

Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY
REVIEW COMMISSION

(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 Nursing**

(2) Agency Number: 16A
Identification Number: 5126

IRRC Number: 3046

(3) PA Code Cite: 49 Pa. Code §§ 21.29, 21.29a, 21.131-21.134, 21.156, 21.156b, 21.332, 21.723
and 21.723a

(4) Short Title: **Continuing Education; Reporting of Crimes and Discipline**

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

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(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)

This regulation: (1) amends current continuing education regulations and (2) requires licensees to report criminal and disciplinary actions/sanctions. In that nurses have now had several opportunities to obtain the continuing education and seek renewal, the Board is removing the 6-month grace period originally given to registered nurses to cure deficiencies in favor of the procedure used by other professional licensure Boards prohibiting renewal until continuing education requirements are completed. Additionally, the Board is adding the authority to require a designated course as part of the continuing education hours. Finally, the regulation requires all licensees to report crimes and disciplinary actions to the Board within 30 and 90 days of disposition, respectively.

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

The amendments relating to registered nurses and licensed dietitian-nutritionists fall within the authority of sections 2.1(k) and 12.1(a) of the Professional Nursing Law (RN Act) (63 P.S. §§ 212.1(k) and 222 (a)) which provide the general authority to the Board to establish rules and regulations for the practice of professional nursing, the practice of dietetics-nutrition and administration of the RN Act and requirements of continuing nursing education for registered nurses. The amendments relating to practical nurses fall within the authority of section 17.6 of the Practical Nurse Law (PN Law) (63 P.S. § 667.6) which authorizes the Board to establish rules and regulations for the practice of practical nursing and the administration of the PN Law.

(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.

No.

(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 regulation refines current continuing education regulations for RNs assuring their continued competence through 30 hours of education biennially. Also, by requiring PNs to notify the Board of criminal and disciplinary actions and RNs and LDNs to notify the Board sooner than currently required, the Board can better assure that licensees are qualified and competent to practice nursing benefitting recipients of nursing care.

There are approximately 217,636 RNs who renew their licenses during each biennium all of whom are required to complete 30 hours of continuing education. Certified Registered Nurse Practitioners (CRNP) may apply the continuing education credits earned for renewal of their CRNP certifications to the renewal of their RN licenses. School nurses may apply the continuing education credits earned for renewal of their school nurse certification to the renewal of their RN licenses. Licensed Dietitian-Nutritionists (LDN), who are generally not also RNs, may apply the continuing education credits earned for renewal of their LDN licenses to the renewal of their RN licenses, if applicable.

In addition to the 217,636 licensed RNs, there are also currently 4,002 LDNs and 53,322 licensed practical nurses that will be required to comply with the regulations relating to reporting crimes and disciplinary actions.

(11) 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.

No. There are no federal licensure standards for nurses or dietitians.

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

The final regulations do not adversely affect Pennsylvania's ability to compete with other states.

Neither New York nor New Jersey permit RNs to renew if they have not completed the continuing education required for the biennium. Delaware permits RNs to renew a lapsed license within 2 months of the expiration date by completing a renewal application online and paying the renewal fee plus a late fee. Beyond the 2 months, the Delaware RNs must apply for reinstatement. Under this proposal, like New York, New Jersey, and other licensing Boards within the Bureau of Professional and Occupational Affairs, 30 hours of continuing education must be completed prior to renewal.

New Jersey, Maryland, Delaware, New York, Ohio, California, Florida and Michigan Boards of Nursing regulations permit the Boards to require designated courses for registered nurses as warranted. If deemed warranted, under this proposal, registered nurses may be required by the Board to take up to 4 hours in a designated topic in a biennial renewal period.

Neighboring states of New Jersey and Maryland, in addition to California and Michigan, require both registered and practical nurses to notify the Board of criminal convictions, probations without verdict, and ARDs. Delaware, New York and Ohio do not have a similar reporting requirement. Currently, registered nurses are required to notify the Board of criminal convictions, probations without verdict, and ARDs and disciplinary sanctions as late as during renewal. The final regulations would require all licensees to report criminal actions within 30 days and disciplinary actions within 90 days. This shorter timeframe will enable the Board to learn of these actions more expeditiously and take appropriate action.

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

No.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. (“Small business” is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

In preparing this rulemaking, the Board shared drafts of the proposed amendments with stakeholders and interested parties. See Attachment 1 for the list of specific persons and/or groups who were involved. Following publication, the following stakeholders commented on the proposal: Paula A. Bussard, Senior Vice President, Policy and Regulatory Services, The Hospital & Healthsystem Association of Pennsylvania; Margaret Cybualrz, MSN, RN, PRISM Career Institute; Natalie O. DeLeonardis, RN, MSN, Coordinator, North Campus Outreach Practical Nurse Program, Pennsylvania College of Technology; Dawn Johnson, MSN, RN, Ed, Practical Nurse Administrator, Erie Business Center; and Meg Rowe, the Pennsylvania Academy of Nutrition and Dietetics. Each commentator supported the regulation.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

Currently, there are 217,636 RNs, 53,322 PNs and 4,002 LDNs that will be affected by the regulation. According to the Pennsylvania Department of Labor and Industry in 2010, the majority of RNs work in general medical & surgical hospitals (53.0%), while a minority work in physician offices (9.8%), home health care services (6.2%), nursing care facilities (5.6%), or outpatient care centers (4.2%). Other RNs are employed by other types of hospitals, community care facilities for the elderly, elementary & secondary schools, and employment placement agencies. Likewise, according to the Pennsylvania Department of Labor & Industry in 2010, the majority of PNs work in nursing care facilities (24.6%) and general medical & surgical hospitals (21.0%). A minority work in community care facilities for the elderly (11.1%), home health care services (9.4%), physician offices (9.1%), or employment placement agencies (4.3%). Other licensed practical nurses are employed with local government agencies, residential mental health facilities, and outpatient care centers. For LDNs, Most jobs are in hospitals, nursing care facilities, outpatient care centers, and offices of physicians or other health practitioners.

According to the Small Business Administration (SBA), there are approximately 982,692 businesses in Pennsylvania; of which 978,831 are small businesses; and 3,861 are large businesses. Of the 978,831 small businesses, 236,775 are small employers (those with fewer than 500 employees) and the remaining 772,056 are non-employers. Thus, the vast majority of businesses in Pennsylvania are considered small businesses.

For the business entities listed above for RNs, PNs and LDNs, small businesses are defined in Section 3 of Act 76 of 2012, which provides that a small business is defined by the U.S. Small Business Administration’s (SBA) Small Business Size Regulations under 13 CFR Ch. 1 Part 121. Specifically, the SBA has established these size standards at 13 CFR 121.201 for types of businesses under the North American Industry Classification System (NAICS).

In applying the NAICS standards to the types of businesses where nurses and dietitians/nutritionists work, a small business in general medical and surgical hospitals is one with \$35.5 million or less in average annual receipts, while a small business in offices of physicians is one with \$10.0 million or less in average annual receipts. A small business in home health care services is one with \$14.0 million or less in average annual receipts, while a “nursing care facility (skilled nursing facilities)” is one with \$25.5 million or less in annual receipts. According to the NAICS, small businesses in outpatient care centers have \$19.0 million or less in average annual receipts. Also according to the NAICS, small businesses in community care facilities for the elderly (if they are for-profit facilities) would be included as either continuing care retirement communities with \$25.5 million in average annual receipts or assisted living facilities for the elderly with \$10.0 million in average annual receipts. (However, if the community care facilities for the elderly are nonprofit facilities, the SBA would not characterize them as small businesses.) Employment placement agencies are considered small businesses if they have \$7.0 million or less in annual receipts. Residential mental health facilities have \$14.0 million or less in average annual receipts, and elementary and secondary schools are considered small businesses if they have \$10.0 million or less in average annual receipts.

The Board does not collect data regarding the size of businesses where its licensees work. Many nurses and dietitians/nutritionists probably work in small businesses in this Commonwealth. However, the regulation’s impact should not extend to those businesses as the board licenses individuals, not businesses, and there are no direct costs that would be passed on to the licensee’s employer.

(16) List the persons, groups or entities, including small businesses, that will be required to comply with the regulation. Approximate the number that will be required to comply.

Currently, there are 217,636 RNs, 53,322 PNs and 4,002 LDNs that will be affected by the regulation.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

The Board and registered nurses should have a reduced fiscal and paperwork impact by the amendment relating to continuing education because the regulation originally had permitted registered nurses to renew prior to completing the continuing education requirement. Under that provision, the review process would necessarily occur twice: once when licensees renew with deficient credits and again when licensees submit documentation evidencing completion to the Board for review. Under this proposal, registered nurses may only renew after completing their continuing education. However, should an audit reveal deficiencies, the regulation retains the requirement that deficiencies be made up within 6 months.

There is no additional fiscal or paperwork impact associated with the audit requirement or mandatory designated continuing education course as audits are currently occurring and the designated course can be completed as part of the 30 hours of continuing education that registered nurses must complete each biennium.

The requirement that registered nurses, practical nurses and licensed dietitian-nutritionists report criminal actions and disciplinary sanctions to the Board within 30 and 90 days, respectively, should have a slight fiscal and paperwork impact on the Board and licensees. Currently, licensees report this information on their biennial renewal application. Under this proposal, these reports must be made sooner, triggering additional paperwork responsibilities for licensees. The Board anticipates that it will see an increase in reports as licensees comply with the regulatory requirement thereby incurring additional enforcement costs.

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

Requiring RNs to complete their 30 hours of continuing education prior to biennial renewal assures the public that currently licensed RNs have received current nursing education. Additionally, requiring licensees to report pending criminal charges, criminal convictions, guilty pleas and ARDs within 30 days of action and disciplinary actions within 90 days of the disposition benefits the public as the Board will receive more timely notice of actions impacting licensees. Especially in the case of drug and alcohol related offenses, the Board will be better able to protect the public by requiring potentially addicted licensees to undergo mental and physical examinations.

(19) 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.

This regulation will impose at best a slight increase in costs on the regulated community. Currently such reports are made as part of the biennial renewal application. Under this proposal, licensees will be required to report criminal and disciplinary actions to the Board in a shorter timeframe, rather than at biennial renewal.

(20) Provide a specific estimate of the costs and/or savings to the 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 this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **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.

Savings: The Board should have reduced processing costs associated with reviewing continuing education documentation for RNs who renewed their licenses but did not complete their continuing education until the 6-month grace period. The Board found that managing the 6-month grace period was administratively burdensome. It required the Board to audit every nurse who renewed without certifying completion of the continuing education requirements; and then essentially audit their documentation again 6-months later to assure that all deficiencies were made up and compliance was achieved. Under the current proposal, registered nurses may only renew after completing their continuing education.

Costs: If the number of reports of criminal and disciplinary actions increases over what is currently reported at biennial renewal, the Board may incur increased enforcement costs. Because the Board cannot calculate the number of reports it will receive, it cannot, with a reasonable degree of certainty, predict the actual costs of enforcement.

The regulation does not impose any additional education requirements so there are no additional costs associated with enforcing these provisions.

(22) For each of the groups and entities identified in items (19)-(21) above, 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.

Under this proposal, licensees will be required to report pending criminal charges, criminal convictions, pleas of guilty or nolo contendere, or admissions into a probation without verdict or ARDs as well as disciplinary actions taken by other states and jurisdictions. Once received by the Board, the reports will be sent to the Bureau of Professional and Occupational Affairs' Professional Compliance Office (PCO) for processing. No specific forms are required for licensees to complete.

(23) 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:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						

Total Savings						
COSTS:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
State Board of Nursing	\$9,208,993.47	\$9,508,423.62	\$9,255,417.97	\$9,810,000.00

(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

There is no small business impact. The regulation revises existing continuing education requirements for registered nurses; and requires more timely reporting by licensees of crimes and disciplinary actions. There are no direct costs associated with the rulemaking that would be passed on to employers. RNs and LDNs are already required to maintain documentation of continuing education and provide copies to the Board. Licensees are already required to report crimes and disciplinary actions at biennial renewal. Employers, be they small or large businesses, have no obligations under these regulations.

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

No groups with particular needs have been identified.

(26) 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 alternatives have been considered as the requirements of this regulation are not burdensome on licensees. Furthermore, requiring licensees to report criminal and disciplinary actions is the most expeditious way to obtain this information. Similarly, requiring RNs to complete their continuing education before renewing their licenses is the most expeditious way to assure that licensees will complete their education in a timely manner.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performing standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

There is no small business impact as the requirements fall on individual nurses and dietitian-nutritionists and not on their employers. Less stringent reporting requirements or schedules or deadlines or exemptions for licensees employed by small businesses would be contrary to the public interest.

(28) 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.

No data was relied upon to formulate this regulation.

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

- A. The date by which the agency must receive public comments: **The public comment period ended on March 3, 2014.**
- B. The date or dates on which public meetings or hearings will be held: No specific date has been scheduled. The Board holds monthly meetings and considers public comment at those meetings.
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: Spring 2015.
- D. The expected effective date of the final-form regulation: Date of publication in the PA Bulletin as final
- E. The date by which compliance with the final-form regulation will be required: Date of publication in the PA Bulletin as final
- F. The date by which required permits, licenses or other approvals must be obtained: N/A

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The Board regularly evaluates the effectiveness of its regulations. Additionally, the Board regularly reviews requests by licensees and members of the public to amend its regulations causing the Board to evaluate the regulations' impact and necessity. The Board reviews all regulatory proposals at regularly scheduled meetings. The upcoming meeting dates for 2015 are: May 12-13, 2015, June 25, 2015, July 28, 2015, September 10, 2015, October 26-27, 2015 and December 3-4, 2015.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

2015 APR 24 AM 10: 50

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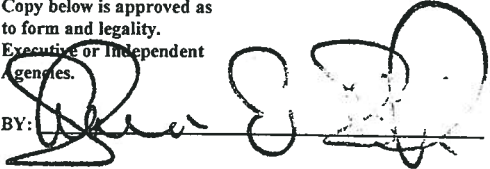
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BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Nursing
(AGENCY)

BY: 

DOCUMENT/FISCAL NOTE NO. 16A-5126

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Ann M. Coughlin, MBA, MSN, RN

(Executive Deputy General Counsel
Strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Check if applicable
Copy not approved.
Objections attached.

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

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
49 PA. CODE, CHAPTER 21
§§ 21.29, 21.29a, 21.131—21.134, 21.156, 21.156a, 21.332 21.723 and 21.723a
CONTINUING EDUCATION; REPORTING OF CRIMES AND DISCIPLINE

The State Board of Nursing (Board) hereby amends §§ 21.29, 21.131—21.134, 21.156, 21.332 and 21.723, and adds §§ 21.29a, 21.156b and 21.723a (relating to reporting of crimes and disciplinary action), 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 regarding registered nurses and licensed dietitian-nutritionists are authorized under sections 2.1(k) and 12.1(a) of The Professional Nursing Law (RN Act) (63 P.S. §§ 212.1(k) and 222 (a)) which provide the general authority to the Board to establish rules and regulations for the practice of professional nursing, the practice of dietetics-nutrition, the administration of the RN Act and requirements of continuing nursing education for registered nurses. The amendments regarding practical nurses are authorized under section 17.6 of the Practical Nurse Law (PN Law) (63 P.S. § 667.6) which authorizes the Board to establish rules and regulations for the practice of practical nursing and the administration of the PN Law.

Background and Purpose

The final-form rulemaking accomplishes two goals: (1) amends current continuing education regulations for registered nurses and (2) requires licensees to report criminal and disciplinary actions sooner than currently required. The Board published continuing education regulations implementing section 12.1 of the RN Act at 38 Pa.B. 3796 (July 12, 2008). To ease implementation, the Board had provided registered nurses with a grace period of 6 months to cure any deficiencies. Now that licensees have had an opportunity to obtain the continuing education and seek renewal, this grace period is no longer warranted and in its place, the Board is implementing a procedure for continuing education compliance identical to that applied by the other licensing boards within the Bureau of Professional and Occupational Affairs. Additionally, the final-form rulemaking provides the Board with the flexibility to require licensees to complete continuing education on a specific topic as the necessity arises. This is particularly important when there are advances or changes in practice that affect the entire profession or significant modifications to the Board's regulations.

Regarding the reporting of criminal and disciplinary actions, § 21.29(c)(4) (relating to expiration and renewal of license) requires registered nurses to report such actions on their biennial renewal. Similarly, § 21.723 (relating to license renewal) requires licensed dietitian-nutritionists to report criminal and disciplinary actions at biennial renewal. Conversely, § 21.156 (relating to renewal of license), which applies to practical nurses, does not require reporting of criminal and disciplinary actions at all. In many circumstances, especially in cases when licensees enter into an

Accelerated Rehabilitation Disposition (ARD) Program, licensees avoid notifying the Board of the criminal action because the matter has been expunged by the time of renewal. The Board is authorized to discipline licensees who receive ARD, disposition in lieu of trial or probation without verdict in the disposition of felony charges. In addition, licensees who receive ARD or other pre-trial disposition of DUIs and other drug offenses may suffer from mental or physical illnesses or conditions or physiological or psychological dependence on alcohol, hallucinogenic or narcotic drugs or other drugs which tend to impair judgment or coordination, authorizing the Board to require mental and physical examinations under section 14(a)(2) and (2.1) of the RN Act (63 P.S. § 224(a)(2) and (2.1)) or section 16(a)(6) of the PN Law (63 P.S. § 666(a)(6)). It is therefore imperative that the Board receive these reports in a timely manner.

Similarly, in spite of the statutory requirements in section 11.1 of the RN Act (63 P.S. § 221.1) and section 13.2 of the PN Law (63 P.S. § 663.2), at times the Board does not learn that disciplinary actions, including the immediate and temporary suspension of a license, were taken against a licensee in another state until the licensee reports it upon biennial renewal. To ensure that the Board receives information about these criminal and disciplinary actions in a timelier manner, the Board is updating the regulations to clarify the requirements and to expedite the reporting of crimes and disciplinary actions.

Summary and Responses to Comments

Notice of the proposed rulemaking was published at 44 Pa.B. 648 (February 1, 2014). Publication was followed by a 30-day public comment period during which the Board received comments from Paula A. Bussard, Senior Vice President, Policy and Regulatory Services, The Hospital & Healthsystem Association of Pennsylvania; Margaret Cybularz, MSN, RN, PRISM Career Institute; Natalie O. DeLeonardis, RN, MSN, Coordinator, North Campus Outreach Practical Nurse Program, Pennsylvania College of Technology; Dawn Johnson, MSN, RN, Ed, Practical Nurse Administrator, Erie Business Center; and Meg Rowe, the Pennsylvania Academy of Nutrition and Dietetics. The Independent Regulatory Review Commission (IRRC) also submitted comments. Neither the House Professional Licensure Committee (HPLC) nor the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) submitted comment.

Generally

Ms. DeLeonardis and Ms. Johnson commented in favor of the Board's proposed changes. Ms. Rowe commented that the Pennsylvania Academy of Nutrition and Dietetics finds no issue with the proposed regulation.

§§ 21.29a, 21.156b, 21.723a—Reporting of crimes and disciplinary action.

Subsection (a) of §§ 21.29a, 21.156b and 21.723a requires registered nurses, practical nurses,

and licensed dietitian-nutritionists, respectively, to report crimes and disciplinary actions to the Board within specified time frames. Ms. Cybularz expressed her agreement with these reporting requirements in that they send a message of accountability for practice and protection of the citizens in the Commonwealth. Ms. Bussard noted HAP's appreciation for the standardization of reporting requirements for registered and practical nurses.

IRRC noted that existing regulations at §§ 21.29(c) and 21.723 (b)(4) require the disclosure of pending criminal charges on the biennial renewal application and recommended that the Board amend §§ 21.29a, 21.156b and 21.723a to also require disclosure of any pending criminal charges and disciplinary actions. The Board agrees with IRRC's suggestion as to pending criminal charges and has amended §§ 21.29a(a), 21.156b(a) and 21.723a(b) accordingly. However, section 11.1 of the RN Act (63 P.S. § 221.1) and section 13.2 of the PN Act (63 P.S. § 663.2) specifically authorize the Board to require the reporting of disciplinary actions taken in other states within 90 days of final disposition and do not extend to pending disciplinary actions. For that reason, the Board did not add a requirement to report pending disciplinary actions to the final-form rulemaking.

§ 21.131—Continuing Education.

Subsection (b) exempts applicants for licensure by examination and endorsement from completing the continuation education requirements for the first renewal immediately following licensure. IRRC questioned the Board's rationale and statutory basis for the amendment to this provision which deleted the phrase "by examination." IRRC asked whether this amendment was intended to allow applicants for initial licensure by reciprocity to be exempt from the continuing education requirements for the first renewal immediately following licensure. In addition, IRRC asked for the statutory authority for such an exemption, and an explanation of why the Board believes this is reasonable.

In revising its continuing education regulations, the Board desired to make its procedures identical to the other licensing Boards within the Bureau of Professional and Occupational Affairs that require continuing education. Each of those Boards exempt applicants for both licensure by examination and endorsement/reciprocity. The Board's statutory authority is found in section 12.1(c) of the RN Law (63 P.S. § 222.1(c)) which exempts all "individuals applying for the first time for licensure in this Commonwealth" from the continuing education requirement for the first renewal immediately following licensure. This provision is not limited to those applying for licensure by examination. Therefore, the Board believes the exemption must be applied to all applicants applying for the first time for licensure in this Commonwealth, whether by examination or by endorsement. Had the statutory provision not included the modifier "in this Commonwealth," the Board would have retained the limitation to those applying for licensure for the first time by examination.

Ms. Bussard noted HAP's appreciation for the Board's implementation of a continuing education procedure identical to that applied by the other Boards.

IRRC also recommended that the Board add the *Purdon*'s citation to the cross reference to section 14(a)(4)(i) of the RN Law in subsection (h)(4). The Board has made this amendment to the final-form rulemaking.

§ 21.132—Continuing education hours

Ms. Cybularz expressed her agreement with the Board's replacement of the term "course" for "units" in subsection (b).

Description of Amendments to the Final-form rulemaking

The Board has amended the final-form rulemaking to include the duty to report pending criminal charges in §§ 21.29a, 21.156b and 21.723a (relating to reporting of crimes and disciplinary action) as requested by IRRC. In § 21.131(d) (relating to continuing education) the Board has deleted the word "renewal" which had been inadvertently added to the proposed rulemaking. The inclusion of the word "renewal" in the phrase "biennial renewal period" changes the intended meaning of the provision. The Board intends that nurses who are seeking reinstatement of a lapsed license or reactivation of an inactive license complete 30 hours of continuing education within the biennial (2-year) period immediately preceding application for reinstatement or reactivation. Additionally, the Board added a cross-reference to the RN law to § 21.131(h)(4), as requested by IRRC.

Fiscal Impact and Paperwork Requirements

The Board and registered nurses should have a reduced fiscal and paperwork impact by the amendment relating to continuing education because the registered nurses will only be able to renew after completing their continuing education thereby eliminating licensees' submission and the Board's dual review of renewal applications and documentation evidencing completion. Should an audit reveal deficiencies, the regulation retains the requirement that deficiencies be made up within 6 months.

There is no additional fiscal or paperwork impact associated with the audit requirement or mandatory designated continuing education course as audits are currently occurring and the designated course can be completed as part of the 30 hours of continuing education that registered nurses must complete each biennium.

The requirement that registered nurses, practical nurses and licensed dietitian-nutritionists report criminal actions and disciplinary sanctions to the Board within 30 and 90 days, respectively, should have a slight fiscal and paperwork impact on the Board and licensees. Under this amendment, licensees must report this information sooner, triggering additional paperwork

responsibilities for licensees. The Board anticipates that it will see an increase in reports as licensees comply with the regulatory requirement thereby incurring additional enforcement costs.

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 January 17, 2014, the Board submitted notice of this proposed rulemaking, published at 44 *Pa.B.* 648 (February 1, 2014), to IRRC and the Chairpersons of the HPLC and SCP/PLC for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2015 the final-form rulemaking was approved by the HPLC. On _____, 2015, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2015, and approved the final-form rulemaking.

Additional Information

Additional information may be obtained by writing to Cynthia Miller, Board Administrator, State Board of Nursing, P.O. Box 2649, Harrisburg, PA 17105-2649.

Findings

The State Board of Nursing finds that:

- (1) Public notice of intention to adopt a regulation at 49 Pa. Code, Chapter 21, was given under sections 201 and 202 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201-1202) and the regulations promulgated under those sections at 1 Pa. Code §§ 7.1-7.2.
- (2) A public comment period was provided as required by law and all comments were considered in drafting this final-form rulemaking.

- (3) The amendments made to the final-form rulemaking do not enlarge the original purpose of the proposed rulemaking as published under section 201 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1201).
- (4) These amendments to the regulations of the State Board of Nursing are necessary and appropriate for the regulation of the practice of professional nurses, practical nurses, and licensed dietitian-nutritionists in the Commonwealth.

Order

The Board therefore ORDERS that:

- (A) The regulations of the State Board of Nursing, 49 Pa. Code, Chapter 21, are amended to read as set forth in Annex A.
- (B) The Board shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.
- (C) The Board shall certify this Order and Annex and shall deposit them with the Legislative Reference Bureau as required by law.
- (D) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Ann M. Coughlin, MBA, MSN, RN, Chair

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 21. STATE BOARD OF NURSING

Subchapter A. REGISTERED NURSES

LICENSES

§ 21.29. Expiration and renewal of license.

* * * * *

(c) The applicant for license renewal may complete and submit an application online or may mail a completed application form to the Board's administrative office. When applying for licensure renewal, a [professional] registered nurse shall:

* * * * *

(4) Disclose any discipline imposed by a state licensing board on any nursing or allied health profession license or certificate in the previous biennial period and any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition during the previous biennial period unless prior notification has been made under § 21.29a (relating to reporting of crimes and disciplinary action).

* * * * *

§ 21.29a. Reporting of crimes and disciplinary action.

(a) A REGISTERED NURSE SHALL NOTIFY THE BOARD OF PENDING CRIMINAL CHARGES WITHIN 30 DAYS OF THE FILING OF THE CRIMINAL CHARGES OR ON THE BIENNIAL RENEWAL APPLICATION UNDER § 21.29(c)(4) (RELATING TO EXPIRATION AND RENEWAL OF LICENSE), WHICHEVER IS SOONER.

(b) A registered nurse shall notify the Board of a criminal conviction, plea of guilty or nolo contendere, or an admission into a probation without verdict or accelerated rehabilitative disposition program within 30 days of the disposition or on the biennial renewal application under § 21.29(c)(4) (relating to expiration and renewal of license), whichever is sooner.

~~(b)~~ (C) A registered nurse shall notify the Board of disciplinary action in the nature of a final order taken against the registered nurse by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action, or on the biennial renewal application under § 21.29(c)(4), whichever is sooner.

CONTINUING EDUCATION

§ 21.131. Continuing education.

(a) *Requirement of continuing education.* [Beginning with the license period commencing on July 12, 2010, an applicant for renewal of a professional nursing license] A registered nurse seeking licensure renewal shall complete 30 hours of continuing education approved by the Board during the biennial renewal period immediately preceding the application for renewal in accordance with section [12] 12.1 of the act (63 P.S. § 222) and this subchapter. The Board will not renew a license of a registered nurse who fails to verify compliance with the continuing education requirement. A registered nurse whose license is not renewed by the expiration of the

biennial renewal period may not engage in the practice of professional nursing until the continuing education requirements are satisfied and the license has been renewed, reinstated or reactivated.

(b) *Exception.* An applicant applying for initial licensure [by examination] in this Commonwealth will not be required to meet the continuing education requirement on the first renewal immediately following licensure [if the applicant completed an approved nursing education program, within 2 years of the date of application for initial licensure by examination].

(c) *Board audits; proof of completion.* The Board may perform audits on [professional] registered nurses to determine compliance with the continuing education requirements. A [professional] registered nurse shall retain documentation of the registered nurse's completion of continuing education for at least 5 years. A [professional] registered nurse shall comply with a request for submission of documents verifying the registered nurse's completion of continuing education. The following documents shall be retained and submitted upon request:

- (1) For attendance at continuing education programs or courses, the registered nurse shall retain the certificate of attendance provided by the program or course provider.
- (2) For academic courses taken from an accredited college or university, the registered nurse shall retain the [official] transcript issued by the educational institution.
- (3) For publication of a textbook or article, the registered nurse shall retain a copy of the published item, including the date of publication.
- (4) For a research project, the registered nurse shall retain a copy of the research abstract, letter from the institutional review board granting approval for the research projects and list of primary and co-investigators.

* * * * *

(d) *Reinstatement of lapsed license or reactivation of inactive license.* A [licensee] registered nurse seeking to reinstate a lapsed license or reactivate an inactive license shall file an application for reinstatement or reactivation and submit documentation to demonstrate that the [licensee] registered nurse completed 30 hours of continuing education within the biennial renewal period immediately preceding application [for reinstatement]. [A refresher or reactivation course at an accredited school of nursing will be credited toward the 30-hour continuing education requirement as set forth in § 21.132 (relating to continuing education hours).]

(e) *Reinstatement of suspended license.* A [licensee] registered nurse seeking to reinstate a suspended license shall submit documentation to demonstrate that the [licensee] registered nurse completed 30 hours of continuing education within the biennial period immediately preceding application for reinstatement.

(f) *Carry over.* Continuing education hours may not be carried over from one biennial renewal period to the next.

(g) *Waiver.* A [licensee] registered nurse may request a waiver of the continuing education requirement because of serious illness, military service or other demonstrated hardship. The [licensee] registered nurse shall submit the request and any supporting documentation to the Board in writing at least 90 days prior to the [licensee's] registered nurse's license expiration date unless an emergency or hardship occurs within the 90-day period. The Board will grant, deny or grant in part the request for waiver.

[(g)] (h) *Disciplinary action authorized.*

(1) Failure to complete a minimum of 30 hours of continuing education in a biennial period in accordance with subsection (a) will subject the [professional] registered nurse to

discipline under section 13(b) of the act (63 P.S. § 223(b)) in accordance with the schedule of civil penalties at § 43b.18 (relating to schedule of civil penalties – nurses). A second or subsequent violation will subject the [professional] registered nurse to discipline under section 14(a)(3) of the act (63 P.S. § 224(a)(3)).

(2) A [professional] registered nurse who has not completed a minimum of 30 hours of continuing education [shall report the number of continuing education hours completed on the biennial renewal application and] shall make up the deficiency within 6 months of [the expiration date of the nurse’s license] receiving notice of the deficiency. [The licensee shall provide documentation demonstrating the completion of the entire 30-hour requirement to the Board immediately upon completion, but no later than 6 months after the end of the biennial period.]

(3) Notwithstanding any civil penalty assessed under paragraph (1), failure to provide the Board with documentation demonstrating the completion of 30 hours of approved continuing education within 6 months after [the end of the biennial period in which the professional nurse was deficient] receiving notice of a deficiency will subject the [licensee] registered nurse to discipline under section 14(a)(3) of the act.

(4) Failure to comply with an audit request for continuing education documentation may subject a registered nurse to additional discipline under section 14(a)(4)(i) of the act (63 P.S. § 224(a)(4)(i)).

§ 21.132. Continuing education hours.

* * * * *

(b) For purposes of determining acceptable hours of continuing education for academic coursework, the following apply:

- (1) One academic trimester [unit] course is equivalent to 12 continuing education hours.
- (2) One academic quarter [unit] course is equivalent to 10 continuing education hours.
- (3) One academic semester [unit] course is equivalent to 15 continuing education hours.

§ 21.133. Continuing education content.

* * * * *

(b) The Board may, for any given biennial license period and with adequate notice to registered nurses, require that up to 4 hours of continuing education be completed in designated topics.

(c) Courses in areas related to the practice of professional nursing such as the following are acceptable:

* * * * *

[(c)] (d) Courses in areas impacting the practice of professional nursing [practice], such as nursing administration, management, education and diagnostic and procedural coding are acceptable.

[(d)] (e) Group or individual research, as the principal or co-principal investigator, if approved by the institutional review board of the sponsoring institution, is acceptable and will be credited in the year completed as 15 hours of continuing education.

[(e)] (f) Nonprofessional course content not directly related to patient care, such as courses in self-improvement, changed in attitude, financial gain, courses designed for lay people, basic life

support or cardiopulmonary [resuscitation] resuscitation, mandatory annual education on facility specific policies unrelated to the practice of professional nursing [practice] (such as facility leave policies) and employment orientation programs are not acceptable for meeting requirements for license renewal.

§ 21.134. Continuing education sources.

(a) The following continuing education activities that meet the requirements of § 21.133 (relating to continuing education content) for [professional] registered nurses are approved:

- (1) Activities sponsored by a Board-approved practical or professional nursing program or [CRNP education] a Nationally accredited graduate nursing program.

* * * * *

(b) The Board may approve other sources of continuing education on a case-by-case basis after the provider or [professional] registered nurse seeking approval submits the following:

* * * * *

Subchapter B. PRACTICAL NURSES

LICENSURE

§ 21.156. Renewal of license.

* * * * *

(b) [Application for renewal] Notice of the renewal period of a license will be forwarded biennially to each active [registrant] licensee prior to the expiration date of the current renewal biennium.

(c) [Application forms shall be completed and returned, accompanied by the required renewal fee. Upon approval of an application, the applicant will receive a license for the current renewal period. The display portion of the renewal license shall be retained by the current

employer of the registrant. The pocket card portion shall be retained by the registrant.] The applicant for license renewal may complete and submit an application in a form acceptable to the Board. When applying for licensure renewal, an LPN shall:

- (1) Complete and submit the renewal application, including disclosing any license to practice nursing or any allied health profession in any other state, territory, possession or country.
 - (2) Pay the biennial renewal of license fee in § 21.147(b) (relating to fees).
 - (3) Disclose any discipline imposed by a state licensing board in the previous biennial period and any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period, unless prior notification has been made under § 21.156b (relating to reporting of crimes and disciplinary action).
- (d) When communicating with the Board, [registrants] LPNs shall identify themselves by their full name, [including maiden name,] current address and [their Commonwealth certification number, which shall be typed or printed] license number.

§ 21.156b. Reporting of crimes and disciplinary action.

- (a) AN LPN SHALL NOTIFY THE BOARD OF PENDING CRIMINAL CHARGES WITHIN 30 DAYS OF THE FILING OF THE CRIMINAL CHARGES OR ON THE BIENNIAL RENEWAL APPLICATION UNDER § 21.156 (RELATING TO RENEWAL OF LICENSE), WHICHEVER IS SOONER.
- (b) An LPN shall notify the Board of a criminal conviction, plea of guilty or nolo contendere or admission into a probation without verdict or accelerated rehabilitative disposition program

within 30 days of the disposition or on the biennial renewal application under § 21.156 (relating to renewal of license), whichever is sooner.

(b) (C) An LPN shall notify the Board of disciplinary action in the nature of a final order taken against the LPN by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action or on the biennial renewal application under § 21.156, whichever is sooner.

Subchapter C. CERTIFIED REGISTERED NURSE PRACTITIONERS

MAINTENANCE OF CERTIFICATION

§ 21.332. Requirement of continuing education.

* * * * *

(b) Continuing education requirements shall be completed each biennial renewal cycle.

* * * * *

(2) The Board may waive the requirements of continuing education in cases of illness or undue hardship. It is the duty of each CRNP who seeks a waiver to notify the Board in writing and request the waiver at least 90 days prior to the end of the renewal period unless an emergency or hardship occurs within the 90-day period. The Board will grant, deny or grant in part the request for waiver.

* * * * *

Subchapter G. DIETITIAN-NUTRITIONISTS

LICENSURE REQUIREMENTS

§ 21.723. License renewal.

* * * * *

(b) When applying for renewal of licensure, an LDN shall:

* * * * *

(4) Disclose any discipline imposed by a state licensing board in the previous biennial period or any criminal charges pending or criminal conviction, plea of guilty or nolo contendere, or admission into a probation without verdict or accelerated rehabilitative disposition program during the previous biennial period unless prior notification has been made under § 21.723a (relating to reporting of crimes and disciplinary action).

§ 21.723a. Reporting of crimes and disciplinary action.

(a) AN LDN SHALL NOTIFY THE BOARD OF PENDING CRIMINAL CHARGES WITHIN 30 DAYS OF THE FILING OF THE CRIMINAL CHARGES OR ON THE BIENNIAL RENEWAL APPLICATION UNDER § 21.723 (RELATING TO LICENSE RENEWAL), WHICHEVER IS SOONER.

(b) An LDN shall notify the Board of a criminal conviction, plea of guilty or nolo contendere or admission into a probation without verdict or accelerated rehabilitative disposition program within 30 days of the disposition or on the biennial renewal application under § 21.723 (relating to license renewal), whichever is sooner.

~~(b)~~ (C) An LDN shall notify the Board of disciplinary action in the nature of a final order taken against the LDN's license by the licensing authority of another state, territory or country within 90 days of receiving notice of the disciplinary action or on the biennial renewal application under § 21.723, whichever is sooner.

* * * * *

State Board of Nursing
16A-5126 – Continuing Education; Reporting of Crimes and Discipline
List of Public Commentators

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING

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April 24, 2015

The Honorable John F. Mizner, Esq., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation
State Board of Nursing
16A-5126:CONTINUING EDUCATION; REPORTING OF CRIMES AND DISCIPLINE

Dear Chairman Mizner:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to Continuing Education; Report of Crimes and Discipline.

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

Sincerely,

Kristin Malady, BSN, RN, Chairperson
State Board of Nursing

KM/JPS:rs

Enclosure

cc: Ian J. Harlow., Acting Commissioner of
Professional and Occupational Affairs
Patricia Allan, Director of Policy, Department of State
Steven Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Judith Pachter Schulder, Counsel
State Board of Nursing
State Board of Nursing

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

I.D. NUMBER: 16A-5126
SUBJECT: Continuing Education; Reporting of Crimes and Discipline
AGENCY: DEPARTMENT OF STATE
 BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
 STATE BOARD OF NURSING

TYPE OF REGULATION

- Proposed Regulation
- X 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 Disapproved Regulation
 - a. With Revisions
 - b. Without Revisions

2015 APR 24 AM 10:50

RECEIVED
LRPC

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
		<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>
4/24/15	<i>Michele Warren</i>	MAJORITY CHAIR <u>Julie Harhart</u>
		MINORITY CHAIR _____
		<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>
4/24/15	<i>Lanny Brinkman</i>	MAJORITY CHAIR <u>Robt. M. Tomlinson</u>
		MINORITY CHAIR _____
4/24/15	<i>K Cooper</i>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL</i> (for Final Omitted only)
		<i>LEGISLATIVE REFERENCE BUREAU</i> (for Proposed only)