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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 3, 2004

Janet H. Shields, MSN, CRNP, CS, Chairperson  
State Board of Nursing  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-5121 (IRRC #2425)  
State Board of Nursing  
Temporary Practice Permits

Dear Chairperson Shields:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

A handwritten signature in black ink, reading "Robert E. Nyce", is written over a horizontal line.

Robert E. Nyce  
Executive Director

evp

Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Pedro A. Cortes, Secretary, Department of State

# **Comments of the Independent Regulatory Review Commission**

**on**

## **State Board of Nursing Regulation #16A-5121 (IRRC #2425)**

### **Temporary Practice Permits**

**November 3, 2004**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Nursing (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on October 4, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Comments from the House Professional Licensure Committee. - Consistency with existing regulations; Reasonableness; Implementation procedure; Need; Clarity.**

During our review of this regulation, we identified issues and raised questions related to the criteria of the Regulatory Review Act. Many of these issues were also raised in the comments submitted by the House Professional Licensure Committee (House Committee) in a letter dated October 6, 2004. We concur with the comments presented by the House Committee.

In addition, we have three concerns directly related to the issues of adding definitions and practice by an unlicensed candidate.

First, the final-form regulation should define the terms "graduate registered nurse" and "graduate practical nurse" because similar terms are also used in existing regulations. The terms are used repeatedly in this proposed regulation and the same or comparable terms are also found in existing language at 49 Pa. Code §§ 21.27 and 21.154.

Second, the Board needs to review the relationship between this proposed regulation and existing provisions at 49 Pa. Code §§ 21.27 and 21.154. These existing sections and the proposed regulation both allow unlicensed nurses to practice under certain conditions. Will these two existing provisions be necessary when this proposed regulation is adopted?

Third, the proposed regulation needs to address the fact that existing regulations require that unlicensed graduate nurses practice under the supervision of another nurse. Sections 21.27(2) and 21.154(2) state that a graduate nurse, who is not yet licensed, may practice but may only do so under the supervision of an experienced registered nurse (RN). "Supervision" in both of the existing sections "means that the registered nurse is physically present in the area or unit where the unlicensed candidate is practicing." Will these existing rules still apply to graduate nurses

with temporary practice permits (TPPs)? If not, the existing sections should be revised to clarify that they do not apply to TPP holders.

**2. Sections 21.7 and 21.149. Temporary practice permits. - Reasonableness; Implementation procedure; Clarity.**

This proposed regulation establishes the procedures and standards for the administration of TPPs for both RNs and licensed practical nurses (LPNs). Section 21.7 pertains to RNs and Section 21.149 pertains to LPNs. The following paragraphs identify questions and issues that apply to both Sections 21.7 and 21.149.

*Subsection (a) – Graduate nurses*

This subsection contains the requirements for graduate RNs and LPNs who do not have the results of their licensing examination and want to practice nursing. The first sentence of Subsection (a)(1) states, in part: “An individual who wishes to practice as a graduate registered [practical] nurse during the period from the date of completion of a Board-approved educational program and notification of the results of the licensing examination . . . .” (Emphasis added.) The word “and” should be replaced with the phrase “to the.”

Under Subsection (a)(2), a graduate nurse that holds a TPP does not have to apply to take the licensure exam until 90 days before the TPP expires. Since TPPs are valid for one year, this would allow graduate nurses to practice for approximately nine months before they need to apply for a licensure examination. The Board should explain the basis for the nine-month timeframe.

Subsection (a)(3) allows for an extension of a TPP for illness or extreme hardship. We have two concerns.

First, the regulation does not indicate how long an extension for illness or extreme hardship lasts. The final-form regulation should include a time limit for these extensions or a statement that the Board will notify the applicant in writing of the time limit for each case.

Second, Paragraph (iii) requires an applicant to supply certification of the illness from the applicant’s treating physician. What documentation would be required to evidence extreme hardship?

*Subsection (b) – Nurses with out-of-state licenses*

Under Subsection (b)(4) an applicant must submit all of the required documentation no later than 90 days prior to the expiration date of the TPP. Why are TPP holders allowed to practice for approximately nine months before they are required to supply the necessary documentation for licensure?

Subsection (b)(5) allows for an extension of a TPP for illness or extreme hardship. We have the same two concerns with this subsection that we have with Subsection (a)(3) noted above.

### 3. Miscellaneous Clarity.

These regulations are being added to the “General Provisions” portions of the RN and LPN regulations. A more appropriate place to place the regulations would be under the “License” section of the RN regulations and the “Licensure” section of the LPN regulations.

The evidentiary requirements for the “illness” extensions found in Sections 21.7(a)(3)(iii) and (b)(5)(iii), and 21.149(a)(3)(iii) and (b)(5)(iii) switch back and forth between the term “physician” and the phrase “treating physician.” The Board should consistently use either the term “physician” or the phrase “treating physician” throughout the final-form regulation.

Sections 21.7(b)(5) and 21.149(a)(3), unlike similar provisions in Sections 21.7(a)(3) and 21.149(b)(5), do not specifically include the criteria “illness or extreme hardship” as bases for requesting a TPP extension. This final-form regulation should clarify this possible error.

The references in Sections 21.149(a)(2)(ii) and 21.149(b)(1)(ii) should be to Section 21.147 (relating to fees), not Section 21.5.

There is also a notable difference between Sections 21.7(b) and 21.149(b). Section 21.7(b) begins with:

The Board **may** grant a temporary practice permit to a currently-licensed registered nurse as follows . . . . (Emphasis added.)

However, Section 21.149(b) reads:

The Board **will** grant a temporary practice permit for a currently-licensed practical nurse as follows . . . . (Emphasis added.)

Why does one subsection use the term “may” while the other uses “will”?

Subsection (b)(7) references Paragraphs (2)-(5). Should the reference be (2)-(6)?

## Facsimile Cover Sheet

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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14<sup>TH</sup> FLOOR, HARRISBURG, PA 17101

**To:** Suzanne Hoy  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251  
**Date:** November 3  
**Pages:** 5

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**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Nursing regulation #16A-5121 (IRRC #2425). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: \_\_\_\_\_

*Suzanne Hoy*

Date: \_\_\_\_\_

*11/3/04*