

RULES AND REGULATIONS

Title 34—LABOR AND INDUSTRY

DEPARTMENT OF LABOR AND INDUSTRY

[34 PA. CODE CHS. 401 AND 403]

Uniform Construction Code

In accordance with section 304 of the Pennsylvania Construction Code Act (act) (35 P.S. § 7210.304), the Department of Labor and Industry (Department) amends Chapters 401 and 403 (relating to Uniform Construction Code training and certification of code administrators; and administration).

Statutory Authority

This final-form rulemaking is issued under the authority in section 304(a)(3) of the act, which provides that the Department shall promulgate regulations updating accessibility standards by adopting Chapter 11 and Appendix E of the International Building Code of 2012, or its successor, by December 31 of the year of issuance of the new code.

Background

The act mandates a process for the adoption of updated building codes issued by the International Code Council. Although most building code provisions are reviewed by the Uniform Construction Code Review and Advisory Council, under section 107 of the act (35 P.S. § 7210.107), the General Assembly excluded accessibility provisions of the International Building Code from review. The act of April 25, 2011 (P.L. 1, No. 1) (Act 1) amended the act to require that the Department regularly adopt updated accessibility standards for the construction, repair or alteration of buildings in this Commonwealth by December 31 of the year of issuance, beginning with Chapter 11 and Appendix E of the International Building Code of 2012. Therefore, the Department is required to adopt these provisions by December 31, 2012. Adoption of the current accessibility standards will ensure that commercial buildings meet current standards for accessible and usable facilities.

The Department published notice of proposed rulemaking at 42 Pa.B. 1861 (April 7, 2012). The Department received written comments from Robert Heil, on behalf of the Pennsylvania Association of Building Code Officials (PABCO), and Elam Herr, on behalf of the Pennsylvania State Association of Township Supervisors (PSATS). On June 6, 2012, the Department received a letter from the Independent Regulatory Review Commission (IRRC) indicating that it did not have objections, comments or recommendations to offer regarding the proposed rulemaking.

Purpose

The purpose of this final-form rulemaking is to adopt recognized International standards for accessible and usable buildings and structures as directed by Act 1. The final-form rulemaking brings the Commonwealth's standards for accessible and usable buildings to the current state of the art and conforms to standards issued by the United States Department of Justice under the Americans with Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213). Adopting Chapter 11 and Appendix E of the 2012

International Building Code will allow the Department to comply with the directive of the act.

Response to Comments

PABCO commented that the Department is adopting the ICC A117.1-2009 standard without authority to do so. This final-form rulemaking does not explicitly adopt ICC A117.1-2009. However, ICC A117.1-2009 is adopted by Chapter 11 of the 2012 International Building Code. The Department is required under section 304(a)(3) of the act to adopt Chapter 11 and Appendix E of the 2012 International Building Code. Those are the only standards that are expressly adopted by this final-form rulemaking.

PABCO and PSATS commented that there are accessibility provisions in sections of the 2012 International Building Code other than Chapter 11 and Appendix E and expressed concern regarding those provisions. PABCO urged the Department to adopt other accessibility provisions. Section 304(a)(3) of the act clearly directs the Department to adopt Chapter 11 and Appendix E. The Department does not have authority to expressly adopt other provisions.

PABCO commented that the Department should provide, by regulation, a list of the chapters, sections and subsections in the International Building Code and the International Existing Building Code that pertain to accessibility. Again, section 304(a)(3) of the act gives the Department authority to adopt Chapter 11 and Appendix E of the International Building Code of 2012. The Department is constrained to adopt only those sections. The Department may provide guidance to code officials regarding its interpretation of this adoption at a later date.

Affected Persons

This final-form rulemaking affects owners of new commercial buildings or commercial buildings undergoing addition, renovation or repair. It also ensures that persons with physical disabilities will be able to access and use commercial buildings in this Commonwealth.

Fiscal Impact

The Commonwealth will incur minimal additional costs under this final-form rulemaking. Costs are related to the purchase of updated code books for Commonwealth personnel. The cost to enforce the final-form rulemaking will be the same as the current regulations. This final-form rulemaking will not increase administrative, enforcement or legal activity.

Reporting, Recordkeeping and Paperwork Requirements

This final-form rulemaking will not require the creation of new forms or reporting requirements. Current forms may be updated.

Sunset Date

A sunset date is not appropriate for this final-form rulemaking. The act directs the Department to update these regulations with each new International Code Council, or successor code, edition.

Effective Date

This final-form rulemaking takes effect December 31, 2012.

Contact Person

The contact person is Edward Leister, Director, Bureau of Occupational and Industrial Safety, Department of

Labor and Industry, 16th Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17120, eleister@pa.gov.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 23, 2012, the Department submitted a copy of the notice of proposed rulemaking, published at 42 Pa.B. 1861, to IRRC and the Chairpersons of the Senate Committee on Labor and Industry and the House Labor and Industry Committee for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the House and Senate Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on November 14, 2012, the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC effective November 14, 2012.

Findings

The Department finds that:

(a) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(b) A public comment period was provided as required by law and the comments were considered.

(c) The final-form rulemaking is necessary and appropriate for the administration and enforcement of the act.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 34 Pa. Code Chapters 401 and 403, are amended by amending §§ 401.1 and 403.21 to read as set forth at 42 Pa.B. 1861.

(b) The Secretary of the Department shall submit this order and 42 Pa.B. 1861 to the Office of General Counsel and the Office of Attorney General for approval as to legality and form as required by law.

(c) The Secretary of the Department shall submit this order and 42 Pa.B. 1861 to IRRC, the Senate Labor and Industry Committee and the House Labor Relations Committee as required by law.

(d) The Secretary of the Department shall certify this order and 42 Pa.B. 1861 and deposit them with the Legislative Reference Bureau as required by law.

(e) This order takes effect December 31, 2012.

JULIA K. HEARTHWAY,
Secretary

(Editor’s Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7364 (December 1, 2012).)

Fiscal Note: Fiscal Note 12-94 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-2466. Filed for public inspection December 21, 2012, 9:00 a.m.]

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE REAL ESTATE COMMISSION

[49 PA. CODE CH. 35]

Education

The State Real Estate Commission (Commission) amends §§ 35.201, 35.271—35.273, 35.275, 35.308, 35.341, 35.354, 35.359, 35.384 and 35.385 to read as set forth in Annex A.

Statutory Authority

The final-form rulemaking is authorized under section 404.1 of the Real Estate Licensing and Registration Act (63 P.S. § 455.404a).

Background and Purpose

In 2004, the Commission amended its regulations to consolidate duplicative prelicensure and continuing education provisions and revise outdated, burdensome and unnecessary real estate education provider requirements. Since that time, the Commission has reviewed the effectiveness of its regulations and determined that several provisions require additional amendment. This final-form rulemaking: (1) reinstates the requirement that real estate education providers provide transcripts, electronically or in print, to licensees; (2) requires new licensees to complete a required course as a condition of their first biennial renewal; (3) consolidates and clarifies real estate education provider provisions; (4) defines and uses the term “accredited college” consistently throughout the regulations; and (5) adds appropriate cross references to aid clarity for continuing education providers.

Response to Comments

Notice of proposed rulemaking was published at 40 Pa.B. 5195 (September 11, 2010). Publication was followed by a 30-day public comment period during which the Commission received a letter from the Pennsylvania Association of Realtors (PAR) indicating that PAR, along with its school, the Pennsylvania Realtors Institute, did not have comments or questions concerning the proposed rulemaking. The Commission did receive public comments from the School Directors within the PAR (School Directors), and the Greater Harrisburg Association of Realtors and its related organization the Greater Harrisburg Realtors Institute (GHAR/GHRI). Following the close of the public comment period, the Commission received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not comment.

References to “industry organization”

Proposed §§ 35.271, 35.272, 35.273 and 35.275 included references to “industry organizations” among those entities that could provide prelicensure education to candidates for licensure. The School Directors, GHAR/GHRI and the HPLC questioned whether the Commission should define “industry organization.” Upon reviewing the multitude of organizations that hold themselves out as “real estate industry organizations” and noting that many do not have expertise in, nor are they designed to, provide

real estate education, the Commission deleted references to “industry organization” in the final-form rulemaking.

GHAR/GHRI suggested that the final-form rulemaking should refer specifically to the National Association of Realtors (NAR) instead of the term “industry organization” to give credit for the NAR’s designation programs. The Commission believes that an amendment does not need to be made because these courses would fall within §§ 35.271(b)(3)(i) and (ii), 35.272(b)(3)(i) and (ii), 35.273(b)(4)(i) and (ii) and 35.275(b)(3)(i) and (ii) if taught within this Commonwealth and §§ 35.271(b)(3)(iii), 35.272(b)(3)(iii), 35.273(b)(4)(iii), and 35.275(b)(3)(iii) if taught outside of this Commonwealth and they are approved by the licensing jurisdiction where the provider is located.

§ 35.359—Course documentation

Proposed § 35.359 (relating to course documentation) required continuing education providers to provide transcripts to students within 30 days after course completion. The School Directors asked the Commission to define “provide” to clarify whether paper transcripts or original signatures are required. GHAR/GHRI recommended that transcripts only be provided upon audit instead of at the completion of the course and commented that paper transcripts are costly.

The Commission learned from continuing education providers that licensees frequently ask the providers to supply additional copies of transcripts to respond to an audit. Owing to the concerns of the commentators, the Commission considered deleting the requirement that transcripts be provided following each course and replacing it with the requirement that providers “make the transcripts available to course participants.” Ultimately, the Commission decided not to make this change as it would shift the burden of demonstrating compliance from the individual licensee to the provider. Additionally, in the event of a provider closing or destruction of its records, the licensee would be unable to verify compliance with the continuing education requirements. Because the Commission believes that this is the licensee’s obligation, amendments have not been made and the final-form rulemaking requires providers to provide transcripts to participants upon completion of the course. However, to ease the burden on providers, the Commission clarified that the transcripts can be produced in any format that cannot be altered, including electronically or in print, so long as the transcript is signed by the provider or director. Allowing for an electronic format should help alleviate some, if not most, of the providers’ cost concerns.

IRRC questioned why the cross reference to § 35.360(a)(5)(i)—(viii) (relating to records) did not contain subparagraph (ix) and inquired whether it should be added. The Commission added subparagraph (ix) to the citation.

References to “accredited college” and “college, university or institute of higher learning”

The proposed definition of “accredited college” recognized institutions accredited by Middle States Commission on Higher Education or an equivalent body. IRRC questioned the criteria used to evaluate the “equivalent body.” In response to this comment, the Commission reviewed the current recognition bodies and determined that the most inclusive, while assuring quality, were the Council for Higher Education Accreditation and the United States Secretary of Education. The Commission replaced “accredited by the Middle States Commission on Higher Education or an equivalent body” with “recognized

by the Council for Higher Education Accreditation or the United States Secretary of Education” in this final-form rulemaking.

The HPLC questioned whether the Commission should also amend §§ 35.271(b)(1)(i) and (ii), 35.272(b)(1)(i) and (ii), 35.273(b)(1)(i) and (ii), 35.275(b)(1)(i) and (ii), 35.308, 35.341(6)(i)(a) and 35.354(a)(3) so that the Commission’s use of “accredited college” is consistent throughout the regulations. The Commission found this suggestion worthwhile and amended these provisions to replace “an accredited college, university or institute of higher learning” with “an accredited college as defined in § 35.201 (relating to definitions)” throughout the final-form rulemaking.

§ 35.272—Examination for salesperson’s license

IRRC commented that § 35.272(b)(2)(ii) (relating to examination for salesperson’s license) permitted credits offered by a provider “approved by the Commission” but it did not explain the process for approval. IRRC further noted that § 35.341 (relating to approval of real estate education provider) included a process for approval of real estate education providers. Therefore, the Commission amended this section to include a cross reference to § 35.341 to help clarify the approval process for real estate education providers. The Commission also added this cross reference to §§ 35.271(b)(3)(ii), 35.273(b)(2)(ii) and 35.275(b)(2)(ii) (relating to examination for broker’s license; examination for cemetery broker’s license; and examination for rental listing referral agent’s license).

§ 35.385—Continuing education providers

IRRC questioned why the Commission intends for continuing education providers to comply with certain subsections rather than entire sections that apply to real estate education providers. Subsection (b) identifies the sections of the regulations that apply to providers that only do continuing education. The sections that were not identified deal with providers that do precicensure education as opposed to continuing education. The Commission has had many questions in the past from continuing education providers as to what was required of them. This section would help alleviate confusion as to what applies to the continuing education provider. The Commission is also deleting the reference to § 35.355 (relating to prospectus materials) as that was inadvertently added.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking does not have fiscal impact on the Commonwealth, its political subdivisions or the public. The final-form rulemaking will impose a paperwork requirement which may have a fiscal impact on the regulated community because the regulations require real estate education providers to provide signed transcripts/certificates of completion to continuing education participants/instructors at the end of each course and because licensees are required to retain this documentation for 2 years following the end of the biennial renewal period for purposes of audit. The fiscal impact on the providers should be minimal since they may provide transcripts/certificates of completion electronically.

Sunset Date

The Board continually monitors the effectiveness of its regulations through communication with the regulated population. Therefore, a sunset date has not been set.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 27, 2010, the Commission

submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5195, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 14, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2012, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Patricia Ridley, Administrator, State Real Estate Commission, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3658.

Findings

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and the comments were considered.
- (3) The amendments to the final-form rulemaking do not enlarge the purpose of proposed rulemaking published at 40 Pa.B. 5195.
- (4) This amendment is necessary and appropriate for administering and enforcing the authorizing acts identified in this preamble.

Order

The Commission, acting under its authorizing statutes, orders that:

- (a) The regulations of the Commission, 49 Pa. Code Chapter 35, are amended by amending §§ 35.201, 35.271—35.273, 35.275, 35.308, 35.341, 35.354, 35.359, 35.384 and 35.385 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.
(Editor's Note: Final-form §§ 35.308 and 35.354 were not included in the proposed rulemaking published at 40 Pa.B. 5195.)
- (b) The Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.
- (c) The Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

JEFFREY J. JOHNSON,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7364 (December 1, 2012).)

Fiscal Note: Fiscal Note 16A-5613 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 35. STATE REAL ESTATE COMMISSION

Subchapter B. GENERAL PROVISIONS

§ 35.201. Definitions.

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

Accredited college—A college, university or institute of higher learning recognized by the Council for Higher Education Accreditation or the United States Secretary of Education.

Act—The Real Estate Licensing and Registration Act (63 P. S. §§ 455.101—455.902).

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Subchapter D. LICENSING EXAMINATIONS

§ 35.271. Examination for broker's license.

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(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(4):

(1) A candidate who has obtained one of the following degrees will be deemed to have met the education requirement and will not be required to show completion of coursework in specific areas of study:

- (i) A bachelor's degree with a major in real estate from an accredited college as defined in § 35.201 (relating to definitions).
- (ii) A bachelor's degree from an accredited college as defined in § 35.201, having completed coursework equivalent to a major in real estate.
- (iii) A juris doctor degree from an accredited law school.

(2) Candidates who have not obtained a degree specified in paragraph (1) shall acquire 16 credits in professional real estate education. Two of the required 16 credits shall be in a Commission-developed or approved real estate office management course and 2 of the required 16 credits shall be in a Commission-developed or approved law course. At least 6 of the remaining 12 credits shall be in 3 or more of the Commission-developed courses listed in this paragraph. The remaining 6 credits shall be in real estate courses but not necessarily those listed in this paragraph. A candidate may not apply credits used to qualify for the salesperson's examination toward fulfillment of the broker education requirement.

- (i) Real Estate Law.
- (ii) Real Estate Finance.
- (iii) Real Estate Investment.
- (iv) Residential Property Management.
- (v) Nonresidential Property Management.
- (vi) Real Estate Sales.
- (vii) Residential Construction.
- (viii) Valuation of Residential Property.

(ix) Valuation of Income-Producing Property.

(3) To be counted toward the education requirement, a real estate course shall have been offered by:

(i) An accredited college as defined in § 35.201.

(ii) A real estate education provider who has met the approval requirements in § 35.341 (relating to approval of real estate education provider).

(iii) A real estate education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

(4) A maximum of four credits will be allowed for each real estate course. A maximum of four credits will be allowed for each area of real estate study listed in paragraph (2).

(5) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(6) Two credits will be allowed for each year of active practice the candidate has had as a licensed broker in another state during the 10-year period immediately preceding the submission of the examination application.

(c) A reciprocal licensee who is converting that license to a standard broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.272. Examination for salesperson's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a standard salesperson's license shall:

(1) Be 18 years of age or older.

(2) Have successfully completed four credits, or 60 hours of instruction, in basic real estate courses as determined by the Commission under subsection (b).

(3) Submit a completed examination application to the Commission or its designee with the examination fee.

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirement of subsection (a)(2):

(1) A candidate who has obtained one of the following degrees will be deemed to have met the education requirement and will not be required to show completion of coursework in specific areas of study:

(i) A bachelor's degree with a major in real estate from an accredited college as defined in § 35.201 (relating to definitions).

(ii) A bachelor's degree from an accredited college as defined in § 35.201, having completed coursework equivalent to a major in real estate.

(iii) A juris doctor degree from an accredited law school.

(2) Credits will be allowed for Real Estate Fundamentals and Real Estate Practice and all acceptable basic real estate courses when offered by:

(i) An accredited college as defined in § 35.201.

(ii) A real estate education provider who has met the approval requirements in § 35.341 (relating to approval of real estate education provider).

(iii) A real estate education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

(3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(c) A licensee who is converting a reciprocal license to a standard salesperson's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

§ 35.273. Examination for cemetery broker's license.

* * * * *

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirements of subsection (a)(3):

(1) A candidate who has obtained one of the following degrees will be deemed to have met the education requirement and will not be required to show completion of course work in specific areas of study:

(i) A bachelor's degree with a major in real estate from an accredited college as defined in § 35.201 (relating to definitions).

(ii) A bachelor's degree from an accredited college as defined in § 35.201, having completed course work equivalent to a major in real estate.

(iii) A juris doctor degree from an accredited law school.

(2) Credits will be allowed for Real Estate Fundamentals and Real Estate Practice, cemetery courses and all basic real estate courses when offered by:

(i) An accredited college as defined in § 35.201.

(ii) A real estate education provider who has met the approval requirements in § 35.341 (relating to approval of real estate education provider).

(iii) A real estate education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

(iv) A cemetery association outside this Commonwealth, if the course taught by the cemetery association is equivalent to a course taught by a real estate education provider in this Commonwealth approved by the Commission.

(3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(c) A reciprocal licensee who is converting a reciprocal license to a standard cemetery broker's license is exempt from subsection (a) and is only required to pass the state portion of the examination.

§ 35.275. Examination for rental listing referral agent's license.

(a) An individual who wants to take the salesperson's examination for the purpose of obtaining a standard rental listing referral agent's license shall:

- (1) Be 18 years of age or older.
- (2) Have successfully completed four credits, or 60 hours of instruction, in basic real estate courses as determined by the Commission under subsection (b).

(3) Submit a completed examination application to the Commission or its designee with the examination fee.

(b) The Commission will apply the following standards in determining whether an examination candidate has met the education requirements of subsection (a)(2):

(1) A candidate who has obtained one of the following degrees will be deemed to have met the education requirement and will not be required to show completion of coursework in specific areas of study:

(i) A bachelor's degree with a major in real estate from an accredited college as defined in § 35.201 (relating to definitions).

(ii) A bachelor's degree from an accredited college as defined in § 35.201, having completed coursework equivalent to a major in real estate.

(iii) A juris doctor degree from an accredited law school.

(2) Credits will be allowed for Real Estate Fundamentals and Real Estate Practice and all acceptable basic real estate courses when offered by:

(i) An accredited college as defined in § 35.201.

(ii) A real estate education provider who has met the approval requirements in § 35.341 (relating to approval of real estate education provider).

(iii) A real estate education provider outside this Commonwealth that has been approved by the real estate licensing authority of the jurisdiction where the real estate education provider is located. The course transcript or certificate of completion must state that the course is approved by the licensing authority of the jurisdiction where the real estate education provider is located.

(3) Courses shall have been completed within 10 years prior to the date of successful completion of the licensing examination.

(c) A reciprocal licensee who is converting a reciprocal license to a standard rental listing referral agent's license is exempt from the requirements in subsections (a) and (b) and is only required to pass the state portion of the examination.

Subchapter E. STANDARDS AND CONDUCT AND PRACTICE

ADVERTISING AND SOLICITATION

§ 35.308. Relationship with educational institution.

A real estate company, franchise or network may promote, endorse or advertise its association, affiliation or connection with a real estate education provider or with an accredited college as defined in § 35.201 (relating to definitions) regarding its offering of real estate instruction. An association, affiliation or connection which includes an ownership interest shall be disclosed in all promotions, endorsements or advertisements. For purposes of this section, an ownership interest will be considered by the Commission to include proprietary or beneficial interests through which the real estate company, franchise or network earns or has the potential to earn income, or which produces a direct or indirect economic benefit.

Subchapter F. REAL ESTATE EDUCATION PROVIDERS

APPROVAL OF REAL ESTATE EDUCATION PROVIDERS

§ 35.341. Approval of real estate education provider.

A real estate education provider shall obtain the Commission's approval before commencing operations in this Commonwealth. To obtain approval from the Commission, the real estate education provider shall:

(1) Be owned by persons who possess good moral character or, if the owner is a corporation, have officers and directors who meet this requirement.

(2) Have a name that is acceptable to the Commission.

(3) Have a director of operations who meets the requirements of § 35.342 (relating to approval of real estate educational director).

(4) Designate a person or entity to serve as custodian of records if the real estate education provider were to terminate operations.

(5) Post a surety bond of \$10,000 to the Commonwealth for the protection of the contractual rights of the real estate education provider's students.

(6) Submit a completed real estate education provider approval application to the Commission with:

(i) A completed real estate education provider owner application with:

(A) A resume of the applicant's experience in owning, administrating or teaching in an accredited college as defined in § 35.201 (relating to definitions) or as a real estate education provider.

(B) Two letters of reference from responsible persons relating to the applicant's integrity and to the applicant's previous experience, if any, in the administration of an educational program.

(C) Certified copies of court documents related to a conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

(ii) A completed real estate education provider director application with:

(A) Credentials evidencing the qualifications required of the applicant under § 35.342.

(B) Certified copies of court documents related to conviction of, or plea of guilty or nolo contendere to, a felony or misdemeanor and the sentence imposed.

(iii) A fictitious name registration, if the real estate education provider has a fictitious name.

(iv) A copy of the registration documentation approved by the Department's Corporation Bureau, if the real estate education provider is a corporation, limited liability partnership, limited partnership or limited liability company.

(v) A copy of the surety bond required under paragraph (5).

(vi) A copy of the student enrollment agreement.

(vii) A copy of the school transcript.

(viii) A statement of the prerequisites for admission.

(ix) A statement of policy regarding refund of tuition and other fees.

(x) The approval fee prescribed in § 35.203 (relating to fees).

(xi) For the main school location and each proposed satellite location, a sketch or photograph of the real estate education provider's sign.

ADMINISTRATION OF REAL ESTATE EDUCATION PROVIDERS

§ 35.354. Prohibited forms of advertising and solicitation.

(a) A real estate education provider may not:

* * * * *

(3) Hold itself out to be an educational institution that conforms to the standards and requirements prescribed for accredited colleges as defined in § 35.201 (relating to definitions) unless the real estate education provider meets those standards and requirements.

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§ 35.359. Course documentation.

(a) *Prelicensure.* Within 30 days after a course has been taught, a real estate education provider shall provide each student in the course with an official course transcript that contains the information in § 35.360(a)(5) (relating to records) and is signed by the director.

(b) *Continuing education.* Within 30 days after a continuing education course has ended, the continuing education provider shall provide each licensee who satisfactorily completed/taught the course transcripts/certificates of instruction that contain the information in § 35.360(a)(5)(i)—(ix) signed by the provider or the director. The transcript/certificate of instruction must be in a format that cannot be altered.

(1) Licensees shall retain the transcripts/certificates of instruction for 2 years following the biennial renewal period during which the courses were taken to renew the license.

(2) Licensees shall provide a copy of the transcripts/certificates of instruction to the Commission verifying completion of the continuing education requirement upon request.

Subchapter H. CONTINUING EDUCATION

§ 35.384. Qualifying courses.

(a) Except as provided in subsection (b), a licensee shall complete 14 hours of continuing education in acceptable courses in a minimum of 2-hour increments.

(b) The Commission may, for a given biennial license period and with adequate notice to standard license holders, require that all or part of the 14 hours be completed in required topics. In addition, during the first biennial period that continuing education is required, a new licensee shall complete the Commission-developed 14-hour required course for new licensees in satisfaction of the continuing education requirement.

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§ 35.385. Continuing education providers.

(a) The following providers may offer instruction for continuing education:

(1) An accredited college as defined in § 35.201 (relating to definitions).

(2) A real estate education provider who has met the approval requirements in § 35.341 (relating to approval of real estate education provider).

(3) A real estate education provider outside this Commonwealth that has been approved by the real estate

licensing authority of the jurisdiction where the real estate education provider is located.

(b) Continuing education providers shall comply with the standards for real estate education providers in §§ 35.352(b), 35.353(a), 35.358(a) and 35.359(b).

[Pa.B. Doc. No. 12-2467. Filed for public inspection December 21, 2012, 9:00 a.m.]

**STATE BOARD OF PHYSICAL THERAPY
[49 PA. CODE CH. 40]
Act 38 of 2008 Amendments**

The State Board of Physical Therapy (Board) amends Chapter 40 to read as set forth in Annex A.

Description and Need for the Rulemaking

The act of July 4, 2008 (P. L. 293, No. 38) (Act 38) substantially amended the Physical Therapy Practice Act (act) (63 P. S. §§ 1301—1313), including qualifications for licensure as a physical therapist, continuing education for physical therapists and physical therapist assistants, professional liability insurance for physical therapists, physician referral and supervision of physical therapist assistants by physical therapists on a basis that may be less than direct on-premises supervision. The extensive nature and breadth of these amendments required that the Board amend its regulations to implement Act 38. The Board amends the regulations to implement the changes from Act 38 and to conform the regulations to current practice.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 41 Pa.B. 4962 (September 17, 2011) with a 30-day public comment period. The Board received comments from the following members of the public: the Pennsylvania Physical Therapy Association (PPTA); the Pennsylvania Health Care Association; the Neuman University Physical Therapy Program; the Philadelphia Consortium of Academic Coordinators of Clinical Education; James Baniewicz, PT; Colleen Chanler, PT; Kevin M. Cooney, PT; Thomas Glumac, PT; Cheryl L. Kramer, PT; Alicia Moran, PTA; Barbara Potena, PT; LaVerne Russell, PT; Terri Russell, PT; and Antoinette Amodi, PT and others including a large group from the Reading Hospital. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC noted that, although Act 38 was effective October 2, 2008, the proposed rulemaking was published on September 17, 2011. IRRC indicated that it would review the Board's response to this comment as part of its determination as to whether the final-form rulemaking is in the public interest. The Board recognizes that section 16 of Act 38 directed the Board to promulgate regulations to implement the amendments to the act within 18 months of the effective date of Act 38 (or by April 2, 2010) and that the Board failed to do so. However, because these types of time frames have been held by the courts of the Commonwealth to be directory, and not mandatory, the Board believes that the fact that it was unable to

complete the regulatory process within 18 months as directed should not be controlling in deciding whether the final-form rulemaking is in the public interest. See, for example, *Commonwealth ex rel. Fortney v. Wozney*, 326 Pa. 494, 497 (1937) (“The provisions of a statute requiring public officers to act within a specified time are generally regarded as directory, unless time is of the essence of the thing to be done, or the statute indicates that the provision is to be regarded as mandatory.”); and *Delaware County v. Department of Public Welfare*, 383 A.2d 240 (Pa. Commonwealth Ct. 1978). The Board began the task of drafting these regulations as soon as Act 38 was passed. The Regulations Committee of the Board met monthly with interested parties and stakeholders for over a year to craft these regulations. Once the Board was satisfied with the draft of the proposed rulemaking, it proceeded through internal departmental/administrative review. The Board was unable to complete the process before the General Assembly adjourned the 2009-2010 session. Early in 2011, the Board was contacted by the Executive Director of the HPLC who identified some policy issues with the proposed rulemaking and asked the Board to consider those issues before publishing the proposed rulemaking. As a result, the Board voted to make additional revisions at its meeting in March 2011. The regulations then continued to be reviewed by the new administration. Ultimately, the proposed rulemaking was delivered and published in September 2011. Much of the delay was not under the Board’s control. For these reasons, the Board believes that the delay should not be considered in evaluating the final-form rulemaking.

The HPLC questioned the Board’s statutory authority to include physical therapy assistant students in the physical therapist to physical therapist assistant supervision ratio of § 40.171(c) (relating to functions of physical therapist assistants), as section 9.1(c)(6) of the act (63 P. S. § 1309.1(c)(6)) specifically limits a physical therapist to supervising no more than three physical therapist assistants. IRRC also asked this question. The Board believes that it retains the authority to limit the number of students seeking to become certified as physical therapy assistants that a physical therapist may supervise at a given time. However, upon further consideration of the comments, the Board concluded that it is not necessary to include physical therapist assistant students in the ratio. IRRC suggested that the Board also make clear that the physical therapist providing supervision is licensed. The Board revised § 40.171(c) to refer specifically to a “licensed physical therapist.”

After noting its interest in the Board’s responses to the two comments from the HPLC, IRRC raised the economic impact of the final-form rulemaking. IRRC recommended that the Board amend its responses to questions 17, 19, 20 and 21 of the Regulatory Analysis Form to provide cost estimates associated with implementation and compliance with the final-form rulemaking, specifically the continuing education and professional liability insurance requirements and the Board’s review of additional continuing education programs. The obligations to complete continuing education and to maintain professional liability insurance are required under the act. The Board is merely implementing the statutory mandate. The regulated community will incur costs in participating in continuing education and purchasing professional liability insurance. Those costs were not included in evaluating the impact of this final-form rulemaking and should not be considered as a factor in determining whether the final-form rulemaking is in the public interest as it is not the Board’s action in promulgating regulations to implement require-

ments that imposes those costs on the regulated community. The Board determined that the average annual cost to comply with the statutorily mandated continuing education to be approximately \$400 but could be substantially less. Some continuing education activities, such as authoring publications, do not have direct costs. Often, professional associations offer continuing education at a reduced rate to members. As for the costs associated with meeting the professional liability insurance requirements imposed by the act, the Board notes that many physical therapists already maintain professional liability insurance, either personally or through an employer, so the fiscal impact may actually be very small. However, the estimated costs of professional liability insurance in the amount of \$1 million per occurrence or claims made for a physical therapist is estimated at \$500 per year for a full-time physical therapist. The regulatory analysis has been revised to reflect these costs.

The only cost to be imposed as a result of the final-form rulemaking is the cost to continuing education providers to obtain approval of continuing education programs and courses. However, the vast majority of continuing education will be provided by preapproved providers who will not have to incur that cost. As a result, the aggregate cost of continuing education course approval to providers will be minimal. Because the Board will recover its costs of approving continuing education programs and courses through its already set fee, there is not an additional cost to the Board.

IRRC noted that section 9(c) of the act (63 P. S. § 1309(c)) requires a physical therapist certified to treat without a referral to complete continuing education as a condition of certificate renewal. Section 40.63(b) (relating to continuing education for direct access certificateholder) explicitly provides that completion of required continuing education is a condition of certificate renewal for a physical therapist certified to treat without a referral. IRRC also noted that section 7.2 of the act (63 P. S. § 1307.2) requires a licensed physical therapist to complete continuing education as a condition of license renewal and that section 9.1(j) of the act requires a certified physical therapist assistant to complete continuing education as a condition of certificate renewal. By contrast, however, proposed §§ 40.19 and 40.191 (relating to renewal of physical therapist license; and renewal of certification) did not have these explicit requirements. Because it is concerned that these sections do not provide direct notice that would increase clarity and help avoid licensee failures, IRRC recommended that these sections be amended to clearly state that the Board will not renew without completion of continuing education. The Board revised § 40.19(c)(5) to provide that the Board will not renew a license if the physical therapist has not completed the required continuing education and § 40.191(c)(5) to provide that the Board will not renew the certificate if the physical therapist assistant has not completed the required continuing education.

The Board proposed to amend § 40.11 (relating to educational requirements for licensure by examination) to require an applicant to have graduated from a physical therapy program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) or “another National organization recognized by the Board that accredits physical therapy programs.” IRRC questioned what was meant by this phrase and how an applicant would be able to identify an organization. Currently, CAPTE is the only accreditation agency recognized by the United States Department of Education and the Council for Higher Education Accreditation to accredit

entry-level physical therapist and physical therapist assistant education programs. The Board included the additional language to allow for development of other accrediting organizations. If there are organizations and the Board recognizes them, it will identify those organizations on the Board's web site and in its application instructions.

Because § 40.12(b) (relating to application for licensure) requires an applicant to "apply on forms supplied by the Board," IRRC next questioned whether those forms are available online and, if so, suggested that the web address be included in the subsection. The forms are available on the Board's web site at www.dos.state.pa.us/physther. Because the web address has changed in the past and may very likely be changed again, the Board did not include it in this subsection.

IRRC noted that section 6(i)(2) of the act (63 P.S. § 1306(i)(2)) requires an applicant who has been educated outside the United States to "provide proof of holding an unrestricted license in the country where the applicant was educated" and questioned whether the deletion of § 40.17(3) (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience) is consistent with the act. Section 40.17(3) provides that an applicant shall provide written documentation of authorization to practice as a physical therapist without limitations in the country where the professional education took place. In drafting the proposed rulemaking, the Board wanted to allow for applicants who fully completed training in a foreign country and then came to the United States prior to becoming licensed or otherwise authorized to practice in that country. In doing so, the Board overlooked section 6(i)(2) of the act. The Board did not delete § 40.17(3) and did not renumber this section. IRRC further noted that section 6(i)(3) of the act requires an applicant who has been educated outside of the United States to provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited program approved by the Board. This section further provides that, as an alternative to graduation from a program accredited by the same accrediting agency approved by the Board, the applicant shall: (1) show graduation from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy; (2) provide written proof that the applicant's school of physical therapy is recognized by its own ministry of education; (3) undergo a credentials evaluation as directed by the Board to determine that the candidate has met uniform criteria for education requirements; and (4) complete additional education as required by the Board. IRRC suggested that the Board review § 40.17 for consistency with section 6(i)(3) of the act. The regulations address substantially equivalent foreign education in § 40.17(5). The Board revised paragraph (5) to provide that the applicant shall show substantial equivalence by either showing that the education program is accredited as provided in § 40.11(a) or securing a credentials evaluation. Without satisfying the requirements of § 40.17(2) that the program prepares the applicant to engage without restriction in the practice of physical therapy and is recognized by the authorizing agency or entity of the jurisdiction, the program cannot be accredited by CAPTE. With this revision, § 40.17 is consistent with section 6(i) of the act. Notwithstanding this revision, very few applicants will be able to take advantage of it. CAPTE currently accredits two physical therapist education programs in Ontario and one program in Scotland.

IRRC noted that § 40.191(j) provides that a physical therapist assistant who provides services after the certificate has expired but before it has been reactivated is subject to disciplinary action under section 9.1(d) and (f) of the act. IRRC suggested that a similar provision be included for physical therapists. The Board added § 40.20(f) (relating to inactive status of physical therapist license) to provide analogously that a licensed physical therapist who has not renewed the license may not practice until the license is reactivated and that one who does so is subject to disciplinary action under sections 4(a) and 11(6) of the act (63 P.S. §§ 1304(a) and 1311(6)). In considering this comment, the Board also realized that § 40.20(d), which imposes a late fee upon reactivation for a licensee who has practiced while the license was inactive, is not sufficiently clear regarding those who did not practice. The Board amended this subsection to provide that an applicant for reactivation will not be assessed a late fee for prior renewal periods during which the licensee did not practice. An analogous provision for physical therapist assistants is in § 40.191(h). In reviewing this comment, the Board also reconsidered proposed § 40.20(e) pertaining to reactivation of a license that has been inactive for more than 5 years. Upon further consideration, the Board concluded that requiring practice in another jurisdiction throughout the entire 5-year period immediately preceding application for reactivation, as the only alternative to passing the licensure examination anew, is excessively onerous. Instead, the Board reduced that requirement to practice for 36 months of the prior 5 years. The Board also added § 40.191(k) to provide an analogous standard for a physical therapist assistant seeking to reactivate after 5 years.

Previously, physical therapists who were certified to treat patients without a referral had been required to complete at least 20 hours of continuing education during each renewal cycle. Act 38 amended the act to require licensed physical therapists to complete at least 30 hours of continuing education during each renewal cycle. The Board proposed requiring physical therapists to complete continuing education during the January 1, 2011, through December 31, 2012, renewal cycle and would have amended § 40.63(b) to reflect this increased number of hours. However, to provide greater clarity, the Board provided that during renewal periods prior to January 1, 2013, a direct access holder would only need to complete 20, not 30, hours. Because the proposed rulemaking was not published until September 2011, IRRC suggested revising this date. The Board revised § 40.63(b) to provide that the increased number of hours of continuing education does not apply to direct access certificateholders prior to January 1, 2013, and revised § 40.67(a) (relating to continuing education for licensed physical therapist) to provide that the continuing education requirement for physical therapists begins January 1, 2013. Licensed physical therapists and certified physical therapist assistants will need to complete required continuing education during the January 1, 2013, through December 31, 2014, renewal cycle as a condition for renewal for the January 1, 2015, through December 31, 2016, renewal cycle.

In discussing this provision, the Board noticed that, although § 40.63(b) exempts new direct access certificateholders from the continuing education requirement prior to the first renewal of the certificate of authorization, the Board had not previously considered when the continuing education requirement begins for new licensed physical therapists or new certified physical therapist assistants. Because a licensee has adequately

demonstrated competence to practice by passing the licensure examination and becoming licensed and that competence is generally not lost during the period (of up to 2 years) prior to first renewal, licensing boards in the Bureau of Professional and Occupational Affairs have typically exempted licensees from the continuing education requirement during the biennial renewal cycle in which the licensee was first licensed. Accordingly, the Board added § 40.67(a)(5) and § 40.192(a)(5) (relating to continuing education for certified physical therapist assistant) to exempt newly licensed physical therapists and newly certified physical therapist assistants, respectively, from the continuing education requirement during the biennium in which first licensed or certified.

Proposed § 40.67(a)(4) addressed a request for a waiver of the continuing education requirement based upon physical disability or illness or undue hardship. IRRC noted that this paragraph provided that a waiver “will not be granted unless a written request is submitted by the licensee; or in case of physical disability or illness, by a physician . . . , or both,” and questioned under what circumstances the physician would submit the request for waiver. This provision and its analog for physical therapist assistants in § 40.192(a)(4) were poorly drafted. Although the Board recognizes that a request for a waiver might be made by someone else (such as a family member or person with power of attorney), the Board intended that a physician provide only the documentation to support the physical disability or illness. Accordingly, the Board revised these paragraphs to provide that a waiver will not be granted “unless a written request is submitted by or on behalf of the [applicant for waiver]. In case of physical disability or illness, the request must include supporting documentation provided by a physician” and deleted the references to “or both.” The Board similarly revised § 40.63(g) for waiver requests from direct access certificateholders.

IRRC pointed to a commentator who expressed concern with the requirement of § 40.67(b)(1) that proof of completion of continuing education consist of a certificate of completion, because at a recent program the American Physical Therapy Association (APTA) did not issue a certificate of completion. The Board notes that APTA, a preapproved provider, will later issue a certificate of completion upon request. Notwithstanding, to make the requirements clearer, in addition to beginning this provision with “in general,” the Board revised § 40.67(b)(1) and the analogous § 40.191(b)(1) for physical therapist assistants to provide that the proof completion must consist of a certificate of completion “or other documentation” issued by the course or program provider.

IRRC expressed concern about the waiver provisions of §§ 40.67(d)(2) and 40.192(d)(2) that permit a continuing education provider to apply for approval less than 60 days before the course or program is presented. The Board notes that this is the existing practice for continuing education providers for direct access certificateholders and that it has not experienced complaints of certificateholders who have said that they were not treated fairly by providers who advertised the course prior to receiving approval. Notwithstanding this history, the Board does not want to unnecessarily encourage providers to wait until the last minute to apply for approval. Therefore, the Board deleted the waiver provision from these sections. In further considering the continuing education provider approval process, the Board realized that §§ 40.67(d)(2)(ii) and 40.192(d)(2)(ii) contained redundancies for multiple offering and multiple locations of a course and revised them accordingly.

In addressing IRRC’s comment about an applicant trained in a foreign educational program accredited by CAPTE, the Board reviewed the provisions for preapproved providers of continuing education who are accredited by CAPTE. During this discussion, the Board noted that the correct term used by CAPTE is a “physical therapist educational program” and not a “physical therapy program.” Sections 40.67(d)(1)(i)(C) and 40.192(d)(1)(i)(C) were revised accordingly. The Board revised these provisions to make clear that both physical therapists and physical therapist assistants may obtain continuing education provided by either physical therapist or physical therapist assistant educational programs. While reviewing the preapproved providers and comparing requirements for physical therapists in § 40.67 and for physical therapist assistants in § 40.192, the Board noted that it preapproved the American Heart Association and the Red Cross only in § 40.192(a)(1)(i)(D) for the purpose of providing their educational programs in identifying and responding to emergency health conditions because the Board requires this continuing education for physical therapist assistants only. However, although not required, this type of continuing education is also appropriate for physical therapists. Therefore, the Board added § 40.67(d)(1)(i)(D) to include these organizations for this purpose.

IRRC questioned the Board’s inclusion of continuing competence activities to complete the continuing education requirement. Section 7.2 of the act requires licensed physical therapist to complete “continuing physical therapy education as approved by the board” as a condition of renewal and section 9.1(j) of the act requires certified physical therapist assistants to complete “continuing physical therapy education as approved by the board in accordance with standards and criteria established by the board by regulation.” Except for the prohibition against credit for courses in office management or practice building for licensed physical therapists, the act does not provide further indication of what is acceptable continuing education. As noted in proposed §§ 40.67(e) and 40.192(e), continuing education is a structured process of education beyond professional entry-level education that is applicable to the practice of physical therapy and is designed or intended to support the continuous development of physical therapists and to maintain and enhance their professional competence. Because the purpose of mandatory continuing education is to assure that licensees remain competent to practice, the Board views continuing competence activity as a form of continuing education. As proposed in §§ 40.68(a)(3) and 40.193(a)(3), the Board would be guided in approving continuing competence activities by, among other principles, the belief that a physical therapist or physical therapist assistant should have a wide variety of activities available to demonstrate competence. Allowing licensed physical therapists and certified physical therapist assistants to satisfy the continuing education requirement in part in this manner serves the purpose of the act’s continuing education requirement and is consistent with the language and other provisions of the act. Notwithstanding the Board’s view that it does have authority to do so, the Board concluded that it should not, at this time, promulgate regulations authorizing continuing education credit for continuing competence activities. Accordingly, the Board has withdrawn §§ 40.68 and 40.193.

In proposing to allow for continuing education credit through continuing competence, the Board consolidated under that topic continuing education activities that were not traditional courses or programs of continuing education. Although obviously of longer term than traditional

continuing education programs or courses, residencies, fellowships and advanced specialty credentialing programs are provided through specific providers and have traditionally been considered as continuing education. Because these programs are by definition credentialed by APTA and the Board preapproved continuing education programs provided by APTA, the Board determined that APTA-credentialed programs should be included as preapproved providers for those specific activities. The Board added to the list of preapproved providers in § 40.67(d)(1)(e)—(g) organizations credentialed by APTA to confer a fellowship in a specialty area, those organizations credentialed by APTA to offer a residency program and those organizations credentialed by APTA for specialty certification, respectively. These activities were proposed in § 40.68(c)(1)—(3) as continuing competence. Because these programs typically extend over a period of time, the Board generally considered how it should address continuing education courses and programs that extend beyond a single biennial renewal cycle. The Board determined that for consistency and ease of administration, it should follow the completion date of the course or program and award credit for the biennial renewal period in which the course or program was finally completed and added §§ 40.67(c)(6) and 40.192(c)(6) to do so. Because credit will be available as continuing education from a preapproved provider, the Board has not provided for continuing education credit to be available for becoming an APTA-recognized credentialed clinical instructor or instructor trainer as provided in proposed §§ 40.68(c)(6) and 40.193(c)(6) or for a physical therapist assistant receiving advanced proficiency designation from APTA as provided in proposed § 40.193(c)(1).

Continuing education credit has traditionally been available for authoring various publications relevant to professional practice. Because it has deleted continuing competence activities, the Board revised proposed §§ 40.67(c) and 40.192(c) to allow continuing education credit for authoring publications and replaced proposed §§ 40.67(e) and 40.192(e) to set the appropriate standards. Sections 40.67(e)(1) and 40.192(e)(1) set up the process by providing that the physical therapist or physical therapist assistant must apply to the Board for credit before the end of the renewal period and provide all necessary supporting documentation. Under §§ 40.67(e)(2) and 40.192(e)(2), the amount of credit will be 1 contact hour for each hour spent in research or writing, subject to maximum credit limitations for specific types of authorship. Sections 40.67(e)(3) and 40.192(e)(3) authorize up to 15 contact hours of credit for authoring or editing a book, up to 10 contact hours for authoring or editing a chapter of a book, up to 10 contact hours for authoring or reviewing a peer-reviewed article and up to 5 contact hours for authoring a non-peer-reviewed article in a physical therapy publication. Finally, §§ 40.67(e)(4) and 40.192(e)(4) provide that credit will be awarded only for the biennial renewal period in which the publication was published.

Regarding § 40.162 (relating to application for certification), IRRC questioned why the Board would require a physical therapist assistant applicant over 18 years of age but not yet 20 years of age to prove the capability to accept and handle the responsibilities appurtenant to certification, when section 9.1(a)(4) of the act merely requires an applicant to be “at least 18 years of age unless otherwise determined by the board.” Until reduced to 18 years of age by Act 38, the act required an applicant to be at least 20 years of age unless otherwise determined by the Board. Section 40.162(a)(1) formerly required an

applicant to be “at least 20 years of age unless otherwise determined by the Board that the candidate has proved the capability to accept and handle the responsibilities appurtenant to registration.” Upon further consideration, the Board concluded that few applicants would complete the 2-year post-high school education prior to reaching 20 years of age. To be consistent with the act, the Board amended § 40.162(1) to replace 20 years of age with 18 years of age.

Proposed §§ 40.165(b)(3) and 40.166(b)(5) (relating to authorization to provide services as a physical therapist assistant under indirect supervision; and temporary certificate to provide services as a physical therapist assistant) provided that the Board will grant the application if the applicant meets certain criteria and “otherwise complies with this subchapter.” Unless that standard is clarified, IRRC suggested deleting these paragraphs. The Board intended these provisions to avoid being obliged to grant the application when there are grounds for denial separate from qualifications, such as a prior criminal or disciplinary record. To set this standard, the Board deleted those paragraphs and revised subsection (b) to clarify that it will grant the application of an applicant meeting the criteria “unless there are grounds to deny the application under § 40.181 (relating to refusal, suspension or revocation of certification).”

In proposed § 40.19(b), the Board included the provision that the failure of the Board to send renewal notices does not relieve the licensed physical therapist of the obligation to renew. Although the Board had not proposed an analogous provision for a certified physical therapist assistant, IRRC recommended doing so in § 40.191(b). The Board revised § 40.191(b) to additionally provide: “Failure of the Board to send or of the certified physical therapist assistant to receive a biennial renewal application does not relieve the certified physical therapist assistant of the biennial renewal responsibility.”

IRRC further noted that the Board incorrectly referred to “license renewal” rather than “certificate renewal” in § 40.191(c). The Board has corrected this in the final-form rulemaking. Because other jurisdictions may call the appropriate credential by a variety of names, IRRC suggested that the Board revise § 40.191(c)(2) to not be limited to licenses that shall be disclosed upon renewal. The Board revised this provision to require a physical therapist assistant applying for renewal of the certificate to disclose a license, “certificate, registration or other authorization” to provide services as a physical therapist assistant in another jurisdiction. In reviewing this comment, the Board realized that § 40.191(h) mistakenly referred to certificate renewal rather than reactivation and revised this subsection to correctly refer to an applicant for reactivation, rather than for renewal. Similarly, the Board realized that it had not corrected all references of a physical therapist assistant practicing, rather than providing, services as a physical therapist assistant. The Board revised § 40.191(c), (d), (e) and (i) to correct this oversight.

Some commentators objected to the required continuing education as imposing an unnecessary burden on health care costs. Because the requirement to complete continuing education is imposed by the act, the Board is obligated to implement it.

An individual commentator inquired how often the Board meets to be able to review and approve continuing education programs and courses in a more timely manner. As it has been doing with continuing education for direct

access certificateholders, the Board will utilize a committee of Board members to review applications for course approvals without regard to the Board meeting schedule. An appeal taken from the committee's decision would be considered by the full Board.

An individual commentator objected to the requirement of § 40.173(c)(1) (relating to supervision of physical therapist assistant by licensed physical therapist), which provides that when care is delivered in an inpatient rehabilitation center or long-term acute care hospital setting, the physical therapist assistant shall be under the direct on-premises supervision of a licensed physical therapist because that setting has the greatest availability of other care when needed. By contrast, the least alternative care is available for home health care under § 40.173(c)(6), which provides that for home health care, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient visits or every 14 days, whichever occurs first. PPTA correctly pointed out a typographical error in the proposed preamble that stated that physical therapist involvement was required every 17 days. The Board notes that if a physical therapist assistant makes multiple visits with a patient in a single day, each of those visits count as a separate visit under Medicare. However, the Board does not view that as sufficient reason to require the licensed physical therapist to make more frequent onsite visits to actively participate in the treatment of the patient. Accordingly, the Board provided that multiple visits on a single day count only as a single patient visit for purposes of determining whether the licensed physical therapist is required to make an onsite visit. The commentator also objected to imposing the same level of required continuing education on physical therapist assistants as on physical therapists, despite the differential in pay. The commentator objected to the heightened number of hours of required continuing education compared to some other states and the resultant financial impact on licensees. The commentator objected to excluding office management and practice building from continuing education. Because these standards are in the act, the Board is required to implement them.

Another individual commentator suggested that to streamline the process the Board should permit continuing education providers other than those identified as preapproved under proposed § 40.67(d)(1)(i) or § 40.192(d)(1)(i) to be considered approved if separately approved in another jurisdiction. Because the standards in other jurisdictions vary, the Board is not able to rely upon approval from another jurisdiction. Because the vast majority of continuing education will be provided by the identified preapproved providers, the Board does not believe that the overall process would be substantially streamlined.

PPTA noted that the Federation of State Boards of Physical Therapy, which administers the National licensure examination, is shifting to fixed-date testing administered approximately five times each year. As a result, applicants who fail would be disadvantaged by § 40.14(a) (relating to examination; failure; reexamination), which provides that an applicant may retake the examination after 60 days but within 1 year, by not being able to sit for the next administration of the examination. Because the requirement to wait 60 days is set by section 6(c) of the act, the Board cannot reduce the waiting period. The Board notes that this is a reduction from the current waiting period of 6 months.

PPTA suggested that proposed § 40.67(a)(1) should require that the 30 contact hours of continuing education

include at least 10 contact hours in evaluative procedures as is required under § 40.63(b) for direct access certificateholders. As part of standard physical therapy practice, physical therapists perform patient evaluations and re-evaluation on a regular basis. Evaluative procedures are taught as part of prelicensure education programs and are included within the definition of "physical therapy" in section 2 of the act (63 P. S. § 1302). Because imposing this requirement would be overly prescriptive and effectively force many licensees into being direct access certificateholders, the Board chose not to do so. However, the Board revised §§ 40.67(a)(1) and 40.192(a)(1) to require at least 2 hours in law and ethics applicable to the profession.

PPTA noted that proposed § 40.173(d) construed the emergency situations for supervision under section 9.1(i) of the act to apply to certified physical therapist assistants and not just to those who are authorized under section 9.1(c)(4) of the act and § 40.165 to provide services under less than direct on-premises supervision. PPTA objected that a broad interpretation would permit even the most newly licensed physical therapist who is not authorized to provide services under indirect supervision to become the sole provider of physical therapy services without supervision in situations when the physical therapist is away due to an emergency. PPTA suggested that, in the interest of patient protection, the Board should reverse this construction. The Board agreed with PPTA and revised § 40.173(d) to limit the application of section 9.1(i) of the act only to practice by a physical therapist assistant who is authorized to provide services under indirect supervision in those instances where the supervising physical therapist is absent due to an unanticipated emergency.

Other public comments have been included in the previously stated responses.

Additionally, while reviewing the comments, the Board noted that, although it had proposed amending § 40.5 (relating to fees) to delete the fees for athletic trainers because athletic trainers are no longer regulated by the Board, it did not propose to amend Subchapter D (relating to child abuse reporting requirements) to delete references to athletic trainers. In the final-form rulemaking, the Board amends §§ 40.202—40.205 and 40.207 to delete the references to athletic trainers.

Fiscal Impact and Paperwork Requirements

The requirement to complete 30 hours of continuing education will result in increased costs and paperwork requirements for licensed physical therapists and physical therapist assistants. The requirement to maintain professional liability insurance will result in increased costs and paperwork requirements for those physical therapists that are not direct access certificateholders who have been required to carry insurance since 2005. The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The final-form rulemaking is authorized under section 3(a) of the act (63 P. S. § 1303(a)) and section 16 of Act 38.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 4962, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 14, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2012, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7134, st-physical@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 41 Pa.B. 4962.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

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

(a) The regulations of the Board, 49 Pa. Code Chapter 40 are amended by adding §§ 40.19, 40.20, 40.67, 40.69, 40.165, 40.166, 40.173, and 40.192; deleting § 40.62; and amending §§ 40.1, 40.5, 40.11, 40.12, 40.14, 40.17, 40.53, 40.61, 40.63, 40.152, 40.161—40.164, 40.171, 40.181, 40.191, 40.202—40.205 and 40.207 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(*Editor's Note:* Sections 40.202—40.205 and 40.207 were not included in the proposed rulemaking published at 40 Pa.B. 4962.)

(*Editor's Note:* Proposed §§ 40.68 and 40.193 included in the proposed rulemaking published at 40 Pa.B. 4962 have been withdrawn by the Board.)

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

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

SUSAN L. WHITNEY, PT,
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7364 (December 1, 2012).)

Fiscal Note: Fiscal Note 16A-6514 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS

GENERAL PROVISIONS

§ 40.1. Definitions.

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

APTA—The American Physical Therapy Association.

Act—The Physical Therapy Practice Act (63 P. S. §§ 1301—1313).

Board—The State Board of Physical Therapy.

CAPTE—The Commission on Accreditation in Physical Therapy Education.

Contact hour—A unit of measure equaling 60 minutes of participation in an approved continuing education course or program. For courses taken through an academic institution, a semester credit is equal to 15 contact hours.

Direct on-premises supervision—The physical presence of a licensed physical therapist in the facility, including affiliated buildings in immediate proximity, who is immediately available to exercise supervision, direction and control.

FSBPT—The Federation of State Boards of Physical Therapy.

Physical therapist—A person licensed under the act and this chapter to provide physical therapy services without restriction in this Commonwealth.

Supportive personnel—Persons other than physical therapist assistants who aid and assist a physical therapist but whose activities do not require the formal education or knowledge of a physical therapist or physical therapist assistant. The term does not include secretarial, administrative and other personnel who are not involved in direct patient care.

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

Application for licensure by examination/ endorsement	\$30
Application for licensure through foreign training ...	\$45
Verification of licensure or temporary permit	\$15

Certification of examination scores or licensure	\$25
Temporary license	\$15
Biennial renewal	\$90
Application for Certificate to Practice Physical Therapy without a referral	\$30
Biennial renewal of Certificate to Practice Physical Therapy without a referral	\$45
Application for approval of continuing education provider or program (per each course offered)	\$40
Application for reactivation of inactive license	\$30
<i>Physical therapist assistant:</i>	
Initial application for certification by exam or endorsement	\$30
Certification of exam scores or certification	\$25
Biennial renewal of certification	\$45
Verification of certification	\$15
Initial application for certification to provide services under indirect supervision	\$30
Application for temporary certification	\$15
Application for reactivation of inactive certificate	\$30

LICENSURE

§ 40.11. Educational requirements for licensure by examination.

(a) Except as provided in § 40.17 (relating to foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience), an applicant for license by examination shall have graduated from a physical therapy program accredited by CAPTE or by another National organization recognized by the Board that accredits physical therapy programs.

(b) An applicant completing the professional study of physical therapy after 2002 shall hold a minimum of a master's degree in physical therapy from a regionally accredited institution of higher education. An applicant completing the professional study of physical therapy between January 1, 1967, and December 31, 2002, shall hold a minimum of either:

- (1) A baccalaureate degree in physical therapy from a regionally accredited institution of higher education.
- (2) A baccalaureate degree from a regionally accredited institution of higher education and a post-baccalaureate certificate in physical therapy.

§ 40.12. Application for licensure.

(a) Evidence, satisfactory to the Board, shall be submitted indicating that the applicant:

- (1) Is at least 20 years of age, unless otherwise waived upon application to and review by the Board.
- (2) Is of good moral character.
- (3) Is not addicted to the habitual use of alcohol, narcotics or other habit forming drugs.
- (4) Has met the professional requirements in § 40.11 (relating to educational requirements for licensure by examination).

(b) The applicant shall apply on forms supplied by the Board, answer all questions fully and provide all documentation required under subsection (a).

(c) The applicant shall pay the fee in § 40.5 (relating to fees) for application for physical therapist licensure by examination/endorsement.

§ 40.14. Examination; failure; reexamination.

(a) Applicants shall successfully pass, to the satisfaction of the Board, the examination approved by the Board. In cases of failure at the first examination, the applicant shall have, after the expiration of 60 days and within 1 year from the date of the first failure, the privilege of a second examination, with the payment of an additional examination fee charged by the vendor.

(b) After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall make a new application within the meaning of section 5 of the act (63 P.S. § 1305) within 6 months from the date of the last failure. However, prior to filing a new application for examination, the Board may require evidence of additional training. If the Board determines that the applicant will be permitted to take a third or successive examination, the Board may authorize in connection with a written examination an oral or practical examination, or both, to test the knowledge and competence of the applicant.

(c) The granting of permission by the Board to take a third or successive examination is at all times subject to the applicant otherwise qualifying under the requirements in force at the time permission to take the examination is sought.

(d) An applicant may not take the examination more than three times in a consecutive 12-month period.

§ 40.17. Foreign-educated physical therapists applying to take the licensure examination and pursue a clinical experience.

To be eligible to take the examination for licensure, foreign-educated applicants for licensure shall comply with the following conditions:

(1) The applicant shall submit evidence, satisfactory to the Board, indicating that the applicant has met the requirements in § 40.12(a)(1)–(3) and (b) (relating to application for licensure) and pay the fee in § 40.5 (relating to fees) for application for physical therapist licensure through foreign training.

(2) The applicant shall provide written documentation that the applicant has graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy and that the school of physical therapy is recognized by the authorizing agency or entity of the jurisdiction in which the school is situated.

(3) The applicant shall provide written documentation of authorization to practice as a physical therapist without limitations in the country where the professional education took place.

(4) The applicant shall provide documentation of legal authorization to seek employment in the United States or its territories.

(5) The applicant shall provide satisfactory evidence that the applicant's education is substantially equivalent to the education of physical therapists educated in an accredited program as set forth in § 40.11 (relating to educational requirements for licensure by examination) by either showing that the education program is accredited as provided in § 40.11(a) or securing a credentials evaluation from a recognized and accredited evaluation agency approved by the Board. If the applicant's educa-

tion was completed before 1998, the credentials evaluation must demonstrate that the applicant has met the requirement of at least 120 semester credit hours of which at least 42 credit hours must be in general education subjects and 69 credit hours must be in professional education subjects. If the applicant's education was completed in 1998 or later, credentials evaluation must demonstrate that the applicant has met the requirements of at least 150 semester hours of which at least 60 credit hours must be in general education subjects and 90 credit hours must be in professional education subjects. If an applicant has deficiencies in general education or professional education, the applicant can correct the deficiencies as follows:

(i) *General education.* A minimum of one semester course shall be successfully completed in each of the following areas of general education unless otherwise noted:

- (A) Humanities.
- (B) Physical science (two courses each in chemistry and physics including laboratory sessions).
- (C) Biological science.
- (D) Social science.
- (E) Behavioral science.
- (F) Mathematics.

(ii) *Professional education.* The applicant shall complete 69 credit hours of professional education the content of which includes:

- (A) Basic health science including:
 - (I) Human anatomy (specific to physical therapy).
 - (II) Human physiology (specific to physical therapy).
 - (III) Neuroscience.
 - (IV) Kinesiology or functional anatomy.
 - (V) Pathology.

(B) Medical and clinical science coursework including the following:

- (I) Clinical medicine pertinent to physical therapy including:
 - (-a-) Neurology.
 - (-b-) Orthopedics.
 - (-c-) Pediatrics.
 - (-d-) Geriatrics.
 - (-e-) Cardiopulmonary.
 - (-f-) Pharmacology.

(II) Physical therapist coursework must include:

- (-a-) Examination, evaluation and intervention pertaining to the integumentary system.
- (-b-) Examination, evaluation and intervention pertaining to the musculoskeletal system.
- (-c-) Examination, evaluation and intervention pertaining to the neuromuscular system.
- (-d-) Examination, evaluation and intervention pertaining to the cardiopulmonary system.

(iii) *Clinical education.* Clinical education shall include physical therapist-supervised application of physical therapy theory, examination, evaluation and intervention. The applicant shall have a minimum of two full-time clinical internships of at least 800 hours total, which are

supervised by a physical therapist. The maximum number of full-time clinical education credits is 23.

(iv) *Related professional coursework.* Content is required in the following nine areas:

- (A) Professional behaviors.
- (B) Administration.
- (C) Community health.
- (D) Research and clinical decision making.
- (E) Educational techniques.
- (F) Medical terminology.
- (G) Communication (related to client/patient care).
- (H) Legal and ethical aspects of physical therapy practice.
- (I) Psychosocial aspects in physical therapy practice.

(6) *General educational deficiencies.* The applicant may correct general educational deficiencies in the areas specified in paragraph (5)(i) by either:

(A) Pursuing studies in an accredited college or university. Upon completion of studies, the applicant shall submit an official transcript to the Board.

(B) Attaining college credit through successful completion of the following examinations offered by the College Level Examination Program (CLEP). No more than 30 credits may be obtained through CLEP.

(I) The CLEP General Examination may be used to satisfy the requirements in paragraph (5)(i) for credit hours if passing scores are received in the following subjects:

<i>General Examination</i>	<i>College Level Credit</i>
English Composition with Essay	6
Mathematics	3
Humanities	6
Natural Sciences	
Biological Sciences (subscore)	3
Physical Sciences (subscore)	3
Social Sciences	6

(II) The CLEP Subject Examination may be used to satisfy the requirements in paragraph (5) for credit hours if passing scores are received in the following subjects:

<i>Subject Examination</i>	<i>College Level Credit</i>
Analysis and Interpretation of Literature	3
College Algebra	3
English Literature	3
Foreign Language	
French—Levels I and II	6
German—Levels I and II	6
Spanish—Levels I and II	6
Freshman English	3
English Composition	4
General Biology	3
General Chemistry	3
General Psychology	2
Human Growth & Development	2

<i>Subject Examination</i>	<i>College Level Credit</i>
Introduction to Management	2
Introduction to Sociology	2
Statistics	2
Trigonometry	2
Western Civilization	3

(III) The applicant is responsible for directing that CLEP report his examination scores to the Board.

(7) *Clinical experience.* The applicant may correct a deficiency in clinical experience by obtaining, at the Board's discretion, up to 1 year of supervised clinical experience in the United States, as approved by the Board.

(i) To apply for approved supervised clinical experience the applicant shall:

(A) Submit a notarized application signed by the sponsoring physical therapist who will supervise the applicant in the institution in which the applicant will be pursuing the clinical experience.

(B) Arrange for and have a personal interview with a member of the Board and have the application forms signed and approved by the Board member.

(C) Submit a passport-size photograph for the purpose of identification. The applicant and a sponsor shall both sign either the photograph or the paper on which the photograph is mounted.

(ii) The applicant may obtain the required clinical experience while pursuing studies to correct educational deficiencies in the areas specified in paragraph (5).

(iii) The applicant shall submit a letter from the supervising physical therapist in the institution where the supervised clinical experience was completed, certifying the applicant's clinical competence.

§ 40.19. Renewal of physical therapist license.

(a) A license issued under this subchapter expires on December 31 of each even-numbered year unless renewed for the next biennium.

(b) If a licensee's mailing address changes, the licensee shall notify the Board in writing within 10 days thereafter. Notice of renewal will be forwarded to the licensee's last known address on file with the Board. Failure of the Board to send or of the licensee to receive a biennial renewal application does not relieve the licensee of the biennial renewal responsibility.

(c) A licensee applying for biennial license renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist license.

(2) Disclose any license to practice as a physical therapist in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the licensee has complied with the continuing education requirements mandated by section 7.2 of the act (63 P.S. § 1307.2) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.67 (relating to continuing education for licensed physical therapist). The Board will not renew a license if the licensee has not completed the continuing education required under section 7.2 of the act during the biennial period immediately preceding the period for which renewal is sought.

(6) Verify that, if practicing as a physical therapist in this Commonwealth, the licensee maintains professional liability insurance coverage in accordance with section 9(b)(4) of the act (63 P.S. § 1309(b)(4)) and § 40.69 (relating to professional liability insurance).

§ 40.20. Inactive status of physical therapist license.

(a) A physical therapist license will become inactive upon either of the following:

(1) The licensee in writing affirmatively requests the Board to place licensure on inactive status. Written confirmation of inactive status will be forwarded to the licensee.

(2) The licensee fails to renew the license by the expiration of the renewal period.

(b) A physical therapist whose license has expired or been placed on inactive status may not practice as a physical therapist in this Commonwealth until the license has been reactivated.

(c) To reactivate an inactive license, the licensee shall apply on forms supplied by the Board, answering all questions fully. The licensee shall:

(1) Include the documentation required under § 40.67(b) (relating to continuing education for licensed physical therapist) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under § 40.67(a)(4), the Board will not reactivate a license until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee specified in § 40.5 (relating to fees).

(3) Verify that the licensee did not practice as a physical therapist in this Commonwealth while the license was inactive.

(d) A licensee who does not make the verification required under subsection (c)(3) shall also pay prior biennial renewal fees and late fees as required under this subsection. Unless previously paid, the licensee shall pay the renewal fee for each biennial renewal period after the license became inactive and during which the licensee practiced as a physical therapist in this Commonwealth. The licensee shall also pay a late fee of \$5 per month or part of the month from the first date the licensee practiced as a physical therapist in this Commonwealth after the license became inactive until the date the licensee files a fully-completed reactivation application. The applicant for license reactivation will not be assessed a fee or penalty for preceding biennial periods in which the licensee did not engage in practice as a physical therapist in this Commonwealth. Payment of a late fee does not preclude the Board from taking disciplinary action for practicing as a physical therapist without a current license.

(e) In addition to the other requirements of this section, a licensee whose license has been inactive for 5 years or more shall demonstrate current competence to practice as a physical therapist by at least one of the following:

(1) Successful completion of the licensure examination required under § 40.13 (relating to areas of examination) and section 6(b) of the act (63 P. S. § 1306(b)).

(2) Satisfaction of the requirements of § 40.16 (relating to licensure by endorsement) and proof of licensed practice of physical therapy in one or more other jurisdictions of the United States or Canada for at least 36 months of the 5 years immediately preceding application for reactivation.

(f) A licensee who has not renewed the license may not practice the profession in this Commonwealth until the license has been renewed or reactivated. A licensee who practices the profession in this Commonwealth after the license has expired and before it has been renewed or reactivated is subject to disciplinary action under sections 4(a) and 11(6) of the act (63 P. S. §§ 1304(a) and 1311(6)) as set forth in § 40.52(11) (relating to unprofessional conduct; physical therapists). A licensee who has engaged in practice during a period in which the license was not active may be subject to criminal prosecution under section 12 of the act (63 P. S. § 1312).

SCOPE OF PRACTICE

§ 40.53. Nondelegable activities; accountability.

* * * * *

(b) A physical therapist may not assign or delegate to physical therapist assistants or supportive personnel functions which require the formal education or training and the skill and knowledge of a licensed physical therapist, including the following functions:

- (1) Interpretation of referrals.
- (2) Initial patient contact and initial evaluation or reevaluation.

* * * * *

PRACTICE WITHOUT REFERRAL

§ 40.61. Certificate of authorization to practice physical therapy without a referral.

(a) An applicant for certification of authorization to practice physical therapy without a referral of a licensed physician shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following requirements:

(1) Holds a current license to practice physical therapy in this Commonwealth.

(2) Has done one of the following:

(i) Passed the National Physical Therapy Examination (NPTE) after January 1, 1990.

(ii) Passed the NPTE prior to January 1, 1990, and successfully completed, within 2 years prior to application, a Board approved course consisting of at least 10 hours on the appropriate evaluative and screening procedures to determine the need for further examination or consultation by a physician, dentist or podiatrist prior to initiating treatment without a referral. The Board will maintain a list of currently approved courses.

(3) Has done one of the following:

(i) Practiced physical therapy in the delivery of patient care on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(ii) Been licensed by endorsement and practiced physical therapy in the delivery of patient care as a licensed physical therapist in the other state on a continuous basis for at least 2 years immediately preceding the application for certificate of authorization.

(iii) Provided proof of meeting these practice requirements through any combination of subparagraphs (i) and (ii).

(iv) For purposes of this section, "practice of physical therapy on a continuous basis" is defined as a minimum of 200 hours each year in the delivery of direct patient care.

(4) Has obtained professional liability insurance under the requirements of § 40.69 (relating to professional liability insurance).

(b) A certificateholder shall display the certificate of authorization in a manner conspicuous to the public.

(c) A certificateholder may not delegate the care of a patient being treated without a referral to a physical therapist who is not a certificateholder.

(d) A certificateholder shall refer patients to a licensed physician or other appropriate health care practitioner in the following cases:

(1) Cases where symptoms are present for which physical therapy is a contraindication.

(2) Cases for which treatment is outside the scope of practice of physical therapy.

(3) Cases for which treatment is beyond the education, expertise or experience of the physical therapist.

(e) A certificateholder may treat an individual without a referral as provided in this chapter for up to 30 calendar days from the date of the first treatment. A physical therapist may not treat an individual beyond 30 days from the date of the first treatment unless the individual has obtained a referral from a licensed physician, a licensed physician assistant practicing under a written agreement, a certified registered nurse practitioner practicing under a collaborative agreement, a licensed dentist for the treatment of a condition that is within the scope of practice of dentistry or a licensed podiatrist for the treatment of a condition that is within the scope of practice of podiatry. The date of the first treatment for purposes of this subsection is the date the person is treated by any physical therapist treating without a referral.

(f) A certificateholder may not treat a condition in an individual which is a nonneurologic, nonmuscular or nonskeletal condition or treat an individual who has an acute cardiac or acute pulmonary condition unless the certificateholder has consulted with the individual's licensed physician, dentist or podiatrist regarding the individual's condition and the physical therapy treatment plan or has referred the individual to a licensed physician, dentist or podiatrist for diagnosis and referral.

§ 40.62. (Reserved).

§ 40.63. Continuing education for direct access certificateholder.

(a) *Definitions.* The following word, when used in this section, has the following meaning, unless the context clearly indicates otherwise:

Certificateholder—A licensed physical therapist who holds a certificate of authorization to practice physical therapy without a referral.

(b) *Continuing education requirement for renewal of certificate of authorization.* Beginning after the first renewal of the certificate of authorization, as a condition of certificate renewal, a physical therapist shall have completed during the preceding biennium a minimum of 30 contact hours of physical therapy continuing education related to keeping the certificateholder apprised of advancements and new developments in the practice of the physical therapy profession. At least 10 of the 30 contact hours shall be in evaluative procedures to treat a person without a referral. During renewal periods prior to January 1, 2013, a direct access certificateholder need complete only 20 hours of continuing education, including at least 10 hours in evaluative procedures.

* * * * *

(g) *Waivers; exemptions for continuing education.* The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. A waiver or extension of time will not be granted unless a written request is submitted by or on behalf of the licensee. In case of physical disability or illness, the request must include supporting documentation provided by a physician licensed in this Commonwealth or another state or territory of the United States or the District of Columbia and whose license is in good standing. Necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of any waiver granted, require the licensee to make up all or part of the continuing education waived.

(h) *Preapproved sponsors.* In addition to sponsors whose specific courses and programs are approved, the Board finds the following entities have currently met the standards for approved courses and programs. Accordingly, courses or programs that otherwise meet all requirements for required continuing education are approved when offered by the following sponsors:

- (1) APTA and its components.
- (2) FSBPT and its jurisdictions.
- (3) Graduate education programs accredited by CAPTE.
- (4) Postentry level doctorate of physical therapy programs in an academic institution accredited by a regional accrediting organization recognized by the Council of Regional Accrediting Commissions on behalf of the Council for Higher Education Accreditation.

(i) *General continuing education requirement.* Hours of continuing education applied to satisfy the requirement of this section may also be applied to satisfy the requirement of § 40.67 (relating to continuing education for licensed physical therapist). Satisfaction of the continuing education requirement in this section will be deemed to establish satisfaction of the continuing education requirement in § 40.67.

CONTINUING EDUCATION

§ 40.67. Continuing education for licensed physical therapist.

(a) *Contact hour requirements.* Beginning with the January 1, 2013—December 31, 2014 biennial renewal period, a licensed physical therapist shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a licensee shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 2 contact hours in law or ethics applicable to the practice of physical therapy.

(2) Except as permitted in § 40.20(c)(1) (relating to inactive status of physical therapist license), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it was completed. A contact hour of continuing education may not be used to satisfy the requirement of paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 7.2 of the act (63 P.S. § 1307.2) and this section will subject the licensee to disciplinary action under section 11(a)(6) of the act (63 P.S. § 1311(a)(6)) as provided in § 40.52(11) (relating to unprofessional conduct; physical therapists).

(4) The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. A waiver or extension of time will not be granted unless a written request is submitted by or on behalf of the licensee. In case of physical disability or illness, the request must include supporting documentation provided by a physician licensed in this Commonwealth or another state or territory of the United States or the District of Columbia and whose license is in good standing. The necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the licensee shall reapply for an extension of the waiver. The Board may, as a condition of a waiver granted, require the licensee to make up all or part of the continuing education involved.

(5) A licensee is not required to complete continuing education during the biennial renewal cycle in which the licensee was first licensed.

(b) *Reporting completion of continuing education.* Continuing education shall be reported and documented in the following manner.

(1) In general, proof of completion of a course or program of continuing education must consist of a certificate of completion or other documentation issued by the course or program provider, including:

- (i) The name of the participant.
- (ii) The name of the provider.
- (iii) The date or dates of the course or program.
- (iv) The name of the course and any Board issued approval number of the course or program.
- (v) The number of contact hours of continuing education or academic credit.

(2) A licensee shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the renewal period during which the continuing education was required or applied, whichever is later.

(3) The Board will audit licensees to verify compliance with continuing education requirements. A licensee shall fully respond to an audit notice within 30 days or other time period allowed in the notice.

(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2) or for authoring publications as authorized under subsection (e).

(2) Unless limited by this section, continuing education credit may be earned in a course or program or authoring a publication relating to any of the following:

(i) Subject matter falling within the definition of "physical therapy" in section 2 of the act (63 P. S. § 1302).

(ii) Subject matter that is part of training necessary to qualify one for licensure as a physical therapist or certification of authority to practice physical therapy without a referral.

(iii) Law or ethics applicable to the practice of physical therapy.

(iv) Subject matter that otherwise keeps the licensee apprised of advancements and new developments in the practice of the profession of physical therapy.

(3) Continuing education credit may not be earned in a course in office management or practice building.

(4) A licensee may not receive credit more than once in a given renewal period for repetition of courses or programs with substantially similar content and objectives.

(5) A licensee teaching a course or program of continuing education may receive the same credit that a licensee attending the course or program would receive and may also receive credit for time spent in preparation. Credit for time spent in preparation may not exceed the credit available for a licensee attending the course or program.

(6) If a course or program extends beyond a single biennial renewal period, credit will be awarded in the period in which the course or program is finally completed.

(d) *Approval of continuing education courses and programs.* Continuing education courses and programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements of subsection (c)(2) and the provider issues to each attending licensee a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

(A) APTA or its components.

(B) FSBPT and its jurisdictions.

(C) A physical therapist or physical therapist assistant educational program accredited by CAPTE.

(D) The American Heart Association and the American Red Cross and their component organizations, only for purposes of providing continuing education in identifying and responding to emergency health conditions.

(E) An organization credentialed by APTA to confer a fellowship in a specialty, only for purposes of conferring the fellowship.

(F) An organization credentialed by APTA to offer a residency program, only for purposes of the residency program.

(G) The American Board of Physical Therapy Specialization or its successor organization, only for specialty certification.

(ii) Any other provider seeking preapproved provider status shall:

(A) Apply to the Board on forms supplied by the Board.

(B) Pay the required fee.

(C) Demonstrate that the provider is competent to provide continuing education to physical therapists without direct review by the Board.

(iii) The Board may terminate preapproved provider status if the provider, including the providers in subparagraph (i), is no longer able to demonstrate that it is competent to provide continuing education to physical therapists without direct review by the Board. The Board will audit preapproved providers to assure that the provider complies with the requirements of this paragraph and paragraph (3).

(iv) The Board will maintain a list of preapproved providers and make the list publicly available.

(2) A continuing education course or program offered by a provider not preapproved under paragraph (1) may be approved as provided in this paragraph.

(i) The provider shall apply at least 60 days prior to the date the continuing education course or program is scheduled to take place on forms provided by the Board and fully provide the information required on the application forms for the Board to fulfill its duties under this section. The application shall be submitted to the Board with payment of the fee as required under § 40.5 (relating to fees).

(ii) The provider shall apply for approval of each course or program of continuing education, which may include multiple presentations of the course or program at one or more locations. Unless approved by the Board, a significant change in content or use of instructors other than those described in the application for approval is a separate course or program for which Board approval is required.

(iii) The Board may deny approval of a course or program of continuing education when the provider has previously failed or is not currently able to comply with the provider responsibilities of paragraph (3) or the course or program does not qualify under subsection (c)(1). The Board may approve in part and deny in part an application for approval of a course or program. The Board may deny an application for approval that does not comply with the act or this chapter.

(iv) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course or program when it is later determined that the

Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(v) The Board will maintain a list of approved courses and programs in a form accessible to licensees and the public.

(vi) If the provider has not separately sought approval under this paragraph, a licensee attending the course or program may apply for approval of a course or program of continuing education in accordance with this paragraph. The licensee shall apply for approval prior to attending the course or program. The Board may waive the requirements in paragraph (3) when a licensee attending a course or program applies for approval.

(3) For each course or program of continuing education, the provider shall:

(i) Disclose in advance to prospective attendees the objectives, content, teaching method and the number of hours of continuing education credit approved by the Board.

(ii) Provide physical facilities adequate for the number of anticipated participants and the teaching methods to be used.

(iii) Provide accurate instructional materials.

(iv) Utilize qualified instructors who are knowledgeable in the subject matter.

(v) Evaluate the course or program through the use of questionnaires of the participants and instructors.

(vi) Issue a certificate of completion to each participant.

(vii) Retain attendance records, written outlines and a summary of evaluations for 5 years.

(e) *Authoring publications.* A licensed physical therapist may earn continuing education credit for authoring publications as provided in this subsection.

(1) Prior to the end of the biennial renewal period for which credit is sought, the licensed physical therapist shall apply to the Board on forms provided by the Board and submit the documentation necessary to establish entitlement to credit.

(2) Subject to the limitations of paragraph (3), 1 contact hour of continuing education credit will be awarded for each hour spent in research or writing. Credit will not be awarded if the total research and writing time was less than 1 hour.

(3) Within the subject matter limitations of subsection (c), a licensed physical therapist may earn credit for authoring a publication as follows:

(i) Authoring or editing a book, not to exceed 15 contact hours.

(ii) Authoring or editing a chapter of a book, not to exceed 10 contact hours.

(iii) Authoring or reviewing a published peer-reviewed article, not to exceed 10 contact hours.

(iv) Authoring a non-peer-reviewed article published in a physical therapy publication, not to exceed 5 contact hours.

(4) Credit for authoring a publication will be awarded only for the biennial renewal period in which it was published.

PROFESSIONAL LIABILITY INSURANCE

§ 40.69. Professional liability insurance.

(a) *Professional liability insurance requirements.* As required under section 9.1(b)(4) of the act (63 P.S. § 1309.1(b)(4)), a licensed physical therapist shall maintain professional liability insurance in the minimum amount of \$1 million per occurrence or claims made as a condition of practicing as a physical therapist in this Commonwealth. Coverage may be provided through:

(1) A self-insurance plan that meets the standards and procedures established by the Insurance Department in 31 Pa. Code Chapter 243 (relating to medical malpractice and health-related self-insurance plans).

(2) Personally purchased professional liability insurance.

(3) Professional liability insurance, coverage provided by the licensee's employer.

(4) A similar type of coverage.

(b) *Proof of professional liability insurance coverage.* Proof of professional liability insurance coverage must include a certificate of insurance or copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage. A license that was issued in reliance upon a letter from the applicant's insurance carrier indicating that the applicant will be covered against professional liability effective upon the issuance of the applicant's license as permitted under section 9.1(b)(4)(iii.2) of the act will become inactive as a matter of law 30 days after issuance of the license if the licensee has not provided proof of professional liability insurance coverage and will remain inactive until the licensee provides proof of insurance coverage.

(c) *Disciplinary action.* Failure to maintain insurance coverage as required will subject the licensee to disciplinary action under section 11(a)(6) of the act (63 P.S. § 1311(a)(6)) as provided in § 40.52(11) (relating to unprofessional conduct; physical therapists).

Subchapter C. PHYSICAL THERAPIST ASSISTANTS

GENERAL PROVISIONS

§ 40.152. Definitions.

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

Act—The Physical Therapy Practice Act (63 P.S. §§ 1301—1313).

Indirect supervision—Supervision of a physical therapist assistant by a licensed physical therapist that is not direct on-premises supervision, as authorized under section 9.1(c) of the act (63 P.S. § 1309.1(c)) and this subchapter, including § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

Physical therapist assistant—A person who has been certified in accordance with the act and this subchapter to provide services as a physical therapist assistant.

Physical Therapist Assistant Certification Examination—An examination adopted by the Board and administered in accordance with section 812.1 of The Administrative Code of 1929 (71 P.S. § 279.3a). The term also includes an examination administered by another state,

territory or the District of Columbia if it is the same examination adopted by the Board.

Physical therapy independent private practice outpatient facility—

(i) A practice owned and operated by a licensee under the act, or by a licensee under the act and a healthcare practitioner, licensed by the Commonwealth, as permitted by law.

(ii) This term does not include a practice owned or affiliated with a hospital or healthcare system.

CERTIFICATION

§ 40.161. Certification as physical therapist assistants; practice; exceptions.

(a) A person may not perform or hold himself out as being able to perform as a physical therapist assistant in this Commonwealth unless the person is certified by the Board under section 9.1 of the act (63 P. S. § 1309.1) and this subchapter or exempted under this section.

(b) A person or business entity may not use in connection with a business name or activity the words “physical therapist assistant,” the letters “P.T.A.” or similar words and related abbreviations to imply that physical therapist assistant services are being provided, unless the services are provided by a physical therapist assistant certified under the act and this subchapter.

(c) This subchapter does not prohibit physical therapist assistant students from assisting a physical therapist licensed to practice without restriction in this Commonwealth under the direct on-premises supervision of the physical therapist as is incidental to their course of study in a program which has been approved for the education and training for physical therapist assistants by the Commission on Accreditation in Physical Therapy Education (CAPTE).

(d) Physical therapist assistants shall identify themselves to patients as physical therapist assistants.

§ 40.162. Application for certification.

(a) The applicant shall submit evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met the following criteria. The applicant:

(1) Is at least 18 years of age, unless otherwise determined by the Board that the candidate has proved the capability to accept and handle the responsibilities appurtenant to certification.

(2) Is of good moral character.

(3) Is not addicted to the habitual use of alcohol, narcotics or other habit-forming drugs.

(4) Has met the professional requirements for certification under § 40.163 (relating to requirements for certification).

(b) An applicant for certification issued by the Board shall apprise the Board of the following:

(1) A license, certificate, registration or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, a branch of the Federal government or another country.

(2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, a branch of the Federal government or another country.

(3) A finding or verdict of guilt, an admission of guilt or a plea of nolo contendere to a felony offense or an offense involving moral turpitude.

(c) The reporting responsibilities enumerated in subsection (b) continue after the Board issues a certification. If, after the Board has issued a certification, one or more events listed under subsection (b)(1) and (2) occur, the certified physical therapist assistant shall report that matter to the Board in writing on the biennial renewal application or within 90 days of its occurrence, whichever occurs sooner. The certified physical therapist assistant shall report an event occurring under subsection (b)(3) within 30 days of occurrence.

§ 40.163. Requirements for certification.

(a) Under section 9.1(a) of the act (63 P. S. § 1309.1(a)), an applicant for certification by examination shall submit evidence of the following:

(1) Graduation from a physical therapist assistant program which has been approved for the education and training for physical therapist assistants by the Commission on Accreditation in Physical Therapy Education (CAPTE).

(2) A passing grade on the physical therapist assistant certification examination.

(b) Under section 6(d.1) of the act (63 P. S. § 1306(d.1)), an applicant for reciprocal certification shall submit evidence of a valid license, certificate or registration as a physical therapist assistant issued by another state, territory or the District of Columbia, where the requirements for licensure, certification or registration were on the date of issuance substantially the same as those required by this Commonwealth, and which accords similar privileges to persons certified as physical therapist assistants in this Commonwealth.

§ 40.164. Physical therapist assistant certification examination.

(a) *Application procedure.* An applicant applying for certification by examination shall take the physical therapist assistant certification examination. The applicant who is taking the examination within this Commonwealth shall comply with the following:

(1) The applicant shall complete application forms for admission to the examination obtained from the Board and return the completed form with a check or money order for the appropriate fee.

(2) The applicant shall present the required credentials of professional education at the time of application.

(b) *Failure and reexamination.* In the case of failure of examination, the following apply:

(1) After failing the first examination, the applicant has, after the expiration of 6 months and within 2 years of the date of the first failure, the privilege of a second examination upon the filing of a new application under subsection (a) and upon payment of the appropriate fee.

(2) After a second or successive failure to pass the examination, an applicant desiring to take a third or successive examination shall file a new application. The Board may require evidence of additional training prior to allowing a candidate to take a third or successive examination.

(3) The granting of permission to take a third or successive examination is subject to:

(i) Authorization by the Board at its discretion to include an oral or practical examination, or both, in

connection with the written examination to further test the knowledge, skills and competence of the applicant.

(ii) The applicant otherwise qualifying under requirements in force at the time that permission to take the examination is sought.

§ 40.165. Authorization to provide services as a physical therapist assistant under indirect supervision.

(a) An applicant for a certificate of authority to provide services as a physical therapist assistant under indirect supervision by a licensed physical therapist shall submit to the Board on forms supplied by the Board a completed application, including all necessary supporting documents, and pay the fee in § 40.5 (relating to fees) for initial application for certification to provide services under indirect supervision.

(b) Unless there are grounds to deny the application under § 40.181 (relating to refusal, suspension or revocation of certification), the Board will grant a certificate of authority as described in this section to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of §§ 40.161—40.164.

(2) Demonstrates that the applicant satisfies the requirements of section 9.1(c)(4) of the act (63 P.S. § 1309.1(c)(4)) for certification to provide services as a physical therapist assistant under indirect supervision of a licensed physical therapist by either verifying that the applicant:

(i) Has at least 2,000 hours of experience providing patient-related acts and services under the supervision of one or more licensed physical therapists, as verified by those physical therapists.

(ii) Worked as a physical therapist assistant for at least 3 years between October 2, 2003, and October 2, 2008, the 5-year period immediately preceding the effective date of section 9.1(c)(4) of the act, and providing a detailed resume or other adequate documentation to corroborate the verification. Part-time work will be acceptable if it is at least equivalent to 3 years of full-time work.

§ 40.166. Temporary certificate to provide services as a physical therapist assistant.

(a) An applicant for a temporary certificate to provide services as a physical therapist assistant under section 9.1(a.1) of the act (63 P.S. § 1309.1(a.1)) shall apply to the Board on forms provided by the Board including all necessary supporting documents and pay the fee in § 40.5 (relating to fees) for application for temporary certificate to provide services as a physical therapist assistant.

(b) Unless there are grounds to deny the application under § 40.181 (relating to refusal, suspension or revocation of certification), the Board will grant a temporary certificate as described in this section to an applicant who:

(1) Demonstrates that the applicant satisfies the requirements of §§ 40.161—40.164 except the certification examination requirement in § 40.163(a)(2) (relating to requirements for certification).

(2) Has applied for certification to provide services as a physical therapist assistant in accordance with §§ 40.161—40.164 or § 40.165.

(3) Has not previously sat for the certification examination.

(4) Has not previously received a temporary certificate under this section.

(c) The Board may rescind a temporary certificate issued under this section if the Board determines that the certificate was issued based upon fraudulent information, such as the applicant's identity or educational, criminal, or professional or occupational licensure record.

(d) A temporary certificate issued under this section will expire upon the earlier of failing the certification examination or 6 months after issuance. A temporary certificate issued under this section will become void upon issuance of a certificate to provide services as a physical therapist assistant under §§ 40.161—40.165.

(e) A temporary certificate may not be renewed or extended beyond its expiration. The holder of a temporary certificate shall return the certificate to the Board within 10 days after its expiration.

(f) The holder of a temporary certificate may provide services as a physical therapist assistant only under the direct on-premises supervision of a licensed physical therapist.

SCOPE OF ACTIVITIES

§ 40.171. Functions of physical therapist assistants.

(a) A physical therapist assistant may perform only activities for which the physical therapist assistant has received formal education and training, including the following activities:

(1) Providing patient-care services as specified in the patient's plan of care.

(2) Modifying treatment techniques as indicated in the patient's plan of care.

(3) Responding to acute changes in the patient's physiological state.

(4) Performing selected tests and measurements consistent with the physical therapist assistant's formal education and training.

(b) Physical therapist assistants may not interpret referrals or tests, perform evaluation procedures, initiate treatment programs, assume responsibility for planning patient care or perform activities which require the formal education or training and the skill and knowledge of a licensed physical therapist.

(c) Patient care services performed by a physical therapist assistant under the supervision of a licensed physical therapist shall be on the basis of not more than three physical therapist assistants for a licensed physical therapist.

(d) The initial patient contact shall be made by a licensed physical therapist for evaluation of the patient and establishment of a plan of care.

§ 40.173. Supervision of physical therapist assistant by licensed physical therapist.

(a) *General rule.* A physical therapist assistant may provide patient care services only under the supervision of a licensed physical therapist. Except as otherwise provided in the act or this subchapter, a physical therapist assistant may provide patient care services only under the direct on-premises supervision of a licensed physical therapist.

(b) *Supervision generally.* The required level of supervision depends upon the following factors:

(1) The performance of selected acts and services by the physical therapist assistant is the responsibility of the licensed physical therapist at all times.

(2) Supervision shall be based upon the following:

(i) The complexity and acuity of the patient's needs.

(ii) The proximity and accessibility of the licensed physical therapist to the certified physical therapist assistant.

(iii) The amount of supervision available in the event of an emergency or critical event.

(iv) The type of practice setting in which the service is provided.

(3) The supervising licensed physical therapist may determine and require that the physical therapist assistant provide services under greater supervision than would otherwise appear to be required under section 9.1(c)(3) of the act (63 P. S. § 1309.1(c)(3)) or this section, including requiring that the physical therapist assistant provide services under direct on-premises supervision.

(c) *Practice setting.* A physical therapist assistant holding a current certificate of authority to provide services under indirect supervision may do so in accordance with this section and section 9.1(c) of the act.

(1) When care is delivered to an individual in an acute care hospital, acute inpatient rehabilitation center, long-term acute care hospital setting or as otherwise required by Federal or State law or regulation, the physical therapist assistant shall be under the direct on-premises supervision of a licensed physical therapist.

(2) When care is provided to an individual in a preschool, primary school, secondary school or other similar educational setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first.

(3) When care is provided to an individual in an early intervention setting, a licensed physical therapist shall make an onsite visit and examine the patient at least every four patient visits or every 30 days, whichever occurs first.

(4) When care is provided to a patient in a physical therapy independent private practice outpatient facility, a licensed physical therapist shall provide direct on-premises supervision for a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law. The physical therapist shall be immediately available by telecommunication when not providing direct on-premises supervision.

(5) When care is provided to a patient in an outpatient facility of a practice owned or affiliated with a hospital or healthcare system, a licensed physical therapist shall provide direct on-premises supervision for a physical therapist assistant for at least 50% of the hours worked by the physical therapist assistant during the calendar week unless otherwise required under Federal law. The physical therapist shall be immediately available by telecommunication if not providing direct on-premises supervision.

(6) For home health care, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient

visits or every 14 days, whichever occurs first. For purposes of this paragraph, active participation includes examination of the patient. Multiple visits on a single date constitute only a single patient visit in determining whether the licensed physical therapist is required to make an onsite visit.

(7) For care provided in a long-term care nursing facility, skilled nursing facility or extended care facility, a licensed physical therapist shall make an onsite visit and actively participate in the treatment of the patient at least every seven patient visits or every 14 days, whichever occurs first. For purposes of this paragraph, active participation includes examination of the patient. Multiple visits on a single date constitute only a single patient visit in determining whether the licensed physical therapist is required to make an onsite visit.

(d) *Emergency situations.* The emergency situation provisions of section 9.1(i) of the act apply only to those current certified physical therapist assistants who are authorized by the Board under section 9.1(c)(4) of the act and § 40.165 (relating to authorization to provide services as a physical therapist assistant under indirect supervision) to provide services under supervision of a licensed physical therapist other than direct on-premises supervision.

DISCIPLINE

§ 40.181. Refusal, suspension or revocation of certification.

(a) Under section 9.1(f) of the act (63 P. S. § 1309.1(f)), the Board may refuse, suspend or revoke the certification of a person who has:

(1) Performed physical therapist assistant functions outside the scope of activities under § 40.171 (relating to functions of physical therapist assistants).

(2) Attempted to obtain or obtained registration by fraud or misrepresentation.

(3) Committed an act of gross negligence, or gross incompetence or repeated acts of negligence or incompetence in the providing of physical therapist assistant services.

(4) Been convicted of a felony or of a misdemeanor which relates to the person's suitability for registration as a physical therapist assistant in a Federal, state, territorial or foreign court of competent jurisdiction. Conviction as used in this paragraph includes a finding, or verdict of guilt, an admission of guilt or a plea of nolo contendere.

(5) Become addicted to alcohol or hallucinogenic, narcotic or other drugs which tend to impair judgment or coordination.

(6) Been found guilty of unprofessional conduct, which includes departure from or failure to conform to the minimal standards of acceptable and prevailing practice for physical therapist assistants in which proceeding actual injury to a patient need not be established.

(7) Been adjudged mentally incompetent by a court of competent jurisdiction.

(8) Had a certificate, license or registration to practice as a physical therapist assistant revoked, suspended or refused or otherwise been subjected to other disciplinary action taken by another state, territory or country or by the District of Columbia.

(9) Made misleading, deceptive, untrue or fraudulent representations in violation of the act or otherwise in the rendering of physical therapist assistant services.

(10) Provided services as a physical therapist assistant under indirect supervision without having a current certificate of authorization to practice under indirect supervision issued under § 40.165 (relating to authorization to provide services as a physical therapist assistant under indirect supervision).

(11) Provided services as a physical therapist assistant under indirect supervision other than as authorized by section 9.1(c) of the act and § 40.173 (relating to supervision of physical therapist assistant by licensed physical therapist).

(b) Actions taken by the Board regarding the refusal, suspension or revocation of a registration are taken subject to the right of notice, hearing and adjudication, and the right of appeal therefrom under 2 Pa.C.S. §§ 501—508 and 701—704 (relating to the Administrative Agency Law).

MAINTENANCE OF CERTIFICATION

§ 40.191. Renewal of certification.

(a) A certification issued under this subchapter expires on December 31 of every even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last mailing address given to the Board by the certified physical therapist assistant. The certified physical therapist assistant shall notify the Board in writing within 10 days after making an address change. Failure of the Board to send or of the certified physical therapist assistant to receive a biennial renewal application does not relieve the certified physical therapist assistant of the biennial renewal responsibility.

(c) To retain the right to provide services as a physical therapist assistant, the certified physical therapist assistant's certification shall be renewed by the certified physical therapist assistant in the manner prescribed by the Board, and the required fee shall be paid by the certified physical therapist assistant prior to the expiration of the next biennium. A certified physical therapist assistant applying for biennial certificate renewal shall:

(1) Complete and submit the renewal application, including payment of the biennial renewal fee in § 40.5 (relating to fees) for application for biennial renewal of physical therapist assistant certificate.

(2) Disclose any license, certificate, registration or other authorization to provide services as a physical therapist assistant in another state, territory, possession or country.

(3) Disclose any disciplinary action pending before the appropriate healthcare licensing authority in any other jurisdiction or taken since the most recent application for renewal, whether or not licensed, registered or certified to practice in that other jurisdiction.

(4) Disclose any pending criminal charges and any finding or verdict of guilt, admission of guilt, plea of nolo contendere or other criminal conviction since the most recent application for renewal.

(5) Verify that the certified physical therapist assistant has complied with the continuing education requirements mandated by section 9.1(j) of the act (63 P. S. § 1309.1(j)) during the biennial period immediately preceding the period for which renewal is sought in accordance with § 40.192 (relating to continuing education for certified physical therapist assistant). The Board will not renew a physical therapist assistant certification if the certified

physical therapist assistant has not completed the continuing education required under section 9.1(j) of the act during the biennial period immediately preceding the period for which renewal is sought.

(d) When a certification is renewed beyond December 31 of an even-numbered year, a late fee of \$5 for each month or part of a month that the certified physical therapist assistant has provided services as a physical therapist assistant beyond the renewal date will be charged, in addition to the renewal fee. Payment of a late fee does not preclude the Board from taking disciplinary action for providing services as a physical therapist assistant without a current certification.

(e) A certified physical therapist assistant who does not intend to provide services as a physical therapist assistant in this Commonwealth and who does not desire to renew the certification shall inform the Board in writing. Written confirmation of the Board's receipt of the request and notice that the certification has been classified as inactive will be forwarded to the certified physical therapist assistant.

(f) The certified physical therapist assistant who either fails to pay the biennial renewal fee or who notifies the Board of the desire not to renew the certification will not be sent biennial renewal forms for the following biennial renewal periods unless the certified physical therapist assistant requests the Board, in writing, to reactivate the certification.

(g) To reactivate an inactive certification, the certified physical therapist assistant shall apply on forms supplied by the Board and answer all questions fully. The certified physical therapist assistant shall:

(1) Include the documentation required under § 40.192(b) for the immediately preceding biennium, which may be completed during the current biennium. Unless waived by the Board under § 40.192(a)(4), the Board will not reactivate a certificate until the required continuing education for the preceding biennium has been successfully completed.

(2) Pay the current renewal fee and the reactivation application fee in § 40.5.

(3) Verify that the certified physical therapist assistant did not provide services as a physical therapist assistant in this Commonwealth while the certification was inactive.

(h) A certified physical therapist assistant who does not make the verification of subsection (g)(3) shall also pay prior biennial renewal fees and late fees as required under this subsection. Unless previously paid, the certified physical therapist assistant shall pay the renewal fee for each biennial renewal period after the certificate became inactive and during which the certified physical therapist assistant provided services as a physical therapist assistant in this Commonwealth. The certified physical therapist assistant shall also pay a late fee of \$5 per month or part of month from the first date the certified physical therapist assistant provided services as a physical therapist assistant in this Commonwealth after the certificate became inactive until the date the certified physical therapist assistant files a fully-completed reactivation application. The applicant for certification reactivation will not be assessed a fee or penalty for preceding biennial periods in which the applicant did not provide services as a physical therapist assistant in this Commonwealth. Payment of a late fee does not preclude the Board

from taking disciplinary action for providing services as a physical therapist assistant without a current certification.

(i) If other conditions of the act and this chapter have been met, active status will be restored upon payment of the fees which have accrued.

(j) A certified physical therapist assistant who has not renewed the certification may not provide services as a physical therapist assistant in this Commonwealth until the certification has been renewed or reactivated. A certified physical therapist assistant who provides services as a physical therapist assistant in this Commonwealth after the certification has expired and before it has been renewed or reactivated is subject to disciplinary action under section 9.1(d) and (f) of the act, as set forth in § 40.181(a)(6) (relating to refusal, suspension or revocation of certification). A certified physical therapist assistant who has provided services as a physical therapist assistant during a period in which the certified physical therapist assistant's certification was not active may be subject to criminal prosecution under section 12 of the act (63 P. S. § 1312).

(k) In addition to the other requirements of this section, a certified physical therapist assistant whose certification has been inactive for 5 years or more shall demonstrate current competence to provide services as a physical therapist assistant by one or both of the following:

(1) Successful completion of the certification examination required under § 40.164 (relating to physical therapist assistant certification examination).

(2) Satisfaction of the requirements of § 40.163(b) (relating to requirements for certification) and proof of licensed or certified provision of services as a physical therapist assistant in one or more other jurisdictions of the United States or Canada for at least 36 months of the 5 years immediately preceding application for reactivation.

§ 40.192. Continuing education for certified physical therapist assistant.

(a) *Contact hour requirements.* Beginning with the January 1, 2013—December 31, 2014 biennial renewal period, a certified physical therapist assistant shall satisfy the following continuing education requirements.

(1) During each biennial renewal period, a certified physical therapist assistant shall complete qualifying continuing education equal to at least 30 contact hours of continuing physical therapy education, including at least 4 contact hours in identifying and responding to emergency health conditions and at least 2 contact hours in law or ethics applicable to the practice of physical therapy.

(2) Except as permitted in § 40.191(g)(1) (relating to renewal of certification), paragraph (4) or as directed by the Board, continuing education may satisfy the requirement of paragraph (1) only for the biennium during which it was completed. A contact hour of continuing education may not be used to satisfy the requirement of paragraph (1) for more than 1 biennium.

(3) Unless otherwise excused by the act or this subchapter, failure to complete the minimum required amount of continuing education during the applicable renewal period as required under section 9.1(j) of the act (63 P. S. § 1309.1(j)) and this section will subject the certified physical therapist assistant to disciplinary action

under section 9.1(f) of the act as provided in § 40.181(6) (relating to refusal, suspension or revocation of certification).

(4) The Board may, in individual cases involving physical disability or illness, or undue hardship, grant a waiver of the continuing education requirements or grant an extension of time to complete the requirements. A waiver or extension of time will not be granted unless a written request is submitted by or on behalf of the certified physical therapist assistant. In case of physical disability or illness, the request must include supporting documentation provided by a physician licensed in this Commonwealth or another state or territory of the United States or the District of Columbia and whose license is in good standing. The necessary documentation must be received by the Board no later than 90 days preceding the biennial renewal. If the physical disability or illness or undue hardship for which the waiver has been granted continues beyond the period of the waiver, the certified physical therapist assistant shall reapply for an extension of the waiver. The Board may, as a condition of a waiver granted, require the certified physical therapist assistant to make up all or part of the continuing education involved.

(5) A certified physical therapist assistant is not required to complete continuing education during the biennial renewal cycle in which the certified physical therapist assistant was first certified.

(b) *Reporting completion of continuing education.* Continuing education shall be reported and documented in the following manner.

(1) In general, proof of completion of a course or program of continuing education must consist of a certificate of completion or other documentation issued by the course or program provider, including:

(i) The name of the participant.

(ii) The name of the provider.

(iii) The date or dates of the course or program.

(iv) The name and any Board issued approval number of the course or program.

(v) The number of contact hours of continuing education or academic credit.

(2) A certified physical therapist assistant shall retain proof of completion of continuing education for 5 years after completion of the continuing education or after the completion of the renewal period during which the continuing education was required or applied, whichever is later.

(3) The Board will audit certified physical therapist assistants to verify compliance with continuing education requirements. A certified physical therapist assistant shall fully respond to an audit notice within 30 days or other time period allowed in the notice.

(c) *Credit for approved continuing education.* Credit for continuing education will be determined in accordance with the following.

(1) Credit for continuing education will be granted only for courses or programs offered by providers preapproved under subsection (d)(1) or approved by the Board under subsection (d)(2) or for authoring publications as authorized under subsection (e).

(2) Unless limited by this section, continuing education credit may be earned in a course or program or by authoring a publication relating to any of the following:

(i) Subject matter falling within the definition of “physical therapy” in section 2 of the act (63 P. S. § 1302).

(ii) Law or ethics applicable to the practice of physical therapy.

(iii) Subject matter that otherwise keeps the certified physical therapist assistant apprised of advancements and new developments in the practice of the profession of physical therapy.

(3) Continuing education credit may not be earned in a course in office management or practice building.

(4) A certified physical therapist assistant may not receive credit more than once in a given renewal period for repetition of courses or programs with substantially similar content and objectives.

(5) A certified physical therapist assistant teaching a course or conducting a program of continuing education may receive the same credit that a certified physical therapist assistant attending the course or program would receive and may also receive credit for time spent in preparation. Credit for time spent in preparation may not exceed the credit available for a certified physical therapist assistant attending the course or program.

(6) If a course or program extends beyond a single biennial renewal period, credit will be awarded in the period in which the course or program is finally completed.

(d) *Approval of continuing education courses.* Continuing education courses or programs may be approved in accordance with this subsection.

(1) Provided that the course or program otherwise meets the requirements in subsection (c)(2) and the course or program provider issues to each attending certified physical therapist assistant a certificate of completion record in accordance with subsection (b)(1), a course or program of continuing education from a provider preapproved under this paragraph is approved by the Board.

(i) The following providers are preapproved:

(A) The American Physical Therapy Association or its components.

(B) The Federation of State Boards of Physical Therapy and its jurisdictions.

(C) A physical therapist or physical therapist assistant educational program accredited by the Commission on Accreditation in Physical Therapy Education.

(D) The American Heart Association and the American Red Cross and their component organizations, only for purposes of providing continuing education in identifying and responding to emergency health conditions as required under subsection (a)(1).

(ii) Any other provider seeking preapproved provider status shall:

(A) Apply to the Board on forms supplied by the Board.

(B) Pay the required fee.

(C) Demonstrate that the provider is competent to provide continuing education to physical therapist assistants without direct review by the Board.

(iii) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a

course or program when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(iv) The Board will maintain a list of preapproved providers and make the list publicly available.

(2) A continuing education course or program offered by a provider not preapproved under paragraph (1) may be approved as provided in this paragraph.

(i) The provider shall apply at least 60 days prior to the date the continuing education course or program is scheduled to take place on forms provided by the Board and fully provide the information required on the application forms for the Board to fulfill its duties under this section. The application shall be submitted to the Board with payment of the fee as required under § 40.5 (related to fees).

(ii) The provider shall apply for approval of each course or program of continuing education, which may include multiple presentations of the course or program at one or more locations. Unless approved by the Board, a significant change in content or use of an instructor or instructors other than those described in the application for approval is a separate course or program for which Board approval is required.

(iii) The Board may deny approval of a course or program of continuing education when the provider has previously failed or is not currently able to comply with the provider responsibilities of paragraph (3) or the course or program does not qualify under subsection (c)(1). The Board may approve in part and deny in part an application for approval of a course or program. The Board may deny an application for approval that does not comply with the act or this chapter.

(iv) The Board may terminate its prior approval of a course or program of continuing education when the applicant made one or more false or misleading material statements on the application. The Board may also terminate in part or in whole its prior approval of a course or program when it is later determined that the Board has grounds to deny approval in accordance with this section. Termination of approval will not forfeit credit for a course or program completed prior to termination of approval.

(v) The Board will maintain a list of approved courses and programs in a form accessible to certified physical therapist assistants and the public.

(vi) If the provider has not separately sought approval under this paragraph, a certified physical therapist assistant attending the course or program may apply for approval of a course or program of continuing education in accordance with this paragraph. The certified physical therapist assistant shall apply for approval prior to attending the course or program. The Board may waive the requirements in paragraph (3) when a certified physical therapist assistant attending a course or program applies for approval.

(3) For each course or program of continuing education, the provider shall:

(i) Disclose in advance to prospective attendees the objectives, content, teaching method and the number of hours of continuing education credit approved by the Board.

(ii) Provide physical facilities adequate for the number of anticipated participants and the teaching methods to be used.

- (iii) Provide accurate instructional materials.
- (iv) Utilize qualified instructors who are knowledgeable in the subject matter.
- (v) Evaluate the course or program through the use of questionnaires of the participants and instructors.
- (vi) Issue a certificate of completion to each participant.
- (vii) Retain attendance records, written outlines and a summary of evaluations for 5 years.

(e) *Authoring publications.* A certified physical therapist assistant may earn continuing education credit for authoring publications as provided in this subsection.

(1) Prior to the end of the biennial renewal period for which credit is sought, the certified physical therapist assistant shall apply to the Board on forms provided by the Board and submit the documentation necessary to establish entitlement to credit.

(2) Subject to the limitations of paragraph (3), 1 contact hour of continuing education credit will be awarded for each hour spent in research or writing. Credit will not be awarded if the total research and writing time was less than 1 hour.

(3) Within the subject matter limitations of subsection (c), a certified physical therapist assistant may earn credit for authoring a publication as follows:

- (i) Authoring or editing a book, not to exceed 15 contact hours.
- (ii) Authoring or editing a chapter of a book, not to exceed 10 contact hours.
- (iii) Authoring or reviewing a published peer-reviewed article, not to exceed 10 contact hours.

(iv) Authoring a non-peer-reviewed article published in a physical therapy publication, not to exceed 5 contact hours.

(4) Credit for authoring a publication will be awarded only for the biennial renewal period in which it was published.

Subchapter D. CHILD ABUSE REPORTING REQUIREMENTS

§ 40.202. Suspected child abuse—mandated reporting requirements.

(a) *General rule.* Under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse), physical therapists and physical therapist assistants 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 the physical therapist or physical therapist assistant has reasonable cause to suspect on the basis of 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.* Physical therapists and physical therapist assistants 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 physical therapist or physical therapist assistant, 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).

(c) *Reporting procedure.* Reports of suspected child abuse shall be made by telephone and by written report.

(1) *Oral reports.* Oral reports of suspected child abuse shall be made immediately by telephone to ChildLine, (800) 932-0313.

(2) *Written reports.* Written reports shall be made within 48 hours after the oral report is made by telephone. Written reports shall be made on forms available from a county children and youth social service agency.

(d) *Written reports.* Written reports shall be made in the manner and on forms prescribed by the Department of Public Welfare. The following information shall be included in the written reports, if available:

- (1) The names and addresses of the child and the parents or other person responsible for the care of the child, if known.
- (2) Where the suspected abuse occurred.
- (3) The age and sex of the subjects of the report.
- (4) The nature and extent of the suspected child abuse including any evidence of prior abuse to the child or siblings of the child.
- (5) The name and relationship of the persons responsible for causing the suspected abuse, if known, and any evidence of prior abuse by those persons.
- (6) Family composition.
- (7) The source of the report.
- (8) The person making the report and where that person can be reached.
- (9) The actions taken by the reporting source, including the taking of photographs and X-rays, removal or keeping of the child or notifying the medical examiner or coroner.
- (10) Other information which the Department of Public Welfare may require under 55 Pa. Code (relating to public welfare).

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

A physical therapist or physical therapist assistant 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 tests 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.

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

A physical therapist or physical therapist assistant 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.

§ 40.205. Immunity from liability.

Under 23 Pa.C.S. § 6318 (relating to immunity from liability), a physical therapist or physical therapist assistant 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 physical therapist's or physical therapist assistant's actions. For the purpose of any civil or criminal proceeding, the good faith of the physical therapist or physical therapist assistant shall be presumed. The Board will uphold the same good faith presumption in any disciplinary proceeding that might result by reason of a physical therapist's physical therapist assistant'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.

§ 40.207. Noncompliance.

(a) *Disciplinary action.* A physical therapist or physical therapist assistant who willfully fails to comply with the reporting requirements in § 40.202 (relating to suspected child abuse—mandated reporting requirements) will be subject to disciplinary action under section 11 of the act (63 P. S. § 1311).

(b) *Criminal penalties.* Under 23 Pa.C.S. § 6319 (relating to penalties for failure to report or to defer), a physical therapist or physical therapist assistant 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.

[Pa.B. Doc. No. 12-2468. Filed for public inspection December 21, 2012, 9:00 a.m.]

**BUREAU OF PROFESSIONAL AND
OCCUPATIONAL AFFAIRS
[49 PA. CODE CH. 43b]**

**Schedule of Civil Penalties for Violations of the
Clean Indoor Air Act**

The Commissioner of Professional and Occupational Affairs (Commissioner) amends §§ 43b.4—43b.7, 43b.8 and 43b.9 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The Clean Indoor Air Act (act) (35 P. S. §§ 637.1—637.11) prohibits smoking in public places. Although the Department of Health (Department) has primary enforcement authority under the act, section 5(b)(1)(ii) of the act (35 P. S. § 637.5(b)(1)(ii)) provides that if a public place is subject to licensure by another agency, the Department will refer the complaint to the appropriate licensing agency for investigation and enforcement. Six of the boards or commissions under the Bureau of Professional and Occupational Affairs (Bureau) license and routinely

inspect public places as defined in section 2 of the act (35 P. S. § 637.2): the State Board of Barber Examiners; the State Board of Cosmetology; the State Board of Funeral Directors; the State Board of Pharmacy; the State Real Estate Commission; and the State Board of Vehicle Manufacturers, Dealers and Salespersons. Therefore, these six boards and commissions are responsible for the enforcement of the act in licensed facilities under their jurisdiction.

The act of July 2, 1993 (P. L. 345, No. 48) (Act 48) authorizes the Commissioner, after consultation with the licensing boards and commissions, to adopt a schedule of civil penalties for violations of their respective acts or regulations regarding the conduct or operation of a business or facility licensed by the licensing boards or commissions. Therefore, the Commissioner is amending the existing schedules of civil penalties to add civil penalties for violations of the provisions of the act. The boards and commissions approved the amendments to the civil penalty schedules at regularly scheduled public meetings.

Background and Purpose

Adoption of a schedule of civil penalties for violations of the act at licensed facilities will permit duly authorized agents of the Bureau to issue citations for these violations. Citations streamline the disciplinary process by eliminating the need for formal orders to show cause, answers, adjudications and orders, and consent agreements. At the same time, licensees who receive citations retain their due process rights to a hearing prior to the imposition of discipline. Section 6(a) of the act (35 P. S. § 637.6(a)) identifies three violations that are subject to civil penalties: failure to post a sign as required under section 4 of the act (35 P. S. § 637.4); permitting smoking in a public place where smoking is prohibited; and smoking in a public place where smoking is prohibited. The Commissioner is amending the schedules of civil penalties for these six boards and commissions in §§ 43b.4—43b.7, 43b.8 and 43b.9 to establish a civil penalty schedule for the three violations in section 6(a) of the act. Section 6(c) of the act sets forth the administrative penalties for violations of the act: not to exceed \$250 for first violations; not to exceed \$500 for second violations (defined as those occurring within 1 year of the first violation); and not to exceed \$1,000 for third violations (defined as those occurring within 1 year of the second violation). The Commissioner is adopting civil penalties of \$250 for first offenses, \$500 for second offenses and \$1,000 for third offenses. The act is silent as to subsequent violations. However, Act 48 limits the maximum civil penalty that may be imposed by citation to \$1,000. Therefore the civil penalty for subsequent violations will be \$1,000.

Summary of Comments and Response

Notice of proposed rulemaking was published at 40 Pa.B. 5175 (September 11, 2010) followed by a 30-day public comment period. Comments were not received from the public. The House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) did not submit comments on the proposed rulemaking. On November 12, 2010, the Commissioner received a letter from the Independent Regulatory Review Commission (IRRC) indicating that they did not have objections, comments or recommendations to offer on the proposed rulemaking.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions

and will reduce the paperwork requirements of both the Commonwealth and the regulated community by eliminating the need for orders to show cause, answers, consent agreements and adjudications/orders for violations of the act.

Sunset Date

Professional licensure statutes require boards and commissions to be self-supporting. Therefore, the Commissioner and the boards and commissions continually monitor the cost effectiveness of regulations affecting their operations. As a result, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 27, 2010, the Commissioner submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 5175, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 14, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 15, 2012, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Cynthia Montgomery, Regulatory Counsel, Department of

State, Bureau of Professional and Occupational Affairs, P. O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The Commissioner finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and comments were not received.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in this preamble.

Order

The Commissioner, acting under the authority of Act 48, orders that:

(a) The regulations of the Commissioner, 49 Pa. Code Chapter 43b, are amended by amending §§ 43b.4—43b.7, 43b.8 and 43b.9 to read as set forth in Annex A.

(b) The Commissioner shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General as required by law.

(c) The Commissioner shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

KATIE TRUE,
Commissioner

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 7364 (December 1, 2012).)

Fiscal Note: Fiscal Note 16-46 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 43b. COMMISSIONER OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

SCHEDULE OF CIVIL PENALTIES, GUIDELINES FOR IMPOSITION OF CIVIL PENALTIES AND PROCEDURES FOR APPEAL

§ 43b.4. Schedule of civil penalties—barbers and barber shops.

STATE BOARD OF BARBER EXAMINERS

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of licensed barber shop or school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Barber shop permitting smoking in the barber shop or barber school permitting smoking in the barber school in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(3)	Licensee of the Board smoking in a barber shop or in a barber school in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 551	Practicing without a license	1st offense—\$500 2nd offense—Formal action
Section 558	Availability of current license on premises	1st offense—\$150 2nd offense—\$500
Section 558	Practicing on a lapsed or expired license	1st offense—Up to 90 days—Warning; 90 days to 1 year—\$250; 1 year to 2 years—\$500; over 2 years—\$1,000 2nd offense—Formal action
Section 562(a)(2)	Operating a business or facility on a lapsed or expired permit or license	1st offense—Up to 90 days—Warning; 90 days to 1 year—\$250; from 1 year to 2 years—\$500; over 2 years—\$1,000 2nd offense—Formal action
Section 559	Failure to employ licensed persons	1st offense—\$500 for each individual unlicensed barber 2nd offense—Formal action
Section 560	Opening shop for business before shop inspected and approved	1st offense—\$200 2nd offense—Formal action
Section 560	Failure to file application when taking over as owner of existing shop	1st offense—\$500 2nd offense—Formal action
Section 562	Operating an establishment without supervision of designated manager barber or other designated licensee	1st offense—\$250 2nd offense—Formal action
Section 560	Operating a business or facility without a permit or license	1st offense—\$500 2nd offense—Formal action
Section 563(a)	Licensee practicing in place other than licensed shop	1st offense—\$500 2nd offense—Formal action
<i>Violation under 49 Pa. Code Chapter 3</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 3.51(a)	Failure to obtain new shop license when shop moves	1st offense—\$500 2nd offense—Formal action
Section 3.51(b)	Failure to register trade name	1st offense—\$100 2nd offense—Formal action
Section 3.54	Failure to meet minimum equipment requirements	1st offense—\$100 2nd offense—Formal action
Section 3.55	Failure to meet minimum maintenance and sanitation requirements	1st offense—\$100 2nd offense—Formal action
Section 3.85	School equipment does not meet requirements	1st offense—\$100 2nd offense—Formal action
Section 3.86	School maintenance and sanitation requirements not met	1st offense—\$250 2nd offense—Formal action
Section 3.89	School advertising requirements not met	1st offense—\$250 2nd offense—Formal action

§ 43b.5. Schedule of civil penalties—cosmetologists, nail technicians, estheticians, natural hair braiders, salons.

STATE BOARD OF COSMETOLOGY

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of licensed cosmetology salon, limited practice salon or cosmetology school to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Licensed cosmetology or limited practice salon permitting smoking in the salon or licensed cosmetology school permitting smoking in the school in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a cosmetology salon, limited practice salon, or cosmetology school in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 508	Practicing without a license	1st offense—\$500 2nd offense—Formal action
Section 508	Maintaining an unlicensed shop	1st offense—\$500 2nd offense—Formal action
Section 514	Practice in place other than licensed shop	1st offense—\$500 2nd offense—Formal action
Section 519(a)	Owner employing unlicensed employees	1st offense—\$500 for each unlicensed individual 2nd offense—Formal action
Section 524	Availability of current licenses and permits on the premises	1st offense—\$100 2nd offense—\$250
<i>Violation under 49 Pa. Code Chapter 7</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 7.43	Practice on lapsed license	1st offense—Up to 90 days—Warning; 90 days or more—\$250 2nd offense—Formal action
Section 7.62	Operating without manager	1st offense—\$100 2nd offense—\$250
Sections 7.64(a)	Manager employing unlicensed persons	1st offense—\$500 for each unlicensed individual 2nd offense—Formal action
Sections 7.71—7.79	Physical requirements for beauty shop	1st offense—\$50 for each violation 2nd offense—\$100 for each violation
Section 7.82	Failure to maintain record of services rendered outside a shop	1st offense—\$50 2nd offense—\$250
Section 7.92	Failure to sterilize equipment	1st offense—\$100 2nd offense—\$250
Section 7.93	Unsanitary use of towels	1st offense—\$100 2nd offense—\$250
Section 7.94	Unsanitary use of supplies	1st offense—\$100 2nd offense—\$250
Section 7.101	Electrical appliances not properly installed/grounded	1st offense—\$50 2nd offense—\$250
Section 7.114	School equipment and supplies not sufficient for student enrollment	\$50/each item missing

<i>Violation under 49 Pa. Code Chapter 7</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 7.117	Failure to employ supervisor	1st offense—\$500 2nd offense—Formal action
Section 7.118(a)	Unlicensed teachers	1st offense—\$500 2nd offense—Formal action
Section 7.118(b)	Availability of instructor license on the premises	1st offense—\$100 2nd offense—\$250
Section 7.118(c)	Failure to employ at least one full time instructor	1st offense—\$100 2nd offense—\$250
Section 7.118(d)	Allowing student-teacher ratio to exceed 25:1	1st offense—\$100 2nd offense—\$250
Section 7.119	Failure to maintain student records	1st offense—\$250 2nd offense—Formal action
Section 7.119a	Failure to obtain notarized transcript; failure to obtain verification from other state	1st offense—\$50 2nd offense—\$250
Section 7.120	Work done by students on public; failure to post notices; failure to post sign	1st offense—\$100 2nd offense—\$250
Section 7.121	Failure to advertise licensee name or student work	1st offense—\$100 2nd offense—\$250
Section 7.134	Apprentice reports—failure to submit to board	1st offense—\$100 2nd offense—\$250

§ 43b.6. Schedule of civil penalties—funeral directors and funeral establishments.

STATE BOARD OF FUNERAL DIRECTORS

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of funeral establishment to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Funeral establishment permitting smoking in the funeral establishment in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a funeral establishment in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 479.6	Failure to display licenses conspicuously	1st offense—\$50 2nd offense—\$250
Section 479.13	Practice without license	Any offense—\$1,000
<i>Violation under 49 Pa. Code Chapter 13</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 13.83 Section 13.84 Section 13.194	Requirements for advertising of name of licensee	1st offense—\$100 2nd offense—\$250
Section 13.91	Operating funeral establishment without Board approval	Any offense—\$1,000

*Violation under 49 Pa. Code
Chapter 13*

	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 13.171	Use of preparation room for purposes other than embalming or caring for remains	1st offense—\$100 2nd offense—Formal action
Section 13.174	Preparation room facility and equipment requirements	1st offense—\$100 per violation 2nd offense—\$250 per violation
Section 13.182	Improper disposal of waste products including biohazardous waste	1st offense—\$100 2nd offense—\$500
Section 13.193	Advertising name of permanent supervisor	1st offense—\$100 2nd offense—\$250
Section 13.224	Failure to comply with reporting requirements for prepaid burial contracts	1st offense—\$100 2nd offense—Formal action
Section 13.225	Failure to file affidavit for prepaid burial account	1st offense—\$100 2nd offense—Formal action
Section 13.231	Practicing on a lapsed license	Up to 60 days—1st offense—Warning 60 days or more—\$500 2nd offense—Formal action

§ 43b.7. Schedule of civil penalties—pharmacists and pharmacies.

STATE BOARD OF PHARMACY

Violation under 35 P. S.

	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of a pharmacy permit holder to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Pharmacy permit holder permitting smoking in the pharmacy in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in a pharmacy in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

*Violation under 49 Pa. Code
Chapter 27*

	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 27.11	Pharmacy Permit— (a) Lack of permit showing accurate and current information as to name and address of pharmacy and name of pharmacist manager (b) Display, advertise or use a name other than registered name (g) Failure to notify Board of change in pharmacist manager or operation of pharmacy without pharmacist manager.	\$100 1st offense—\$100 2nd offense—\$100 1st offense—\$50 per month or part of month; Formal action if no compliance within 60 days after receiving citation 2nd offense—same as 1st offense
Section 27.14	Supplies— (b) Expired drugs	1st offense—Under 1 year old—\$250 1st offense—Over 1 year old—\$500 2nd offense—\$1,000

*Violation under 49 Pa. Code
Chapter 27*

	<i>Title/Description</i>	<i>Civil Penalty</i>
	(c) Failure to maintain equipment and miscellaneous supplies	\$100 each
Section 27.15	Sanitary standards	
	(a) Pharmacy not in good repair or not in clean and orderly condition.	\$250
	(b) Violation of health and sanitation statutes of the Commonwealth and of the municipality and county where pharmacy is located.	\$250
	(c) Waste disposal violations	\$250
	(d) Prescription area not dry, well ventilated and well lighted; not free from rodents or insects	\$250
	(e) Plumbing not functional	\$250
	(f) Unauthorized items in prescription area	\$250
Section 27.16	Construction requirements—	
	(b)(4) Lack of telephone	\$250
	(5) Lack of required sanitary facilities	\$250
	(7) Television set in prescription area not intended for pharmacy instructional use	\$500
	(8) Drugs accessible to unauthorized persons; animals unrelated to pharmacy security in prescription area	\$250
Section 27.18	Standards of practice—	
	(a) Unsuitable containers	\$100
	(b) Lack of required information on prescriptions	\$100
	(d) Lack of required information on container labels	\$100
Section 27.31	Biennial renewal—(c) practicing on a lapsed license or permit	0-4 months—\$50 per month; over 4 months—8 months—\$100 per month; over 9 months—12 months—\$200 per month; over 1 year—formal action

*Violation under 28 Pa. Code
Chapter 25*

	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 25.55(d)	Improper generic substitution	
	Five to nine	\$250
	10 or more	\$500
Section 25.55(e)	Failure to refill prescription with the identical product without authorization from prescriber and patient	\$100
Section 25.56(a)	Improper filing of Schedule II prescriptions	\$100
Section 25.56(b)	Improper filing of Schedule III, IV, V prescriptions	\$100
Section 25.63(b)	Inadequate security for controlled substances	\$250
Section 25.92	Lack of lot numbers required on stock items	\$100
Section 25.94	Lack of expiration date on label of dispensed drugs of less than 1 year's potency.	\$100

§ 43b.8. Schedule of civil penalties—real estate and cemetery brokers, real estate schools.

STATE REAL ESTATE COMMISSION

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of broker or cemetery broker to post a sign in a real estate office or cemetery office or real estate education provider to post a sign in a real estate school as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(2)	Broker or cemetery broker permitting smoking in a real estate or cemetery office or real estate education provider permitting smoking in a real estate school in violation of the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Commission smoking in a real estate office, cemetery office or real estate school in violation of the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 455.301	Acting in capacity of cemetery broker or cemetery salesperson without a license	1st offense—\$250 per violation 2nd offense—\$500 per violation
Section 455.601(a)	Failure of licensee to notify Commission of change of location of office of broker or cemetery broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.601(a)	Failure of broker or cemetery broker to maintain sign with licensed name outside office	1st offense—\$250 2nd offense—\$500
Section 455.603	Failure of licensee to notify Commission of change of employing broker within 10 days	1st offense—\$125 2nd offense—\$250
Section 455.604(a)(4)	Use of any trade name or insignia or membership in any real estate association or organization of which the licensee is not a member	1st offense—\$250 2nd offense—\$500
Section 455.604(a)(8)	Placing a “for sale” or “for rent” sign or advertising property without the written consent of the owner	1st offense—\$250 2nd offense—\$500
Section 455.604(a)(16)	Failure to exercise adequate supervision of licensed sales-person or associate broker (when subordinate violates § 455.601(a), § 455.603 or § 455.604(a)(21))	Same as penalty for underlying offense by subordinate
Section 455.604(a)(21)	Failure of licensee to have current license when performing licensed activity	1st offense—\$250 per month up to \$1,000 2nd offense—Formal action
Section 455.604(a)(26)	Failure to include right-of-cancellation information in a time share or campground membership	1st offense—\$500 2nd offense—\$1,000
Section 2205(b)(2)	Aiding and abetting cemetery or real estate sales activities by unlicensed individuals	1st offense—\$250 per individual 2nd offense—\$500 per individual

*Violation under 49 Pa. Code
Chapter 35*

	<i>Title / Description</i>	<i>Civil Penalty</i>
Section 35.242(a)	Failure of broker or cemetery broker to devote office to transaction of real estate business in privacy	1st offense—\$125 2nd offense—\$250
Section 35.242(b)	Failure of broker or cemetery broker to maintain separate entrance to office located in private residence	1st offense—\$125 2nd offense—\$250
Section 35.242(c)	Failure of broker or cemetery broker to display business name prominently and in permanent fashion outside office	1st offense—\$250 2nd offense—\$500
Section 35.243(a)	Failure of broker or cemetery broker to obtain license before opening branch office	1st offense—\$250 2nd offense—\$500
Section 35.245(a)	Failure of broker, cemetery broker or rental listing referral agent to maintain the current license of employed or affiliated licensees at main office	1st offense—\$125 2nd offense—\$250
Section 35.245(b)	Failure of associate broker, salesperson, associate cemetery broker or cemetery salesperson to conspicuously display current license at office out of which licensee works	1st offense—\$100 2nd offense—\$250
Section 35.245(c)	Failure of broker or cemetery broker to maintain a list of licensees employed or affiliated with the broker or cemetery broker at the branch office out of which each licensee works	1st offense—\$125 2nd offense—\$250
Section 35.285	Failure to provide Commission or its representative with information regarding a franchisor, network or other parent real estate company with which the licensee is or may become affiliated	1st offense—\$250 2nd offense—\$500
Section 35.286(a)	Failure of broker to retain a copy of the written estimate of reasonably foreseeable expenses required under 49 Pa. Code § 35.334 (relating to statements of estimated cost and return)	1st offense—\$250 2nd offense—\$500
Section 35.286(a)(1)	Failure of broker, associate broker or salesperson to retain a copy of the acknowledgement portion of the Consumer Notice	1st offense—\$250 2nd offense—\$500
Section 35.286(b)	Failure of a licensed entity other than an individual to produce its corporate, partnership or association records for examination by the Commission or its authorized representative	1st offense—\$250 2nd offense—\$500
Section 35.290(b)	Failure of a licensee to notify the Commission of disciplinary action taken against the licensee by the real estate licensing authority of another jurisdiction within 30 days of receiving notice of the disciplinary action	1st offense—\$500 2nd offense—\$1,000
Section 35.292(a)(6)	Failure of broker, associate broker or salesperson to provide a copy of the Consumer Notice as required under 63 P. S. § 455.608 (relating to information to be given at initial interview)	1st offense—\$250 2nd offense—\$500

*Violation under 49 Pa. Code
Chapter 35*

<i>Section</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 35.301(a)	Advertising the sale or lease of real estate without the authority of the seller or lessor or its agent	1st offense—\$250 2nd offense—\$500
Section 35.301(b)	Publishing information about a rental property if the lessor or property manager expressly stated that the property was not to be included in lists prepared by rental listing referral agents	1st offense—\$250 2nd offense—\$500
Section 35.304	Failure of a licensee who sells or leases his own real estate to disclose in ads for the property that he is a licensee	1st offense—\$250 2nd offense—\$500
Section 35.305(a)	Failure of broker, cemetery broker or rental listing referral agent to advertise or hold himself out to public under business name designated on license	1st offense—\$250 2nd offense—\$500
Section 35.305(b)	Advertising or using a nickname that has not been registered with the Commission	1st offense—\$250 2nd offense—\$500
Section 35.305(c)	Failure of salesperson or associate broker to include the business name and telephone number of the broker in at least equal size as the salesperson's or associate broker's name and telephone number on an advertisement	1st offense—\$250 2nd offense—\$500
Section 35.334	Failure of broker to provide a written estimate of reasonably foreseeable expenses	1st offense—\$250 2nd offense—\$500
Section 35.361(a)	Failure of real estate school to prominently display certificate of approval at main location and copy at satellite location	1st offense—\$125 2nd offense—\$250
Section 35.361(b)	Failure of real estate school to prominently display school's approved name outside each school location	1st offense—\$250 2nd offense—\$500
Section 35.361(c)	Failure of real estate school to prominently display school director's letter of approval at main location and copy at each satellite location	1st offense—\$125 2nd offense—\$250
Section 35.361(d)	Failure of real estate school to prominently display alphabetical list of courses and instructors at each school location	1st offense—\$125 2nd offense—\$250

§ 43b.9. Schedule of civil penalties—vehicle manufacturers, dealers and salespersons.

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(1)	Failure of vehicle dealer, branch lot, public or retail vehicle auction, or wholesale vehicle auction to post a sign as required under section 4 of the Clean Indoor Air Act (35 P. S. § 637.4)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000

<i>Violation under 35 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 637.6(a)(2)	Vehicle dealership, branch lot, public or retail vehicle auction, or wholesale vehicle auction permitting smoking in an area where smoking is prohibited by the Clean Indoor Air Act (35 P. S. §§ 637.1—637.11)	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
Section 637.6(a)(3)	Licensee of the Board smoking in an area of the vehicle dealership, branch lot, public or retail vehicle auction or wholesale vehicle auction where smoking is prohibited by the Clean Indoor Air Act	1st offense—\$250 2nd offense (within 1 year of 1st offense)—\$500 3rd offense (within 1 year of 2nd offense)—\$1,000 Subsequent offenses (within 1 year of previous offense)—\$1,000
<i>Violation under 63 P. S.</i>	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 818.5(a)	Person or entity engaging in business of vehicle dealer, auction, manufacturer or distributor without license or acting as broker	Each offense—\$1,000
Section 818.5(a)	Person engaging in business as a factory representative or distributor representative without a license	1st offense—\$100 2nd offense—\$500 3rd offense—\$1,000
Section 818.5(a)	Individual working as unlicensed salesperson for dealership	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(c)	Licensed salesperson working as salesperson for dealership other than for whom salesperson is licensed	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(d)	Failure to display license in principal office	1st offense—\$100 2nd offense—\$500 3rd offense—Formal action
Section 818.5(h)	Vehicle auction not posting list of revoked/suspended licensees	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(15)	Licensed dealer employing unlicensed salesperson	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action
Section 818.19(29)	Wholesale auction permitting unlicensed or revoked or currently suspended dealer or vehicle business to buy, sell or represent vehicle at auction	1st offense—\$250 2nd offense—\$500 3rd offense—\$1,000 Subsequent offense—Formal action
Section 818.19(30)	Dealer permitting revoked or currently suspended salesperson to sell, represent or purchase vehicle at auction	1st offense—\$500 2nd offense—\$1000 3rd offense—Formal action
Sections 818.5(a) and 818.19(27)	Licensed dealer operating an unlicensed branch lot	1st offense—\$1,000 2nd offense—Formal action
Sections 818.5(f)(5) and (g)(1) and 818.19(38)	Person with revoked or currently suspended dealer or salesperson license physically present during auctioning of vehicles	Each offense \$1,000
Section 818.19(34)	Licensed dealer conducting its business under any name other than its licensed name	1st offense—\$250 2nd offense—\$500 3rd offense—Formal action
Section 818.19(37)	Licensed dealer failing to produce records to an authorized agent of the Board	1st offense—\$500 2nd offense—\$1,000 3rd offense—Formal action

*Violations under 49 Pa. Code
Chapter 19*

	<i>Title/Description</i>	<i>Civil Penalty</i>
Section 19.17	Broker or dealer business identity combined with other businesses	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(1)	Dealer does not have permanent enclosed building	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(2)	Dealership does not have private office	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(i)	Dealer display area for five vehicles or 5,000 square feet	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(ii)	Display lot not graded and surfaced with required material	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iii)	Display area separated from adjacent parking area	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(3)(iv)	Display area lighted if open evenings	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(5)	Dealer fails to maintain separate telephone line	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(6)	Business sign not permanent or visible to the public	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(7)	Dealership in violation of land use ordinances	1st offense—\$100 2nd offense—\$500
Section 19.18(a)(9)	Failure to post business hours	1st offense—\$100 2nd offense—\$500

[Pa.B. Doc. No. 12-2469. Filed for public inspection December 21, 2012, 9:00 a.m.]

Title 58—RECREATION

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 65 AND 75]

Fishing; Special Fishing Regulations and Endangered Species

The Fish and Boat Commission (Commission) amends Chapters 65 and 75 (relating to special fishing regulations; and endangered species). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments modify and update the Commission's fishing regulations.

A. *Effective Date*

The amendments to §§ 65.5, 65.6 and 65.14 (relating to catch and release areas; delayed harvest artificial lures only areas; and catch and release fly-fishing only areas) will go into effect on January 1, 2013. The amendments to §§ 75.1—75.3 (relating to endangered species; threatened species; and candidate species) will go into effect upon publication of this order in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 65.5, 65.6, 65.14 and 75.3 are published under the statutory authority of section 2102 of the code (relating to rules and regulations). The amend-

ments to §§ 75.1 and 75.2 are published under the statutory authority of section 2305 of the code (relating to threatened and endangered species).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's fishing regulations. The specific purpose of the amendments is described in more detail under the summary of changes.

E. *Summary of Changes*

(1) Currently fishing is not permitted from 1 hour after sunset to 1 hour before sunrise on special regulations areas managed under §§ 65.5, 65.6 and 65.14. None of the other special regulations programs that apply to angling in this Commonwealth carry any type of hourly angling restriction and clear biological rationale does not exist for placing fishing hours restrictions on waters managed under these three programs. Hourly fishing restrictions limit angling opportunity by denying angler access to fishing for part of the day.

For the purpose of simplifying the regulations and to encourage more angling opportunity, the fishing hours restrictions that currently apply to waters managed under these programs should be removed in favor of permitting angling on a 24-hour basis. The Commission therefore amends these sections to read as set forth in the notice of proposed rulemaking published at 42 Pa.B. 3449 (June 16, 2012).

(2) Eastern Mud Turtle (*Kinosternon subrubrum subrubrum*) is a small (3-4 inches) semiaquatic turtle. It has olive to brown colored shell and mottled skin with a domed carapace and two hinges on a reduced plastron. This small turtle is known to live in shallow wetlands and associated uplands that have still-water or slow-water habitats, such as marshes, swamps, seasonal forest

pools, shallow ponds, creeks and ditches, all with soft substrates. In states surrounding this Commonwealth, *K. subrubrum* is listed as critically imperiled (S1) in New York, secure (S5) in Delaware and Maryland and not ranked/under review (SNR/SU) in New Jersey (NatureServe, 2008). White and White (2002) considered *K. subrubrum* to be common in Delmarva's Atlantic Coastal Plain but rare within the Maryland Piedmont (Cecil County). The historical range of *K. subrubrum* in this Commonwealth most likely included the entirety of the Atlantic Coastal Plain. As a result of intensive urbanization throughout the greater Philadelphia landscape, the current distribution in this Commonwealth is restricted to 350 hectares (865 acres) at two sites in Bucks County. These two known sites are located where there are already occurrences of other threatened or endangered species.

The Eastern Mud Turtle was rediscovered in this Commonwealth during the spring of 2008. This signified the first observation of this species in this Commonwealth in 45 years. The Commission engaged a 2-year study for this species which was concluded in 2011. The Eastern Mud Turtle was encountered at only two sites in the entirety of this Commonwealth. These isolated sites are separated by a distance of 5 airline miles, account for an area of only 865 acres (350 hectares) or 1.4 miles² (3.6 km²) and are completely surrounded by the major urban center of the Philadelphia region. The extent of occurrence for *K. subrubrum* in this Commonwealth is 1.4 miles², under the maximum allotment of 40 miles² found in the Commission's Listing Criterion B.1. The area of occupancy for *K. subrubrum* in this Commonwealth is only 1.4 miles², under the maximum allotment of 4 miles² found in the Commission's Listing Criterion B.2, and severely fragmented (Listing Criterion B.2.a). Additionally, declines are projected in the area of occupancy, area/extent/and or quality of habitat, number of locations or subpopulations and number of mature individuals (Listing Criterion B.2.b). Recent studies by the Commission and East Stroudsburg University (Ruhe and LaDuke, 2011) found only 11 total Eastern Mud Turtles in this Commonwealth, meeting the requirements for listing under Listing Criterion C.1 (under 250 mature individuals in this Commonwealth). Due to the low number of individuals found in this Commonwealth, a population decline observed during the recent study and the severe fragmentation of the Atlantic Coastal Plain Province in this Commonwealth, the species also meets Listing Criteria C.1.b.1 and D.1 (severe fragmentation, a decline of any rate and all subpopulations under 50 individuals; and population is characterized by an acute restriction in the area of occupancy (less than 40 square miles) or in number of locations (less than 5)). As the species meets Listing Criteria B.1., B.2., B.2.a., B.2.b, C.1., C.1.b.1 and D.1, the Amphibian and Reptile Technical Committee of the Pennsylvania Biological Survey (PABS) recommended the status of the Eastern Mud Turtle (*Kinosternon subrubrum subrubrum*) be elevated to "endangered" status in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission adds the Eastern Mud Turtle to the Commonwealth's list of endangered species.

(3) Round Hickorynut (*Obovaria subrotunda*) is a freshwater mussel species distinguished by its almost perfectly round shape. The shell is thick and solid and dark-brown with a lighter band along the posterior-dorsal

surface. It occurs in medium to larger rivers. The physical habitat of the Round Hickorynut has been generally described as consisting of sandy substrates with gravel or clay. The Round Hickorynut is distributed throughout the Ohio River basin (including the Cumberland and Tennessee Rivers) and parts of the Mississippi River basin, ranging from eastern Illinois to western Pennsylvania to Mississippi (Parmalee and Bogan, 1998). This species is also known from western Lake Erie and Lake St. Clair basins.

Historically, this species was reported from nine streams in this Commonwealth including the Ohio River, Beaver River (Mahoning River, Shenango River, Little Shenango River and Pymatuning Creek), Monongahela River and the Allegheny River (Crooked Creek) (Ortmann, 1909a, 1913, 1919; Strayer et al., 1991). Although historical records have been reported from Lake Erie in neighboring Ohio (for example, Shelford and Boesel, 1942), this species has not been reported from this Commonwealth's portion of Lake Erie. Besides Ortmann's efforts (1909a, 1919), few historical mussel surveys of this Commonwealth's freshwater mussel fauna were conducted (see Dennis, 1971 (western Pennsylvania) and Taylor, 1980 (Ohio River mainstem)). The Round Hickorynut may have occurred in other streams of this Commonwealth but was not reported.

Recent surveys, including predredging surveys, within the species' historical range within this Commonwealth (Crooked Creek, Allegheny River, Ohio River, Monongahela River, Beaver River, Mahoning River, Pymatuning Creek and Little Shenango River) did not detect live individuals of the Round Hickorynut. Live individuals of this species were recently detected in the Shenango River between the Pymatuning Reservoir and Shenango River Lake (Burse, 1987; Nelson and Vilella, 2010; C. Bier, personal communication). Nelson and Vilella's 2010 surveys did not detect Round Hickorynut downstream of Shenango River Lake. The Round Hickorynut is only found in the Shenango River and co-occurs with other State and Federal listed mussel species.

The Round Hickorynut was previously identified by PABS as a State rare species, warranting an S1 ranking (Critically Imperiled in Pennsylvania). It currently meets the following criteria for endangered status: A.2.c. Population reduction suspected to be met within next three generations; B.3. Extent of occupancy less than 50 miles; B.4.a. Severely fragmented or known to exist at fewer than 6 location(s); B.4.b.1. Continuing decline inferred for extent of occurrence; B.4.b.3. Continuing decline inferred in area, extent and/or quality of habitat; and B.4.b.4. Continuing decline inferred in number of locations or subpopulations. Of this Commonwealth's ten historical subpopulations, only the Shenango River subpopulation remains. Based upon the extent of occurrence, number of locations within this Commonwealth and threats to this species, the PABS Mollusk Subcommittee recommended that the Commission list the Round Hickorynut as an endangered species in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission adds the Round Hickorynut to the Commonwealth's list of endangered species.

(4) Pistolgrip (*Quadrula verrucosa*) is a freshwater mussel that has a posterior ridge that is very pronounced and constriction in the shell at the midpoint and the

posterior slope of the shell is pleated. It occurs in a variety of habitats and conditions, ranging from riffles, runs and pools with variable substrates including mud, sand or coarse and fine gravel (Ortmann, 1919; Williams et al., 2008; Parmalee and Bogan, 1998).

The Pistolgrip is widely distributed throughout the Mississippi River basin including the Ohio, Cumberland and Tennessee River basins and ranges from western Pennsylvania to western Minnesota south to Texas and Mississippi (Parmalee and Bogan, 1998; Williams et al., 2008). The Pistolgrip is also native to the Mobile River basin (Alabama, Georgia, Mississippi and Tennessee) and may occur in other rivers draining into the western Gulf of Mexico (Williams et al., 2008).

Historically, this species was reported from eight streams in this Commonwealth, including the Ohio River, Beaver River (Mahoning River, Shenango River and Pymatuning Creek), Monongahela River (Dunkard Creek) and the Allegheny River (Ortmann, 1913, 1919).

Live individuals of this species were recently detected in the Shenango River between the Pymatuning Reservoir and Shenango River Lake (Bursey, 1987; Nelson and Vilella, 2010; C. Bier, personal communication) and downstream of Shenango River Lake (Nelson and Vilella, 2010). The Pistolgrip is only found in the Shenango River and co-occurs with other State and Federal listed mussel species.

The Pistolgrip was previously identified by PABS as a State rare species, warranting an S1 ranking (Critically Imperiled in Pennsylvania). The Pistolgrip meets the following endangered species listing criteria: B.3. Extent of occupancy less than 50 miles; B.4.a. Severely fragmented or known to exist at fewer than 6 location(s); B.4.b.1. Continuing decline inferred for extent of occurrence; B.4.b.3. Continuing decline inferred in area, extent and/or quality of habitat; and B.4.b.4. Continuing decline inferred in number of locations or subpopulations. Of this Commonwealth's eight historical subpopulations, only the Shenango River subpopulation remains. Based upon the extent of occurrence, number of locations within the Commonwealth and threats to this species, the PABS Mollusk Subcommittee recommended that the Commission list the Pistolgrip as an endangered species in this Commonwealth.

Enough information is available to make the determination that this species is critically imperiled in this Commonwealth at present and to justify adding it to the Commonwealth's list of endangered species. Therefore, the Commission adds the Pistolgrip to the Commonwealth's list of endangered species.

(5) Rayed Bean (*Villosa fabalis*). On February 14, 2012, the United States Department of the Interior, Fish and Wildlife Service (FWS), designated *Villosa fabalis* (Rayed Bean) and Snuffbox (*Epioblasma triquetra*) as Federally endangered throughout their entire ranges. The Snuffbox was previously listed by the Commission at 39 Pa.B. 3442 (July 11, 2009). The Rayed Bean is a freshwater mussel species known to occur in Illinois, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Ontario, Canada. The Rayed Bean still occurs in the following streams and rivers in this Commonwealth: Allegheny River, French Creek, LeBoeuf Creek, Muddy Creek and Cussewago Creek. The Rayed Bean co-occurs with other State and Federal listed mussel species and is not known from within the permitted sand and gravel dredging area of the Allegheny River.

Section 102 of the code (relating to definitions) defines endangered species as "All species and subspecies of fish

which: (1) have been declared by the Secretary of the United States Department of the Interior to be threatened with extinction and appear on the Endangered Species List or the Native Endangered Species List published in the *Federal Register*; or (2) have been declared by the executive director to be threatened with extinction and appear on the Pennsylvania Endangered Species List published in the *Pennsylvania Bulletin*." Because Rayed Bean has been designated as Federally endangered throughout its range, which includes this Commonwealth, the Commission adds the Rayed Bean to the Commonwealth's list of endangered species.

(6) Chesapeake Logperch (*Percina bimaculata*) is a small to medium size fish (up to 7 inches) in the perch family. Little is known about this species and its habits, but it occurs primarily in larger waterways and lowermost sections of tributaries.

Its National range includes the Chesapeake Bay watershed in the District of Columbia (formerly), Maryland, Pennsylvania and Virginia (formerly), limited to lower sections of the Potomac (now extirpated) and Susquehanna Rivers and tributaries, and a few direct tributaries to the Chesapeake Bay (Haldeman, 1842; Smith and Bean, 1899; Jenkins and Burkhead, 1994).

In this Commonwealth, it occurs only in the Piedmont Province of the lower Susquehanna River drainage. Currently, it is restricted to the Susquehanna River and the lowermost section of four tributaries within the Conowingo Pool (Fishing Creek, Muddy Creek, Peters Creek and Michael Run) located in Lancaster and York Counties. It is also found in the Octoraro Creek watershed in Chester and Lancaster Counties.

The Chesapeake logperch *Percina bimaculata* was recently removed from taxonomic synonymy with the logperch *Percina caprodes* and recognized as a distinct and valid species with a limited global distribution restricted to the Chesapeake Bay watershed (Near, 2008). It meets fish listing criteria B3 and B4 for threatened status. To meet criterion B3, the extent of occupancy must be less than 50 miles in lotic waters (less than 10 miles would qualify for endangered status). The Chesapeake logperch only occurs in approximately 30 combined stream and river miles within this Commonwealth. It also meets criterion B4 which compares distributions using HUC 12 watersheds (within GIS software) to characterize their relative rarity within this Commonwealth. The Chesapeake logperch occupies only 7 of the 641 HUC 12 watersheds (~1%) within the Susquehanna Basin. Also, it is likely extirpated from at least two HUC 12 watersheds, those covering Lake Clarke and Lake Aldred on the Susquehanna River.

The Chesapeake logperch is classified as endangered by the American Fisheries Society Endangered Species Committee (Jelks et al., 2008, Fisheries 33(8): 372—407). It is classified as a threatened species in Maryland, the only other state where it has recently been documented. It is also listed in the 2010 update of Threatened Fishes of the World (Ashton and Near, 2010). The Chesapeake logperch's limited global distribution, extirpation from a significant portion of its historic range and extant threats make it a responsibility species for this Commonwealth and provide justification for listing it as a threatened species in this Commonwealth.

Enough information is available to make the determination that this species is threatened in this Commonwealth at present and to justify adding it to the Commonwealth's list of threatened species. Therefore, the

Commission adds the Chesapeake Logperch to the Commonwealth's list of endangered species.

(7) American Brook Lamprey (*Lampetra appendix*) is one of the nonparasitic lampreys in this Commonwealth. It inhabits small to medium size creeks and, less frequently, large streams and small rivers. Adults generally prefer sandy and gravelly riffles and runs for spawning, while ammocoetes prefer deposits of silt, sand, mud and detritus (Jenkins and Burkhead, 1993).

Its National range includes the Atlantic, Great Lakes and Mississippi River basins from St. Lawrence River, Quebec, west to Minnesota, south to Roanoke River system, Virginia, Tennessee River system, northern Alabama, and St. Francis and White river systems, Missouri and Arkansas; Martin River (Arctic basin), Northwest Territories, to Ugashik and Chatanika River (Pacific basin), Alaska. Populations tend to be uncommon (Page and Burr, 1991) and disjunctive across North America.

In this Commonwealth, it is restricted to the northwest and southeast corners of the State. It is known from the following drainages: Upper Allegheny River and tributaries, middle Allegheny River tributaries, Lake Erie tributaries, upper Genesee River and tributaries and Lower Delaware River tributary (White Clay Creek). It has been collected from Chester, Clarion, Crawford, Elk, Erie, Forest, McKean, Potter, Venango and Warren Counties.

Cooper (1983) shows the main distribution of the American brook lamprey to cover the northwest corner of this Commonwealth, including Lake Erie tributaries, portions of the middle and upper Allegheny River basin and the Genesee River headwaters. Cooper (1983) also cites a small population in White Clay Creek, Chester County. Additional historic data are known to fall within this same general distribution. We have found 9 "104," 6 HUC 8 and 48 HUC 12 watersheds occupied based on historic data at the "104" and HUC 8 level. All historically occupied watersheds had occurrences from both pre-1971 and 1971–1990 periods.

The distribution of recent American brook lamprey collections closely mirrors that of the historic distribution presented by Cooper (1983). Recent data (1991–2011) characterize it as relatively common in numerous waterways within northwest Pennsylvania (Fish and Boat Commission, Pennsylvania State University, R. Criswell and FWS, unpublished data). The FWS's Sea Lamprey Control Program has conducted distributional surveys for lampreys within the Erie Basin (Erie and Crawford Counties) using larval lamprey specific electrofishing gear since the mid-1980s. As a result, excellent lamprey information is available for those streams. Information available for other waterways tends to be less focused and more incidental due to brook lamprey ammocoete habitat preferences, relatively poor ammocoete recruitment to conventional electrofishing gear and short adult life span. In southeastern Pennsylvania (Chester County), the American brook lamprey is found in a relatively small area consisting of a single subbasin. Horowitz et al. (2008) reported American brook lamprey occurrences in four streams from the Mid-Atlantic Piedmont based on a previous study (Sweeney et al., 2004). Populations are also known from New Jersey to the east and from the Delmarva Peninsula to the south (Lee et al., 1980).

The Fishes Technical Committee of PABS reviewed the Heritage rank of the American Brook Lamprey and recommended it be changed from "vulnerable" (S3) to "apparently secure" (S4) status (State Rank Definitions, 1996). The Fishes Technical Committee additionally rec-

ommended "delisting" status based on the aforementioned data and apparent commonality of the species in this Commonwealth (PABS definition of "delisted species"—species which were once listed but now cited for delisting (PABS Suggested Status Definitions, 2005)).

The American brook lamprey was listed in 1999 as a Pennsylvania candidate based on a limited distribution and apparent low numbers. Argent et al. (2000) provided the methodology and rationale for listing the American brook lamprey as a Pennsylvania candidate. Currently available data indicate little if any range reduction has occurred when historic and recent records are compared throughout the four occupied basins (Allegheny, Delaware, Erie and Genesee). Extreme fragmentation, fluctuation or decline of populations has not been documented or suspected. The American brook lamprey in this Commonwealth exceeds minimum requirements for multiple listing criteria. A significant reduction in range within this Commonwealth cannot be seen when historic and recent data were compared (Criteria A1 and A2). The extent of occupancy in streams and rivers is greater than the maximum of 150 miles for candidate status (Criterion B3). The attention paid to this species since being listed is likely responsible for subsequent efforts to survey historic sites and unassessed waters. The American brook lamprey currently appears secure within this Commonwealth, thereby justifying removal from the Commonwealth's list of candidate species. Therefore, the Commission removes the American brook lamprey from the Commonwealth's list of candidate species.

The Commission amends §§ 65.5, 65.6, 65.14, 75.1, 75.2 and 75.3 to read as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The amendments to Chapter 65 will not have adverse fiscal impact on the Commonwealth or its political subdivisions and will not impose new costs on the private sector or the general public. The amendments to Chapter 75 will not have direct adverse fiscal impact on this Commonwealth or its political subdivisions. The amendments to Chapter 75 will not impose new direct costs on the private sector or the general public. The direct regulatory significance of designating a species as endangered or threatened is limited to prohibiting persons from taking, catching, killing or possessing these species in this Commonwealth. Because none of the species listed have commercial or recreational significance because of their rarity, there are not direct fiscal impacts from providing these protections.

It has been asserted that the designation of species as endangered or threatened has fiscal impacts on the private sector and the Commonwealth. However, these impacts are indirect in that they flow from the application by other agencies, including the Department of Environmental Protection (Department), of their statutory and regulatory authorities and not from the listings themselves. Therefore, the Commission will continue to rely on the Department and other agencies to examine their programs and determine the fiscal impacts that flow from their responsibilities, including the responsibility to protect rare species in accordance with their own authorities.

In addition, one of the species proposed for State endangered status, the Rayed Bean Mussel, was desig-

nated by the FWS as Federally endangered throughout its entire range on February 14, 2012. This species accordingly would have received protection regardless of the Commission's action. Also, three of the five proposed additions to the list (Pistolgrip Mussel, Round Hickorynut Mussel and Eastern Mud Turtle) co-occur with other listed species within the same waterway or wetland. Therefore, there would be little additional burden placed on projects in those areas.

H. *Public Involvement*

Notice of proposed rulemaking was published at 42 Pa.B. 3449. The Commission did not receive public comments concerning the proposed amendments to §§ 65.5, 65.6 and 65.14. After the formal comment period, the Commission received one comment from the Department requesting the Commission to delay consideration of its final action on the proposed amendments to §§ 75.1—75.3. A copy of this comment was provided to the Commissioners. As a result of the Department's comment, the Commission deferred consideration of the agenda item to allow its Executive Director to respond to the Department's letter. The Commission's Executive Director responded to the letter and the Commission subsequently adopted the amendments to §§ 75.1—75.3.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the public comment received was considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 65 and 75, are amended by amending §§ 65.5, 65.6, 65.14 and 75.1—75.3 to read as set forth at 42 Pa.B. 3449.

(b) The Executive Director will submit this order and 42 Pa.B. 3449 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 42 Pa.B. 3449 and deposit them with the Legislative Reference Bureau as required by law.

(d) The amendments to §§ 65.5, 65.6 and 65.14 take effect on January 1, 2013. The amendments to §§ 75.1—75.3 take effect upon publication in the *Pennsylvania Bulletin*.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-237 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-2470. Filed for public inspection December 21, 2012, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CHS. 93, 99, 105 AND 109]

Boating

The Fish and Boat Commission (Commission) amends Chapters 93, 105 and 109 (relating to boat registration and numbering; operational conditions; and specialty boats and waterskiing activities) and rescinds Chapter 99. The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The amendments modify and update the Commission's boating regulations.

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2013.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to §§ 93.2 and 93.3 (relating to permanent and temporary registration; and application for boat registration) and the rescission of Chapter 99 are published under the statutory authority of section 5122 of the code (relating to registrations, licenses, permits, plates and statistics). The amendment to § 93.13 (relating to issuing agents) is published under the statutory authority of section 5304 of the code (relating to issuing agents). The amendment to § 93.102 (relating to application procedure and contents of applications for certificates of title) is published under the statutory authority of section 5325 of the code (relating to rules and regulations). The amendments to §§ 105.3 and 109.4 (relating to unacceptable boating practices; and waterskiing, aquaplaning, kiteskiing and similar activities) are published under the statutory authority of section 5123 of the code (relating to general boating regulations).

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's administrative and boating regulations. The specific purpose of the amendments is described in more detail under the summary of changes. Prior to final adoption, the Commission solicited the advice and opinion of the Commission's Boating Advisory Board (BAB).

E. *Summary of Changes*

(1) On June 1 and 2, 2011, the United States Coast Guard's (USCG) Boating Safety Division conducted an onsite program review of the Commonwealth's Recreational Boating Safety (RBS) program. Onsite program reviews are used by the USCG to help determine a state's eligibility to receive funding made available under the Recreational Boating Safety Act (46 U.S.C.A. §§ 13101—13110) for the state RBS program.

During the program review, the USCG identified a deficiency that required corrective action. Specifically, the issuance of a temporary registration certificate and decal that remains valid in excess of 60 days is not in compliance with Federal regulations. Currently, the Commission's regulations allow for temporary boat registrations to be valid for up to 90 days. Failure to correct this

deficiency may jeopardize the Commission's eligibility for funding through the USCG-administered RBS program.

To correct the deficiency, the Commission amends §§ 93.2 and 93.13 to reflect the USCG's application. These amendments will limit the validity of temporary registration certificates and decals to a maximum of 60 days and require issuing agents to enter the expiration date (month/date/year) to ensure that the 60-day maximum is not exceeded. The Commission amends these sections to read as set forth in the notice of proposed rulemaking published at 42 Pa.B. 3446 (June 16, 2012).

(2) Due to changing Federal regulations at the time, the Commission made large-scale amendments to its capacity plate regulations in 1975 to conform to Federal regulations. The Commission again made modifications to its capacity plate regulations in 1994 as part of a year-long comprehensive review and update of the Commonwealth's boating regulations.

During the past 2 years, Commission staff have dealt with a number of capacity plate applications and inquiries that have revealed conflicts between the Commission's regulations and Federal regulations. Further research revealed that the Commonwealth is the only state that had capacity plate regulations that differed from Federal regulations and issued capacity plates. The Commission processed capacity plate applications for boats registered in this Commonwealth as well as boats registered in other states that may not be operated on waters in this Commonwealth. The Commission utilized a capacity plate calculator provided by the USCG that was intended to provide guidance to boaters rather than to be used to meet State or Federal regulations. In fact, the USCG recently informed the Commission that it should discontinue its use of the capacity plate calculator for these purposes.

Federal capacity plate requirements apply to manufacturers and are enforced by the USCG. Therefore, it is unnecessary for the Commission to promulgate regulations regarding capacity plate requirements. The Commission accordingly rescinds Chapter 99. As a result of rescinding Chapter 99, the references to capacity plate information in §§ 93.3(2)(x) and 93.102(b)(11), which required applicants to provide capacity plate information for boat registrations and certificates of title, respectively, is also deleted. The Commission rescinds Chapter 99 and amends §§ 93.3(2)(x) and 93.102(b)(11) to read as set forth in the notice of proposed rulemaking.

(3) Based on information presented at its February 8, 2011, meeting, the BAB recommended amending §§ 105.3 and 109.4 regarding the operation of boats engaged in the activity of wake surfing. Specifically, the BAB recommended that the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing, exclude wake surfing from the 20-foot minimum tow rope requirement, adopt a definition of "wake surfing," and allow wake surfing participants to wear a specifically designed wetsuit instead of the USCG-approved personal flotation device.

To date, there have not been propeller strike accidents reported Nationwide for participants in wake surfing activities. Boats with inboard motors are the preferred configuration for wake surfing activity. The propellers of inboard motors are located in front of the boat's transom and pose less risk to a person being towed. Outboard and inboard/outboard motors pose a much greater risk to persons being towed since the propeller is located aft of the transom. Outboards and inboard/outboards used for

wake surfing are often trimmed up to create more wake which increases exposure to the propeller. The Water Sports Industry Association has been working with states to encourage the use of "model language" in crafting legislation or regulations to protect the safety of towed watersport participants, such as wake surfers. The Commission therefore adopts this model language in § 105.3(12) in addition to the changes previously recommended by the BAB to § 105.3(11). Additionally, the Commission clarifies the 20-foot measurement for tow ropes as being measured from the transom of the boat.

As previously noted, the BAB previously recommended the Commission adopt a 300-foot slow, no-wake zone for boats engaged in the activity of wake surfing. This recommendation was made in an effort to limit disturbance and damage resulting from excessive wakes created by boats engaged in wake surfing activity. However, upon further research of other states' regulations and a United States Naval Academy study on wave height and energy, Commission staff concluded that a 300-foot slow, no-wake zone will provide minimal additional benefits and unnecessarily limit wake surfing activity as compared to a 200-foot slow, no-wake zone. The Commission therefore adds § 109.4(k) to contain additional regulations specific to wake surfing, including a slow, no-wake zone of 200 feet. The Commission amends §§ 105.3 and 109.4 to read as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose new costs on the private sector or the general public.

H. Public Involvement

Notice of proposed rulemaking was published at 42 Pa.B. 3446. The Commission did not receive public comments concerning the proposed amendments to §§ 93.2, 93.3, 93.13 and 93.102 or the proposed rescission of Chapter 99. The Commission received a total of eight comments concerning the proposed amendments to §§ 105.3 and 109.4—one prior to, six during and one after the formal comment period. The majority of comments supported the amendments with the primary reasons being enhanced safety for the participants and the rapid growth of the sport.

Findings

The Commission finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the public comments received were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapters 93, 99, 105 and 109, are amended by deleting

§§ 99.1—99.7 and amending §§ 93.2, 93.3, 93.13, 93.102, 105.3 and 109.4 to read as set forth at 42 Pa.B. 3446.

(b) The Executive Director will submit this order and 42 Pa.B. 3446 to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order and 42 Pa.B. 3446 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order takes effect January 1, 2013.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-236 remains valid for the final adoption of the subject regulations.

[Pa.B. Doc. No. 12-2471. Filed for public inspection December 21, 2012, 9:00 a.m.]

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 115]

Boating; Boats Carrying Passengers for Hire

The Fish and Boat Commission (Commission) amends 58 Pa. Code Chapter 115 (relating to boats carrying passengers for hire). The Commission is publishing this final-form rulemaking under the authority of 30 Pa.C.S. (relating to Fish and Boat Code) (code).

A. *Effective Date*

The final-form rulemaking will go into effect on January 1, 2013.

B. *Contact Person*

For further information on the final-form rulemaking, contact Wayne Melnick, Esq., P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7810. This final-form rulemaking is available on the Commission's web site at www.fish.state.pa.us.

C. *Statutory Authority*

The amendments to Chapter 115 are published under the statutory authority of section 5123(a)(1) of the code (relating to general boating regulations) and deemed necessary for the health and safety of passengers, operators and persons on, in or towed by boats on, in or along the waters of this Commonwealth.

D. *Purpose and Background*

The final-form rulemaking is designed to improve, enhance and update the Commission's boating regulations. The specific purpose of the final-form rulemaking is described in more detail under the summary of changes.

E. *Summary of Changes*

Chapter 115, regarding the operation of boats carrying passengers for hire, was adopted in 1994. With the exception of some minor procedural amendments in 1999 and 2003, significant changes have not been made to the regulations in the past 18 years. During this period, boat accidents involving passenger for hire vessels have occurred in other states, most notably the capsizing of the tour boat *Ethan Allen* on Lake George, New York in 2005, which prompted Commission staff to re-examine the Commission's current regulations. In July 2011, a workgroup consisting of Commission staff, a passenger for hire business owner and vessel operator met to discuss proposed amendments to the regulations.

The most significant proposed amendments involved a requirement that the passenger capacity of vessels in the program be determined through United States Coast Guard-approved stability testing. The current passenger for hire fleet in this Commonwealth numbers 18 vessels owned and operated by 13 businesses. The vessels are tour boats and range in size from 18 to 75 feet. Most are pontoon boats with the exception of four larger vessels operated on Lake Raystown and Conneaut Lake. Under the current regulations, only boats carrying more than 49 passengers or having more than 1 passenger carrying deck are required to undergo stability testing. In all other cases, passenger capacity is determined by means of manufacturer supplied capacity plates. In the *Ethan Allen* accident, the vessel was initially rated for 50 passengers but had been modified with the addition of a solid canopy and other superstructure. On the day of the accident, the *Ethan Allen* carried 47 passengers plus the operator and capsized after striking the wake of another vessel during a turn. Twenty passengers died as a result of the accident. The National Transportation Safety Board concluded that had the vessel undergone appropriate stability testing after modification, it would have been certified for only 14 passengers. Members of the workgroup agreed that requiring stability testing on passenger for hire boats is the most appropriate method to address concerns regarding capacity and loading. After obtaining an initial test, boats will not be required to have a new stability test unless modified or involved in an accident.

Other proposed amendments to Chapter 115 included the following:

- Increasing the required amount of liability insurance to reflect more realistic damage and personal injury estimates in case of an accident.
- A housekeeping change to indicate that passenger for hire vessels are now a Bureau of Law Enforcement program area.
- Eliminating the requirement that licensed operators disclose changes in their physical condition when applying for renewal of their license and instead requiring that operators obtain a new physical examination with each renewal of their license.
- Removing the requirement that the vessel operator license, currently an 8 1/2" x 11" paper certificate, be displayed on the boat next to the certificate of inspection in favor of the issuance of a wallet sized identification card that the operator will be required to carry and display while in operation of the boat.
- Adding language indicating that operator licenses are good on water under the jurisdiction of the Commonwealth for vessels up to and including the size listed on the license and thereby clarifying the intent that operators may work on any passenger for hire vessel certified by the Commission and are not limited to one employer.
- Eliminating the requirement that the Commission maintain an approved list of marine surveyors in favor of a requirement that marine surveys be conducted by individuals accredited through one of the National marine surveyors associations.
- Adding language indicating that individuals with United States Coast Guard certification appropriate to the size and type of boat they intend to operate in the Commission's program will be able to obtain a waiver of the state licensing requirements upon presentation of their Coast Guard credentials and certification in CPR and first aid.

Notice of proposed rulemaking was published at 42 Pa.B. 4472 (July 14, 2012). The Commission received seven comments during and one comment after the formal public comment period mostly from current operators of passenger for hire vessels. The comments expressed concerns about the cost of implementing various aspects of the proposed rulemaking, including stability testing, first aid and CPR certification, and drug testing. Upon consideration of the public comments and further research, the Commission adopted the following modifications to the proposed rulemaking on final-form rulemaking:

- In § 115.3(a)(1) (relating to recertification), the Commission deleted the requirement for an in-water inspection and changed the frequency of the dry dock examination by a qualified accredited marine surveyor to at least once every 5 years from the proposed 3 years. This frequency was suggested by an operator and coincides with the recommendation in the National Association of State Boating Law Administrators' Model Act for Charter Boat Safety.

- In § 115.3(a)(2), the Commission removed the requirement that boats undergo stability testing to maintain certification and limit stability testing to only those boats that have been involved in an accident or have been structurally modified.

- The Commission withdrew the requirement for operators and crew to possess and maintain certification in CPR and first aid in §§ 115.8(c)(4) and 115.9(e) and (h) (relating to personnel requirements of passenger carrying boats; and licenses for operators).

- The Commission withdrew the requirement for standard drug screen for operators in § 115.9(b).

The Commission amends §§ 115.3 and 115.9 to read as set forth in Annex A. The Commission withdraws the proposed amendment to § 115.8. The Commission amends all other sections in Chapter 115 to read as set forth in the notice of proposed rulemaking.

F. Paperwork

The final-form rulemaking will not increase paperwork and will not create new paperwork requirements.

G. Fiscal Impact

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will impose increased costs on the private sector for marine surveys and stability tests. The final-form rulemaking will increase the frequency of dry dock examinations from once every 6 years to once every 5 years. Examinations are estimated to cost between \$500 and \$800 depending upon the boat. Stability testing will be an expense if a boat is modified or involved in an accident. Testing is estimated to cost between \$600 and \$1,500 for most boats. Testing for boats with hulls 65 feet or longer or unusual hull designs may range from \$3,500 to \$10,000. The final-form rulemaking will not impose new costs on the general public.

H. Public Involvement

As previously noted, the Commission received a total of eight comments mostly from current operators of passenger for hire vessels. The comments expressed concerns about the cost of implementing various aspects of the proposed rulemaking including stability testing, first aid and CPR certification, and drug testing. Copies of the public comments were provided to the Commissioners.

Findings

The Commission finds that:

(a) Public notice of intention to adopt the amendments adopted by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided and the public comments were considered.

(3) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for administration and enforcement of the authorizing statutes.

Order

The Commission, acting under the authorizing statutes, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 115, are amended by amending §§ 115.1, 115.2, 115.4, 115.5, 115.7, 115.10 and 115.12 to read as set forth at 42 Pa.B. 4472 and by amending §§ 115.3 and 115.9 to read as set forth in Annex A.

(Editor's Note: The proposed amendment to § 115.8 has been withdrawn by the Commission.)

(b) The Executive Director will submit this order, 42 Pa.B. 4472 and Annex A to the Office of Attorney General for approval as to legality and form as required by law.

(c) The Executive Director shall certify this order, 42 Pa.B. 4472 and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on January 1, 2013.

JOHN A. ARWAY,
Executive Director

Fiscal Note: Fiscal Note 48A-235 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 115. BOATS CARRYING PASSENGERS FOR HIRE

§ 115.3. Recertification.

(a) A boat carrying passengers for hire shall have reinspections and recertifications as follows:

(1) A dry dock examination shall be conducted by a qualified accredited marine surveyor at least once every 5 years.

(2) A stability test shall be conducted whenever a boat has been involved in an accident or has been structurally modified. The stability test shall be United States Coast Guard-approved, suitable for the type and size of boat and utilize the current Assumed Average Weight per Person standard adopted by the United States Coast Guard.

(b) The owner will forward to the Commission a copy of the recertification report along with other documents requested by the Commission.

§ 115.9. Licenses for operators.

(a) *Eligibility.* Persons, 18 years of age and older, in good physical condition and who possess a valid Boating

Safety Education Certificate are eligible for licensing as operators of passenger-carrying boats.

(b) *Physical examination.* The physical condition of an applicant for an operator's license shall be certified by a physician after a physical examination. The physician's certification must include a statement attesting that the applicant displays normal color vision. This requirement may be waived if the operation of vessels for which the license is sought will be limited to daylight hours.

(c) *Application.* An application for a boat operator's license shall be made on the form provided by the Commission. The completed form shall be submitted with the applicable fee as listed in section 5104(a)(6) of the code (relating to fees).

(d) *Examination.* An applicant for a boat operator's license shall pass a professional examination to demonstrate sufficient experience and capabilities to assume the responsibilities for operation of a passenger-carrying boat. Examination will include oral questions and a practical test of boating skills using the boat—or a boat of identical size and type—for which an operator's license is being requested. If the applicant does not pass the oral examination or the practical test, 30 days is required prior to taking a retest. A request for the retest shall be submitted on Form PFBC-292.

(e) *Contents and display of boat operator's license.* The operator's license shall contain a photograph of the licensee. In addition, it will list the name and the limitations on the operator with respect to size of vessel authorized to operate and day or night restrictions. Licenses issued under this section are valid on any water under the sole jurisdiction of the Commonwealth for boats up to and including the size listed on the license. The Commission will validate the operator's license. The operator shall carry and display the license while in actual operation of a passenger carrying boat and produce the license upon request of the Commission.

(f) *Expiration.* Licenses issued under this section will expire on December 31, 5 years from the date of issuance.

(g) *Waiver.* The Commission will waive the licensing requirement of this section for an individual possessing a current valid United States Coast Guard certification appropriate for the size and type of boat he intends to operate upon presentation of proof of his Coast Guard Merchant Mariner Credential or other Coast Guard certification.

[Pa.B. Doc. No. 12-2472. Filed for public inspection December 21, 2012, 9:00 a.m.]
