h) Subsections (e)—(g) supplement 1 Pa. Code §§ 35.111—35.116 (relating to prehearing conferences).]

§ 42.33. [Formal hearings] (Reserved).

[(a) The Board will issue the administrative complaint and rule to show cause prepared by the prosecutor to the respondent, notifying him of the following:

- (1) The factual allegations and the charges filed against him.
- (2) The time and place of the hearing.
- (3) The right to be represented by counsel.
- (4) The right to appear personally.
- (5) The right to cross-examine witnesses testifying against him.
- (6) The right to call witnesses in his own behalf.
- (7) The right to review and object to documentary evidence produced against him.

(8) The procedure to be followed in requesting a continuance.

(b) A verbatim transcript of the proceeding will be made.

(c) The time of the hearing will be fixed by the Board or the designated hearing examiner as soon as convenient, but not earlier than 20 days after service of the administrative complaint and rule to show cause upon the respondent. The Board or the designated hearing examiner will issue subpoenas for the respondent only upon a showing by the respondent that a necessary witness will not appear unless subpoenaed. The Board will look to the courts of the Commonwealth to enforce its subpoenas.

(d) Within a reasonable time after holding the hearing, under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to Administrative Agency Law), the Board will prepare a written adjudication of the decision reached, supported with findings of fact and conclusions of law. An order disposing of the case will be transmitted to the parties of record. The Board will retain copies of the adjudication and order and items offered into evidence and considered in reaching a decision.

(e) Formal disciplinary proceedings will be open to the public.

(f) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.121—35.133 (relating to hearing and transcript).]

CHILD ABUSE REPORTING REQUIREMENTS

§ 42.42. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), [**occupational therapists or occupational therapist assistants**] licensees who, in the course of their employment, occupation or practice of their profession, come into contact with children shall report or cause a report to be made to the Department of Public Welfare when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse.

(b) *Staff members of public or private agencies, institutions and facilities.* [**Occupational therapists or occu-**

pational therapist assistants] Licensees who are staff members of a medical or other public or private institution, school, facility or agency, and who, in the course of their employment, occupation or practice of their profession, come into contact with children shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge when they have reasonable cause to suspect on the basis of their professional or other training or experience, that a child coming before them in their professional or official capacity is a victim of child abuse. Upon notification by the [**occupational therapist or occupational therapist assistant**] licensee, the person in charge or the designated agent shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with subsections (a), (c) and (d).

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

[**An occupational therapist or occupational therapist assistant**] A licensee may take or cause to be taken photographs of the child who is subject to a report and, if clinically indicated, cause to be performed a radiological examination and other medical test on the child. Medical summaries or reports of the photographs, X-rays and relevant medical tests taken shall be sent to the county children and youth social service agency at the time the written report is sent or as soon thereafter as possible. The county children and youth social service agency shall have access to actual photographs or duplicates and X-rays and may obtain them or duplicates of them upon request.

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

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

§ 42.45. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), [**an occupational therapist or occupational therapist assistant**] a licensee who participates in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs shall have immunity from civil and criminal liability that might result by reason of the [**occupational therapist's or occupational therapist assistant**] licensee's actions. For the purpose of any civil or criminal proceeding, the good faith of the [**occupational therapist or occupational therapist assistant**] licensee shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of [**an occupational therapist's or occupational therapist assistant's**] a licensee's actions in participating in good faith in the making of a report, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse or the taking of photographs.

§ 42.47. Noncompliance.

(a) *Disciplinary action.* **[An occupational therapist or occupational therapist assistant]** A licensee who willfully fails to comply with the reporting requirements in §§ 42.42—42.44 (relating to suspected child abuse—mandated reporting requirements; photographs, medical tests and X-rays of child subject to report; and suspected death as a result of child abuse—mandated reporting requirement) will be subject to disciplinary action under section 16 of the act (63 P. S. § 1516).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report), **[an occupational therapist or occupational therapist assistant]** a licensee who is required to report a case of suspected child abuse who willfully fails to do so commits a summary offense for the first violation and a misdemeanor of the third degree for a second or subsequent violation.

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