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INDEPENDENT REGULATORY
REVIEW COMMISSION

2012 MAY -2 PM 2: 24

Regulatory Analysis Form

(Completed by Promulgating Agency)

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: **Department of State, Bureau of Professional and Occupational Affairs, State Board of Osteopathic Medicine**

(2) Agency Number: **16A**

Identification Number: **5321**

IRRC Number: **2941**

(3) PA Code Cite: **49 Pa. Code §§ 25.141, 25.142, 25.161, 25.163, 25.164, 25.176, 25.191, 25.192, 25.201, 25.215, 25.231, 25.501-25.510**

(4) Short Title: **Physician Assistant and Respiratory Therapist**

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: **Louis Lawrence Boyle, Assistant Regulatory Counsel, Department of State; phone: (717)783-7200; fax: (717)787-0251; email: llboyle@pa.gov.**

Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State; phone: (717) 783-7200; fax: (717) 787-0251; email: cymontgome@pa.gov.**

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The act of July 4, 2008 (P.L. 589, No. 46) (Act 46) amended the act in a number of ways. Act 46 changed certification of respiratory care practitioners to licensure of respiratory therapists. It revised the standards for licensure as a respiratory therapist and for receiving a temporary permit to practice prior to sitting for the licensure examination. Act 46 also identified additional specific acts of practice in which physician assistants may engage and required physician assistants to complete continuing education and to maintain professional liability insurance. Additionally, the act of July 2, 2004 (P.L. 486, No. 56) (Act 56) amended section 10(f) of the act (63 P.S. § 271.10(f)) to provide that the Board shall grant licensure, rather than certification, to physician assistants. This proposed rulemaking would amend the Board's regulations to implement the changes of Acts 56 and 46.

(8) State the statutory authority for the regulation. Include specific statutory citation.

The amendments are authorized under sections 10(h), 10.1(c), 10.2(f), and 16 of the Osteopathic Medical Practice Act (act) (63 P.S. §§ 271.10(h), 271.10a(c), 271.10b(f), and 271.16).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, as explained in the response to question (7). Section 8 of Act 46 requires the Board and the State Board of Medicine to jointly promulgate regulations to implement the amendments to the act within 18 months. The rulemaking is not mandated by any other federal or state law or court order or federal regulation.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed rulemaking is required to implement the Act 46 amendments to the act.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

This rulemaking is not based upon any scientific data, studies, or references.

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

The Board does not foresee any groups being adversely affected by the rulemaking.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

All physician assistants and respiratory therapists will be required to comply with the rulemaking. There are currently 914 physician assistants and 504 respiratory therapists licensed by the Board.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to the regulated community associated with compliance with the rulemaking. It is believed that the vast majority of, if not all, licensed physician assistants are currently covered by liability insurance through the supervising physician or employer and will not have any increase in costs in order to comply.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with compliance with the rulemaking.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

(17a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 2008-2009	FY -2 2009-2010	FY -1 2010-2011	Current FY 2011-2012 (budgeted)
State Board of Osteopathic Medicine	\$ 885,527.96	\$844,556.63	\$900,278.01	\$960,000.00

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any costs.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

Because much of this proposed rulemaking is statutorily mandated, the Board did not send an exposure draft of the proposed rulemaking or solicit input from interested parties. However, the Board discussed the proposed rulemaking at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This proposed rulemaking would not be more stringent and would not overlap or conflict with any federal requirements.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

This proposed rulemaking implements the statutorily-mandated revisions to licensure and would not put Pennsylvania at a competitive disadvantage.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This proposed rulemaking would not affect other regulations of the Board or other state agencies.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This proposed rulemaking would not require any additional recordkeeping or other paperwork.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(26) Include a schedule for review of the regulation including:

A. The date by which the agency must receive public comments: **Within 30 days of publication as proposed.**

B. The date or dates on which public meetings or hearings will be held: **No public hearings are scheduled. The Board discusses its regulatory proposals at monthly meetings usually held on the second Wednesday of the month.**

C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Summer of 2012.**

D. The expected effective date of the final-form regulation: **Upon publication as final.**

E. The date by which compliance with the final-form regulation will be required: **Upon publication as final.**

F. The date by which required permits, licenses or other approvals must be obtained: **N/A**

(27) Provide the schedule for continual review of the regulation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the second Wednesday of each month. More information can be found on the Department of State's website (www.dos.state.pa.us).

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2012 MAY -2 PM 2: 24

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

Amey M. Elliott

State Board of Osteopathic Medicine

Megan L. Consedine

BY: _____
(DEPUTY ATTORNEY GENERAL)

(AGENCY)

BY: _____

APR 11 2012

DOCUMENT/FISCAL NOTE NO. 16A-5321

MAR 13 2012

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

BY: *Joseph C. Gallagher, Jr.*
Joseph C. Gallagher, Jr., DO

(Deputy General Counsel
(Chief-Counsel,
Independent-Agency
(Strike inapplicable title)

[] Check if applicable
Copy not approved.
Objections attached.

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OSTEOPATHIC MEDICINE

49 Pa. Code Ch. 25, Subchs. C and K
ACT 46 OF 2008 - PHYSICIAN ASSISTANT AND RESPIRATORY THERAPIST

The State Board of Osteopathic Medicine (Board) proposes to amend §§ 25.141, 25.142, 25.161, 25.163, 25.176, 25.191, 25.192, 25.201, 25.215, 25.231, 25.501-25.510; and to add § 25.164 (relating to professional liability insurance coverage for licensed physician assistant), to read as set forth in Annex A.

Effective date

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

Statutory Authority

The amendments are authorized under sections 10(h), 10.1(c), 10.2(f), and 16 of the Osteopathic Medical Practice Act (act) (63 P.S. §§ 271.10(h), 271.10a(c), 271.10b(f), and 271.16).

Background and Need for the Amendment

The act of July 4, 2008 (P.L. 589, No. 46) (Act 46) amended the act in a number of ways. Act 46 changed certification of respiratory care practitioners to licensure of respiratory therapists. It revised the standards for licensure as a respiratory therapist and for receiving a temporary permit to practice prior to sitting for the licensure examination. Act 46 also identified additional specific acts of practice in which physician assistants may engage and required physician assistants to complete continuing education and to maintain professional liability insurance. Additionally, the act of July 2, 2004 (P.L. 486, No. 56) (Act 56) amended section 10(f) of the act (63 P.S. § 271.10(f)) to provide that the Board shall grant licensure, rather than certification, to physician assistants. This proposed rulemaking would amend the Board's regulations to implement the changes of Acts 56 and 46.

Description of the Proposed Amendments

With regard to respiratory therapists, the proposed rulemaking would amend §§ 25.215 and 25.501 through 25.510, to replace terms referring to the certification of respiratory care practitioners with references to the licensure of respiratory therapists. For additional clarity, the Board proposes to replace the reference in § 25.507(1)(i) (relating to criteria for certification as respiratory care practitioner) from passing the "CRTT" to passing the "credentialing examination" as determined by the National Board for Respiratory Care (NBRC). Moreover, because amended section 10.1(a.2) of the act (63 P.S. § 271.10a(a.2)) prohibits one not licensed as a respiratory therapist from using the title "licensed respiratory therapist" or designations "LRT" or "RT," the proposed rulemaking would amend § 25.504(b) (relating to certification of respiratory care practitioners; practice; exceptions) to prohibit unlicensed persons from using the title "licensed respiratory therapist" or the designations "LRT" or "RT," in addition to using the words "licensed respiratory care practitioner" or "respiratory care practitioner" or the letters "RCP" or similar words or related abbreviations to suggest licensure.

The proposed rulemaking would amend § 25.505(a) and (b) (relating to functions of respiratory care practitioners) to provide that a respiratory therapist may provide services upon

referral of a certified registered nurse practitioner or physician assistant, in addition to referral of a physician, as provided in amended section 10.1(d) of the act.

Because amended section 10.1(a) of the act sets as a standard for licensure graduation from a program approved by the Committee on Accreditation for Respiratory Care (CoARC), the proposed rulemaking would amend § 25.507(1)(i) (relating to criteria for certification as a respiratory care practitioner) to require graduation from a program approved by CoARC, rather than the Joint Review Committee on Respiratory Therapy Education (JRCRTE), and would replace the definition in § 25.502 (relating to definitions). Similarly, the proposed rulemaking would amend § 25.506 (relating to temporary permits) to require that an applicant for a temporary permit shall have graduated from a program approved by CoARC, rather than JRCRTE.

Because section 10.1(a) of the act, as amended, sets as the only criteria for licensure as a respiratory therapist either graduation from a respiratory care program approved by CoARC, or existing licensure in another state by examination, the proposed rulemaking would amend § 25.507(a) to delete alternative criteria of being credentialed as a certified respiratory therapy technician or registered respiratory therapist and having continuously provided respiratory care services for a minimum of 12 months at existing subparagraphs (1)(ii) and (iv). Similarly, section 10.2(b) of the act (63 P.S. § 271.10b(b)) has been amended to delete the following alternative qualifications for a temporary permit: designation as a certified respiratory therapist or registered respiratory therapist by a National credentialing agency; continuous provision of respiratory care services for at least 12 months; and holding certification, licensure or registration as a respiratory care practitioner in another state. Instead, section 10.1 of the act provides for recognition as a credentialed respiratory therapist as approved by the Board. Therefore, the proposed rulemaking would amend § 25.506(a) to provide that a temporary permit will be issued to an applicant who is recognized as a credentialed respiratory therapist by the National Board for Respiratory Care (NBRC), which credentials respiratory therapists. Additionally, because the licensing boards of the Bureau of Professional and Occupational Affairs now accept payment by credit card for online application and may extend other payment options in the future, the Board proposes to amend § 25.507(2) to require payment of the fee “in a form acceptable to the Board.”

Because Act 46 amended section 10.2(f)(2) of the act to increase the continuing education requirement from 20 to 30 hours each biennial renewal period, the proposed rulemaking would amend § 25.509a(a) (relating to requirement of continuing education) to increase that requirement to 30 hours. Existing § 25.509a(a)(1) prohibits crediting more than 10 hours of continuing education obtained through nontraditional education such as prerecorded presentations, Internet presentations, or journal review. In drafting the proposed rulemaking, the Board considered adjusting this limitation to respond to the increased total continuing education requirement or, as suggested by the Pennsylvania Society for Respiratory Care, replacing the hour limitation with a percentage. However, the Board instead determined that it should leave this limitation as is. The proposed rulemaking would also amend § 25.509a(a)(2) by clearly stating that at least 1 hour must be completed in medical ethics and one 1 hour must be completed in patient safety, as required by amended section 10.2(f)(2) of the act. Additionally, because licensees could complete the entire amount of required continuing education through education in cardiac life support, the Board

proposes to add § 25.509a(a)(3) to prohibit credit for basic cardiac life support courses and permit no more than 8 hours during each biennial renewal period of credit in advanced cardiac life support. The Board also proposes to add § 25.509a(a)(4) to prohibit credit for the same continuing education more than once in a biennium. Because Act 46 amended section 10.2(f)(6) of the act to prohibit credit for courses in practice building as well as in office management, the proposed rulemaking would amend § 25.509b(c) accordingly. Finally, in reviewing its existing regulations in light of Act 46, the Board noticed a clarity issue in the recordkeeping requirement of § 25.509a(d), which requires a licensee to maintain proof of continuing education for 2 years, without specifying when this period would begin. Therefore, in order to permit the Board adequate time in which to audit licensees for compliance, the Board proposes to amend this subsection to require that a licensee maintain proof of continuing education for at least 2 years after the conclusion of the biennial renewal period to which the continuing education or waiver applies, the date of completion of the continuing education, or the date the waiver was granted, whichever is latest.

For physician assistants, the proposed rulemaking would amend §§ 25.141, 25.142, 25.161, 25.163, 25.176(b), 25.191(c), 25.192(c), 25.201(a), and 25.231 to reflect that physician assistants are licensed, rather than certified.

The proposed rulemaking would add new § 25.163(b.1) (relating to approval and effect of certification and biennial renewal of physician assistants and registration of supervising physicians) to require that as a condition for biennial renewal physician assistants must maintain National certification available to the profession and recognized by the Board. This new provision would note that the Board recognizes certification through the National Commission on Certification of Physician Assistants (NCCPA) and its successors and any other National organization for which the Board has published recognition of the organization's certification of physician assistants. Proposed § 25.163(b.1) would also require that as a condition of renewal, a physician assistant must complete continuing medical education, as required by amended section 10(f) of the act. Because this subsection would require physician assistants to maintain national certification and that certification may not be renewed without completing the continuing education requirements, and NCCPA has standards for continuing education programs, the Board has not proposed any additional requirements for continuing education as a condition of licensure renewal.

The proposed rulemaking would add § 25.164(a) (relating to professional liability insurance coverage for licensed physician assistants) to require physician assistants to maintain professional liability insurance as required by section 10(g.3) of the act, and proposed § 25.164(d) would prohibit a physician assistant who does not have professional liability insurance from practicing. Under § 25.164(b), a physician assistant could provide proof of insurance through a certificate of insurance or a copy of the declaration page from the insurance policy setting forth the effective date, expiration date and dollar amounts of coverage; or the physician assistant could provide proof of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Department of Insurance at 31 Pa. Code §§ 243.1-243.11 (relating to medical malpractice and health-related self-insurance plans). New section 10(g.3)(2) of the act provides that a physician assistant applicant may file a copy of a letter from a professional liability insurance carrier indicating that the applicant will be covered against professional liability in the required amounts effective upon

issuance of the applicant's license to practice, but that the new licensee has 30 days to submit to the Board proof of insurance. In order to enforce this provision, proposed § 25.164(c) would provide that failure to provide this proof within the 30-day time period will result in the license becoming inactive as a matter of law. A licensee may not practice on an inactive license, but inactivation of the license is not considered disciplinary action.

Amendments were not necessary to implement all of the provisions of Act 46. The Board has not proposed any amendments to its regulations to implement section 10.1(b) of the act, which provides that for 2 years after the effective date of Act 46, the Board may license without examination an applicant who is currently licensed by the Board or the State Board of Medicine and has otherwise met the new statutory requirements for licensure as a respiratory therapist. No amendments are necessary because this provision is self-executing. Also, because existing § 25.509a(c) provides that the Board may waive the continuing education requirement for serious illness, undue hardship or military service upon timely written request with adequate supporting documentation, the Board found it unnecessary to propose any amendments to implement section 10.(f)(4) of the act. Finally, the Board has not proposed any amendments to its regulations to implement new section 10(g.2) of the act, because it is self-executing, and the existing regulations do not explicitly prohibit these acts of medical practice by a physician assistant.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 2, 2012, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-5321 (Physician Assistant and Respiratory Therapist), when submitting comments.

Joseph C. Gallagher, Jr., DO
Chairman

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

* * * * *

Subchapter C. PHYSICIAN ASSISTANT PROVISIONS

GENERAL PROVISIONS

§ 25.141. Purpose.

The purpose of this subchapter is to implement the provisions of the act which provide for the [certification] licensure of physician assistants. The legislation provides for more effective utilization of certain skills of osteopathic physicians enabling them to delegate certain medical tasks to qualified physician assistants when such delegation is consistent with the patient's health and welfare.

§ 25.142. Definitions.

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

Certification – The [approval of an individual by the Board to serve as a physician assistant; and the] approval of a program by the Board for the training and education of physician assistants.

* * * * *

**[CERTIFICATION] LICENSURE OF PHYSICIAN ASSISTANTS AND
REGISTRATION OF SUPERVISING PHYSICIANS**

§ 25.161. Criteria for [certification] licensure as a physician assistant.

* * * * *

(c) The Board will approve for [certification] licensure as a physician assistant an applicant who:

* * * * *

(e) A person who has been [certified] licensed as a physician assistant by the State Board of Medicine shall make a separate application to the Board if he intends to provide physician assistant services for a physician licensed to practice osteopathic medicine and surgery without restriction.

(f) An application for [certification] licensure as a physician assistant by the Board may be obtained by writing to the Harrisburg office of the Board.

* * * * *

§ 25.163. Approval and effect of [certification] licensure and biennial renewal of physician assistants and registration of supervising physicians.

(a) Upon approval of an application for [certification] licensure as a physician assistant, the Board will issue a physician assistant [certificate] license which contains [his] the licensee's name, [his certificate] license number and the date of issuance, after payment of the fee required by § 25.231 (relating to schedule of fees).

(b) A physician assistant's right to continue [his practice] practicing is conditioned upon biennial renewal and the payment of the fee required by § 25.231. Upon receipt of the form provided to the physician assistant by the Board in advance of the renewal period and the

required fee, the Board will issue the physician assistant a biennial renewal certificate containing [his] the licensee's name, [his certification] license number and the beginning and ending dates of the biennial renewal period.

(b.1) To be eligible for renewal of a physician assistant license, the physician assistant shall complete continuing medical education as required by NCCPA and shall maintain National certification by completing current recertification mechanisms available to the profession and recognized by the Board. The Board recognizes certification through NCCPA and its successor organizations and certification through any other National organization for which the Board publishes recognition of the organization's certification of physician assistants.

* * * * *

(e) The Board will keep a current register of persons [certified] licensed as physician assistants. This register will include the name of each physician assistant, [his] the physician assistant's mailing address of record, [his] current business address, the date of initial [certification] licensure, biennial renewal record and current supervising physician. This register is available for public inspection.

* * * * *

§ 25.164. Professional liability insurance coverage for licensed physician assistants.

(a) A licensed physician assistant shall maintain a level of professional liability insurance coverage as required by section 10(g.3) of the act (63 P.S. § 271.10(g.3)).

(b) Proof of professional liability insurance coverage may include:

(1) A certificate of insurance or copy of the declaration page from the applicable insurance policy setting forth the effective date, expiration date, and dollar amounts of coverage.

(2) Evidence of a plan of self-insurance approved by the Insurance Commissioner of the Commonwealth under regulations of the Department of Insurance at 31 Pa. Code §§ 243.1 – 243.11 (relating to medical malpractice and health-related self-insurance plans).

(c) 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 10(g.3)(2) of the act (63 P.S. § 271.10(g.3)(2)) 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.

(d) A licensee who does not have professional liability insurance coverage as required by section 10(g.3) of the act (63 P.S. § 271.10(g.3)) may not practice as a physician assistant in this Commonwealth.

PHYSICIAN ASSISTANT UTILIZATION

* * * * *

§ 25.176. Monitoring and review of physician assistant utilization.

* * * * *

(b) Reports shall be submitted to the Board and become a permanent record under the supervising physician's registration. Deficiencies reported shall be reviewed by the Board and may provide a basis for disciplinary action against the [certification] license of the physician assistant and the license and registration, or both, of the supervising physician.

* * * * *

PHYSICIAN ASSISTANT REQUIREMENTS IN EMPLOYMENT

§ 25.191. Physician assistant identification.

* * * * *

(c) In the supervising physician's office and a satellite operation, a notice plainly visible to patients shall be posted in a prominent place explaining the meaning of the term "physician assistant." The supervising physician shall display his registration to supervise the office. The physician assistant's [certificate] license shall be prominently displayed in all facilities in which he may function. Duplicate certificates may be obtained from the Board if required.

* * * * *

§ 25.192. Notification of termination of employment; change of address.

* * * * *

(c) Failure to notify the Board of a termination in the physician/physician assistant relationship shall provide a basis for disciplinary action against the physician assistant's [certificate] license, the supervising physician's license or registration as a supervising physician.

**DISCIPLINARY ACTION AGAINST [CERTIFICATION] LICENSE OF PHYSICIAN
ASSISTANT**

§ 25.201. Grounds for complaint.

(a) The bases upon which the Board may take disciplinary action against the [certification] license of a physician assistant are set forth in section 15(b) of the act (63 P.S. § 271.15(b)). A complaint against a physician assistant shall allege that the physician assistant is performing tasks in violation of statute, regulation or good and acceptable standards of practice

of physician assistants. The grounds include those specifically enumerated in section 15(b) of the act (63 P.S. § 271.15(b)). Unprofessional conduct shall include, but is not limited to, the following:

(1) Misrepresentation or concealment of a material fact in obtaining a [certificate] license or reinstatement thereof.

* * * * *

(7) Impersonation of a licensed physician or another [certified] licensed physician assistant.

* * * * *

Subchapter D. MINIMUM STANDARDS OF PRACTICE

* * * * *

§ 25.215. Definitions.

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

Board-regulated practitioner—An osteopathic physician, physician assistant, respiratory [care practitioner] therapist, athletic trainer, acupuncturist or an applicant for a license or certificate issued by the Board.

* * * * *

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * * * *

Application for physician assistant [certificate] license\$30

* * * * *

Subchapter K. RESPIRATORY [CARE PRACTITIONERS] THERAPISTS

§ 25.501. Purpose.

This subchapter implements sections 10.1 and 10.2 of the act (63 P.S. §§ 271.10a and 271.10b), which were added by section 3 of the act of July 2, 1993 (P.L. 418, No. 59) to provide for the [certification] licensure of respiratory [care practitioners] therapists.

§ 25.502. Definitions.

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

* * * * *

CoARC – The Committee on Accreditation for Respiratory Care, an organization which accredits respiratory care programs.

[CRTT – The Certification Examination For Entry Level Respiratory Therapy Practitioners, a National uniform examination developed and administered by the NBRC for certified respiratory care therapy practitioners.]

* * * * *

[JRCRTE – The Joint Review Committee on Respiratory Therapy Education, which accredits respiratory care programs.]

NBRC – The National Board for Respiratory Care, the agency recognized by the Board to certify respiratory [care practitioners] therapists.

Respiratory [care practitioner] therapist – A person who has been [certified] licensed in accordance with the act and this subchapter.

§ 25.503. Fees.

The following is the schedule of fees charged by the Board:

* * * * *

(3) [Certification] Licensure examination\$100

* * * * *

(5) Biennial renewal of [certification] licensure.....\$25

* * * * *

§ 25.504. [Certification] Licensure of respiratory [care practitioners] therapists; practice; exceptions.

(a) A person may not practice or hold himself out as being able to practice as a respiratory [care practitioner] therapist in this Commonwealth unless the person holds a valid, current temporary permit or [certificate] license issued by the Board, or the State Board of Medicine under Chapter 18 (relating to State Board of Medicine – practitioners other than medical doctors), or is exempted under section 10.1(e) of the act (63 P.S. § 271.10a(e)) or section 13.1(e) of the Medical Practice Act of 1985(63 P.S. § 422.13a(e)).

(b) A person may not use the words “licensed respiratory therapist” or “respiratory care practitioner,” the letters “LRT” or “RT” or “R.C.P.” or similar words and related abbreviations to imply that respiratory care services are being provided, unless the services are provided by a respiratory [care practitioner] therapist who holds a valid, current temporary permit or [certificate] license issued by the Board or the State Board of Medicine and only while working under the supervision of a licensed physician.

§ 25.505. Functions of respiratory [care practitioners] therapists.

(a) Under section 10.1(d) of the act (63 P.S. § 271.10a(d)), a respiratory [care

practitioner] therapist may implement direct respiratory care to an individual being treated by either a licensed medical doctor or a licensed doctor of osteopathic medicine, upon [physician] prescription or referral by a physician, certified registered nurse practitioner or physician assistant, or under medical direction and approval consistent with standing orders or protocols of an institution or health care facility. This care may constitute indirect services such as consultation or evaluation of an individual and also includes, but is not limited to, the following services:

* * * * *

(b) Under section 10.1(d) of the act, a respiratory [care practitioner] therapist may perform the activities listed in subsection (a) only upon [physician] prescription or referral by a physician, certified registered nurse practitioner or physician assistant or while under medical direction consistent with standing orders or protocols in an institution or healthcare facility.

§ 25.506. Temporary permits.

(a) A temporary permit will be issued to an applicant who submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

- (1) Has graduated from a respiratory care program approved by the [JRCRTE] CoARC.
- (2) Is enrolled in a respiratory care program approved by the [JRCRTE] CoARC and expects to graduate within 30 days of the date of application to the Board for a temporary permit.
- [(3) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993.]

(4) Meets all applicable requirements and is recognized as a credentialed respiratory therapist by the NBRC.

* * * * *

§ 25.507. Criteria for [certification] licensure as a respiratory [care practitioner] therapist.

The Board will approve for [certification] licensure as a respiratory [care practitioner] therapist an applicant who:

(1) Submits evidence satisfactory to the Board, on forms supplied by the Board, that the applicant has met one or more of the following criteria:

(i) Has graduated from a respiratory care program approved by the [JRCRTE] CoARC and passed the [CRTT] credentialing examination as determined by the NBRC.

(ii) [Has been credentialed as a Certified Respiratory Therapy Technician or Registered Respiratory Therapist by the NBRC.

(iii)] Holds a valid license, certificate or registration as a respiratory [care practitioner] therapist in another state, territory or the District of Columbia which has been issued based on requirements substantially the same as those required by the Commonwealth, including the examination requirement.

[(iv) Has continuously provided respiratory care services for a minimum of 12 months immediately preceding December 28, 1993, and has passed the CRTT as determined by the NBRC.]

(2) Has paid the appropriate fee in [the form of a check or money order] a form acceptable to the Board.

§ 25.508. Change of name or address.

A [certificateholder] licensee shall inform the Board in writing within 10 days of a change of name or mailing address.

§ 25.509. Renewal of [certification] licensure.

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

* * * * *

(c) To retain the right to engage in practice, the [certificateholder] licensee shall renew [certification] licensure in the manner prescribed by the Board, complete the continuing education requirement set forth in § 25.509a (relating to requirement of continuing education) and pay the required fee prior to the expiration of the current biennium.

(d) When a [certification] license is renewed after December 31 of an even-numbered year, a penalty fee of \$5 for each month or part of a month of practice beyond the renewal date will be charged in addition to the renewal fee.

§ 25.509a. Requirement of continuing education.

(a) [Commencing with the biennial period January 1, 2007, through December 31, 2008, an] An applicant for biennial renewal or reactivation of [certification] licensure is required to complete a minimum of [20] 30 hours of continuing education as set forth in section 10.2(f)(2) of the act (63 P.S. § 271.10b(f)(2)) subject to the following:

* * * * *

(2) One hour [each] must be completed in medical ethics and one hour must be completed in patient safety.

(3) No credit will be given for continuing education in basic life support.

including basic cardiac life support and cardiopulmonary resuscitation. In any given biennial renewal period, a licensee may receive credit for no more than 8 continuing education hours in advanced life support, including advanced cardiac life support, neonatal advanced life support/neonatal resuscitation and pediatric advanced life support.

(4) A licensee may not receive continuing education credit for participating in a continuing education activity with objectives and content identical to those of another continuing education activity within the same biennial renewal period for which credit was granted.

(b) An individual applying for the first time for [certification] licensee in this Commonwealth is exempt from the continuing education requirement for the biennial renewal period following initial [certification] licensee.

(c) The Board may waive all or a portion of the requirements of continuing education in cases of serious illness, or other demonstrated hardship or military service. It shall be the duty of each [certificateholder] licensee who seeks a waiver to notify the Board in writing and request the waiver prior to the end of the renewal period. The request must be made in writing, with appropriate documentation, and include a description of circumstances sufficient to show why the [certificateholder] licensee is unable to comply with the continuing education requirement. The Board will grant, deny or grant in part the request for waiver and will send the [certificateholder] licensee written notification of its approval or denial in whole or in part of the request. A [certificateholder] licensee who requests a waiver may not practice as a respiratory [care practitioner] therapist after the expiration of the [certificateholder's] licensee's current [certification] license until the Board grants the waiver request.

(d) A [certificateholder] licensee shall maintain the information and documentation

concerning compliance with the continuing education requirement or the waiver granted for a period of at least 2 years after the end of the biennial renewal period to which the continuing education or waiver applies, the date of completion of the continuing education or grant of the waiver, whichever is latest, and provide the information and documentation to representatives of the Board upon request.

§ 25.509b. Approved educational courses.

* * * * *

(b) Advanced course work in respiratory care successfully completed at a degree-granting institution of higher education approved by the United States Department of Education which offers academic credits are also approved for continuing education credit by the Board. Advanced course work is course work beyond the academic requirements necessary for [certification] licensure as a respiratory [care practitioner] therapist.

(c) The Board will not accept courses of study which do not relate to the actual provision of respiratory care, such as studies in office management [and financial procedures] or practice building.

§ 25.510. Inactive status.

(a) A [certificateholder] licensee who does not intend to practice in this Commonwealth and who does not desire to renew [certification] licensure shall inform the Board in writing. Written confirmation of inactive status will be forwarded to the [certificateholder] licensee.

(b) A [certificateholder] licensee shall notify the Board, in writing, of [his] the licensee's desire to reactivate the [registration] license.

(c) A [certificateholder] licensee who is applying to return to active status is required

to pay fees which are due for the current biennium and submit a sworn statement stating the period of time during which the [certificateholder] licensee was not engaged in practice in this Commonwealth.

* * * * *

SENATE AMENDED

PRIOR PRINTER'S NO. 3007

PRINTER'S NO. 4113

 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

 No. 2088 Session of 2007

INTRODUCED BY ADOLPH, YUDICHAK, BARRAR, KILLION, BRENNAN,
 CLYMER, GEORGE, HENNESSEY, W. KELLER, R. MILLER, MILNE,
 MOYER, MUNDY, MURT, MUSTIO, O'NEILL, PALLONE, PAYNE, PETRI,
 REICHLEY, ROSS, RUBLEY, SAYLOR, SEIP, SONNEY, J. TAYLOR,
 WATSON, PETRONE AND HELM, DECEMBER 11, 2007

SENATOR ARMSTRONG, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
 AMENDED, JUNE 28, 2008

AN ACT

1 Amending the act of October 5, 1978 (P.L.1109, No.261), entitled
 2 "An act requiring the licensing of practitioners of
 3 osteopathic medicine and surgery; regulating their practice;
 4 providing for certain funds and penalties for violations and
 5 repeals," further providing for definitions, for the State
 6 Board of Osteopathic Medicine, FOR PROHIBITION ON PRACTICE <--
 7 WITHOUT LICENSE, FOR PHYSICIAN ASSISTANTS, for respiratory
 8 care practitioners, for respiratory care practitioner
 9 certificates and permits and for reasons for refusal,
 10 revocation or suspension of license; and providing for
 11 regulations.

12 The General Assembly of the Commonwealth of Pennsylvania
 13 hereby enacts as follows:

14 Section 1. The definitions of "board-regulated practitioner"
 15 and "respiratory care practitioner" in section 2 of the act of
 16 October 5, 1978 (P.L.1109, No.261), known as the Osteopathic
 17 Medical Practice Act, amended or added July 2, 1993 (P.L.418,
 18 No.59) and December 10, 2001 (P.L.863, No.93), are amended to
 19 read:

20 Section 2. Definitions.

1 The following words and phrases when used in this act shall
 2 have, unless the context clearly indicates otherwise, the
 3 meanings given to them in this section:

4 * * *

5 "Board-regulated practitioner." An osteopathic physician,
 6 physician assistant, respiratory [care practitioner] therapist
 7 or certified athletic trainer or an applicant for a license or
 8 certificate issued by the board.

9 * * *

10 "Respiratory [care practitioner] therapist." An individual
 11 who is [certified] licensed to practice respiratory care by the
 12 State Board of Osteopathic Medicine.

13 * * *

14 Section 2. Section 2.1(a) of the act, amended ~~December 10,~~ <--
 15 ~~2001 (P.L.863, No.93)~~ JUNE 11, 2008 (P.L.161, NO.20), is amended <--

16 to read:

17 Section 2.1. State Board of Osteopathic Medicine.

18 (a) The State Board of Osteopathic Medicine shall consist of
19 the Commissioner of Professional and Occupational Affairs or his
20 designee; the Secretary of Health or his designee; two members
21 appointed by the Governor who shall be persons representing the
22 public at large; one member appointed by the Governor who shall
23 be a respiratory [care practitioner] therapist, A PERFUSIONIST,
24 a physician assistant or a certified athletic trainer; and six
25 members appointed by the Governor who shall be graduates of a
26 legally incorporated and reputable college of ~~osteopathy~~
27 OSTEOPATHIC MEDICINE and shall have been licensed to practice
28 osteopathic medicine under the laws of this Commonwealth and
29 shall have been engaged in the practice of osteopathy in this
30 Commonwealth for a period of at least five years. All

<--
<--
<--

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1 professional and public members of the board shall be appointed
2 by the Governor with the advice and consent of a majority of the
3 members elected to the Senate. The Governor shall assure that
4 respiratory [care practitioners] therapists, PERFUSIONISTS,
5 physician assistants and certified athletic trainers ARE
6 APPOINTED TO FOUR-YEAR TERMS on a rotating basis.

<--
<--

7 * * *

8 SECTION 3. SECTION 3 OF THE ACT, AMENDED JULY 2, 2004
9 (P.L.486, NO.56), IS AMENDED TO READ:

<--

10 SECTION 3. PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY WITHOUT
11 LICENSE PROHIBITED.

12 (A) IT SHALL BE UNLAWFUL FOR ANY PERSON TO ENGAGE IN THE
13 PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY, OR PRETEND TO A
14 KNOWLEDGE OF ANY BRANCH OR BRANCHES OF OSTEOPATHIC MEDICINE AND
15 SURGERY, OR TO HOLD HIMSELF OUT AS A PRACTITIONER IN OSTEOPATHIC
16 MEDICINE AND SURGERY, OR TO ASSUME THE TITLE OF DOCTOR OF
17 OSTEOPATHIC MEDICINE AND SURGERY OR DOCTOR OF ANY SPECIFIC
18 DISEASE, OR TO DIAGNOSE DISEASES OR TO TREAT DISEASES BY THE USE
19 OF OSTEOPATHIC MEDICINE AND SURGERY OR BY ANY OTHER MEANS, OR TO
20 SIGN ANY BIRTH OR DEATH CERTIFICATE UNLESS OTHERWISE AUTHORIZED
21 BY LAW, OR TO HOLD HIMSELF OUT AS ABLE TO DO SO, UNLESS HE HAS
22 RECEIVED A CERTIFICATE OF LICENSURE OR PERMISSION FROM THE BOARD
23 WHICH LICENSE SHALL BE RECORDED IN THE OFFICE OF THE BOARD.

24 (B) NOTHING IN THIS ACT SHALL BE CONSTRUED TO PROHIBIT
25 SERVICES AND ACTS RENDERED BY A QUALIFIED PHYSICIAN ASSISTANT,
26 TECHNICIAN OR OTHER ALLIED MEDICAL PERSON IF SUCH SERVICES AND
27 ACTS ARE RENDERED UNDER THE SUPERVISION, DIRECTION OR CONTROL OF
28 A LICENSED PHYSICIAN. IT SHALL BE UNLAWFUL FOR ANY PERSON TO
29 PRACTICE AS A PHYSICIAN ASSISTANT UNLESS LICENSED AND APPROVED
30 BY THE BOARD. IT SHALL ALSO BE UNLAWFUL FOR ANY PHYSICIAN

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1 ASSISTANT TO RENDER MEDICAL CARE AND SERVICES EXCEPT UNDER THE
2 SUPERVISION AND DIRECTION OF THE SUPERVISING PHYSICIAN. A
3 PHYSICIAN ASSISTANT MAY USE THE TITLE PHYSICIAN ASSISTANT OR AN
4 APPROPRIATE ABBREVIATION FOR THAT TITLE, SUCH AS "P.A.-C."

5 SECTION 4. SECTION 10(F) OF THE ACT, AMENDED JULY 2, 2004
6 (P.L.486, NO.56), IS AMENDED AND THE SECTION IS AMENDED BY
7 ADDING SUBSECTIONS TO READ:

8 SECTION 10. LICENSES; EXEMPTIONS; NONRESIDENT PRACTITIONERS;
9 GRADUATE STUDENTS; BIENNIAL REGISTRATION AND
10 CONTINUING MEDICAL EDUCATION.

11 * * *

12 (F) THE BOARD SHALL GRANT LICENSURE TO PHYSICIAN ASSISTANTS
13 WHICH LICENSURE SHALL BE SUBJECT TO BIENNIAL RENEWAL BY THE
14 BOARD. AS PART OF BIENNIAL RENEWAL, A PHYSICIAN ASSISTANT SHALL
15 COMPLETE CONTINUING MEDICAL EDUCATION AS REQUIRED BY THE
16 NATIONAL COMMISSION ON CERTIFICATION OF PHYSICIAN ASSISTANTS.
17 THE BOARD SHALL GRANT LICENSURE TO APPLICANTS WHO HAVE FULFILLED
18 THE FOLLOWING CRITERIA:

19 (1) SATISFACTORY PERFORMANCE ON A PROFICIENCY
 20 EXAMINATION APPROVED BY THE BOARD.
 21 (2) SATISFACTORY COMPLETION OF A CERTIFIED PROGRAM FOR
 22 THE TRAINING AND EDUCATION OF PHYSICIAN ASSISTANTS APPROVED
 23 BY THE BOARD.
 24 (3) FOR CANDIDATES FOR INITIAL LICENSURE AFTER JANUARY
 25 1, 2005, OBTAINMENT OF A BACCALAUREATE OR HIGHER DEGREE FROM
 26 A COLLEGE OR UNIVERSITY AND COMPLETION OF NOT FEWER THAN 60
 27 CLOCK HOURS OF DIDACTIC INSTRUCTION IN PHARMACOLOGY OR OTHER
 28 RELATED COURSES AS THE BOARD MAY APPROVE BY REGULATION.
 29 IN THE EVENT THAT COMPLETION OF A FORMAL TRAINING AND
 30 EDUCATIONAL PROGRAM IS A PREREQUISITE TO TAKING THE PROFICIENCY
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1 EXAMINATION, THE BOARD SHALL HAVE THE POWER, IF IT DETERMINES
 2 THAT THE EXPERIENCE OF THE APPLICANT IS OF SUCH MAGNITUDE AND
 3 SCOPE SO AS TO RENDER FURTHER FORMAL TRAINING AND EDUCATION
 4 NONESSENTIAL TO THE APPLICANT IN ASSISTING A PHYSICIAN IN THE
 5 PROVISION OF MEDICAL CARE AND SERVICES, TO WAIVE THE TRAINING
 6 AND EDUCATION REQUIREMENTS UNDER THIS SECTION.

* * *

8 (G.2) (1) EXCEPT AS LIMITED BY PARAGRAPH (2), AND IN
 9 ADDITION TO EXISTING AUTHORITY, A PHYSICIAN ASSISTANT SHALL
 10 HAVE AUTHORITY TO DO ALL OF THE FOLLOWING, PROVIDED THAT THE
 11 PHYSICIAN ASSISTANT IS ACTING WITHIN THE SUPERVISION AND
 12 DIRECTION OF THE SUPERVISING PHYSICIAN:

13 (I) ORDER DURABLE MEDICAL EQUIPMENT.
 14 (II) ISSUE ORAL ORDERS TO THE EXTENT PERMITTED BY A
 15 HEALTH CARE FACILITY'S BYLAWS, RULES, REGULATIONS OR
 16 ADMINISTRATIVE POLICIES AND GUIDELINES.
 17 (III) ORDER PHYSICAL THERAPY AND DIETITIAN
 18 REFERRALS.
 19 (IV) ORDER RESPIRATORY AND OCCUPATIONAL THERAPY
 20 REFERRALS.
 21 (V) PERFORM DISABILITY ASSESSMENTS FOR THE PROGRAM
 22 PROVIDING TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF).
 23 (VI) ISSUE HOMEBOUND SCHOOLING CERTIFICATIONS.
 24 (VII) PERFORM AND SIGN THE INITIAL ASSESSMENT OF
 25 METHADONE TREATMENT EVALUATIONS IN ACCORDANCE WITH
 26 FEDERAL AND STATE LAW, PROVIDED THAT ANY ORDER FOR
 27 METHADONE TREATMENT SHALL BE MADE ONLY BY A PHYSICIAN.
 28 (2) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO:
 29 (I) SUPERSEDE THE AUTHORITY OF THE DEPARTMENT OF
 30 HEALTH AND THE DEPARTMENT OF PUBLIC WELFARE TO REGULATE

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1 THE TYPES OF HEALTH CARE PROFESSIONALS WHO ARE ELIGIBLE
 2 FOR MEDICAL STAFF MEMBERSHIP OR CLINICAL PRIVILEGES.

3 (II) RESTRICT THE AUTHORITY OF A HEALTH CARE
 4 FACILITY TO DETERMINE THE SCOPE OF PRACTICE AND
 5 SUPERVISION OR OTHER OVERSIGHT REQUIREMENTS FOR HEALTH
 6 CARE PROFESSIONALS PRACTICING WITHIN THE FACILITY.

7 (G.3) PROFESSIONAL LIABILITY.--

8 (1) A LICENSED PHYSICIAN ASSISTANT IN THIS COMMONWEALTH
 9 SHALL MAINTAIN A LEVEL OF PROFESSIONAL LIABILITY INSURANCE
 10 COVERAGE IN THE MINIMUM AMOUNT OF \$1,000,000 PER OCCURRENCE
 11 OR CLAIMS MADE. FAILURE TO MAINTAIN INSURANCE COVERAGE AS
 12 REQUIRED SHALL SUBJECT THE LICENSEE TO DISCIPLINARY
 13 PROCEEDINGS. THE BOARD SHALL ACCEPT FROM PHYSICIAN ASSISTANTS
 14 AS SATISFACTORY EVIDENCE OF INSURANCE COVERAGE ANY OF THE
 15 FOLLOWING:

16 (I) SELF-INSURANCE;
 17 (II) PERSONALLY PURCHASED LIABILITY INSURANCE; OR
 18 (III) PROFESSIONAL LIABILITY INSURANCE COVERAGE
 19 PROVIDED BY THE PHYSICIAN ASSISTANT'S EMPLOYER OR SIMILAR
 20 INSURANCE COVERAGE ACCEPTABLE TO THE BOARD.
 21 (2) A LICENSE APPLICANT SHALL PROVIDE PROOF THAT THE

22 APPLICANT HAS OBTAINED PROFESSIONAL LIABILITY INSURANCE IN
 23 ACCORDANCE WITH PARAGRAPH (1). IT IS SUFFICIENT IF THE
 24 APPLICANT FILES WITH THE APPLICATION A COPY OF A LETTER FROM
 25 THE APPLICANT'S PROFESSIONAL LIABILITY INSURANCE CARRIER
 26 INDICATING THAT THE APPLICANT WILL BE COVERED AGAINST
 27 PROFESSIONAL LIABILITY IN THE REQUIRED AMOUNTS EFFECTIVE UPON
 28 THE ISSUANCE OF THE APPLICANT'S LICENSE TO PRACTICE AS A
 29 PHYSICIAN ASSISTANT IN THIS COMMONWEALTH. UPON ISSUANCE OF
 30 THE LICENSE, THE LICENSEE HAS 30 DAYS TO SUBMIT TO THE BOARD

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1 THE CERTIFICATE OF INSURANCE OR A COPY OF THE POLICY
 2 DECLARATION PAGE.

3 * * *

4 Section ~~3~~ 5. Section 10.1 of the act, added July 2, 1993 <--
 5 (P.L.418, No.59), is amended to read:

6 Section 10.1. Respiratory [care practitioners] therapists.

7 [(a) Eighteen months after the effective date of this
 8 section, it shall be unlawful for any person to hold himself out
 9 to the public as a respiratory care practitioner and to practice
 10 or offer to practice respiratory care unless he holds a valid,
 11 current temporary permit or certificate issued by the board.

12 (b) A respiratory care practitioner who holds a valid,
 13 current temporary permit or certificate issued by the board may
 14 use the title respiratory care practitioner or respiratory care
 15 practitioner-certified or an appropriate abbreviation of that
 16 title, such as "R.C.P." or "R.C.P.-C."]

17 (a) An individual shall be eligible to apply for licensure
 18 as a respiratory therapist if that individual satisfies all of
 19 the following:

20 (1) Submits evidence satisfactory to the board, on forms
 21 approved by the board, that the applicant has met one or more
 22 of the following criteria:

23 (i) Has graduated from a respiratory care program
 24 approved by the Committee on Accreditation for
 25 Respiratory Care and passed the entry level examination
 26 as determined by the National Board for Respiratory Care.

27 (ii) Holds a valid license, certificate or
 28 registration as a respiratory therapist in another state,
 29 territory or the District of Columbia which has been
 30 issued based on requirements substantially similar to

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1 those required by this Commonwealth, including having
 2 successfully passed an examination.

3 (2) Has paid the licensure fee as established by the
 4 board by regulation.

5 (3) Has proved to the satisfaction of the board that the
 6 individual is of good moral character and is not unfit or
 7 unable to practice as a respiratory therapist by reason of
 8 physical or mental impairment.

9 (a.1) It shall be unlawful for any individual to hold
 10 himself out to the public as a respiratory therapist or to
 11 practice or offer to practice respiratory care unless the
 12 individual holds a valid, current license issued by the board or
 13 the State Board of Medicine.

14 (a.2) It shall be unlawful for an individual to use the
 15 title of "licensed respiratory therapist" or to use the letters
 16 "L.R.T." or "R.T." or to hold oneself out as a licensed
 17 respiratory therapist unless that individual is licensed to
 18 practice respiratory care as provided under this act or the act
 19 of December 20, 1985 (P.L.457, No.112), known as the Medical
 20 Practice Act of 1985.

21 (b) For a period of two years following the effective date
 22 of this subsection, an individual shall be eligible to apply for
 23 licensure without examination if the individual meets the
 24 qualifications for licensure under section 10.2 and holds valid

25 certification as a respiratory care practitioner as issued by
 26 the board or the State Board of Medicine.

27 (c) The board is authorized to promulgate regulations to
 28 implement this section.

29 (d) A respiratory [care practitioner certified] therapist
 30 licensed by the board may implement direct respiratory care to
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1 an individual being treated by either a licensed medical doctor
 2 or a licensed doctor of osteopathic medicine upon physician
 3 prescription or referral BY A PHYSICIAN, CERTIFIED REGISTERED <--
 4 NURSE PRACTITIONER OR PHYSICIAN ASSISTANT or under medical
 5 direction and approval consistent with standing orders or
 6 protocols of an institution or health care facility. This care
 7 may constitute indirect services, such as consultation or
 8 evaluation of an individual, and also includes, but is not
 9 limited to, the following services:

- 10 (1) Administration of medical gases.
- 11 (2) Humidity and aerosol therapy.
- 12 (3) Administration of aerosolized medications.
- 13 (4) Intermittent positive pressure breathing.
- 14 (5) Incentive spirometry.
- 15 (6) Bronchopulmonary hygiene.
- 16 (7) Management and maintenance of natural airways.
- 17 (8) Maintenance and insertion of artificial airways.
- 18 (9) Cardiopulmonary rehabilitation.
- 19 (10) Management and maintenance of mechanical
- 20 ventilation.
- 21 (11) Measurement of ventilatory flows, volumes and
- 22 pressures.
- 23 (12) Analysis of ventilatory gases and blood gases.

24 (e) This section shall not prevent or restrict the
 25 practices, services or activities of:

- 26 (1) A person licensed or certified in this Commonwealth
 27 to provide another health care service, including, but not
 28 limited to, physicians, physical therapists, chiropractors,
 29 nurses, dentists, physician assistants and podiatrists.
- 30 (2) A person rendering respiratory care services

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1 pursuant to employment by a Federal agency.

2 (3) A person pursuing a course of study leading to a
 3 degree or certificate in respiratory care in an accredited
 4 educational program if he is clearly designated as a student
 5 and provides care under supervision implemented through that
 6 program.

7 (4) A person executing or conveying medical orders
 8 pursuant to lawful delegation by a physician.

9 (5) A person who, pursuant to lawful delegation by a
 10 physician, delivers, installs, monitors or maintains a device
 11 which enables an individual to self-administer respiratory
 12 care.

13 (6) A person qualified by academic and clinical
 14 education to operate extracorporeal circulation equipment in
 15 a medical or surgical setting which requires support to or
 16 the temporary replacement of a patient's circulatory or
 17 respiratory functions.

18 (f) Information or allegations filed with the board against
 19 a respiratory [care practitioner certified] therapist licensed
 20 by the State Board of Medicine shall be referred to that board
 21 for appropriate action.

22 Section ~~4~~ 6. Section 10.2 of the act, amended or added July <--
 23 2, 1993 (P.L.418, No.59) and July 2, 2004 (P.L.486, No.56), is
 24 amended to read:

25 Section 10.2. Respiratory [care practitioner certificates]
 26 therapist licenses and permits.

27 (a) A respiratory [care practitioner certificate] therapist

28 license issued by the board empowers the holder to practice
 29 respiratory care under the supervision of a licensed medical
 30 doctor or a licensed doctor of osteopathic medicine. In a health
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1 care facility, that supervision may consist of standing orders
 2 or protocols approved by the institution consistent with
 3 acceptable and prevailing medical standards which may include
 4 services rendered directly to the patient in his home or other
 5 residence.

6 (b) The board shall issue temporary permits for the practice
 7 of respiratory care to individuals who have applied for
 8 [certification] licensure from the board and who meet any of the
 9 following requirements:

10 (1) Graduation from an accredited respiratory care
 11 training program recognized by the board.

12 (2) Enrollment in an accredited respiratory care
 13 training program recognized by the board if the individual is
 14 expected to graduate within 30 days from the date of
 15 application.

16 (3) [Designation as a "Certified Respiratory Therapist"
 17 or a "Registered Respiratory Therapist" by a nationally
 18 recognized credentialing agency approved by the board.

19 (4) Continuous provision of respiratory care services
 20 for a minimum of 12 months immediately preceding the
 21 effective date of this section.

22 (5) Holding certification, licensure or registration as
 23 a respiratory care practitioner issued by another state, the
 24 District of Columbia or a territory of the United States
 25 where the requirements for licensure, registration or
 26 certification are substantially similar to those required by
 27 the board.] Recognition as a credentialed respiratory
 28 therapist as approved by the board.

29 (c) Temporary permits shall be valid for 12 months and for
 30 such additional period as the board may, in each case, specially
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1 determine, except that a temporary permit shall expire if the
 2 holder fails the examination. An appropriate fee for a temporary
 3 permit shall be established by the board by regulation. If [he]
 4 the temporary permit holder is not in violation of any other
 5 provision of this act, a holder of a temporary permit qualifies
 6 for admission to the examination and shall apply for the next
 7 regularly scheduled [certification] licensure examination
 8 administered by the board. The board is authorized to promulgate
 9 regulations to establish procedures for application, credentials
 10 verification, examination and [certification] licensure,
 11 together with appropriate fees.

12 (d) Pursuant to section 812.1 of the act of April 9, 1929
 13 (P.L.177, No.175), known as The Administrative Code of 1929, the
 14 board shall contract for the development and administration of
 15 an examination for the [certification] licensure of respiratory
 16 [care practitioners] therapists. [At least one administration of
 17 this examination shall be given within 12 months of the
 18 effective date of this section, and the] The examination shall
 19 [thereafter] be given at least twice per year. [An individual
 20 qualifying for a temporary permit under subsection (b)(5) shall
 21 be issued a certificate by the board without examination. An
 22 individual qualifying for a temporary permit under subsection
 23 (b)(3) shall be issued a certificate by the board without
 24 examination if the individual passed an examination in order to
 25 obtain designation as a "Certified Respiratory Therapy
 26 Technician" or a "Registered Respiratory Therapist" and that
 27 examination was comparable to the examination developed and
 28 administered pursuant to this subsection.]

29 (e) A respiratory [care practitioner certificate] therapist
 30 license shall be renewed biennially upon application on a form

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1 prescribed by the board and upon payment of a renewal fee
2 adopted by the board by regulation.

3 (f) (1) The board shall adopt, promulgate and enforce rules
4 and regulations consistent with the provisions of this act
5 establishing requirements of continuing education to be met
6 by individuals holding [certification] licensure as
7 respiratory [care practitioners] therapists under this act as
8 a condition for [certificate] biennial license renewal. The
9 regulations shall include any fees necessary for the board to
10 carry out its responsibilities under this section.

11 (2) Beginning with the first biennial license renewal
12 period [designated by regulation, certificate] following
13 promulgation of regulations, license holders shall be
14 required to attend and complete [20] 30 hours of mandatory
15 continuing education during each two-year [certificate]
16 licensure period. At least one credit hour shall be in
17 ethics, and one credit hour shall be in patient safety.

18 (3) An individual applying for the first time for
19 [certification] licensure in this Commonwealth shall be
20 exempted from the continuing education requirement for the
21 biennial renewal period [following initial certification] in
22 which licensure is obtained.

23 (4) [The board may waive all or a portion of the
24 continuing education requirement for biennial renewal for a
25 certificate holder who shows to the satisfaction of the board
26 that the individual was unable to complete the requirements
27 due to serious illness, military service or other
28 demonstrated hardship. The request shall be made in writing,
29 with appropriate documentation, and shall include a
30 description of circumstances sufficient to show why the

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1 certificate holder is unable to comply with the continuing
2 education requirement. Waiver requests shall be evaluated by
3 the board on a case-by-case basis. The board shall send the
4 certificate holder written notification of its approval or
5 denial of a waiver request.] The board shall, by regulation,
6 provide for the waiver of continuing education requirements
7 in case of illness, hardship and armed service duties. A
8 request for waiver shall be evaluated on a case-by-case
9 basis.

10 (5) A [certificate holder] licensee seeking to reinstate
11 an inactive or lapsed [certificate] license shall show proof
12 of compliance with the continuing education requirement for
13 the preceding biennium.

14 (6) All courses, locations, instructors and providers
15 shall be approved by the board. No credit shall be given for
16 any course in office management or practice building.

17 [(7) The board shall initiate the promulgation of
18 regulations to carry out the provisions of this section
19 within one year of the effective date of this subsection.]

20 Section ~~5~~ 7. Section 15(b) of the act, amended July 2, 2004 <--
21 (P.L.486, No.56), is amended to read:

22 Section 15. Reasons for refusal, revocation or suspension of
23 license.

24 * * *

25 (b) The board shall have authority to refuse, revoke or
26 suspend the license of a physician assistant or respiratory
27 therapist, or the certification of a [respiratory care
28 practitioner or] certified athletic trainer for any or all of
29 the following reasons:

30 (1) Failing to demonstrate the qualification for

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1 licensure or certification contained in this act or
2 regulations of the board.

3 (2) Making misleading, deceptive, untrue or fraudulent
 4 representations in his serving as a physician assistant;
 5 practicing fraud or deceit in obtaining a license to serve as
 6 a physician assistant; or making a false or deceptive
 7 biennial registration with the board.

8 (3) Conviction of a felony in this Commonwealth or any
 9 other state, territory or country. Conviction as used in this
 10 paragraph shall include a finding or verdict of guilt, an
 11 admission of guilt or a plea of nolo contendere, or receiving
 12 probation without verdict, disposition in lieu of trial, or
 13 an Accelerated Rehabilitative Disposition in the disposition
 14 of felony charges.

15 (4) Having his license to serve as a physician assistant
 16 revoked or suspended or having other disciplinary action
 17 taken, or his application for licensure refused, revoked or
 18 suspended by the proper certifying authority of another
 19 state, territory or country.

20 (5) Being unable to serve as a physician assistant with
 21 reasonable skill and safety to the physician's patients by
 22 reason of illness, drunkenness, excessive use of drugs,
 23 narcotics, chemicals, or any other type of material, or as a
 24 result of any mental or physical condition.

25 (6) In enforcing paragraph (5), the board shall, upon
 26 probable cause, have authority to compel a physician
 27 assistant to submit to a mental or physical examination by
 28 physicians designated by it. Failure of a physician assistant
 29 to submit to such examination shall constitute an admission
 30 of the allegations against him unless the failure is due to

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 1 circumstances beyond his control, consequent upon which a
 2 default and final order may be entered without the taking of
 3 testimony or presentation of evidence. A physician assistant
 4 affected under this paragraph shall at reasonable intervals
 5 be afforded an opportunity to demonstrate that he can resume
 6 the competent assistance of a physician in the physician's
 7 practice of medicine, with reasonable skill and safety to the
 8 physician's patients.

9 (7) Violating a lawful regulation promulgated by the
 10 board or violating a lawful order of the board, previously
 11 entered by the board in a disciplinary proceeding.

12 (8) Knowingly rendering medical care and services except
 13 under the supervision and direction of the supervising
 14 physician.

15 (9) Being guilty of immoral or unprofessional conduct
 16 shall include any departure from, or the failure to conform
 17 to, the standards of acceptable and prevailing practice for
 18 physician assistants, in which proceeding actual injury to a
 19 patient need not be established.

20 * * *
 21 Section ~~6~~ 8. (A) The State Board of Osteopathic Medicine <--
 22 and the State Board of Medicine shall jointly promulgate
 23 regulations to implement the amendment of sections 2, 2.1(a),
 24 10.1, 10.2 and 15(b) of the act within 18 months of the
 25 effective date of this section.

26 (B) THE STATE BOARD OF OSTEOPATHIC MEDICINE, THE DEPARTMENT <--
 27 OF PUBLIC WELFARE AND THE DEPARTMENT OF HEALTH SHALL PROMULGATE
 28 REGULATIONS TO IMPLEMENT THE ADDITION OF SECTION 10(G.2) OF THE
 29 ACT WITHIN 18 MONTHS OF THE EFFECTIVE DATE OF THIS SECTION.

30 SECTION 9. THE FOLLOWING ACTS ARE REPEALED INsofar AS THEY
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1 ARE INCONSISTENT WITH THE ADDITION OF SECTION 10(G.2) OF THE
 2 ACT:

3 (1) SECTION 9(A) OF THE ACT OF OCTOBER 10, 1975
 4 (P.L.383, NO.110), KNOWN AS THE PHYSICAL THERAPY PRACTICE
 5 ACT.

6 (2) SECTION 14 OF THE ACT OF JUNE 15, 1982 (P.L.502,
7 NO.140), KNOWN AS THE OCCUPATIONAL THERAPY PRACTICE ACT.
8 Section ~~7~~ 10. This act shall take effect as follows: <--
9 (1) This section shall take effect immediately.
10 (2) Section ~~6~~ 8 of this act shall take effect <--
11 immediately.
12 (3) The remainder of this act shall take effect in 60
13 days.

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OSTEOPATHIC MEDICINE
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-4858

May 2, 2012

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Osteopathic Medicine
16A-5321: PHYSICIAN ASSISTANT AND RESPIRATORY THERAPIST

Dear Chairman Lutkewitte:

Enclosed is a copy of a proposed rulemaking package of the State Board of Osteopathic Medicine pertaining to Physician Assistant and Respiratory Therapist.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph C. Gallagher, Jr." with a stylized flourish at the end.

Joseph C. Gallagher, Jr., D.O., Chairperson
State Board of Osteopathic Medicine

JCG/SIH:rs

Enclosure

cc: Katie True, Commissioner
Bureau of Professional and Occupational Affairs
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Sabina I. Howell, Counsel
State Board of Osteopathic Medicine
State Board of Osteopathic Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5321
 SUBJECT: PHYSICIAN ASSISTANT AND RESPIRATORY THERAPIST
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF OSTEOPATHIC MEDICINE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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HRRC

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5/2/12	<i>Michele Warren</i>	MAJORITY CHAIRMAN <u>Julie Harhart</u>
5/2/12	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <u>Robt. M. Tomlinson</u>
5/2/12	<i>K Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
5/2/12	<i>Samatha Hansen</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)