

May 29, 2007

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Leadership for Public Education

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Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
P.O. Box 2649
Harrisburg, PA 17105-2649

INDEPENDENT REGULATORY
REVIEW COMMISSION

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James R. Weaver, *President*
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Carolyn C. Dumaresq, *Executive Director*

Re: Proposed Rulemaking 49 Pa.Code Ch. 43b
State Department #16-38; IRRC #2609
Schedule of Civil Penalties - Nurses

Dear Commissioner Merenda:

PSEA submits the following comments regarding the Bureau of Professional and Occupational Affairs' proposed rulemaking relating to Schedule of Civil Penalties - Nurses. as published in the Pennsylvania Bulletin of April 28, 2007.

These proposed changes would subject nurses to fines up to \$1,000 for a first offense of missing a continuing education deadline. These fines are excessive. Far lower fines would serve as a deterrent to any nurses who might casually decide to miss the deadline on their continuing education (if such nurses exist). No due process provision is apparent in these sections to allow a nurse to appeal the imposition of a fine, particularly before being required to pay it. Also, because the continuing education credits will be reviewed after the fact, in an audit, instead of at the time they are earned, it is foreseeable that a nurse could submit her credits in good faith, believing she has satisfied the Board's requirements, only to have some disallowed after the deadline has passed – thereby making her liable for a very high fine.

Thank you for consideration of our input on these proposed regulations.

Sincerely,

Carol L. Karl
Assistant Director for
Government Relations

cc: Senator Robert Tomlinson, Chairperson, Consumer Protection and Professional Licensure
Representative Michael Sturla, Chairperson, Professional Licensure Committee
✓ Kim Kaufman, Executive Director, Independent Regulatory Review Commission
PSEA Executive Officers
PSEA Health Care Executive Board
PSEA School Nurse Section Executive Board

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To advance quality public education for all students while fostering the dignity and worth of members through collective action.

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May 29, 2007

Ann Steffanic, Board Administrator
State Board of Nursing
P.O. Box 2649
Harrisburg, PA 17105-2649

RE: Proposed Rulemaking, 49 Pa.Code Chapter 21
State Board of Nursing # 16A-5130; IRRC #2608
Continuing Education for Professional Nurses

Dear Ms. Steffanic:

PSEA submits the following comments regarding the State Board of Nursing's Proposed Rulemaking for Continuing Education for Professional Nurses, as published in the Pennsylvania Bulletin on April 28, 2007.

1. **Section 21.5. Fees:** The proposed regulations would require a provider or a nurse to pay to request approval of continuing education from a provider that is not on the Board's pre-approved provider list. The fee, just to submit the request, would be \$75.00 *per hour* of continuing professional education (cpe). Therefore, a nurse who takes a 10-hour course from a provider not on the Board's list would have to pay \$750 just to request approval of the course for continuing education credit. If the Board disapproves, the \$750 would not be refunded in whole or in part. Although the Board no doubt intends that the provider pay these fees, it is foreseeable that responsibility for payment could fall to a nurse if a provider does not obtain approval. We request a more reasonable fee if a nurse has to request approval.
2. **Section 21.29(b) Expiration and Renewal of Licenses:** This section requires that notice of the license renewal period be sent to licensees prior to the expiration date of their licenses. Given the new requirements that nurses must fulfill before the end of their license renewal period, it is important that the notices be sent early enough to allow time for the nurses to correct shortfalls in their continuing education. PSEA requests that language be added to state that the notices must be sent 120 days prior to the expiration of the licensee's license.
3. **Section 21.131 Waiver:** This section would require those seeking waiver of the continuing education requirements because of serious illness, military service or other demonstrated hardship to submit their requests for waiver with supporting documentation at least 120 days prior to their license expiration date. It could be extremely difficult for nurses serving in Afghanistan or Iraq to submit this material four months before their license expiration date. Similar difficulties would face people suffering from serious illness. If they miss this deadline, they could be subject to severe fines under other sections of the proposed rulemaking for not completing their continuing education on time. A more reasonable way to handle people coping with the enumerated situations,

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while accommodating the Board's need for time to process requests, would be to require nurses seeking this waiver to submit their requests at least 60 days prior to returning to work as a professional nurse.

4. **Section 21.131 (g)(1) Disciplinary action authorized:** This section works in conjunction with proposed changes to Section 43b.18a, Schedule of civil penalties – nurses, published in the April 28, 2007 Pennsylvania Bulletin at page 1986-87. Together, the two sections would subject nurses to fines up to \$1,000 for a first offense of missing a continuing education deadline. These fees are excessive. Far lower fines would serve as a deterrent to any nurses who might casually decide to miss the deadline on their continuing education (if such nurses exist). No due process provision is apparent in these sections to allow a nurse to appeal the imposition of a fine, particularly before being required to pay it. Also, because the continuing education credits will be reviewed after the fact, in an audit, instead of at the time they are earned, it is foreseeable that a nurse could submit her credits in good faith, believing she has satisfied the Board's requirements, only to have some disallowed after the deadline has passed – thereby making her liable for a very high fine.
5. **Section 21.131 (g)(2) and (3) Disciplinary action authorized:** Subsection (2) requires that a nurse who missed the deadline must then must make up the deficiency within the following six months. However, because of the manner of enforcement through audit, nurses may not be advised that the Board has not accepted their credits until months after the deadline has passed. This would leave nurses with no way to meet the six-month deadline, thereby subjecting them to the next level of disciplinary action per subparagraph (3). The period for making up the credits should begin to run when the Board notifies the nurse of the deficiency. There also needs to be a procedure available for the Board to grant extensions to nurses who need to make up more credits than can be earned in six months.
6. **Section 21.132 Continuing education hours:** The terminology used in subparagraph (b) needs clarification as to the meaning of “academic quarter unit” and “academic semester unit”. A three-credit course in a semester program should be considered equal to 30 continuing education hours, and that should be clearly stated. For example, Act 48 of 1999, which mandated continuing professional education for educators states: “For the purposes of calculating hours and credits of continuing professional education, one credit of collegiate studies or continuing professional education courses shall be equivalent to 30 hours of continuing professional education....?”
7. **Section 21.133 (e) Continuing education content:** Subparagraph (e) appears to state that no courses designed for lay people are allowable for continuing education credit. This restriction is too severe. It would not allow for courses that could be very professionally beneficial to nurses. Examples would be university biology and pharmaceutical courses. Even courses on preventing professional burnout (for which people in the nursing profession are at risk) arguably should be allowed for continuing education credit, as they can significantly improve the professional effectiveness of nurses, as well as longevity in a field known to be suffering from nurses leaving the profession. Subparagraph (b) allows for “foreign language relevant to health care”, but it appears that a foreign language course at a college or university would be unacceptable; if a hospital has a high incidence of Spanish-speaking patients whom the staff are unable to understand, a college-level Spanish class for a nurse would greatly benefit the patients

and the nurses who care for them. It should not be rejected simply because it is not especially designed for nurses and, in fact, may provide higher quality instruction. The regulations should not rule out consideration of such courses. Also, this goes well beyond the statute, which simply states, "No credit shall be given for any course in office management." The statutory prohibition is reasonable and acceptable; the proposed rulemaking prohibition is neither.

8. **Section 21.134(a) Continuing education sources:** Preapproval of providers is incredibly important under these regulations due to the high fees proposed to be charged to those requesting credit for courses obtained from providers who are not preapproved. Two sources should be added to the list of approved sources: (1) The Pennsylvania Department of Health, which provides valuable continuing education to nurses. (2) Programs approved by the Pennsylvania Department of Education for Act 48 continuing professional development. (See, paragraph 10 below.) Also, Category (5) of approved providers includes: "Programs sponsored by regionally-accredited institutions of higher education offering courses that comply with Section 21.133 (relating to continuing education courses)." Does this mean that all Pennsylvania accredited colleges, community colleges, and universities are preapproved? Or does "regionally-accredited institutions" refer only to nursing schools? **PSEA requests that the former interpretation should be clearly stated, so that professional nurses may obtain the highest quality of instruction available.** Nurses who takes a 3-credit biology, pharmaceutical or other professionally relevant course at an accredited Pennsylvania university or community college that is not a nursing school should have those credits counted toward his or her 30 hour cpe requirement.
9. **Section 21.134(b) and (e) Continuing education sources:** Subparagraph (b) allows for the Board to approve other sources of continuing education on a case by case basis. Our objections to the high fee proposed for this approval is explained in paragraph 1 above. Subparagraph (e) would make the fee even worse. Under that provision, a nurse who puts in a request laying out the required information in 14 delineated categories *must pay the entire fee again* if any of the details of the course change other than the date and location. That is, if a nurse paid \$1000 to request approval for a course, but then the institution changes the instructor, the nurse must resubmit the whole application and pay a whole additional \$1000 – even though only one item needs to be reconsidered. The same is true of a myriad of other individual changes. Doubling the fee is simply not justified.
10. **Additional section needed governing certified school nurses:** Language needs to be added to the proposed rulemaking to implement Section 12(g) of Act 58 of 2006. Section 12(g) states: "**In lieu of meeting the requirements of this section:** (2) School nurses who as certified education specialists are required to obtain continuing professional education under Section 125.2 of the act of March 10, 1949 (P.L. 30, No. 14), known as the "Public School Code of 1949," and under this act, shall be permitted to submit evidence of the completion of education courses approved for their certification by the school district." This statutory language is clearly intended to relieve school nurses from duplicative continuing education requirements in order to maintain their professional education certification (180 hours of cpe or six college credits every five years) as well as their professional nurse licensure. PSEA suggests the following language be added following Section 21.131(c):

School Nurses certified pursuant to the Act of March 10, 1949 (P.L. 30, No. 14) known as the Public School Code of 1949, who are requested by the Board to submit certificates of attendance, shall submit such certificates or, in lieu of certificates, evidence of completion of 30 hours of continuing education pursuant to Act 48 of 1999 within the biennial period, or some combination thereof. Certified School Nurses may meet this requirement by submitting electronically the results of their "Professional Education Record Management System" (PEARMS V2) available on the secure PDE website.

Thank you for your consideration of PSEA's comments on these proposed regulations.

Sincerely,



Carol L. Karl
Assistant Director, Government Relations

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