

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: 5125

IRRC Number: 3080

(3) PA Code Cite:

49 Pa. Code §§ 21.2, 21.3, 21.7, 21.21—21.25, 21.27—21.30a, 21.142, 21.144, 21.149, 21.151—
21.156c, 21.701, 21.722, 21.723b, and 21.724

(4) Short Title:

General Revisions

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

Primary Contact: **Judith Pachter Schulder, Board Counsel, State Board of Nursing, 2601 N. Third
Street, P.O. Box 69523, Harrisburg, PA 17106-9523; Phone: (717) 783-7200; Fax: (717) 787-0251;
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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) establishes timeframes within which candidates for licensure as registered nurses (RNs), practical nurses (PNs) and dietitian-nutritionists (LDNs) must first take the applicable licensure examinations, (2) updates and makes uniform application and examination provisions for registered and practical nurses and dietitian-nutritionists where applicable, and (3) deletes references to the National Council Licensure Examination and the Commission on Graduates of International Nursing Schools and replaces them with generic references.

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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 section 2.1(k) of the Professional Nursing Law (RN Law) (63 P.S. § 212.1(k)) which provides 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 Law. 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.

Sections 21.33b and 21.162b (relating to minimum rate for graduates of nursing education programs to pass the National licensure examination) tie a nursing education program's approval status to the pass rate of its first time test-taker graduates. In 2007, the National Council of State Boards of Nursing (NCSBN) examined the relationship between passing the National Council Licensing Examination (NCLEX® examination) and the elapsed time between becoming eligible and taking the NCLEX for 421,739 RN candidates and 183,546 PN candidates who took the NCLEX from the calendar years 2003-2005 (Eich, Michelle, and O'Neill, Thomas. "NCLEX® Delay Pass Rate Study." January 2007). The study concluded that for the overall testing population, passing rates decreased as the time between the date of becoming eligible to sit for the examination and the actual test date increased. Additionally, the study concluded that repeat testers waiting longer to test produced some of the lowest passing rates. These results were confirmed in a subsequent 2009 NCSBN study using logistic regression that further investigated the effect of exam delays and retake attempts for 176,539 registered nurse and 67,849 practical nurse candidates (Woo, Ada, Wendt, Anne and Liu, Weiwei. "NCLEX Pass Rates: An Investigation Into the Effect of Lag Time and Retake Attempts." JONA'S Healthcare Law, Ethics, and Regulation / Volume 11, Number 1 / January–March 2009). The 2009 study revealed again that pass rate results inversely relate to the amount of time candidates wait to take the NCLEX as candidates were less likely to pass the NCLEX as lag time increased. Studies separately undertaken by the State Boards of California and Oklahoma yielded similar results.

Administrators of RN and PN nursing education programs provided similar antidotal information to the Board as part of their pre-draft input. They requested that the Board insert a provision into the regulations requiring candidates for the licensure examinations to take the examinations for the first time within 1 year of completing their education programs.

(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.

Twenty-three states, including Delaware, Illinois, Maryland, Michigan, Texas, Virginia, and West Virginia require that the examination be passed within months to 5 years of graduation from a nursing education program.

(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. Following publication, the following individuals/entities commented on the proposed regulation: Paula A. Bussard, Senior Vice President, Policy and Regulatory Services, The Hospital & Healthsystem Association of Pennsylvania; Aaron M. Shenck, Executive Director, Pennsylvania Association of Private School Administrators; Margaret Cybularz, MSN, RN, PRISM Career Institute; and Eileen Chopnick, MA, RD, LDN, Michele Rager, MS, RDN, LDN, CNSC, Meg Rowe, MS, RD, LDN, FAND, Jule Anne Henstenberg, MS, RDN, LDN, FAND, and Doris Piccinin, MS, RD, CDE, CD, on behalf of the the Pennsylvania Academy of Nutrition and Dietetics.

(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?

From October 1, 2014, through September 30, 2015, 7,524 graduates of registered nurse education programs and 2,456 graduates of practical nurse education programs took the licensure examinations in Pennsylvania. (In that the Board does not qualify candidates to take the LDN examinations, the Board does not have examinee statistics specific to Pennsylvania.)

In that this regulation solely involves graduates of nursing education programs who have yet to take or pass the licensure examinations, there are no businesses or small businesses impacted by this regulation.

(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.

From October 1, 2014, through September 30, 2015, 7,524 graduates of registered nurse education programs and 2,456 graduates of practical nurse education programs took the licensure examinations in this Commonwealth. Of those taking the exams, 87.17% of the registered nurse candidates and 82.08% of the practical nurse candidates passed. One year earlier, 7,164 registered nurse candidates and 2,512 practical nurse candidates took the licensure examinations. At that time, 82.82% of the registered nurse candidates and 85.75% of the practical nurse candidates passed.

Nationally, from October 1, 2014, through September 30, 2015, the pass rate for registered nurses was 84.18% and the pass rate for practical nurses was 81.18%. The previous year, the pass rate nationally for registered nurses was 81.74% and the pass rate for practical nurses was 82.81%.

In that the Board does not pre-qualify candidates to take the LDN examinations, the Board does not have examinee statistics specific to Pennsylvania. From January 1, 2015 through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination nationwide. Seventy percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed.

(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 regulation will not have any financial, economic or social impact on candidates for RN, PN and LDN licenses as the only substantive change to the regulation is that the licensure examinations must be first taken within 1 year of completion of the nursing education program (unless prevented by emergency, illness, military service or other good cause or the candidate holds a license in another state or country). Candidates continue to need to pass the examination in order to obtain a license.

Requiring candidates to take the examinations within 1 year of graduation enables the candidates to pass the examination at a higher rate. The Board's examination statistics from January 2015 to June 2016 reflect that the more times a candidate takes the registered nurse or practical nurse licensure examinations, the less likely the candidate is to pass the examination. During this 18-month period, 2,762 registered nurse candidates and 1,166 practical nurse candidates retook the licensure examinations. The numbers of repeats range from 1 to 40 for registered nurse candidates and from 1 to 50 for practical nurse candidates. First time repeaters (those taking the examination a second time) formed the largest group of the repeaters and passed at the highest rate with 56.80% of the registered nurse candidates and 48.00% of the practical nurse candidates passing. Thereafter, the pass rate dropped precipitously. For registered nurse candidates, the percentage of pass rates for second through 12 time repeaters (those having taken the test three through 13 times) decreased as follows: 45.40%, 39.00%, 29.60%, 22.80%, 17.80%, 19.10%, 27.60%, 15.80%, 30.80%, 8.30%, 20.00%.

Beginning with the 14th retake and extending through 40 retakes, 100% of registered nurse candidates examined failed. The distinction between the number of retakes and pass rates is similar for practical nurse candidates. The percentage of pass rates for second through twelfth time repeaters (those having taken the test three through 13 times) decreased as follows: 32.90%, 24.10%, 16.70%, 25.00%, 9.10% and 20.80%, 0.00%, 0.00%, 10.00%, 0.00%, 20.00%. Beginning with the 14th and continuing through the 50th retake, except for one candidate who passed on the 18th retake, 100% of the practical nurse candidates examined failed.

The statistics regarding pass rates for first time and repeat test takers is similar for LDN examinees. Although there are no statistical breakdowns by the number of times the examination was taken by a particular candidate, from January 1, 2015 through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination nationwide. Seventy percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers passed, however excluding repeat test takers, 85% of the first time test takers passed.

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

There are no costs or adverse effects of this proposal.

(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.

There are no costs or savings to regulated community associated with this rulemaking. Candidates for RN, PN and LDN licenses continue to need to pass the examination in order to obtain a license.

(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.

The regulation imposes, at best, minimal additional costs to state government as Board staff will have to receive documentation from the candidates to justify any failure to take the examinations within 1 year of completion of the nursing education program.

(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, candidates will be required to provide documentation to justify an emergency, illness, military service or other good cause or license in another state or country to explain any failure to take the examinations within one year of completion of the nursing education program. Like the rest of the application, the materials will be kept in the applicant's file. No specific forms are required for applicants to complete. A category for failure to provide this justification will be added to the form discrepancy letter sent to applicants whose applications are missing documentation.

(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 16-17	FY +1 17-18	FY +2 18-19	FY +3 19-20	FY +4 20-21	FY +5 21-22
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 13-14 Actual	FY -2 14-15 Actual	FY -1 15-16 Projected	Current FY 16-17 Budgeted
State Board of Nursing	\$10,918,637.53	\$12,525,439.83	\$13,469,000.00	\$13,863,000.00

(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 examination procedures. In that regulations impacts candidates for licensure, there are no direct costs associated with the rulemaking that would be passed on to employers. 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.

Based upon the current application procedures and the statistical evidence regarding pass rates on the licensure examinations, no alternatives have been considered as the requirements of this regulation are not burdensome on candidates for licensure.

(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 candidates for licensure as 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.

The following document Pennsylvania and national examination results:

[https://www.ncsbn.org/pdfs/RecentNCLEXResearch Web Testing017B02.pdf](https://www.ncsbn.org/pdfs/RecentNCLEXResearch%20Web%20Testing017B02.pdf)

[https://www.ncsbn.org/NCLEX Pass Rates Lagtime and Retake.pdf](https://www.ncsbn.org/NCLEX%20Pass%20Rates%20Lagtime%20and%20Retake.pdf)

[https://www.ncsbn.org/Table of Pass Rates 2014.pdf](https://www.ncsbn.org/Table%20of%20Pass%20Rates%202014.pdf)

[https://www.ncsbn.org/Table of Pass Rates 2013.pdf](https://www.ncsbn.org/Table%20of%20Pass%20Rates%202013.pdf)

[https://www.ncsbn.org/Table of Pass Rates 2012.pdf](https://www.ncsbn.org/Table%20of%20Pass%20Rates%202012.pdf)

[https://www.ncsbn.org/Table of Pass Rates 2011.pdf](https://www.ncsbn.org/Table%20of%20Pass%20Rates%202011.pdf)

(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 December 1, 2014.**
- B. The date or dates on which public meetings or hearings will be held: **No specific date has been scheduled. The Board holds regularly scheduled public meetings and considers public comment at those meetings.**
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: **Fall 2016.**
- D. The expected effective date of the final-form regulation: **Date of publication in the PA Bulletin as final-form rulemaking.**
- 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 remaining meeting dates for 2016 are: September 16, October 27-28 and December 8, 2016. The upcoming meeting dates for 2017 are: January 20, March 9, April 20, June 8-9, July 26, September 14, October 26-27 and December 7, 2017.

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(DEPUTY ATTORNEY GENERAL)

State Board of Nursing
(AGENCY)

BY: Maura H. Z. LehrDOCUMENT/FISCAL NOTE NO. 16A-5125

SEP 20 2016

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: Kristin Malady, RN, BSN(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.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING
49 PA. CODE, CHAPTER 21**

§§ 21.2, 21.3, 21.7, 21.21—21.25, 21.27—21.29, 21.29b, 21.30, 21.30a, 21.142, 21.144, 21.149, 21.151—
21.156, 21.156b, 21.156c, 21.701, 21.722, 21.723b, and 21.724

**GENERAL REVISIONS
FINAL-FORM RULEMAKING**

The State Board of Nursing (Board) hereby amends Chapter 21 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 section 2.1(k) of The Professional Nursing Law (RN Law) (63 P.S. § 212.1(k)) which provides the Board with the general authority to establish rules and regulations for the practice of professional nursing, the practice of dietetics-nutrition and the administration of the RN Law. 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 three goals: (1) establishes timeframes within which candidates for licensure as registered nurses, practical nurses and dietitian-nutritionists must first take the applicable licensure examinations; (2) updates and makes uniform application and examination provisions for registered nurses, practical nurses and dietitian-nutritionists, where applicable; and (3) deletes references to the National Council Licensure Examination and the Commission on Graduates of Foreign Nursing Schools and replaces them with generic references.

From October 1, 2014, through September 30, 2015, 7,524 graduates of registered nurse education programs and 2,456 graduates of practical nurse education programs took the licensure examinations in this Commonwealth. Of those taking the exams, 87.17% of the registered nurse candidates and 82.08% of the practical nurse candidates passed. One year earlier, 7,164 registered nurse candidates and 2,512 practical nurse candidates took the licensure examinations. At that time, 82.82% of the registered nurse candidates and 85.75% of the practical nurse candidates passed. Nationally, from October 1, 2014, through September 30, 2015, the pass rate for registered nurses was 84.18% and the pass rate for practical nurses was 81.18%. The previous year, the pass rate nationally for registered nurses was 81.74% and the pass rate for practical nurses was 82.81%.

From January 1, 2015 through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination nationwide. Seventy percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers

passed, however excluding repeat test takers, 85% of first time test takers passed. (Because the Board does not pre-qualify applicants to take the dietitian-nutritionist examination, state-specific pass rates are unavailable).

Sections 21.33b and 21.162b (relating to minimum rate for graduates of nursing education programs to pass the National licensure examination) tie a nursing education program's approval status to the pass rate of its first time test-taker graduates. Under these regulations, since October 1, 2010, a nursing education program must achieve a minimum pass rate of 80%. Currently 31 of the 141 approved nursing education programs (11 of the 84 registered nurse programs and 20 of the 57 practical nurse programs) are on provisional approval due to their pass rates which did not reach the 80% threshold.

The Board's examination statistics from January 2015 to June 2016 reflect that the more times a candidate takes the registered nurse or practical nurse licensure examinations, the less likely the candidate is to pass the examination. During this 18-month period, 2,762 registered nurse candidates and 1,166 practical nurse candidates retook the licensure examinations. The numbers of repeats range from 1 to 40 for registered nurse candidates and from 1 to 50 for practical nurse candidates. First time repeaters (those taking the examination a second time) formed the largest group of the repeaters and passed at the highest rate with 56.80% of the registered nurse candidates and 48.00% of the practical nurse candidates passing. Thereafter, the pass rate dropped precipitously. For registered nurse candidates, the percentage of pass rates for second through 12 time repeaters (those having taken the test three through 13 times) decreased as follows: 45.40%, 39.00%, 29.60%, 22.80%, 17.80%, 19.10%, 27.60%, 15.80%, 30.80%, 8.30%, 20.00%. Beginning with the 14th retake and extending through 40 retakes, 100% of registered nurse candidates examined failed. The distinction between the number of retakes and pass rates is similar for practical nurse candidates. The percentage of pass rates for second through twelfth time repeaters (those having taken the test three through 13 times) decreased as follows: 32.90%, 24.10%, 16.70%, 25.00%, 9.10% and 20.80%, 0.00%, 0.00%, 10.00%, 0.00%, 20.00%. Beginning with the 14th and continuing through the 50th retake, except for one candidate who passed on the 18th retake, 100% of the practical nurse candidates examined failed.

The statistics regarding pass rates for first time and repeat test takers is similar for dietitian-nutritionist examinees. Although there are no statistical breakdowns by the number of times the examination was taken by a particular candidate, from January 1, 2015 through December 30, 2015, 5,944 dietitian-nutritionist candidates took the dietitian-nutritionist examination nationwide. Seventy percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed. The previous year, 5,475 dietitian-nutritionist candidates took the examinations. Seventy-four percent of total test takers passed, however excluding repeat test takers, 85% of first time test takers passed.

Summary and Responses to Comments

Notice of the proposed rulemaking was published at 44 *Pa.B.* 6934 (November 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; Aaron M. Shenck, Executive Director, Pennsylvania Association of Private School Administrators; Margaret Cybularz, MSN, RN, PRISM Career Institute; and Eileen Chopnick, MA, RD, LDN, Michele Rager, MS, RDN, LDN, CNSC, Meg Rowe, MS, RD, LDN, FAND, Jule Anne Henstenberg, MS, RDN, LDN, FAND, and Doris Piccinin, MS, RD, CDE, CD, on behalf of the Pennsylvania Academy of Nutrition and Dietetics (PAND). 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 comments.

Generally

Ms. Cybularz commented in favor of the proposed regulation.

§§ 21.2 and 21.142--Scope.

Section 21.2 (relating to scope) delineates the Board's scope regarding registered nurses and the practice of professional nursing. Subsection (e) identifies who may provide professional nursing education. In proposed form, the Board limited those providers to hospitals, colleges and universities. IRRC and Mr. Shenck asked the Board to consider including other post-secondary institutions. During discussions at its January 22, 2015 meeting, Mr. Shenck and the Board noted that "post-secondary institutions" would include those who offer specialized technology programs, providing training in computers, electrical systems and HVAC, and specialized business programs such as legal assistants, computer management, medical assistants and executive assistants. Based upon those discussions, Mr. Shenck recommended and the Board considered limiting post-secondary schools to those that award academic degrees similar to the requirement for expanded function dental assistants in the State Board of Dentistry's regulations at § 33.102(relating to professional education). The Board finds this recommendation to be reasonable. IRRC asked the Board to consider a similar revision regarding post-secondary institutions that award academic degrees for practical nursing education programs in § 21.142(relating to scope). Accordingly, in final form, the list of providers in § 21.2(e) and § 21.142(d) have been expanded to include post-secondary institutions that award academic degrees.

IRRC also questioned how and where the Board would make the list of approved programs available as required by subsection (e). The Board intends to include this list on its website so that the public would have ready access to the information. The Board has amended § 21.2(e) to be consistent with § 21.142 and clarify that the list will be made available on the Board's website.

§§ 21.21 and 21.151—Application for examination

Subsection (c) requires candidates who graduate from nursing education programs outside of the Commonwealth to provide a copy of the transcript validating program completion. Currently the transcripts must be provided within 2 weeks prior to the candidate's testing. IRRC questioned whether the Board intended to remove the 2-week timeframe. Although the preamble to the proposed rulemaking was unclear on this point, the Board did intend to remove the 2-week timeframe for all applicants. The Board will not authorize a candidate to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved professional nursing program. Therefore, an applicant cannot even schedule the exam until after the Board has received and reviewed the transcript. On average, nursing programs within the Commonwealth provide this information to the Board within 1 to 2 weeks of a request. Similarly, out of state programs provide transcripts to the states where their graduates apply for licensure quickly so as not to delay their graduates' ability to pass the licensing examinations, obtain licensure and begin working. For these reasons, the 2-week timeframe is unnecessary for both in-state and out-of-state applicants.

§ 21.23—Qualifications of applicant for examination.

New § 21.23(a) requires applicants to demonstrate proficiency in English. As noted by IRRC, this provision as proposed contained a typographical error in that the word "be" was used in place of "being" and the citation to § 21.7(b) did not specifically identify paragraph (2) in reference to temporary practice permits. In final form, the Board made these revisions.

New § 21.23(b) institutes current Board procedure of requiring graduates of nursing education programs outside of the United States and Canada to have their education evaluated by Board-approved foreign credentials evaluators. These evaluations assure that professional nursing education programs completed outside of the United States and Canada are equivalent to programs of study required in this Commonwealth at the time the programs were completed as set forth in section 5(b) of the RN Law (63 P.S. § 215(b)). The requirement to have this education evaluated by a Board-approved foreign credentials evaluator has also been added to §§ 21.28(c) and 21.155(d) (relating to licensure by endorsement).

New subsection (c) requires candidates for the registered nurse licensing examinations to take the examinations for the first time within 1 year of completing their professional nursing education programs unless prevented by emergency, illness or military service. This provision was inserted at the behest of nursing education program administrators who highlighted decreasing pass rates as the time between completing the education program and taking the examination increases. In final form, the Board added an additional exclusion to the 1-year requirement for candidates who hold licensure

in other states. Without the addition of this exclusion, applicants who hold a license in another state but are required to take the licensing examinations in this state would not be able to comply with the requirement if it is beyond 1 year from the completion of their professional nursing program. The Board also added “other good cause shown” as grounds for a waiver of the 1-year requirement in recognition that there may be other excusable reasons for failing to take the exam for the first time within 1 year.

IRRC questioned whether there is a correlation between the nursing education programs on provisional status and the pass rates on the examinations. The simple answer is yes. Under the current regulatory scheme, the programs that are and have been on provisional status have received that status solely due to the examination scores of its graduates. The National Council of State Boards of Nursing as well as the State Boards of Nursing in Oklahoma and California each studied the National Council Licensure Examination pass rates and the factors that contributed to those rates. They concluded that pass rate results inversely relate to the amount of time candidates wait to take the NCLEX as candidates were less likely to pass the NCLEX as lag time increased. The Board is currently reviewing the nursing education program regulations with an eye toward further improving nursing education.

§§ 21.25, 21.153 and 21.722—Re-examination of applicants.

In proposed form, subsection (c) would have required a candidate to pass the licensure examination within 2 years of completing the nursing/dietitian-nutritionist education program. In the event that a candidate did not pass within the 2-year timeframe, the proposed regulations would have required the candidate to complete a plan of remediation developed by a nursing or dietetics/nutrition education program.

IRRC questioned the Board’s statutory authority under sections 5(a) and 6(a) of the RN Law (63 P.S. §§ 215(a) and 216(a)) and sections 4 and 5.1 of the PN Law (63 P.S. §§ 655(a) and 656(a)) to both require that the examination be passed within a pre-set time frame and that candidates complete a remediation plan in order to be reexamined after a certain number of failures. Because statistical data reflects that the more times an applicant takes the licensure examinations, the less likely the applicant is to pass the examinations, the Board, in its proposed rulemaking, proposed that applicants complete additional education prior to being reexamined. Additionally, Ms. Bussard expressed concerns with the remediation requirement. As a result of the commentators concerns, in final form the Board removed the remedial education and 2-year completion requirements in their entirety.

IRRC also asked the Board to reconcile subsection (b)’s authorization for applicants to retake the examinations an unlimited number of times with the statement in the Preamble to the proposed regulation that within a 2-year period applicants may be examined about 16 times. Taking into account scheduling considerations, the number of seats available for the examinations and the

numbers of forms of the examinations, the Board was merely providing anecdotal information about the approximate number of examinations generally offered within a 2-year time frame. While there is no eligibility impediment to re-examination, scheduling examinations and reexaminations are within the purview of an independent third-party contractor. As such, §§ 21.25(b), 21.153(b) and 21.722(c)(1) all permit candidates to take the licensing examinations as many times as necessary to pass. However, the final-form regulation has been amended to clarify that candidates submitting an application for re-examination 2 years or more after initial examination shall satisfy the administrative and education requirements prevailing at the time of application.

§§ 21.28 and 21.155—Licensure by endorsement.

Sections 21.28 and 21.155 delineate the requirements for licensure by endorsement. IRRC noted that in proposed form, the language in subsections (b) and (d) were not consistent. In response to IRRC's comment, the Board revised these provisions so that they consistently refer to "licensure by endorsement." Additionally, the Board amended the reference to § 21.7(b) (relating to temporary practice permits) in subsection (e) to include paragraph (2). As a result of this comment, the Board realized that the cross-reference to § 21.7(b) pertaining to temporary practice permits for registered nurses contained in § 21.155(e) was incorrect and should instead cross-reference the comparable section pertaining to temporary practice permits for practical nurses at § 21.149(b)(2). This correction has been made to the final-form rulemaking.

§ 21.151—Application for examination.

IRRC noted a typographical error in proposed subsection (f) in that the provision referenced "professional nursing" rather than "practical nursing." In final form, the Board has corrected the reference.

§ 21.701—Definitions.

IRRC noted the typographical error in the spelling of the term "Council" in the definition of ACEND. In final form, the Board has corrected the misspelling.

§ 21.722—Education, examination and re-examination of applicants.

IRRC pointed out that, contrary to the Board's assertion in the proposed rulemaking, § 21.722(c) is not "identical" to the language in §§ 21.25(b) and (c) and 21.153(b) and (c), and asked that if the Board's intent is that they be identical, to do so. IRRC pointed out that subsection (c) refers to completing the licensure process, whereas the other two sections refer to passing the licensure examination. The Board has made these sections consistent. However, these sections cannot be made identical because, as PAND explained in its comment, while the Board is required to pre-approve nursing applicants to take the NCLEX® examinations, dietitian-nutritionist applicants

do not apply to the Board for approval to take the licensure examinations. Applicants apply directly to the test vendor and, once the examination is passed, apply to the Board for licensure. As such, the language within the licensure provisions for registered nurses, practical nurses, and licensed dietitian-nutritionists may differ. Nonetheless, the requirement that applicants take the required examination for the first time within 1 year of completing their education unless prevented by emergency, illness, military service or other good cause, or for those who hold a license in another state, applies to each licensure class equally. This section has been amended consistent with the amendments to §§ 21.25 and 21.153 (relating to re-examination).

RAF Question 4--Short Title

Finally, IRRC questioned whether the Board intended the short title of this regulation package to be “General Revisions” since the existing title for Subchapter A is “General Provisions.” The actual title of Subchapter A is “Registered Nurses.” The Board uses undesignated center headings to group related sections within a subchapter. The first group of sections in Subchapters A, B and G are identified as “General Provisions.” However, the rulemaking addresses both the sections identified as “General Provisions” as well as other sections in Subchapters A, B and G generally relating to licensure requirements for registered nurses, practical nurses and dietitian-nutritionists. Therefore, the Board assigned the short title “General Revisions” to this regulation package.

Fiscal Impact and Paperwork Requirements

This regulation should have a minimal fiscal and paperwork impact on the Board and the regulated community. The application procedures included in this regulation are, for the most part, currently in place and therefore will not incur additional Board time. Board staff will have to spend some additional time confirming that examination candidates take the licensure examination within 1 year of completion of their nursing education program, unless waived. Applicants who fail to take the licensure examination within 1 year of their program completion will have the burden of proving to the Board that they were prevented from taking the examination due to an emergency, illness, military service or other good cause. In that the Board deleted the requirement that applicants who fail to pass the examination within 2 years have to provide the Board with documentation evidencing their compliance with a remediation plan, any fiscal or paperwork impact of that requirement has been negated.

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 October 17, 2014, the Board submitted notice of this proposed rulemaking, published at 44 *Pa.B.* 6934 (November 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(g)(3) and (j.2) of the Regulatory Review Act (71 P.S. § 745.5a(g)(3) and (j.2)), on _____, 2016 the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2016, 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 registered 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 submit this order and Annex A to IRRC, the HPLC and the SCP/PLC as required by law.
- (D) The Board shall certify this Order and Annex and shall deposit them with the Legislative Reference Bureau as required by law.
- (E) The regulations shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

Kristin Malady, RN, BSN, 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

GENERAL PROVISIONS

§ 21.2. Scope.

- (a) The Board administers the act by providing rules and regulations on standards for nursing schools and the conduct of the programs.
- (b) The Board provides for licensure of graduate nurses from approved schools by examination, by endorsement and by renewal of licenses.
- (c) The Board has the right to establish rules and regulations for the practice of nursing.
- (d) The Board may [suspend or revoke licenses] impose disciplinary sanctions and assess civil penalties for cause.
- (e) [The Board will approve basic nursing programs conducted in hospitals, colleges, universities; approve foreign exchange visitor programs; and promulgate a list of approved programs.] The Board may approve professional nursing education programs conducted in hospitals, AND ACCREDITED colleges, and universities AND POSTSECONDARY INSTITUTIONS THAT AWARD ACADEMIC DEGREES, and will make available a list of approved programs ON ITS WEBSITE.
- [(f) The Board will approve applications for inactive status.

(g)] ~~(f)~~ The Board will regulate the practice of professional nursing.

§ 21.3. [Purposes of the Board] (Reserved).

[The Board will insure safe nursing services for the citizens of this Commonwealth. Embodied in this purpose are the following responsibilities:

- (1) To establish safe standards for the preparation of registered and practical nurses in approved educational programs.
- (2) To assure safe standards of nursing practice through examination and licensure of graduates of approved educational programs, through endorsement of registered and practical nurses from other jurisdictions, and through the regulation of the practice of nursing in this Commonwealth.]

* * * * *

§ 21.7. Temporary practice permits.

(a) A graduate registered nurse may only practice professional nursing under supervision and if the graduate registered nurse holds a current temporary practice permit. “Supervision” means that a licensed registered nurse is physically present in the area or unit where the graduate registered nurse is practicing. The Board may grant a temporary practice permit to a graduate registered nurse as follows:

- (1) [An individual who wishes to practice as a graduate registered nurse during the period from the date of completion of the educational program to the notification of the results of the licensing examination] A graduate registered nurse who wishes to practice professional nursing shall submit an application for a temporary practice permit for a graduate registered

nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees).

A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance, unless extended under paragraphs (3) and (4), and immediately expires if the applicant fails the licensing examination.

* * * * *

(b) The Board may grant a temporary practice permit to an individual who holds a current registered nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed registered nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit period in cases of illness or extreme hardship[,] as set forth in paragraph (5).

(1) A currently-licensed registered nurse who wishes to practice professional nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

[(ii)] (i) Submit an application for temporary practice permit for a currently-licensed registered nurse on a form provided by the Board.

[(iii)] (ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed registered nurse shall demonstrate proficiency in English by submitting proof that the

individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. [A] The Board will make available a list of Board-approved English proficiency examinations [is available upon request to the Board] on its web site. This information must be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

- (i) Request verification of licensure from the foreign jurisdiction and retain documentation of the submission of the request to provide to the Board upon request.
- (ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of the submission of the request to provide to the Board upon request.
- (iii) [Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in §§ 21.23(c) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.] Submit an application for an education

evaluation to a Board-approved foreign credentials evaluator if required under §§ 21.23(b) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

* * * * *

LICENSES

§ 21.21. Application for examination.

[(a) An application for the licensing examination without transcript may be submitted during the last term of the nursing program. The applicant will be scheduled for the subsequent examination.

(b) A candidate will not be admitted to the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including the completion of an approved educational program.

(c) A copy of the transcript validating program completion shall be filed at least 2 weeks prior to the testing dates.

(d) The Board will not proctor an applicant for another state board. The Board will not permit an applicant for Commonwealth licensure to be proctored by another state board.]

(a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a professional nursing education program.

(b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved professional nursing educational program.

(c) Graduates of professional nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.

(d) An applicant seeking a waiver of the 1-year requirement in § 21.23(c) (relating to qualifications of applicant for examination) shall submit documentation to demonstrate that an emergency, illness, ~~or~~ military service OR OTHER GOOD CAUSE prevented compliance OR THAT THE CANDIDATE HOLDS A LICENSE TO PRACTICE NURSING IN ANOTHER STATE OR COUNTRY.

§ 21.22. [Date and location of examinations] (Reserved).

[(a) The Board conducts licensing examinations at least twice a year.

(b) A list of examination dates and locations are published annually.]

§ 21.23. Qualifications of applicant for examination.

[(a) An applicant shall pass a written examination as provided by the Board.

(b) Additional applicant qualifications are contained in sections 5 and 6 of the act (63 P.S. §§ 215 and 216).

(c) Nurses educated in schools of nursing outside of the United States or Canada shall have successfully completed the English language and nursing practice proficiency examination of the

Commission on Graduates of Foreign Nursing Schools. A school of nursing located outside of the United States or Canada will be considered a foreign nursing school.]

(a) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has, prior to ~~be~~ BEING approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination, unless the applicant has already met this requirement in satisfaction of § 21.7(a) 21.7(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(b) An applicant who graduated from a professional nursing education program IN A COUNTRY OR TERRITORY outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(c) A candidate for licensure shall take the examination for the first time within 1 year of completing the professional nursing education program unless prevented by emergency, illness, or military service, OR OTHER GOOD CAUSE SHOWN OR THE CANDIDATE HOLDS A LICENSE TO PRACTICE NURSING IN ANOTHER STATE OR COUNTRY.

§ 21.24. [Examination score requirements] Passage of the licensure examination.

The candidate for licensure shall [achieve a minimum score as mandated] pass the licensure examination approved by the Board.

§ 21.25. [Reexamination] Re-examination.

- [(a) A candidate shall submit the required fee in the form of a check for reexamination.
- (b) (Reserved).
- (c) The candidate may take the licensing examination as many times as necessary to complete licensure process.
- (d) A request to retake an examination for the purpose of elevating a passing score will not be granted.]

(a) A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) The candidate may take the licensing examination as many times as necessary to pass the licensure examination within 2 years of completion of the candidate's nursing education program.

(c) If a candidate does not pass the examination within 2 years of completion of the candidate's nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination.

(d) Candidates who apply for re-examination after the 2-year period in subsection (b) 2 YEARS OR MORE AFTER INITIAL EXAMINATION shall satisfy the administrative and education requirements prevailing at the time of reapplication.

* * * * *

§ 21.27. [Unlicensed candidate] (Reserved).

[The candidate may practice as a graduate nurse until the licensing examination is passed subject to

the following:

- (1) Unless licensed, the candidate may be employed as a graduate nurse for 1 year only from the date of completion of a nursing program except in the case where special permission is granted by the Board due to extenuating circumstances. In such a case the candidate shall present validating documentation.
- (2) The candidate shall practice under the supervision of an experienced registered nurse. “Supervision,” as used in this paragraph, means that the registered nurse is physically present in the area or unit where the unlicensed candidate is practicing.]

§ 21.28. Licensure by endorsement.

- (a) [A registered nurse who has graduated from an approved nursing program in another state or territory of the United States or Canada and who is licensed by writing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth by endorsement of the original licensing board.] A registered nurse who has graduated from an approved professional nursing education program in the United States or Canada and who obtained licensure in another jurisdiction having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth.
- (b) An applicant for licensure ~~in this Commonwealth~~ by endorsement shall meet the requirements as stated in the act.

(c) [A registered nurse who has graduated from a nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.] A registered nurse who has graduated from a professional nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure IN THAT COUNTRY OR TERRITORY upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(d) An applicant for LICENSURE BY endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of [§ 21.30a(1) or (2)] § 21.30a(a)(1) or (2) (relating to continued competency).

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant received a passing score on a Board-approved English proficiency examination unless the

applicant has met this requirement in satisfaction of § 21.7(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 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:

- (1) Complete and submit the renewal application [form], 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 licensure fee in § 21.5 (relating to fees).
- (3) [Beginning with the license period commencing on July 12, 2010, verify that the professional] Verify that the registered nurse has complied with the continuing education requirements mandated by section [12] 12.1 of the act (63 P.S. § 222) during the biennial period immediately preceding the application for renewal in accordance with §§ 21.131—21.134 (relating to continuing education). School nurses, who as certified education specialists are required to obtain continuing professional education under the Public School Code of 1949 (24 P.S. §§ [1-100] 1-101—27-2702), shall verify by signed statement that the school nurse has complied with the continuing education requirements for certification by the

Department of Education.

* * * * *

§ 21.29b. Reporting of address changes.

A registered nurse shall notify the Board within 14 days of a change of address.

§ 21.30. Registered nurses licensed outside of the United States[, its territories] or Canada.

(a) [A nurse educated and licensed in another country other than Canada may not be employed as a nurse in this Commonwealth until the requirements for Commonwealth licensure have been met.]

A registered nurse educated and licensed outside of the United States or Canada may not practice professional nursing in this Commonwealth until the registered nurse is issued a license or temporary practice permit by the Board.

(b) A graduate nurse licensed in another country may participate in an [approved exchange-visitor program or in an accreditation] accredited graduate program in nursing for [a period of] 2 years without licensure and compensation in this Commonwealth.

[(c) An applicant coming from a country outside of the United States or Canada who is from a nondegree granting institution shall obtain a Certificate of Preliminary Education through the Department of Education.]

§ 21.30a. Continued competency.

[A] (a) A registered nurse whose license has lapsed for 5 years or longer or [whose license] has been placed on inactive status for 5 years or longer, as permitted in section 11(b) of the act (63 P.S. § 221(b)), may reactivate the license by doing one of the following:

- (1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee [as set forth] in § 21.5 (relating to fees).
- (2) Successfully completing a Board-approved reactivation program, which [includes as a prerequisite to completion the passing of a Board-approved] requires passage of a nursing achievement examination.
- (3) Providing evidence to the Board that the applicant has [practiced nursing] a current license and has practiced as a registered nurse in another jurisdiction at some period of time within the last 5 years [under a current license during that time].

(b) A registered nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

- (1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.5.
- (2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

Subchapter B. PRACTICAL NURSES

GENERAL PROVISIONS

§ 21.142. Scope.

- (a) The Board administers the act by promulgating rules and regulations which establish standards for practical nursing programs and for the conduct of programs.
- (b) The Board provides for licensure of graduate practical nurses from approved programs by examination, by endorsement and by programs renewal of licenses.
- (c) The Board may [suspend or revoke licenses] impose disciplinary sanctions and assess civil penalties for cause.
- [(d)] The Board, with the approval of the Commissioner of Professional and Occupational Affairs, will appoint a committee of two licensed practical nurses and one licensed professional nurse experienced in practical nurse education and, in consultation with this committee, will have the power and duty to establish reasonable rules and regulations for the administration of the act.
- (e) [(d)] The Board may approve [basic] practical nursing education programs conducted in hospitals, AND ACCREDITED community colleges, universities AND POSTSECONDARY INSTITUTIONS THAT AWARD ACADEMIC DEGREES and public school districts and vocational education programs under the Department of Education and [promulgate] make available a list of approved [programs of] practical nursing education programs on its web site.
- [(f)] [(e)] The Board will regulate the practice of practical nursing.

* * * * *

§ 21.144. [Purpose of the Board] (Reserved).

[The Board will insure safe nursing services for the citizens of this Commonwealth. Embodied in this purpose are the following responsibilities:

- (1) To establish safe standards for the preparation of registered and practical nurses in approved educational programs.
- (2) To assure safe standards of nursing practice through examination and licensure of graduates of approved educational programs, through endorsement of registered and practical nurses from other jurisdictions and through the regulation of the practice of nursing in this Commonwealth.]

* * * * *

§ 21.149. Temporary practice permits.

* * * * *

(b) The Board may grant a temporary practice permit to an individual who holds a current practical nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed practical nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit in cases of illness or extreme hardship, as set forth in paragraph (5).

(1) A currently-licensed practical nurse who wishes to practice practical nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

- (i) Submit an application for temporary practice permit for a currently-licensed

practical nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.147.

(2) An individual applying for a temporary practice permit for a currently-licensed practical nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. [A] The Board will make available a list of Board-approved English proficiency examinations [is available upon request to the Board] on its web site. This information shall be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of submission of the request to submit to the Board upon request.

(iii) [Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS)]

application if the applicant is required to meet CGFNS requirements set forth in § 21.155(d) (relating to licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.] Submit an application for an education evaluation to a Board-approved foreign credentials evaluator if required under § 21.155(d) (relating to licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

* * * * *

LICENSURE

§ 21.151. Application for examination.

- [(a) The Board will conduct licensing examinations at least twice a year, and more often when necessary. A list of examination dates will be published annually.
- (b) An application for the licensing examination, without a transcript, may be submitted during the last term of the nursing program. The applicant will be scheduled for the subsequent examination.
- (c) A candidate will not be admitted to the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including the completion of an approved educational program.
- (d) A copy of the transcript validating program completion shall be filed at least 2 weeks prior to the testing dates.

- (e) The Board will not proctor an applicant for another state board. The Board will not permit an applicant for Commonwealth licensure to be proctored by another state board.]
- (a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a practical nursing education program.
- (b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved practical nursing educational program.
- (c) Graduates of practical nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.
- (d) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has, prior to being approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination unless the applicant has already met this requirement in satisfaction of § 21.149(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.
- (e) An applicant who graduated from a practical nursing education program outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(f) A candidate shall take the examination for the first time within 1 year of completing the professional PRACTICAL nursing education program unless prevented by emergency, illness, or military service OR OTHER GOOD CAUSE SHOWN OR THE CANDIDATE HOLDS A LICENSE TO PRACTICE NURSING IN ANOTHER STATE OR COUNTRY.

§ 21.152. [Date and location of examinations] Passage of the examination.

Candidates for practical nursing licensure shall [achieve a minimum standard score as mandated] pass the licensure examination approved by the Board.

§ 21.153. [Reexamination] Re-examination.

(a) [Candidates shall submit the required fee to be scheduled for reexamination.] A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) [Candidates] The candidate may take the licensing examination as many times as necessary to [complete licensure process] pass the licensure examination within 2 years of completion of the candidate's nursing education program.

(c) If a candidate does not pass the examination within 2 years of completion of the nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination.

(d) Re-examination applications submitted after the 2-year period CANDIDATES WHO REAPPLY FOR EXAMINATION 2 YEARS OR MORE AFTER INITIAL EXAMINATION shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.154. [Unlicensed candidate] (Reserved).

[The candidate may practice as a graduate practical nurse until the examination is passed subject to the following:

- (1) Unless licensed, the candidate may be employed as a graduate practical nurse for 1 year only from completion of the program except in the case where special permission is granted by the Board due to extenuating circumstances. In such a case the candidate shall present validating documentation.
- (2) The candidate shall practice under the supervision of an experienced registered nurse. Supervision is defined to mean that the registered nurse is physically present in the area or unit where the unlicensed graduate is practicing.]

§ 21.155. Licensure by endorsement.

(a) [Licensure as a practical nurse in this Commonwealth by endorsement of the original licensing board is granted to a graduate of an approved practical nursing program who is licensed in another jurisdiction by an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth.] A practical nurse who has graduated from an approved practical nursing program in the United States or Canada and who obtained licensure in another jurisdiction of the United States or Canada upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth.

(b) [Applicants for licensure in this Commonwealth] An applicant for licensure by endorsement in this Commonwealth shall meet the requirements regarding age, good moral character, preliminary

education and practical nursing education as outlined in the act.

(c) An applicant for licensure by endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of [§ 21.156a(1) or (2)] § 21.156a(a)(1) or (2) (relating to continued competency).

(d) [A practical nurse who has graduated from a practical nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.] A practical nurse who has graduated from a practical nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure in that country or territory upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the

applicant has received a passing score on a Board-approved English proficiency examination unless the applicant has previously met this requirement in satisfaction of § 21.7(b) § 21.149(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 21.156. Renewal of license.

(a) Licenses for practical nurses expire on June 30 of each biennium in the even-numbered years.

[(b) Application for renewal of a license will be forwarded biennially to each active registrant 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.]

(b) When applying for licensure renewal, a licensed practical nurse shall:

(1) Submit the renewal application, including disclosing a license to practice nursing or an 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 discipline imposed by a state licensing board in the previous biennial period and 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 § 21.156b (relating to reporting of crimes and disciplinary action).

[(d)] (c) When communicating with the Board, [registrants] licensed practical nurses 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.

§ 21.156a. Continued competency.

[A] (a) A licensed practical nurse whose license has lapsed for 5 years or longer or [whose license] has been placed on inactive status for 5 years or longer, as permitted in section 13.1(b) of the act (63 P.S. § 663.1(b)), may reactivate the license by doing one of the following:

- (1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee [as set forth] in § 21.147 (relating to fees).
- (2) Successfully completing a Board-approved reactivation program[, which includes as a prerequisite to completion the passing of a Board-approved] which requires passage of a nursing achievement examination.
- (3) Providing evidence to the Board that the applicant has [practiced nursing] a current license and has practiced as a practical nurse in another jurisdiction at some time within the last 5 years [under a current license during that time].

(b) A licensed practical nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

- (1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.147.
- (2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

§ 21.156c. Reporting of address changes.

A licensed practical nurse shall notify the Board within 14 days of a change of address.

* * * * *

Subchapter G. DIETITIAN-NUTRITIONISTS

GENERAL PROVISIONS

§ 21.701. Definitions.

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

ACEND—Accreditation ~~Counsel~~ COUNCIL for Education in Nutrition and Dietetics—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

ACN—American College of Nutrition.

[*ADA*—American Dietetic Association.]

AND—Academy of Nutrition and Dietetics.

Act—The Professional Nursing Law (63 P.S. §§ 211—225), which provides for the licensing of Licensed Dietitian-Nutritionists.

Approved—Approved by the Board.

Approved program—Those educational programs accredited by the [Commission on Accreditation for Dietetics Education] ACEND or the American Council on Education for dietetics-nutrition education.

Board—The State Board of Nursing of the Commonwealth.

[*CADE*—*Commission on Accreditation for Dietetics Education*—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.]

CBNS—*Certification Board for Nutrition Specialists*—The certification body of the ACN.

CDR—*Commission on Dietetic Registration*—The credentialing agency for the [ADA] AND.

* * * * *

LICENSURE REQUIREMENTS

* * * * *

§ 21.722. Education [and], examination and re-examination of applicants.

(a) Education. The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P.S. § 216(b)(2)) that are approved by [CADE] ACEND or the ACN.

(b) Examination.

(1) The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

(2) A candidate shall take the examination for the first time within 1 year of completing the dietetics-nutrition education program unless prevented by emergency, illness, or military service OR OTHER GOOD CAUSE SHOWN OR THE CANDIDATE HOLDS A LICENSE TO PRACTICE AS A DIETITION-NUTRITIONIST IN ANOTHER STATE OR COUNTRY.

(c) Re-examination.

(1) A candidate may take the licensing examination as many times as necessary to complete the licensure process within a 2-year period of completion of the candidate's dietetics-nutrition education program PASS THE LICENSURE EXAMINATION.

(2) If a candidate does not successfully complete the examination within 2 years of completion of the dietetics-nutrition education program, the candidate shall complete a plan of remediation developed by a dietetics-nutrition education program for the candidate prior to applying for re-examination.

(3) Re-examination applications submitted after the 2-year period CANDIDATES WHO

APPLY FOR RE-EXAMINATION 2 YEARS OR MORE AFTER INITIAL EXAMINATION shall satisfy the administrative and education requirements prevailing at the time of reapplication.

* * * * *

§ 21.723b. Reporting of address changes.

An LDN shall notify the Board within 14 days of a change of address.

§ 21.724. Continuing education.

* * * * *

(b) *Board-approved continuing professional education.* The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2) relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the [ADA] AND, the ACN, by individual state dietetic associations, if the association is a member of the [ADA] AND or ACN, by approved college or dietetic programs under § 21.722 (relating to education [and], examination and re-examination of applicants) when a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

* * * * *

tions to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must 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 State Police, 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 Director, Policy Office, State Police, 1800 Elmerton Avenue, Harrisburg, PA 17110, MARSHMARTI@pa.gov within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference 17-79, Designation of Emergency Vehicles, when submitting comments.

COLONEL FRANK NOONAN,
Commissioner

Fiscal Note: 17-79. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

CHAPTER 41. DESIGNATION OF EMERGENCY VEHICLES

§ 41.5. Eligibility.

(a) *Considerations.* The following vehicles may qualify for an emergency vehicle designation:

(1) [**The**] Pennsylvania Emergency Management Agency and local emergency management organization vehicle.

(2) Bona fide rescue organization vehicle.

(3) Department of Corrections vehicles used by members of [**the Department's**] its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.

(4) **Philadelphia Prison System vehicles used to escort ambulances transporting sick or injured prisoners.**

(b) *Exclusions.* Private vehicles of the following persons will not be considered for an emergency vehicle designation:

* * * * *

(6) The Department of Corrections, its personnel, and members of its Hostage Rescue Teams, Hostage Negotiation Teams, Corrections Emergency Response Teams, Corrections Rifle Specialist Teams and Central Office Special Teams Coordinator.

(7) **The personnel and members of the Philadelphia Prison System who escort ambulances transporting sick or injured prisoners.**

(c) *Restriction.* A designation will be issued only for a vehicle owned or leased by the applicant.

[Pa.B. Doc. No. 14-2255. Filed for public inspection October 31, 2014, 9:00 a.m.]

STATE BOARD OF NURSING

[49 PA. CODE CH. 21]

General Revisions

The State Board of Nursing (Board) proposes to amend Chapter 21 to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The amendments regarding registered nurses and licensed dietitian-nutritionists are proposed under the authority of sections 2.1(k) and 12.1(a) of The Professional Nursing Law (RN Law) (63 P. S. §§ 212.1(k) and 222(a)), which provide the Board with general authority to establish rules and regulations for the practice of professional nursing, the practice of dietetics-nutrition and the administration of the RN Law. The amendments regarding practical nurses are proposed under 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.

Background and Purpose

This proposed rulemaking is intended to: (1) establish time frames within which candidates for licensure as registered nurses, practical nurses and dietitian-nutritionists must first take and ultimately pass the applicable licensure examinations; (2) update and make uniform application and examination provisions for registered nurses, practical nurses and dietitian-nutritionists, when applicable; and (3) delete references to the National Council Licensure Examination and the Commission on Graduates of Foreign Nursing Schools and replace them with generic references.

From October 1, 2012, through September 30, 2013, 7,371 graduates of registered nurse education programs and 2,410 graduates of practical nurse education programs took the licensure examinations in this Commonwealth. Of those taking the exams, 86.22% of the registered nurse candidates and 88.17% of the practical nurse candidates passed. One year earlier, 7,629 registered nurse candidates and 2,679 practical nurse candidates took the licensure examinations. At that time, 90.77% of the registered nurse candidates and 90.03% of the practical nurse candidates passed. Nationally, from October 1, 2012, through September 30, 2013, the pass rate for registered nurses was 84.29% and the pass rate for practical nurses was 84.68%. The previous year, the pass rate for registered nurses was 90.22% and the pass rate for practical nurses was 83.99%.

From January 1, 2012, through June 30, 2013, Nationally, because there is not a Pennsylvania-specific examination, 6,514 dietitian-nutritionist candidates took the dietitian-nutritionist examination. Of that total, 69.3% of

test takers passed. Excluding repeat test takers, 83% first time test takers passed. The previous year, 3,617 dietitian-nutritionist candidates took the examinations. Of that total, 71% of test takers passed. Excluding repeat test takers, 85% first time test takers passed.

Sections 21.33b and 21.162b (relating to minimum rate for graduates of nursing education programs to pass the National licensure examination) tie a nursing education program's approval status to the pass rate of its first time test taker graduates. Under these regulations, since October 1, 2010, a nursing education program must achieve a minimum pass rate of 80%. Currently 22 of the approximately 142 approved nursing education programs are on provisional approval due to their pass rates which did not reach the 80% threshold.

In 2007, the National Council of State Boards of Nursing (NCSBN) examined the relationship between passing the National Council Licensing Examination (NCLEX) and the elapsed time between becoming eligible and taking the NCLEX for 421,739 registered nurse candidates and 183,546 practical nurse candidates who took the NCLEX during calendar years 2003–2005. Eich, M., and O'Neill, T. (2007). "NCLEX(r) Delay Pass Rate Study." The study concluded that for the overall testing population, pass rates decreased as the time between the date of becoming eligible to sit for the examination and the actual test date increased. Additionally, the study concluded that repeat testers waiting longer to test produced some of the lowest passing rates. These results were confirmed in a subsequent 2009 NCSBN study using logistic regression that further investigated the effect of exam delays and retake attempts for 176,539 registered nurse and 67,849 practical nurse candidates. Woo, A., Wendt, A., and Liu, W. (2009). "NCLEX Pass Rates: An Investigation Into the Effect of Lag Time and Retake Attempts." *JONA's Healthcare Law, Ethics, and Regulation*, 11(1). The 2009 study revealed again that pass rate results inversely relate to the amount of time candidates wait to take the NCLEX as candidates were less likely to pass the NCLEX as lag time increased.

The Board's examination statistics from January 2011 to December 2012 support the conclusions of these studies that the more times a candidate takes either the registered nurse or practical nurse licensure examinations, the less likely the candidate is to pass either examination. During this 24-month period, 2,947 registered nurse candidates and 1,124 practical nurse candidates retook the licensure examinations. The numbers of repeats range from 1 to 34 for registered nurse candidates and from 1 to 40 for practical nurse candidates. First time repeaters (those taking the examination a second time) formed the largest group of the repeaters and passed at the highest rate with 66.34% of the registered nurse candidates and 51.75% of the practical nurse candidates passing. Thereafter, the pass rate dropped precipitously. For registered nurse candidates, with one exception, the percentage of pass rates for second through eight time repeaters (those having taken the test three through nine times) decreased as follows: 51.28%, 38.35%, 30.95%, 29.03%, 36.54%, 20.69% and 10.53%. Beginning with the 15th retake and extending through the 34th retake, 100% of registered nurse candidates examined failed. The distinction between the number of retakes and pass rates is even more dramatic for practical nurse candidates. The percentage of pass rates for second through seventh time repeaters (those having taken the test three through eight times) decreased as follows: 34.91%, 22.96%, 14.86%, 13.64%, 16.00% and 9.09%. Beginning with the 9th and continuing through the 40th retake, except for 1

candidate who passed on the 11th retake, 100% of the practical nurse candidates examined failed.

Although there are not statistical breakdowns by the number of times the dietitian-nutritionist examination was taken by a particular candidate, 65.5% of repeat test takers failed that examination in calendar year 2013, 64.5% failed in calendar year 2012 and 65% failed in calendar year 2011.

Administrators of professional and practical nursing education programs provided similar anecdotal information to the Board as part of their input regarding this proposed rulemaking. They requested that the Board insert a provision into the regulations requiring candidates for the licensure examinations to take the examinations for the first time within 1 year of completing their education programs. Additionally, with few exceptions, the administrators either wished that the examinations be passed within 2 years or within a shorter time frame. Almost all stakeholders supported the requirement that candidates who fail to pass the examinations within 2 years be required to complete remediation to retake due to their concern that there may be a deficiency resulting in repeated failures of the licensure examinations.

Description of Proposed Amendments

§ 21.2. Scope

Current § 21.2 (relating to scope) delineates the Board's scope regarding registered nurses and the practice of professional nursing. In this proposed rulemaking, the Board would amend subsection (d) to include the range of statutorily permitted sanctions. The Board proposes to delete subsection (f) because the Board does not approve applications for inactive status, registered nurses merely advise the Board of their wish to revert to inactive status. The Board proposes to amend current subsections (e) and (g) to clarify that they apply only to professional nursing education and the practice of professional nursing.

§ 21.3. Purposes of the Board

The Board proposes to rescind § 21.3 (relating to purposes of the Board) as this section is unnecessary.

§ 21.7. Temporary practice permits

Current § 21.7(b)(2) (relating to temporary practice permits) requires applicants for temporary practice permits who are licensed in another state or jurisdiction to demonstrate proficiency in English. Subsection (b)(3)(iii) requires applicants to submit an application for education credentials review to the Commission of Graduates of Foreign Nursing Schools (CGFNS) and retain a copy of that application to provide to the Board if requested. In this proposed rulemaking, the Board proposed to replace the specific reference to the CGFNS in subsection (b)(3)(iii) with a reference to "a Board-approved foreign credentials evaluator" to expand the list of acceptable evaluators. Instead of providing a copy of the list of Board-approved English proficiency examinations upon request, proposed amendments to subsection (b)(2) permit the Board to post the list on its web site.

§ 21.21. Application for examination

Current § 21.21(a) (relating to application for examination) permits candidates for licensure by examination to apply to take the registered nurse examination during the last term of their nursing education program with scheduling, according to the latter portion of the provision, to occur at the subsequent examination. Because the examination is administered daily, the latter clause is obsolete

and is proposed to be deleted. Additionally, the proposed rulemaking would clarify that applicants may apply 90 days prior to completion of their education programs. However, under subsection (b) they would not be authorized to take the examinations prior to confirmation of actual completion.

Proposed amendments to subsection (b) track current practice regarding authorizations to test. Upon application and confirmation of nursing education program completion, the Board notifies the examiner who issues an "authorization to test" enabling a candidate to schedule an examination date. Current subsection (c) requires a candidate to provide a copy of the transcript validating program completion within 2 weeks of taking the examination. The Board proposes to delete this requirement for graduates of nursing education programs in this Commonwealth as the Board approves these programs and receives this information directly from the programs electronically. The Board would maintain the requirement only for graduates who attend programs outside of this Commonwealth as it does not approve these programs. Current subsection (d) is proposed to be deleted as examinations are no longer proctored by state boards under section 6(b)(4) of the RN Law (63 P.S. § 216(b)(4)). Instead, the Board proposes to add a provision to require an applicant seeking a waiver of the requirement to take the examination within 1 year of completion of the nursing education to submit documentation to demonstrate that an emergency, illness or military service prevented compliance with proposed § 21.23(c) (relating to qualifications of applicant for examination).

§ 21.22. *Date and location of examinations*

The Board proposes to rescind § 21.22 (relating to date and location of examinations) which requires that the examination be conducted at least twice a year and that the examination schedule be published annually. Currently, the licensing examinations are administered from Monday through Saturday Nationally and internationally. Specific examination locations are selected and posted by the examination administrator.

§ 21.23. *Qualifications of applicant for examination*

The Board proposes to delete current § 21.23(a) because the examination is not administered in written form and the requirement that the examinations be passed is in § 21.24 (relating to passage of the licensure examination). The Board also proposes to delete current subsection (b) as it simply recites statutory references without amplification. Current subsection (c) requires applicants who were educated outside of the United States or Canada to prove that either their nursing education programs were conducted in English or they passed the English proficiency examination of the CGFNS. Tracking current practice, the proposed amendments require that applicants demonstrate this proficiency unless it was already met as part of an application for temporary practice permit. The Board believes that the same standard regarding English proficiency should be applied to all applicants because the Board is aware, for example, that not all nursing education programs in North America are conducted in English.

Also, similar to proposed § 21.7(b)(3)(iii) and § 21.149(b)(3)(iii) (relating to temporary practice permits), the Board proposes to replace the specific reference to the CGFNS examination with "Board-approved English proficiency examination" in proposed subsection (a) to include other proficiency examinations, such as the International English Language Test System, Test of English

for International Communication and Test of English as a Foreign Language in addition to the CGFNS. Also, as in proposed §§ 21.7(b)(2) and 21.149(b)(2), proposed subsection (a) indicates that the list of Board-approved English proficiency examinations will be posted on its web site.

Proposed § 21.23(b) would institute current Board procedure of requiring graduates of nursing education programs outside of the United States and Canada to have their education evaluated by Board-approved foreign credentials evaluators. The Board believes that these evaluations assure that professional nursing education programs outside of the United States and Canada are equivalent to programs of study in this Commonwealth at the time the programs were completed as required under section 5(b) of the RN Law (63 P.S. § 215(b)). This proposed subsection is identical for endorsement candidates in §§ 21.28(c) and 21.155(d) (relating to licensure by endorsement).

Proposed subsection (c) would require registered nurse candidates to take the licensing examinations for the first time within 1 year of completing their professional nursing education programs unless prevented by emergency, illness or military service. This subsection is proposed to be added at the behest of nursing education program administrators who highlighted decreasing pass rates as the time between completing the education program and taking the examination increases.

§ 21.24. *Passage of the licensure examination*

Current § 21.24 includes outdated references to passing the licensure examination by achieving a minimum passing score mandated by the Board. This proposed rulemaking would incorporate current requirements by amending this section to require candidates for licensure to pass the examination approved by the Board.

§ 21.25. *Re-examination*

Current § 21.25 (relating to re-examination) addresses re-examination requirements including the authority in subsection (c) to take the examination as many times as necessary to complete the examination process. Proposed subsection (a) tracks current practice which requires a candidate who fails the examination to file a re-examination application with the Board allowing the candidate to obtain new "authorization to test." Proposed subsection (b) requires a candidate to pass the licensure examination within 2 years of completing the professional nursing education program. To preserve the integrity of the examination, it may be administered to a single applicant every 45 days. Under proposed subsection (b), candidates are allowed to take the licensure examination up to 16 times without additional requirements.

In the event that a candidate does not pass within the 2-year time frame in proposed subsection (b), proposed subsection (c) would require the candidate to complete a remedial plan developed by a Board-approved nursing education program. During the drafting of this proposed rulemaking, stakeholders endorsed the proposition that candidates be required to complete additional education after repeated failures. They recommended a full panoply of education alternatives ranging from remedial and review courses to completing anew another nursing education program. The Board appreciates the time and financial commitment to complete additional education. However, it balances those commitments against the Board's obligation to assure that those practicing professional nursing are competent to do so. In the view of the Board and the nursing community, passing the examination is a measurement of the competencies needed to

perform safely and effectively as a newly licensed entry level nurse. The Board believes that a candidate who is unable to pass the licensure examination within 2 years has deficiencies in education such that, at the very least, remediation is warranted. The Board rejected the recommendation that the candidates complete postexamination review courses based upon its understanding that these courses, routinely taken by candidates following failure, do not include the breadth of coursework or clinical components necessary to assure competence. At the same time, while the Board would have liked candidates who have failed the examination within a 2-year period to complete another full nursing education program, it is cognizant that this requirement could lead to an inability to obtain financial aid. Additionally, as stakeholders advised the Board during its October 18, 2013, meeting, nursing education programs may be reluctant to accept students who have repeatedly failed the examination even though these re-examinees would not constitute "first-time test takers" for purposes of § 21.33b(3).

Proposed subsection (d) clarifies that at the expiration of the 2-year period, candidates must again meet the licensure requirements to be qualified to retest.

§ 21.27. *Unlicensed candidate*

The Board proposes to rescind § 21.27 (relating to unlicensed candidate) as it explicitly conflicts with the requirement in section 4.1 of the RN Law (63 P.S. § 214.1) that a temporary practice permit expire immediately following an examination failure. Further the provision is unnecessary as it is properly addressed in § 21.7.

§ 21.28. *Licensure by endorsement*

The Board proposes to add examination, education and English-proficiency requirements for endorsement applicants identical to those proposed for examination applicants. Current § 21.28(a) delineates the endorsement requirements for applicants who completed nursing education programs within the United States or Canada. The Board would amend subsection (a) to require these endorsement applicants to pass an equivalent examination to that required for examination applicants in § 21.24 under section 7(a) of the RN Law (63 P.S. § 217(a)). Current § 21.28(c) delineates the endorsement requirements for applicants who completed nursing education programs and passed licensure examinations outside of the United States or Canada. The Board proposes to amend subsection (c) to clarify that the nursing education programs and the licensure examinations must be equivalent to those required for examination applicants in §§ 21.23 and 21.24. The Board also proposed to amend subsection (c) to remove the reference to the CGFNS.

Proposed subsection (e) tracks the proposed requirement in § 21.23(a) that applicants for examination demonstrate proficiency in English. Like the examination applicants, proposed subsection (e) would require all endorsement applicants to prove that either their nursing education program was conducted in English or they passed an English proficiency examination. If proficiency was demonstrated during an application for a temporary practice permit it need not be proven again.

§ 21.29. *Expiration and renewal of license*

The Board proposes making technical amendments to § 21.29 (relating to expiration and renewal of license) by correcting the reference from "professional nurse" to "registered nurse." Under the RN Law, registered nurses engage in the practice of professional nursing. However, the Board does not issue a professional nurse license.

§ 21.29b. *Reporting of address changes*

Proposed § 21.29b (relating to reporting of address changes) would require registered nurses to notify the Board of address changes within 14 days of the change. Enabling the Board to have current addresses saves money and resources in returned postage and remailing when the Board sends notices, renewal information and legal documents to its licensees.

§ 21.30. *Registered nurses licensed outside of the United States or Canada*

The Board proposes to amend subsection (a) to clarify existing Board practice that requires registered nurses educated and licensed outside of the United States or Canada to practice to hold either a Commonwealth-issued license or temporary practice permit to practice professional nursing in this Commonwealth. In that there are no longer visitor-exchange programs in nursing, the Board proposes to delete the reference to these programs in subsection (b). Subsection (c) is proposed to be deleted as it does not relate to the prior subsections which address the ability to provide licensed services as a licensee or as part of a nursing education program. Subsection (c) relates to educational requirements. The Board intends to reinsert this provision in a subsequent education rulemaking.

§ 21.30a. *Continued competency*

Current § 21.30a (relating to continued competency) delineates reactivation requirements when licenses have lapsed or been placed on inactive status for 5 years or longer. The Board proposes amending this provision to add reactivation requirement for licenses that have been suspended for 5 years or longer. The Board believes that just as lapsed or inactive licensees require retraining on current practices to update their competences as a result of having not practiced for 5 years or longer, so too do licensees whose licenses have been suspended for 5 years or longer once they have complied with the Order suspending their licenses.

§ 21.142. *Scope*

Current § 21.142 (relating to scope) delineates the Board's scope regarding practical nurses and the practice of practical nursing. Like proposed § 21.2(d), the Board proposes to amend subsection (c) to include the range of statutorily permitted sanctions. It would also delete subsection (d) as regulations are generally developed by committees of the Board composed of registered and practical nurses, public members and, when applicable, a dietician-nutritionist. Their proposals are then forwarded, under Executive Order 1996-1, to stakeholders for input before adoption by the full board and promulgation through the regulatory review process. Subsection (d) adds nothing to the Board's statutory authority to promulgate regulations in section 17.6 of the PN Law. Subsection (e), proposed subsection (d), is proposed to be amended to delete the requirement that a list of approved practical nursing education programs be promulgated and, in its place, require that the list be made available on the Board's web site.

§ 21.144. *Purpose of the Board*

Like § 21.3, the Board proposes to rescind § 21.144 (relating to purpose of the Board) as this provision is unnecessary.

§ 21.149. *Temporary practice permits*

Current subsection (b)(2), like § 21.7(b)(2), requires applicants for practical nurse temporary practice permits

who are licensed in another state or jurisdiction to demonstrate proficiency in English. Subsection (b)(3)(iii) requires applicants to submit an application for education credentials review to the CGFNS and retain a copy of that application to provide to the Board if requested. As in § 21.7, the Board proposes to replace the specific reference to the CGFNS with a reference to "a Board-approved foreign credentials evaluator" in subsection (b)(3)(iii) and amend subsection (b)(2) to indicate that the Board will post the list on its web site.

§ 21.151. Application for examination

The Board proposes similar amendments to § 21.151 (relating to application for examination) pertaining to examination application procedures for practical nurses, as are being proposed for registered nurses in § 21.21. Because the examination is administered daily, the Board proposes to delete subsection (a). With the exception of referencing practical nurses instead of professional nurses, identical revisions to § 21.21 are proposed to § 21.151(b)–(e).

Proposed § 21.151(d) would require that applicants for practical nurse licenses prove that either their nursing education programs were conducted in English or they passed a Board-approved English proficiency examination unless the applicants have met this requirement as part of applying for temporary practice permits. Proposed subsection (e) would institute current Board procedure of requiring graduates of nursing education programs outside of the United States and Canada to have their education evaluated by Board-approved foreign credentials evaluators. The Board believes that these evaluations assure that programs outside of the United States and Canada are equivalent to programs of study in this Commonwealth at the time the programs were completed as required under section 6 of the PN Law (63 P.S. § 656).

Proposed subsection (f) would require candidates to take the licensing examinations for the first time within 1 year of completing their practical nursing education programs unless prevented by emergency, illness or military service. This provision, like that for professional nurse candidates, is proposed to be added at the behest of nursing education program administrators who highlighted decreasing pass rates as the time between completing the education program and taking the examination increases.

§ 21.152. Passage of the examination

The heading of § 21.152 (relating to passage of the examination) is proposed to be amended because it includes outdated references to passing the licensure examination by achieving a minimum passing score. This proposed amendment would simply state that candidates for licensure shall pass the licensure examination approved by the Board.

§ 21.153. Re-examination

Current § 21.153 (relating to re-examination) addresses re-examination requirements including the authority in subsection (b) to take the examination as many times as necessary to complete the examination process. Subsection (a) would be amended to track current practice which requires a candidate who fails the examination to file a re-examination application with the Board allowing the candidate to obtain a new "authorization to test." Subsection (b) would be amended to require candidates to pass the licensure examination within 2 years of completing the practical nursing education program. As with the examination for registered nurse licenses, the examina-

tion for practical nurse licenses may be administered to a single applicant every 45 days, enabling an applicant to take the licensure examination up to 16 times without additional requirements.

In the event that a candidate does not pass within the 2-year time frame in proposed subsection (b), proposed subsection (c) would require the candidate to complete a remedial plan developed by a nursing education program for the candidate prior to re-examination. As with the examination for registered nurse licenses, during predraft input, stakeholders also endorsed the proposition that candidates for practical nurse licensure complete additional education after repeated failures. Additionally, as with the examination for registered nurse licenses, the Board believes that a candidate who is unable to pass the licensure examination within 2 years has deficiencies in education such that, at the very least, remediation is warranted.

Proposed subsection (d) clarifies that in the addition to completion of the remediation plan, candidates must meet current licensure requirements to be re-examined.

§ 21.154. Unlicensed candidate

Like § 21.27, the Board proposes to rescind § 21.154 (relating to unlicensed candidate) as it explicitly conflicts with the requirement in section 3.1 of the PN Law (63 P.S. § 653.1) that a temporary practice permit expires immediately upon an examination failure. Further, the provision is unnecessary as it is properly addressed in § 21.149.

§ 21.155. Licensure by endorsement

The Board proposes to add examination, education and English-proficiency requirements for endorsement applicants identical to those proposed for examination applicants. Current § 21.155(a) delineates the endorsement requirements for applicants who completed a nursing education program within the United States or Canada. The Board proposed to amend subsection (a) to require these endorsement applicants to pass an equivalent examination to that required for examination applicants in § 21.152. Current § 21.155(d) delineates the endorsement requirements for applicants who completed a nursing education program outside of the United States or Canada. The Board proposes to amend subsection (d) to require these endorsement applicants to pass an equivalent examination and possess equivalent education to that required for examination applicants.

Proposed amendments to subsection (d) track the proposed amendments in § 21.28 for registered nurses, requiring practical nurse applicants for endorsement to complete a nursing education program and a licensure examination equivalent to that required of practical nurse applicants in this Commonwealth. The Board proposes to amend subsection (d) to delete the reference to the CGFNS.

Similarly, the Board proposes to add subsection (e) requiring endorsement applicants to prove that either their nursing education programs were conducted in English or they passed a Board-approved English proficiency examination, unless the applicants have already met this requirement as part of applying for temporary practice permits in § 21.149.

§ 21.156. Renewal of license

The Board proposes to amend § 21.156 (relating to renewal of license) by updating the Board's renewal procedures for practical nurses so that the procedures match current practice for all licensees, except for the

requirement of continuing education, which is currently imposed only upon registered nurses. The Board proposes deleting current subsection (b) since it places a responsibility on the Board to forward renewal applications. Although the Board sends a mailing to its licensees notifying them that it is time to renew and providing the procedures to renew electronically or by paper, this is a courtesy and not a statutory obligation. Additionally, the Board proposes to amend subsection (d), proposed subsection (c), to reflect under current procedure wherein licensees are asked to disclose on their renewal applications any prior disciplinary actions and criminal charges as well as other licenses held.

§ 21.156a. Continued competency

Current § 21.156a (relating to continued competency) delineates reactivation requirements when licenses have lapsed or been placed on inactive status for 5 years or longer. The Board proposes to add a reactivation requirement for licenses that have been suspended for 5 years or longer. The Board believes that just as lapsed or inactive licensees require retraining on current practices to update their competences as a result of having not practiced for 5 years or longer, so too do licensees whose licenses have been suspended for 5 years or longer once they have complied with the Order suspending their licenses.

§ 21.156c. Reporting of address changes

Proposed § 21.156c (relating to reporting of address changes) would require practical nurses to notify the Board of address changes within 14 days of the change.

§ 21.701. Definitions

The Board proposes amending the titles of two dietetic organizations to conform to their current names and acronyms. The American Dietetic Association is now known as the Academy of Nutrition and Dietetics. The Commission on Accreditation for Dietetics Education is now known as the Accreditation Council for Education in Nutrition and Dietetics. Outdated references to these organizations in the definitions of "approved program" and "CDR" are also proposed to be amended.

§ 21.722. Education, examination and re-examination of applicants

The Board proposes adding subsection (b)(2), identical to the proposal for registered and practical nurses in §§ 21.23(c) and 21.151(f), to require candidates to take the licensing examinations for the first time within 1 year of completing their dietitian-nutritionists education programs unless prevented by emergency, illness or military service.

The Board also proposes adding subsection (c) regarding re-examination. Identical to the proposal for registered nurses and practical nurses in proposed §§ 21.25(b) and (c) and 21.153(b) and (c), the Board proposes adding the requirements that dietitian-nutritionists pass the licensure examinations within 2 years and complete additional remedial education thereafter to again be authorized to take the licensure examinations. Although stakeholders did not seek this addition as they did for registered and practical nurses, the Board believes that all of its licensees should be subject to the same re-examination requirements.

§ 21.723b. Reporting of address changes

Proposed § 21.723b (relating to reporting of address changes) would require licensed dietitian-nutritionists to notify the Board of address changes within 14 days of the change.

§ 21.274. Continuing education

The Board proposes amending § 21.724 (relating to continuing education) to delete outdated references.

Fiscal Impact and Paperwork Requirements

The Board believes that this proposed rulemaking should have a minimal fiscal and paperwork impact on the Board and the regulated community. The application procedures included in this proposed rulemaking are, for the most part, currently in place and therefore will not incur additional Board time. Board staff will have to spend some additional time confirming that examination candidates first take the licensure examination within 1 year of completion of their nursing education program and complete a remediation plan to be authorized to take the examination following failure after 2 years. Similarly, applicants who fail to take the licensure examination within 1 year of their program completion will have the burden of proving to the Board that they were prevented from taking the examination due to an emergency, hardship or military service. Similarly, for those who fail to pass the examination within 2 years, they will have to provide the Board with documentation evidencing their compliance with a remediation plan developed by a Board-approved nursing education program. The remedial education costs for those candidates who fail after the 2-year period cannot be predicted as different programs will charge different fees and the amount of remedial education needed will be candidate-specific.

Sunset Date

The Board reviews the effectiveness of its regulations on an ongoing basis. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2014, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and 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 must 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, recommendations or objections regarding the proposed rulemaking to Judith Pachter Schudler, Counsel, State Board of Nursing, P. O. Box 2649, Harrisburg, PA 17105-2649, RA-STRegulatoryCounsel@pa.gov within 30 days of publication of this proposed rulemaking. Reference No. 16A-5125 (General Revisions) when submitting comments.

ANN M. COUGHLIN, MBA, MSN, RN,
Chairperson

Fiscal Note: 16A-5125. No fiscal impact; (8) recommends adoption.

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

GENERAL PROVISIONS

§ 21.2. Scope.

(a) The Board administers the act by providing rules and regulations on standards for nursing schools and the conduct of the programs.

(b) The Board provides for licensure of graduate nurses from approved schools by examination, by endorsement and by renewal of licenses.

(c) The Board has the right to establish rules and regulations for the practice of nursing.

(d) The Board may [suspend or revoke licenses] impose disciplinary sanctions and assess civil penalties for cause.

(e) [The Board will approve basic nursing programs conducted in hospitals, colleges, universities; approve foreign exchange visitor programs; and promulgate a list of approved programs.] The Board may approve professional nursing education programs conducted in hospitals, colleges and universities, and will make available a list of approved programs.

[(f) The Board will approve applications for inactive status.

(g)] (f) The Board will regulate the practice of professional nursing.

§ 21.3. [Purposes of the Board] (Reserved).

[The Board will insure safe nursing services for the citizens of this Commonwealth. Embodied in this purpose are the following responsibilities:

(1) To establish safe standards for the preparation of registered and practical nurses in approved educational programs.

(2) To assure safe standards of nursing practice through examination and licensure of graduates of approved educational programs, through endorsement of registered and practical nurses from other jurisdictions, and through the regulation of the practice of nursing in this Commonwealth.]

§ 21.7. Temporary practice permits.

(a) A graduate registered nurse may only practice professional nursing under supervision and if the graduate registered nurse holds a current temporary practice permit. "Supervision" means that a licensed registered nurse is physically present in the area or unit where the graduate registered nurse is practicing. The Board may grant a temporary practice permit to a graduate registered nurse as follows:

(1) [An individual who wishes to practice as a graduate registered nurse during the period from the date of completion of the educational program to the notification of the results of the licensing

examination] A graduate registered nurse who wishes to practice professional nursing shall submit an application for a temporary practice permit for a graduate registered nurse on a form provided by the Board and remit the fee specified in § 21.5 (relating to fees). A temporary practice permit granted under this section is valid for up to 1 year from the date of issuance, unless extended under paragraphs (3) and (4), and immediately expires if the applicant fails the licensing examination.

* * * * *

(b) The Board may grant a temporary practice permit to an individual who holds a current registered nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed registered nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit period in cases of illness or extreme hardship[,] as set forth in paragraph (5).

(1) A currently-licensed registered nurse who wishes to practice professional nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

[(ii)] (i) Submit an application for temporary practice permit for a currently-licensed registered nurse on a form provided by the Board.

[(iii)] (ii) Remit the fee specified in § 21.5.

(2) An individual applying for a temporary practice permit for a currently-licensed registered nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. [A] The Board will make available a list of Board-approved English proficiency examinations [is available upon request to the Board] on its web site. This information must be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed registered nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of the submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of the submission of the request to provide to the Board upon request.

(iii) [Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements in §§ 21.23(c) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the

Board upon request.] Submit an application for an education evaluation to a Board-approved foreign credentials evaluator if required under §§ 21.23(b) and 21.28(c) (relating to qualifications of applicant for examination; and licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

* * * * *

LICENSES

§ 21.21. Application for examination.

[(a) An application for the licensing examination without transcript may be submitted during the last term of the nursing program. The applicant will be scheduled for the subsequent examination.

(b) A candidate will not be admitted to the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including the completion of an approved educational program.

(c) A copy of the transcript validating program completion shall be filed at least 2 weeks prior to the testing dates.

(d) The Board will not proctor an applicant for another state board. The Board will not permit an applicant for Commonwealth licensure to be proctored by another state board.]

(a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a professional nursing education program.

(b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved professional nursing educational program.

(c) Graduates of professional nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.

(d) An applicant seeking a waiver of the 1-year requirement in § 21.23(c) (relating to qualifications of applicant for examination) shall submit documentation to demonstrate that an emergency, illness or military service prevented compliance.

§ 21.22. [Date and location of examinations] (Reserved).

[(a) The Board conducts licensing examinations at least twice a year.

(b) A list of examination dates and locations are published annually.]

§ 21.23. Qualifications of applicant for examination.

[(a) An applicant shall pass a written examination as provided by the Board.

(b) Additional applicant qualifications are contained in sections 5 and 6 of the act (63 P. S. §§ 215 and 216).

(c) Nurses educated in schools of nursing outside of the United States or Canada shall have successfully completed the English language and nursing practice proficiency examination of the Commis-

sion on Graduates of Foreign Nursing Schools. A school of nursing located outside of the United States or Canada will be considered a foreign nursing school.]

(a) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has, prior to be approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination, unless the applicant has already met this requirement in satisfaction of § 21.7(a) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(b) An applicant who graduated from a professional nursing education program outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(c) A candidate for licensure shall take the examination for the first time within 1 year of completing the professional nursing education program unless prevented by emergency, illness or military service.

§ 21.24. [Examination score requirements] Passage of the licensure examination.

The candidate for licensure shall [achieve a minimum score as mandated] pass the licensure examination approved by the Board.

§ 21.25. [Reexamination] Re-examination.

[(a) A candidate shall submit the required fee in the form of a check for reexamination.

(b) (Reserved).

(c) The candidate may take the licensing examination as many times as necessary to complete licensure process.

(d) A request to retake an examination for the purpose of elevating a passing score will not be granted.]

(a) A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) The candidate may take the licensing examination as many times as necessary to pass the licensure examination within 2 years of completion of the candidate's nursing education program.

(c) If a candidate does not pass the examination within 2 years of completion of the candidate's nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination.

(d) Candidates who apply for re-examination after the 2-year period in subsection (b) shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.27. [Unlicensed candidate] (Reserved).

[The candidate may practice as a graduate nurse until the licensing examination is passed subject to the following:

(1) Unless licensed, the candidate may be employed as a graduate nurse for 1 year only from the date of completion of a nursing program except in the case where special permission is granted by the Board due to extenuating circumstances. In such a case the candidate shall present validating documentation.

(2) The candidate shall practice under the supervision of an experienced registered nurse. "Supervision," as used in this paragraph, means that the registered nurse is physically present in the area or unit where the unlicensed candidate is practicing.]

§ 21.28. Licensure by endorsement.

(a) [A registered nurse who has graduated from an approved nursing program in another state or territory of the United States or Canada and who is licensed by writing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth by endorsement of the original licensing board.] A registered nurse who has graduated from an approved professional nursing education program in the United States or Canada and who obtained licensure in another jurisdiction having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth.

(b) An applicant for licensure in this Commonwealth by endorsement shall meet the requirements as stated in the act.

(c) [A registered nurse who has graduated from a nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.] A registered nurse who has graduated from a professional nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(d) An applicant for endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of [§ 21.30a(1) or (2)] § 21.30a(a)(1) or (2) (relating to continued competency).

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education

program was conducted in English or that the applicant received a passing score on a Board-approved English proficiency examination unless the applicant has met this requirement in satisfaction of § 21.7(b) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 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:

(1) Complete and submit the renewal application [form], 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 licensure fee in § 21.5 (relating to fees).

(3) [Beginning with the license period commencing on July 12, 2010, verify that the professional] Verify that the registered nurse has complied with the continuing education requirements mandated by section [12] 12.1 of the act (63 P.S. § 222) during the biennial period immediately preceding the application for renewal in accordance with §§ 21.131—21.134 (relating to continuing education). School nurses, who as certified education specialists are required to obtain continuing professional education under the Public School Code of 1949 (24 P.S. §§ [1-100] 1-101—27-2702), shall verify by signed statement that the school nurse has complied with the continuing education requirements for certification by the Department of Education.

* * * * *

§ 21.29b. Reporting of address changes.

A registered nurse shall notify the Board within 14 days of a change of address.

§ 21.30. Registered nurses licensed outside of the United States[, its territories] or Canada.

(a) [A nurse educated and licensed in another country other than Canada may not be employed as a nurse in this Commonwealth until the requirements for Commonwealth licensure have been met.] A registered nurse educated and licensed outside of the United States or Canada may not practice professional nursing in this Commonwealth until the registered nurse is issued a license or temporary practice permit by the Board.

(b) A graduate nurse licensed in another country may participate in an [approved exchange-visitor program or in an accreditation] accredited graduate program in nursing for [a period of] 2 years without licensure and compensation in this Commonwealth.

[(c) An applicant coming from a country outside of the United States or Canada who is from a nondegree granting institution shall obtain a Certificate of Preliminary Education through the Department of Education.]

§ 21.30a. Continued competency.

[A] (a) A registered nurse whose license has lapsed for 5 years or longer or [whose license] has been placed on inactive status for 5 years or longer, as permitted in section 11(b) of the act (63 P.S. § 221(b)), may reactivate the license by doing one of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee [as set forth] in § 21.5 (relating to fees).

(2) Successfully completing a Board-approved reactivation program, which [includes as a prerequisite to completion the passing of a Board-approved] requires passage of a nursing achievement examination.

(3) Providing evidence to the Board that the applicant has [practiced nursing] a current license and has practiced as a registered nurse in another jurisdiction at some period of time within the last 5 years [under a current license during that time].

(b) A registered nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.5.

(2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

Subchapter B. PRACTICAL NURSES GENERAL PROVISIONS

§ 21.142. Scope.

(a) The Board administers the act by promulgating rules and regulations which establish standards for practical nursing programs and for the conduct of programs.

(b) The Board provides for licensure of graduate practical nurses from approved programs by examination, by endorsement and by programs renewal of licenses.

(c) The Board may [suspend or revoke licenses] impose disciplinary sanctions and assess civil penalties for cause.

[(d) The Board, with the approval of the Commissioner of Professional and Occupational Affairs, will appoint a committee of two licensed practical nurses and one licensed professional nurse experienced in practical nurse education and, in consultation with this committee, will have the power and duty to establish reasonable rules and regulations for the administration of the act.

(e) [(d) The Board may approve [basic] practical nursing education programs conducted in hospitals, community colleges, universities and public school districts and vocational education programs under the Department of Education and [promulgate] make available a list of approved [programs of] practical nursing education programs on its web site.

[(f)] (e) The Board will regulate the practice of practical nursing.

§ 21.144. [Purpose of the Board] (Reserved).

[The Board will insure safe nursing services for the citizens of this Commonwealth. Embodied in this purpose are the following responsibilities:

(1) To establish safe standards for the preparation of registered and practical nurses in approved educational programs.

(2) To assure safe standards of nursing practice through examination and licensure of graduates of approved educational programs, through endorsement of registered and practical nurses from other jurisdictions and through the regulation of the practice of nursing in this Commonwealth.]

§ 21.149. Temporary practice permits.

* * * * *

(b) The Board may grant a temporary practice permit to an individual who holds a current practical nurse license issued by another state, territory or possession of the United States or Canada (a currently-licensed practical nurse). The temporary practice permit will expire in 1 year, unless the individual fails the licensure examination, in which case the temporary practice permit will immediately expire. The Board may extend the temporary practice permit in cases of illness or extreme hardship, as set forth in paragraph (5).

(1) A currently-licensed practical nurse who wishes to practice practical nursing during the period from the date of submission of the Applicant Data Sheet of the application for licensure until the Board makes a determination on the application for licensure or 1 year, whichever comes first, shall:

(i) Submit an application for temporary practice permit for a currently-licensed practical nurse on a form provided by the Board.

(ii) Remit the fee specified in § 21.147.

(2) An individual applying for a temporary practice permit for a currently-licensed practical nurse shall demonstrate proficiency in English by submitting proof that the individual's nursing education program was conducted in English or that the individual has received a passing score on a Board-approved English proficiency examination. [A] The Board will make available a list of Board-approved English proficiency examinations [is available upon request to the Board] on its web site. This information shall be submitted with the Applicant Data Sheet of the application for licensure.

(3) Within 45 days of the date the temporary practice permit is issued, an individual who has been granted a temporary practice permit for a currently-licensed practical nurse shall submit the Verification of Licensure Form of the application for licensure and shall:

(i) Request verification of licensure from the foreign jurisdiction and retain documentation of submission of the request to provide to the Board upon request.

(ii) Request certification of the applicant's nursing education program from the licensing board or appropriate educational authorities. The certification of nursing education must be submitted to the Board in English directly from the appropriate educational authorities. The applicant shall retain documentation of submission of the request to submit to the Board upon request.

(iii) [Submit the Commission on Graduates of Foreign Nursing Schools (CGFNS) application if the applicant is required to meet CGFNS requirements set forth in § 21.155(d) (relating to licensure by endorsement) and retain documentation of the submission of the CGFNS application to provide to the Board upon request.] Submit an application for an

education evaluation to a Board-approved foreign credentials evaluator if required under § 21.155(d) (relating to licensure by endorsement) and retain documentation of the application submitted to the evaluator to provide to the Board upon request.

* * * * *

LICENSURE

§ 21.151. Application for examination.

[(a) The Board will conduct licensing examinations at least twice a year, and more often when necessary. A list of examination dates will be published annually.

(b) An application for the licensing examination, without a transcript, may be submitted during the last term of the nursing program. The applicant will be scheduled for the subsequent examination.

(c) A candidate will not be admitted to the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including the completion of an approved educational program.

(d) A copy of the transcript validating program completion shall be filed at least 2 weeks prior to the testing dates.

(e) The Board will not proctor an applicant for another state board. The Board will not permit an applicant for Commonwealth licensure to be proctored by another state board.]

(a) A candidate for the licensing examination may submit an application together with the required fee no sooner than 90 days prior to completing a practical nursing education program.

(b) A candidate will not be authorized to take the examination unless the candidate has satisfied the requirements of the act necessary for eligibility, including confirmation of completion of an approved practical nursing educational program.

(c) Graduates of practical nursing education programs outside of this Commonwealth shall file an official transcript validating program completion with the application.

(d) An applicant shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has, prior to being approved to take the licensure examination, received a passing score on a Board-approved English proficiency examination unless the applicant has already met this requirement in satisfaction of § 21.149(b)(2) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

(e) An applicant who graduated from a practical nursing education program outside of the United States or Canada shall have the applicant's education evaluated by a Board-approved foreign credentials evaluator to determine whether the education obtained is equivalent to the program of study required in this Commonwealth at the time the program was completed.

(f) A candidate shall take the examination for the first time within 1 year of completing the profes-

sional nursing education program unless prevented by emergency, illness or military service.

§ 21.152. [Date and location of examinations] Passage of the examination.

Candidates for practical nursing licensure shall [achieve a minimum standard score as mandated] pass the licensure examination approved by the Board.

§ 21.153. [Reexamination] Re-examination.

(a) [Candidates shall submit the required fee to be scheduled for reexamination.] A candidate shall submit a re-examination application, including the required fee for re-examination.

(b) [Candidates] The candidate may take the licensing examination as many times as necessary to [complete licensure process] pass the licensure examination within 2 years of completion of the candidate's nursing education program.

(c) If a candidate does not pass the examination within 2 years of completion of the nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination.

(d) Re-examination applications submitted after the 2-year period shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.154. [Unlicensed candidate] (Reserved).

[The candidate may practice as a graduate practical nurse until the examination is passed subject to the following:

(1) Unless licensed, the candidate may be employed as a graduate practical nurse for 1 year only from completion of the program except in the case where special permission is granted by the Board due to extenuating circumstances. In such a case the candidate shall present validating documentation.

(2) The candidate shall practice under the supervision of an experienced registered nurse. Supervision is defined to mean that the registered nurse is physically present in the area or unit where the unlicensed graduate is practicing.]

§ 21.155. Licensure by endorsement.

(a) [Licensure as a practical nurse in this Commonwealth by endorsement of the original licensing board is granted to a graduate of an approved practical nursing program who is licensed in another jurisdiction by an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth.] A practical nurse who has graduated from an approved practical nursing program in the United States or Canada and who obtained licensure in another jurisdiction of the United States or Canada upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth.

(b) [Applicants for licensure in this Commonwealth] An applicant for licensure by endorsement in this Commonwealth shall meet the requirements regarding age, good moral character, preliminary education and practical nursing education as outlined in the act.

(c) An applicant for licensure by endorsement whose license in the other jurisdiction is not current for 5 years or longer shall, prior to receiving a license in this Commonwealth, satisfy the requirements of [§ 21.156a(1) or (2)] § 21.156a(a)(1) or (2) (relating to continued competency).

(d) [A practical nurse who has graduated from a practical nursing program in a country or territory outside of the United States or Canada and who is licensed by completing the National Council Licensure Examination in another jurisdiction of the United States or Canada may be granted licensure in this Commonwealth without examination if the applicant's program of study is deemed equivalent to the program of study required in this Commonwealth at the time the program was completed. The Board will base equivalency upon an evaluation performed by the Commission on Graduates of Foreign Nursing Schools (CGFNS) as to the foreign nursing program.] A practical nurse who has graduated from a practical nursing education program in a country or territory outside of the United States or Canada deemed equivalent to the program of study required in this Commonwealth at the time the program was completed and who obtained licensure in that country or territory upon having passed an examination considered by the Board to be equivalent to the examination required for licensure in this Commonwealth may be granted licensure by endorsement in this Commonwealth without examination. The Board will base educational equivalency upon an evaluation administered by a Board-approved foreign credentials evaluator.

(e) An applicant for licensure by endorsement shall demonstrate proficiency in English by submitting proof that the applicant's nursing education program was conducted in English or that the applicant has received a passing score on a Board-approved English proficiency examination unless the applicant has previously met this requirement in satisfaction of § 21.7(b) (relating to temporary practice permits). The Board will make available a list of Board-approved English proficiency examinations on its web site.

§ 21.156. Renewal of license.

(a) Licenses for practical nurses expire on June 30 of each biennium in the even-numbered years.

[(b) Application for renewal of a license will be forwarded biennially to each active registrant 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.]

(b) When applying for licensure renewal, a licensed practical nurse shall:

(1) Complete and submit the renewal application, including disclosing a license to practice nursing or an 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 discipline imposed by a state licensing board in the previous biennial period and 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 § 21.156b (relating to reporting of crimes and disciplinary action).

(Editor's Note: Section 21.156b will be adopted on or before the date of final adoption of this proposed rulemaking.)

[(d)] (c) When communicating with the Board, [registrants] licensed practical nurses 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.

§ 21.156a. Continued competency.

[A] (a) A licensed practical nurse whose license has lapsed for 5 years or longer or [whose license] has been placed on inactive status for 5 years or longer, as permitted in section 13.1(b) of the act (63 P.S. § 663.1(b)), may reactivate the license by doing one of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee [as set forth] in § 21.147 (relating to fees).

(2) Successfully completing a Board-approved reactivation program [, which includes as a prerequisite to completion the passing of a Board-approved] which requires passage of a nursing achievement examination.

(3) Providing evidence to the Board that the applicant has [practiced nursing] a current license and has practiced as a practical nurse in another jurisdiction at some time within the last 5 years [under a current license during that time].

(b) A licensed practical nurse whose license has been suspended for 5 years or longer may reactivate the license after complying with the terms of the suspension Order by doing either of the following:

(1) Successfully completing the initial licensing examination approved by the Board and submitting the examination fee in § 21.147.

(2) Successfully completing a Board-approved reactivation program which requires passage of a nursing achievement examination.

§ 21.156c. Reporting of address changes.

A licensed practical nurse shall notify the Board within 14 days of a change of address.

**Subchapter G. DIETITIAN-NUTRITIONISTS
GENERAL PROVISIONS**

§ 21.701. Definitions.

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

ACEND—Accreditation Counsel for Education in Nutrition and Dietetics—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.

ACN—American College of Nutrition.

[ADA—American Dietetic Association.]

AND—Academy of Nutrition and Dietetics.

Act—The Professional Nursing Law (63 P. S. §§ 211—225), which provides for the licensing of Licensed Dietitian-Nutritionists.

Approved—Approved by the Board.

Approved program—Those educational programs accredited by the [Commission on Accreditation for Dietetics Education] ACEND or the American Council on Education for dietetics-nutrition education.

Board—The State Board of Nursing of the Commonwealth.

[CADE—Commission on Accreditation for Dietetics Education—The organization recognized by the Council on Higher Education Accreditation and the United States Department of Education as the accrediting agency for education programs that prepare individuals for the practice of dietetics-nutrition.]

CBNS—Certification Board for Nutrition Specialists—The certification body of the ACN.

CDR—Commission on Dietetic Registration—The credentialing agency for the [ADA] AND.

* * * * *

LICENSURE REQUIREMENTS

§ 21.722. Education [and], examination and re-examination of applicants.

(a) **Education.** The Board approves educational programs that meet the requirements of section 6(b)(2) of the act (63 P. S. § 216(b)(2)) that are approved by [CADE] ACEND or the ACN.

(b) **Examination.**

(1) The Board approves the Registration Examination for Registered Dietitians and Examination of the Certification Board for Nutrition Specialists as the examinations which an applicant may complete to satisfy section 6(b)(4) of the act.

(2) A candidate shall take the examination for the first time within 1 year of completing the dietetics-nutrition education program unless prevented by emergency, illness or military service.

(c) **Re-examination.**

(1) A candidate may take the licensing examination as many times as necessary to complete the licensure process within a 2-year period of completion of the candidate's dietetics-nutrition education program.

(2) If a candidate does not successfully complete the examination within 2 years of completion of the dietetics-nutrition education program, the candidate shall complete a plan of remediation developed by a dietetics-nutrition education program for the candidate prior to applying for re-examination.

(3) Re-examination applications submitted after the 2-year period shall satisfy the administrative and education requirements prevailing at the time of reapplication.

§ 21.723b. Reporting of address changes.

An LDN shall notify the Board within 14 days of a change of address.

§ 21.724. Continuing education.

* * * * *

(b) **Board-approved continuing professional education.** The Board will accept for completion of the CPE requirement substantive learning experiences, subject to the limitations in paragraph (2) relating to the field of nutrition and dietetics which are not designed for the public and which are sponsored by the [ADA] AND, the ACN, by individual state dietetic associations, if the association is a member of the [ADA] AND or ACN, by approved college or dietetic programs under § 21.722 (relating to education [and], examination and re-examination of applicants) when a certificate of attendance is issued, and courses related to the practice of dietetics-nutrition offered by the Accreditation Council for Continuing Medical Education, the Accreditation Council on Pharmaceutical Education, the American Osteopathic Association and the American Medical Association.

* * * * *

[Pa.B. Doc. No. 14-2256. Filed for public inspection October 31, 2014, 9:00 a.m.]

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5125 (IRRC #3080)

General Revisions

December 31, 2014

We submit for your consideration the following comments on the proposed rulemaking published in the November 1, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the State Board of Nursing (Board) to respond to all comments received from us or any other source.

- 1. Statutory authority; Determining whether the regulation is in the public interest; Economic or fiscal impacts; Protection of the public health, safety and welfare; Reasonableness of requirements, implementation procedures and timetables for compliance.**

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

Section 215(a) of the Professional Nursing Law (RN Law) states, "The Board shall . . . examine all eligible applicants for licensure . . ." (63 P.S. § 215(a)). Section 215(d) of the RN Law states,

In establishing the education requirements for admittance to the nursing licensure examination under this section, the Board shall not deny access to the examination for licensure as a registered nurse to a graduate of a State-approved associate degree, diploma or baccalaureate degree nursing program.

(63 P.S. § 215(d)). Regarding eligibility, Section 216(a) of the RN Law states,

Every applicant, to be eligible for examination for licensure as a registered nurse, shall furnish evidence satisfactory to the Board that he or she is of good moral character, has completed work equal to a standard high school course as evaluated

by the Board and has satisfactorily completed an approved program of professional nursing.

(63 P.S. § 216(a)). The Board proposes to amend Section 21.25 (relating to re-examination) by adding a new requirement in Subsection (c) that states, "If a candidate does not pass the examination within 2 years of completion of the candidate's nursing education program, the candidate shall complete a plan of remediation developed by a nursing education program for the candidate prior to applying for re-examination."

It is unclear how the Board can deny access to the examination to a candidate who meets the eligibility requirements of Section 216(a) of the RN Law. We ask the Board either to remove this requirement from the final-form regulation, or to explain why this proposed regulatory requirement is consistent with the statute in terms of access to the exam.

If the proposed requirement in Section 21.25(c) is retained in the final-form regulation, we ask the Board to address the following concerns.

The Board should explain in the Regulatory Analysis Form (RAF) and Preamble of the final-form regulation the need for the two-year time frame, and why it is reasonable.

In the Preamble, the Board describes this change as requiring the candidate to complete a remedial plan developed by a "Board-approved" nursing education program. The proposed language in Section 21.25(c) does not specifically state that the remedial plan must be developed by a Board-approved nursing education program, and we recommend the Board include this requirement in the final-form regulation.

Section 21.25(c) states that the plan of remediation will be developed "for the candidate," indicating that each failing candidate's plan of remediation will be customized. Such a requirement could have a significant economic or fiscal impact on both the programs and the candidates. In response to RAF #19 related to costs to the regulated community, the Board states, "The remedial education costs for those candidates who fail after the 2 years cannot be predicted as different programs charge different fees and the amount of remedial education required will be candidate-specific." The RRA requires the Board to provide "a specific estimate" of the costs to the regulated community associated with compliance. In order to assist us in our determination of whether the regulation is reasonable and in the public interest, we ask the Board to provide more details in the RAF regarding the economic impact on the programs and candidates.

In response to RAF #21 regarding costs to state government, the Board states that the regulation does not impose any additional costs to state government. However, it seems that the proposed requirements in Sections 21.25(c) and (d) would impact the Board in some manner. We ask the Board to clarify in the RAF and Preamble of the final-form regulation how the processing of a new class of candidates will not impose new costs on the Board. Specifically, would the Board need to verify that these candidates have completed a plan of remediation developed by a Board-approved nursing education program prior to reapplying? Would the Board need to verify that

these candidates satisfy the administrative and education requirements prevailing at the time of reapplication?

We also have concerns related to the implementation of the proposed requirement in Section 21.25(c). We ask the Board to clarify what will be required of a candidate who fails the examination following completion a remediation plan.

Finally, the Board states in the Preamble that since October 1, 2010, a nursing education program must achieve a minimum pass rate for first-time test takers of 80 percent. According to the Board, currently 22 of the approximately 142 approved nursing education programs are on provisional approval due to their pass rates which did not reach the 80 percent threshold. While success or failure on the examination ultimately rests with the candidate, we ask the Board to clarify whether a correlation exists between the failing candidates and any of the education programs on provisional approval. The Board did not provide this information, nor did the Board include the pass rate for the 22 education programs. Without this information, we question whether there would be value in candidates turning to certain provisional approval education programs for remediation plans. We ask the Board to explain how it determined that requiring candidates to complete a remedial plan, rather than addressing the education offered by provisional approval programs, is reasonable.

These concerns also apply to Section 21.153 and Section 21.722.

2. Section 21.2. Scope. – Clarity.

In Subsection (e) the Board states that it may approve professional nursing education programs conducted in hospitals, colleges and universities, and will make available a list of approved programs. We ask the Board to be more specific as to how and where the list of approved programs will be made available.

Additionally, could other types of postsecondary education institutions that are not hospitals, colleges or universities be approved? If so, we ask the Board to consider including these other types of institutions, or explain in the Preamble why they are not included. We ask the Board to also consider this comment in reference to Section 21.142.

3. Section 21.21. Application for examination. – Protection of the public health, safety and welfare; Reasonableness of requirements.

Subsection (c) currently requires a copy of the transcript validating the applicant's completion of the program to be filed at least two weeks prior to the testing dates. The Board states in the Preamble that it proposes to delete this requirement for graduates of in-state programs and maintain the requirement only for out-of-state graduates. The Board notes that it is retaining this requirement for graduates who attend programs outside of the Commonwealth because the Board does not approve these programs. However, proposed Subsection (c) no longer requires the transcript to be filed at least two weeks prior to the testing dates. Does the Board intend to remove the filing deadline from Subsection (c)? If so, we ask the Board to explain the

reasonableness of removing the filing deadline for transcripts for out-of-state graduates and how doing so protects the public health, safety and welfare.

4. Section 21.23. Qualifications of applicant for examination. – Clarity.

Subsection (a) should state “. . . that the applicant has, prior to **being** approved to take the licensure examination . . .” [Emphasis added.]

Also, Subsection (a) addresses demonstration of proficiency in English, and refers to the possibility that an applicant may have satisfied the requirement of Section 21.7(a) (relating to temporary practice permits). A parallel provision related to practical nurses, Section 21.151(d), refers to the possibility that an applicant may have satisfied the requirement of Section 21.149(b)(2) (relating to temporary practice permits). Should Subsection (a) reference Section 21.7(b)(2)? [Emphasis added.]

In the Preamble, the Board states that Subsection (b) is “identical for endorsement candidates in Sections 21.28(c) and 21.155(d) (relating to licensure by endorsement).” However, the language of these three subsections is not identical. We ask the Board to revise the provisions or revise the description in the Preamble of the final-form regulation.

5. Section 21.25. Re-examination. – Clarity; Reasonableness of requirements.

Subsection (b) states, “The candidate may take the licensing examination **as many times as necessary** to pass the licensure examination within 2 years of completion of the candidate’s nursing education program.” [Emphasis added.] However, in the Preamble, the Board states, “To preserve the integrity of the examination, it may be administered to a single applicant **every 45 days**. Under proposed subsection (b), candidates are allowed to take the licensure examination **up to 16 times** without additional requirements.” [Emphasis added.] The proposed language in Subsection (b) does not limit a candidate to 16 exams. If it is the Board’s intention to impose such a limit, Subsection (b) should be revised to make clear the limitation on re-examination.

This comment also applies to Section 21.153(b). Additionally, we ask the Board to consider the impact of this comment on Section 21.722, which the Board describes in the Preamble as “identical” to the proposed re-examination requirements for registered and practical nurses. We ask the Board to revise the final-form regulation as appropriate, or to explain the reasonableness of any differences between these sections.

6. Section 21.28. Licensure by endorsement. – Clarity.

We ask the Board to make the language of Subsections (b) and (d) consistent. Specifically, Subsection (b) states, “An applicant for licensure in this Commonwealth by endorsement . . .” while Subsection (d) states, “An applicant for endorsement . . .”

Similar to Comment #4 regarding demonstration of proficiency in English, should Subsection (e) reference Section 21.7(b)(2)? [Emphasis added.]

7. Section 21.151. Application for examination. – Clarity.

Subsection (f) references completion of the “**professional** nursing education program.” [Emphasis added.] Should this subsection reference the “**practical** nursing education program”? [Emphasis added.]

8. Section 21.153. Re-examination. – Clarity.

In Subsection (c), the Board should clarify that the plan of remediation must be developed by a “Board-approved” nursing education program.

9. Section 21.155. Licensure by endorsement. – Clarity.

Similar to Comment #4 regarding demonstration of proficiency in English, should Subsection (e) reference Section 21.7(b)(2)? [Emphasis added.]

10. Section 21.701. Definitions. – Clarity.

The Board should revise the definition for *ACEND* to state “Accreditation Council for Education in Nutrition and Dietetics.”

11. Section 21.722. Education, examination and re-examination of applicants. – Clarity.

The Board states in the Preamble that it is adding Subsection (c) which is “identical” to the proposed language for registered and practical nurses in proposed Sections 21.25(b) and (c) and 21.153(b) and (c). However, the proposed language is not identical. For example, Subsection (c) references completing the licensure process, whereas Sections 21.25(b) and (c) and 21.153(b) and (c) reference passing the licensure examination. We ask the Board to ensure that where it intends to make language identical, it does so. Additionally, does the Board intend for Paragraph (c)(3), Section 21.25(d) and Section 21.153(d) to be identical?

In reviewing Sections 21.21 and 21.151 (relating to application for examination), we note that Subsection (a) in each requires submission of an application for examination and the required fee. In reviewing Sections 21.25 and 21.153 (relating to re-examination), we note that Subsection (a) in each requires a candidate to submit a re-examination application and the required fee. Does the Board intend for candidates for examination and re-examination under Section 21.722 to do the same? The proposed language related to examination and re-examination does not include requirements for submission of applications or fees.

The Board states in the Preamble that it believes that all of its licensees should be subject to the same re-examination requirements. In keeping with this statement, the Board should clarify in Paragraph (c)(2) that the plan of remediation must be developed by a “Board-approved” dietetics-nutrition education program.

12. RAF #4 Short title. – Clarity.

The existing title for 49 Pa. Code Chapter 21, Subchapter A is “General Provisions.” Should the short title provided in response to RAF #4 and noted in Annex A also be “General Provisions”? We ask the Board to clarify whether it intends this change.

Schulder, Judith

From: Miller, Cynthia (ST)
Sent: Tuesday, November 04, 2014 8:46 AM
To: Schulder, Judith
Subject: FW: Please forward to Cindy Miller

fyi

From: Margaret Cybularz [<mailto:MargaretCybularz@ariahealth.org>]
Sent: Tuesday, November 04, 2014 8:44 AM
To: ST, NURSE
Subject: Please forward to Cindy Miller

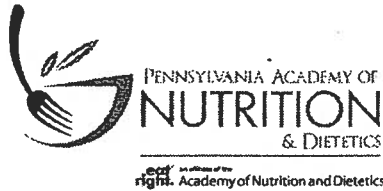
Dear Ms. Miller,

I am strongly in favor of the proposed regulations related to time limitations on testing and the mandated required education if the nursing candidate is not successful in the allotted time.

I was able to attend several PBSON meetings this year and was present during one of the discussions related to this issue. I have taught nursing for B.S.N., Diploma, and LPN programs in Pennsylvania for over 9 years and believe that the proposed regulations will help safeguard the public. Additionally, these regulations will also give clear guidelines for those candidates who are not successful within the given period.

Thank you for your service to the Commonwealth of Pennsylvania.

Margaret Cybularz, MSN, RN
267-391-9365



Judith Pachter Schulder, Esquire
Counsel - State Board of Nursing,
P. O. Box 2649
Harrisburg, PA 17105-2649

November 14, 2014

Dear Ms. Schulder:

On behalf of the Pennsylvania Academy of Nutrition and Dietetics (PAND), we thank you for the opportunity to respond to the PROPOSED RULEMAKING STATE BOARD OF NURSING[49 PA. CODE CH. 21] General Revisions [44 Pa.B. 6934] [Saturday, November 1, 2014].

We have perused the revisions referenced above and wish to offer comments as highlighted below.

PA Academy of Nutrition and Dietetics Comments:

We agree with § 21.722 (a), (b) (1) and (2) and (c) (1) as well as § 21.723 (b) and § 21.724.

While we agree in theory with (c) (2), adherence to this rule change as proposed for LDN applicants in PA may prove to be excessively and unnecessarily burdensome to dietetics-nutrition programs.

We appreciate the Board's desire to align rules across the nursing and dietetics-nutrition spectrums, but in this case, the alignment was not requested by the nutrition-dietetics stakeholders and would pose tremendous challenges for the dietetics-nutrition programs.

1. The rule change does not identify criteria for the plan of remediation but states only that "the candidate shall complete a plan of remediation as developed by a dietetics-nutrition education program prior to applying for re-examination.
2. ACEND accredits Dietetics-nutrition programs. If a dietetics-nutrition program does not maintain an average of 80% pass rate over each 5-year accreditation period, the program must submit a plan of remediation. Programs that do not submit a plan or the submitted plan is ineffective are placed on probation until the examination pass rates reach 80% or better. Thus, a national plan of program remediation is already in place. In Pennsylvania, there are no programs on probation.
3. While not stated in the proposed rule, section § 21.25 specifically disallows review courses. There are several well regarded and highly effective review courses that are accepted by dietetics-nutrition programs and Program Directors. Many if not all dietetics-nutrition programs suggest that students take these review courses before taking the initial examination and recommend them for students who need to re-examine. These courses cover all of the elements of the curriculum and are taught by CDR approved providers.

Many other professions rely on review courses as they are considered excellent tools to refresh the student prior to examination and essential prior to re-examination. Examples of professions that rely on review courses include medicine, pharmacy, and law.

4. Dietetics-nutrition programs integrate knowledge and competencies across the curriculum. Major concepts are taught in several domains as listed below. For example, management is taught in domains I and III. Food and Nutrition is taught in domains I, II, and III. There are four domains tested. When scores are reported, domains I and II are combined and III and IV are combined. A student who fails the examination has no knowledge of the particular competencies that require remediation. Thus, remediation would require a student to complete a minimum of half of the curriculum. The cost to the student would be between \$10,000.00 and \$25,000.00.

Examination Domains (EFFECTIVE JANUARY 1, 2012)

- I. Food and Nutrition Sciences**
 - A. Food Science and Nutrient Composition of Foods
 - B. Nutrition and Supporting Sciences
 - C. Education and Communication
 - D. Research
 - E. Management Concepts
- II. Nutrition Care for Individuals and Groups**
 - A. Screening and Assessment
 - B. Diagnosis
 - C. Planning and Intervention
 - D. Monitoring and Evaluation
- III. Management of Food and Nutrition Programs and Services**
 - A. Function of Management
 - B. Human Resources
 - C. Financial Management
 - D. Marketing and Public Relations
 - E. Quality Improvement
- IV. Foodservice Systems**
 - A. Menu Development
 - B. Procurement, Production, Distribution, and Service
 - C. Sanitation and Safety
 - D. Equipment and Facility Planning
 - E. Sustainability

Examination Scoring Domains: January 1, 2012 to December 31, 2017

	Sub-Score Titles	Registration Examination for Dietitians
I	Food and Nutrition Sciences	Domains I, and II
II	Food Service Systems/ Management	Domains III and IV

5. Program directors receive institutional examination score reports in February and August of each year. The institutional score report includes scaled scores for program graduates (examinee names will only be included

if the examinee authorized release of scores with examinee name), percentile ranks, national mean scores, institutional examinee mean scores, and scaled sub-scores. If a student opts to blind his/her examination, the program will have no knowledge of who passed or failed the examination and will only discover this if the student communicates with the program.

6. As there is no Pennsylvania State Licensure examination for Licensed Dietitians and Nutritionists and many out of state students apply for PA Licensure after passing the Registration Examination, this proposed rule would have impact on dietetics-nutrition programs nationwide. No other states have such a rule.
7. This ruling would require CDR to not only verify successful completion of the Registration Examination but also track and report the number of times each candidate took the examination. Additionally, as students have the ability to blind their name at the time of the test taking; this would present confidentiality challenges in tracking for CDR.
8. Finally, the proposed rule places the burden of remediation on the program and not ultimately on the student. The program would be required to develop a plan of remediation, assure the student followed it, and devote the financial and work force resources to it. At this point, our educational programs are stretched very thin. Adding another requirement to an accredited program, which would cost additional money and faculty time for the purpose of re-teaching only a few students who have had the option to pass or fail the examination up to 16 times, is logically to the detriment of the program and requires a shift of resources from students who have high probability of professional excellence to those who have low probability of it.

Therefore, we request that the rule be adjusted to state: **If a candidate does not successfully complete the examination within 2 years of completion of the dietetics-nutrition education program, the candidate shall complete a plan of remediation developed by a dietetics-nutrition education program (which may include additional course work and/or review course) prior to applying for re-examination.**

We agree with c (3) but request clarification regarding administrative and education requirements prevailing at the time of reapplication. Specifically, are these Board of Nursing requirements, CDR requirements, or Dietetics-Nutrition Program requirements?

We thank you for your careful review of our comments and would be most happy to discuss them in person or at a Board of Nursing Meeting if you so choose.

Best Regards,

Eileen Chopnick, MA, RD, LDN

President - PA Academy of Nutrition and Dietetics

Michele Rager, MS, RDN, LDN, CNSC

President Elect – PA Academy of Nutrition and Dietetics

Meg Rowe, MS, RD, LDN, FAND

PAND Consumer Protection Coordinator

Jule Anne Henstenberg, MS, RDN, LDN, FAND

PAND State Policy Representative

Doris Piccinin, MS, RD, CDE, CD

PAND State Regulatory Specialist

November 29, 2014

To whom it may concern:

The Pennsylvania Association of Private School Administrators (PAPSA) is the statewide association that represents approximately 150 career colleges and schools across the Commonwealth. These schools educate students in a diversity of career fields, including some nursing and other health care programs.

PAPSA has reviewed Regulation #16A-5125 (IRRC #3080) published by the State Board of Nursing and requests the following change to the regulation under Annex A, Title 49, Chapter 21, §21.2 (Scope).

§21.2 (e) The Board may approve professional nursing education programs conducted in hospitals, colleges, and universities, and other postsecondary education institutions, and will make available a list of approved programs.

Our association has several member schools that are approved to offer professional nursing programs, both RN and PN. While some are colleges, the majority are postsecondary education institutions that do not fall under the terms college, university or hospital school of nursing. As a result, we ask you to consider adding the term "postsecondary education institution" in §21.2 and any other relevant section of the regulation to include these previously approved schools.

Thank you for your consideration of this request. If you have further questions on this issue, please contact me at aaron@papsa.org or 717-599-8098.

Sincerely,

Aaron M. Shenck
Executive Director - PAPSA



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

December 1, 2014

Judith Pachter Schulder, Board Counsel
Pennsylvania State Board of Nursing
Department of State, Office of General Counsel
P.O. Box 2649
Harrisburg, PA 17105-2649

RE: 16A-5125: General Revisions

Dear Ms. Pachter Schulder:

The Hospital & Healthsystem Association of Pennsylvania (HAP), on behalf of its members, more than 225 acute and specialty hospitals and health systems, appreciates the opportunity to comment about the State Board of Nursing's proposed regulations that seek to update regulatory provisions related to registered nurse, practical nurse, and dietitian requirements for state licensure.

HAP reviewed the proposed regulations with members of our Council for Health Professions Education, which include the deans and directors of hospital-based nursing education programs. Our comments reflect the input received from our council members.

HAP agrees with the regulatory changes proposed by the board to ensure applicants for the licensing examination demonstrate proficiency in English and that applicants educated outside of the United States and Canada demonstrate program equivalency in order to sit for the licensing examination. HAP believes that these provisions are particularly important to ensure patient safety.

The most significant change proposed by the State Board of Nursing would be to require graduates of registered nursing, practical nursing, and dietitian programs to take the initial licensure examination within the first year of graduation and to ultimately pass this examination within two years of completion of a candidate's education program. During this two-year time period, a candidate may take the licensing examination as many times as possible.

HAP believes that the board's intent is to ensure the provision of quality and safe care for Pennsylvania's patients and supports these amendments in the proposed regulations.

However, HAP does have concerns with regard to the provision that requires the candidate to complete a remedial plan developed by a board-approved program should the candidate fail to pass the licensing exam in the prescribed two-year timeframe. This requirement raises some questions that HAP believes need additional consideration by the board:

- Will the nursing education program from which the student graduated be responsible for the remediation plan or would it be the student's responsibility to seek a program or site where the services are offered? HAP believes it would be unreasonable for a school of nursing to be required to provide remediation services for students who do not pass the

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Judith Pachter Schulder, Board Counsel
December 1, 2014
Page 2

licensing examination within two years of graduation. This would cause an undue burden, particularly with regard to ensuring there is adequate faculty to provide the remediation of each student. It would be more appropriate for the student to be held accountable for their continued efforts to remediate should they be unsuccessful at passing the licensure examination rather than the school from which they graduate.

- Will the board be developing criteria that outlines the curriculum that the remediation program would have to adopt in order for the program to be provided to the population needing the service? What would a remediation program be expected to demonstrate as reasonable outcomes? How will quality be measured? What is the board's plan for follow-up and enforcement? HAP believes it is important for there to be standardization in this area in order for the remediation programs to be effective.
- The licensure examination protects the public from those who cannot demonstrate minimal competency. If there are no remedial programs or services available, what would be the candidate's recourse? HAP believes there may be some legal ramifications as a result of this requirement that may need to be addressed.

HAP appreciates the opportunity to comment about these proposed regulations on behalf of its Council for Health Professions Education, and seeks the board's input with regard to the concerns that have been raised.

If you have any questions about HAP's comments, please feel free to contact Mary Marshall, director, workforce and professional services, at (717) 561-5312 or contact me at (717) 561-5344.

Sincerely,

A handwritten signature in black ink, reading "Paula A. Bussard". The signature is written in a cursive, flowing style.

Paula A. Bussard
Senior Vice President
Policy and Regulatory Advocacy

COMMENTATORS LIST

Reg. 16A-5125

Margaret Cybularz
MargaretCybularz@ariahealth.org

Pennsylvania Academy of Nutrition and Dietetics
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF NURSING

Post Office Box 2649
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September 26, 2016

The Honorable George D. Bedwick, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

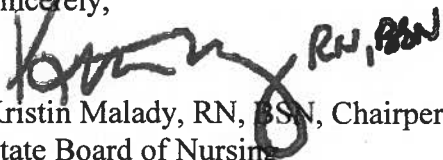
Re: Final Regulation
State Board of Nursing
16A-5125

Dear Chairman Bedwick:

Enclosed is a copy of a final rulemaking package of the State Board of Nursing pertaining to General Revisions.

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, RN, BSN, Chairperson
State Board of Nursing

KM:JPS:jlt

Enclosure

cc: Ian J. Harlow, Commissioner of
Professional and Occupational Affairs
Leigh Chapman, Director of Policy, Department of State
Timothy Gates, 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-5125

SUBJECT: General Revisions

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

2016 SEP 26 AM 10:57

RECEIVED
INFO

FILING OF REGULATION

<u>DATE</u>	<u>SIGNATURE</u>	<u>DESIGNATION</u>
<i>HOUSE COMMITTEE ON PROFESSIONAL LICENSURE</i>		
9/26/16	<u>A. Kelly</u>	MAJORITY CHAIR <u>Julie Harhart</u>
9/26/16	<u>K. Hyl</u>	MINORITY CHAIR <u>Harry Readshaw</u>
<i>SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE</i>		
9/26/16	<u>Lammy m. Baneh</u>	MAJORITY CHAIR <u>Robert Tomlinson</u>
9/26/16	<u>Stephen J. Smith</u>	MINORITY CHAIR <u>Lisa Boscola</u>
9/26/16	<u>K. Cooper</u>	<i>INDEPENDENT REGULATORY REVIEW COMMISSION</i>
		<i>ATTORNEY GENERAL (for Final Omitted only)</i>
		<i>LEGISLATIVE REFERENCE BUREAU (for Proposed only)</i>