

# **RULES AND REGULATIONS**

## **Title 49 – PROFESSIONAL AND VOCATIONAL STANDARDS**

### **STATE BOARD OF NURSING**

#### **[49 PA. CODE CH. 21]**

#### **Clinical Nurse Specialists**

**[40 Pa.B. 3944]**

**[Saturday, July 17, 2010]**

The State Board of Nursing (Board) amends Chapter 21 by adding Subchapter H (relating to clinical nurse specialists) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

The final-form rulemaking is required under the act of July 20, 2007 (P.L. 320, No. 49) (Act 49), which amended The Professional Nursing Law (act) (63 P.S. §§ 211-225.5) to authorize the Board to certify clinical nurse specialists (CNSs) in accordance with statutory criteria, to provide title protection for CNSs, to require CNSs to complete continuing education to renew their certification and to require CNSs to maintain professional liability insurance.

#### *Response to Comments*

The proposed rulemaking was published at 38 Pa.B. 3246 (June 14, 2008). The Board received comments from the Pennsylvania State Nurses Association (PSNA) and the American Psychiatric Nurses Association of Pennsylvania (APNA-PA). PSNA and APNA-PA suggested that the Board should delete the reference to the National Council of State Boards of Nursing (NCSBN) in § 21.811(1)(i) (relating to qualifications for initial certification) and reference instead the National Organization of Competency Assurance (NOCA). NOCA

created the National Commission for Certifying Agencies (NCCA) in 1987 as the organization that would bestow accreditation under the NCCA's Standards for the Accreditation of Certification Programs. The Board rewrote proposed 21.811 in this final-form rulemaking and deleted references to certifying bodies.

The Board rewrote proposed 21.811 in this final-form rulemaking to make the section less convoluted and easier to understand. The requirement that an applicant hold a current, unrestricted registered nurse (RN) license is consistent with requirements for certified registered nurse practitioners (CRNPs). The requirement that an applicant hold the appropriate degree is in section 8.5(a) of the act (63 P.S. 218.5(a)). These requirements are now in subsections (a) and (b). Subsection (c) also applies to applicants for whom current National certification is available, mirroring section 8.5(a)(1) of the act. Subsection (c) also applies to an applicant who currently holds National certification as a CNS. Subsection (d) applies to applicants for whom National certification is not available, mirroring section 8.5(a)(2) of the act. As rewritten, these applicants will be required to submit a letter from a National certifying organization that demonstrates that the applicant is not eligible to sit for a National certification examination, a curriculum vitae, the employer's job description which evidences practice in the CNS role as evaluated by the Board's nursing practice advisors and a letter verifying the applicant's dates of employment to show that the applicant has practiced at least 1,000 hours in the CNS role in the past 5 years. Subsection (e) mirrors section 8.5(a)(3) of the act.

Next, PSNA, APNA-PA and the National Association of Clinical Nurse Specialists (NACNS) suggested that 21.813(d)(1) (relating to application for certification) does not take into consideration a CNS who does not have access to official transcripts from the CNS's educational program. The Board understands that there may be a rare exception of a CNS who does not have access to official transcripts. In this case, the CNS may request a waiver of this section under 1 Pa.Code 35.18 (relating to petitions for issuance, amendment, waiver or deletion of regulations). The Board declines to specify this procedure in this section, as it could be applicable to virtually any provision of its regulations and it would be repetitive to add a statement or cross reference to every provision to which it might apply.

Third, the organizations recommended that CNSs be given 18 months instead of 12 months to complete their applications for certification under 21.813(f). Every other class of individuals licensed or certified by the Board is subject to the 12-month limitation on completing an application for licensure. The Board declines to set a different time frame for completion of a CNS's application for certification.

Finally, APNA-PA recommended that 21.813 should not repeat section 8.6 of the act (63 P.S. 218.6), regarding scope of practice for a CNS,

because the statute is merely title recognition and does not confer scope of practice on CNSs. Other organizations, specifically the Pennsylvania Psychiatric Society (PPS) and Pennsylvania Medical Society (PMS), commented that the statutory section should be added to 21.813. The Independent Regulatory Review Commission (IRRC) commented that the final-form rulemaking "should include all requirements from the Act or justify why certain provisions are being omitted." Because the weight of comments suggested including this statutory section, the Board decided to add this language to the final-form rulemaking.

The Hospital and Healthsystem Association of Pennsylvania (HAP) wrote in support of the overall direction taken by the Board in the rulemaking. However, HAP expressed concern that CNSs might be confused about the different requirements for continuing education for RNs and CNSs. Section 8.5(c)(2) of the act requires CNSs to complete at least 30 hours of Board-approved continuing education prior to biennial renewal of their certification. The Board set forth its requirements for continuing education in 21.822-21.827. Because CNSs are educated at an advanced, master's degree level, they are more akin to CRNPs than RNs. Therefore, the Board modeled the CNS continuing education provisions after the existing CRNP continuing education provisions.

Specifically, HAP noted that the list of preapproved courses for RNs is more expansive than those proposed for CNSs. The list is equivalent to the list of preapproved courses for CRNPs. HAP questioned whether a course completed from the RN list that is not on the CNS list would qualify for continuing education completed by the CNS. Just as courses completed from the RN list that are not on the CRNP list will not qualify for continuing education completed by a CRNP, a course completed from the RN list that is not on the CNS list will not qualify for continuing education completed by a CNS.

HAP next questioned why individual nurses or providers of RN continuing education shall submit their materials to the Board 90 days prior to the beginning of the activity but individual CNSs or providers of CNS continuing education shall submit their materials to the Board 60 days prior to the beginning of the activity. There are approximately 200,000 licensed RNs and the Board anticipates only about 4,000 CNS licensees. The Board allowed itself additional time to review requests for approval regarding RN continuing education because there is a higher likelihood that there will be substantially more requests to consider for RN continuing education than for CNS continuing education. Additionally, the 60-day time period is consistent with the time period provided for individual CRNPs or providers of CRNP continuing education.

HAP questioned why the RN continuing education provisions allow for group or individual research but the CNS provisions are silent regarding research. The Board intended that research be creditable under 21.825(e) (relating to sources of continuing education) when the research is published in a refereed journal or other scholarly publication, similar to when research is creditable for

CRNPs. Regarding this provision, HAP also noted that the RN continuing education provisions do not allow for publication in a refereed journal or other scholarly publication. Again, the Board designed the CNS continuing education regulations to be like the CRNP continuing education regulations because CNSs and CRNPs are both master's prepared nurses. HAP recommended that the Board clarify whether participation in a research project is applicable to the CNS and CRNP. The Board determined that, as master's prepared nurses, only published research would be creditable.

HAP also noted the discrepancy between the CNS and CRNP provisions with respect to the number of hours that could be credited for service as a teacher or preceptor. The Board initially determined that CNS should be able to obtain credit for more hours for these activities because these activities are integral to the CNS role. Upon consideration of HAP's comment, and in a further effort to coincide the CNS and CRNP provisions, the Board amended 21.825(e) to reduce the number of hours that may be credited.

Finally, the Board notes that continuing education for CNSs, like CRNPs, is well-developed because CNSs, like CRNPs, complete extensive continuing education to maintain their National certification. For this additional reason, the Board sought to draft similar regulations for CNS and CRNP continuing education and to grant credit consistent with the standards for continuing education for maintenance of National certification.

NACNS suggested that the Board add a definition of "accepted" and amend its definition of "approved" to indicate Board approval of offerings by entities in this Commonwealth. Because "accepted" is not used in the final-form rulemaking, it is not necessary to define the term.

NACNS recommended phrasing "post-master's degree or certificate in nursing" in 21.811(b) as "post-master's nursing degree." Board staff has told the Board that nursing schools may call what is awarded a post-master's certificate or a post-master's degree. To ensure that all eligible programs are included, the Board will retain the post-master's degree or certificate in nursing language.

NACNS recommended different language regarding CNSs who are not eligible to take a National certification examination or for whom no examination is available to permit a CNS to "demonstrate eligibility through validation" by a credentialing organization. The Board believes that the General Assembly intended, in this title protection legislation, to be as all-inclusive as possible and permit master's-prepared individuals who have been working in the CNS role to continue to do so and to use the title CNS. The Board has drafted equivalency qualifications that effectuate this intent.

¶ NACNS recommended a new paragraph to permit a CNS to demonstrate eligibility for certification by submitting documents and a fee to a CNS program in this Commonwealth for review and critique. The Board prefers to have applicants submit information directly to the Board, where it can be reviewed by Board staff and, if necessary, the full Board.

¶ NACNS next recommended that § 21.812 (relating to qualifications for certification by endorsement; additional certification) refer to the addition or change of specialty area. The Board determined that the section should apply to addition of specialty area because a CNS already certified in one area does not change the area of specialty even if the CNS decides to allow National or Board certification in that specialty area lapse. The Board also made amendments to improve the clarity of § 21.812 and make the language more closely follow statutory language.

¶ NACNS proposed that the Board add a provision, wherever appropriate, stating that a nurse will be eligible to apply for Board certification for 2 years after the publication of the final-form rulemaking. The Board believes that nurses will be eligible to apply for Board certification indefinitely after the publication of the final-form rulemaking, whenever the nurses meet the qualifications for certification. This approach will allow for ongoing certification of CNSs in new areas of practice for which there is not a National certification examination, notably genetics and forensics.

¶ With response to continuing education, NACNS suggested that the Board refer to "clock hours" rather than "hours." The Board specifically did not refer to clock hours, which means a 60-minute hour, to allow CNSs who wish to receive continuing education credit for taking additional nursing classes to do so. The vast majority of academic institutions use the 50-minute academic hour rather than the 60-minute clock hour. Moreover, because the 50-minute period is a minimum, it will not preclude CNSs from taking continuing education courses based on the clock hour.

¶ NACNS also suggested that the Board should specify, in § 21.805 (relating to fees), that fees are nonrefundable. This is not specified in the regulations for any other class of licensees; however, it is specified on every application. Therefore, the Board declines to make the amendment. NACNS suggested that the fee for approval of continuing education activity be for "each review of a proposal" of continuing education activity in § 21.805(a). The Board agrees and amended the language. NACNS suggested that the Board add § 21.805(c), stating that an action would not be taken until all documents and fees are received. The Board believes this is implicit in its regulations and applications and declines to add a subsection. Finally, NACNS suggested that the regulation specify that the application shall be completed within 12 months "from the first date of application." The Board believes that this is also implicit in the language already and declines to make the amendment.

¶ The Board received identical comments from PMS and PPS. These associations suggested that the regulation should repeat section 8.6 of the act. The Board agrees that some reference to section 8.6 of the act would improve the regulation and amended Â§â€21.821(a) (related to CNS standards of conduct) to specify that a CNS may perform only those services that comprise the practice of professional nursing as defined in section 2(1) of the act (63 P.â€S. Â§â€212); amended Â§â€21.831 (relating to penalties for violations) to specify that a CNS may be disciplined for engaging in medical diagnosis or the prescription of medical therapeutic or corrective measures prohibited by section 8.6(a) of the act; and amended Â§â€21.831(2) to specify that a CNS may be disciplined for performing a service beyond the scope of practice of professional nursing.

¶ Several commentators, including the House Professional Licensure Committee (HPLC), suggested that the regulation should include a reference to the liability insurance provisions in section 8.5(e) of the act. The Board referenced section 8.5(e) of the act in Â§â€21.813(f).

¶ IRRC next noted that several commentators suggested the regulation should include a grandfather clause for nurses that have a master's degree in nursing and have previously "demonstrated success" and effectiveness in the role of CNS. IRRC stated: "The Board should consider adding a grandfather clause for a CNS in this situation. If the Board adds a grandfather clause, it should also specify the criteria that must be met for a nurse to be certified as a CNS under a grandfather clause." The Board provided for broad equivalence requirements which will permit master's-educated CNSs to continue using the CNS title.

¶ IRRC noted that the regulatory definition of a CNS is not identical to the statutory definition of a CNS. The regulation replaces the term "registered nurse" with the definition in section 3 of the act (63 P.â€S. Â§â€213) for clarity. In addition, the regulation clarifies that the Board may only certify a professional nurse as a CNS if the professional nurse meets the requirements in the act. The definition in the regulation is wholly consistent with the statutory definition and the Board believes that the definition is much clearer for the regulated community.

¶ IRRC asked whether the Board intends to require candidates to pay fees to the National certification or credentialing organizations, and if so, asks what is the Board's authority to do so. Section 8.5(a) of the act requires that a candidate either hold current National certification or meet equivalence requirements. The Board assumes that the General Assembly was aware that fees are required to be paid to the National certification organization and intended to require candidates to pay these fees. Section 21.805 merely informs candidates that there are fees associated with obtaining National certification or meeting equivalence requirements and is consistent with the Board's regulations of other licensees who are required to pay fees to entities other than the Board associated with licensure. See Â§â€21.5(b), 21.147(b) and 21.705(b) (relating to fees). It should be noted

that CRNPs, who under section 8.1(b)(1)(ii) of the act (63 P.S. § 218.1(b)(1)(ii)) shall also hold National certification, also shall pay a fee to the National certification body that confers National certification on CRNPs. In the past, licensing boards have been advised to include in their rulemakings the requirement that candidates pay fees to organizations involved in certification or credentialing. See 32 Pa.B. 1861 (April 13, 2002).

IRRC commented that §§ 21.811 and 21.813 should specify what evidence shall be submitted by an applicant for certification to demonstrate completion of a CNS educational program, current National certification or certification from a National nursing, nursing specialty or credentialing organization. The Board declines to include these specifics in its regulation for two main reasons. First, because the regulation represents the initial certification of CNSs in this Commonwealth, the Board does not have extensive experience with all of the organizations involved in CNS credentialing and does not know the proper titles of documents used by these organizations. To include the name of every organization's credentialing documents would be unwieldy and unnecessary in the regulations. Second, the Board believes that certification to licensing boards will change in the next several years with the advent of and increased use of online verification programs, which would require rewriting and repromulgating the regulations, an unnecessary expense. As with its other licensees, the Board intends to provide details of the information applicants should submit directly on the application for certification. This procedure has worked well for the Board for many years with the licensure of RNs, LPNs, licensed dietitian-nutritionists and CRNPs and the Board does not anticipate that following the same procedure for CNSs will create confusion or difficulties.

IRRC also commented on other commentator's remarks about NOCA and NCSBN, about "change" or "addition" of specialty area and about applicants who do not have access to their official transcripts. The Board has previously addressed these comments.

Regarding § 21.813(f), which has been renumbered § 21.813(g), IRRC posited that the subsection allowed 12 months for CNSs to meet compliance standards and asked how the Board determine that this was an appropriate time frame. The section does not provide a time frame for candidates to meet compliance standards. The section limits the lifespan of an application for certification. Certification is not granted until the application is complete, that is, until all supporting documentation has been received. If supporting documentation is not received within 12 months of the initial receipt of the application for certification, this section provides that the application will expire and the applicant will be required to file a new application. The section does not give an applicant 12 months to meet compliance standards because the certification is not granted until all standards have been met.

IRRC next questioned 21.821 and asked how the Board would determine whether a CNS has the "necessary knowledge, preparation, experience and competency" to properly execute a specific practice of procedure. A virtually identical provision has been part of the RN regulations for many years and the Board has not had problems applying the provision. In accordance with 2 Pa.C.S. 504 (relating to hearing and record), the Board imposes discipline on its licensees only after licensees have been afforded due process protections. Through the legal process, and after hearing evidence presented at hearing, the Board may make determinations regarding whether a licensee has the "necessary knowledge, preparation, experience and competency" to properly execute a specific practice of procedure.

In response to commentators, including IRRC, who suggested that the Board should reference the scope of practice of CNSs in its final-form rulemaking, the Board added 21.821(b). The Board notes that the CNS enabling amendments to the act do not confer a scope of practice on CNSs. Rather, Act 49 noted that the scope of practice of a CNS is the same as the statutorily defined scope of practice of the RN. The Board believes its changes and the addition of 21.821(b) meets the concerns raised by commentators.

Regarding 21.822 (relating to biennial renewal of certification), IRRC suggested that the Board specify the time when the Board will forward renewal notices to licensees. The boards within the Bureau of Professional and Occupational Affairs (Bureau) plan to send renewal notices to licensees 90 days prior to the expiration date. However, if this time frame were placed in regulations, it is not clear what effect a delay in sending renewal notices would have. Therefore, the Board declines to put a specific time in its regulations. The expiration date is printed on every license, so every licensee is aware of the date by which they shall renew their license.

IRRC suggested that 21.822(f) was misplaced. The Board decided that the provision, which required identifying information be submitted with correspondence, was unnecessary.

Second, IRRC suggested that the Board should provide circumstances for when it would waive the continuing education requirement or provide a cross reference to 21.823(b) (relating to CNS-level continuing education; waiver; sanctions). The Board added the requested cross-reference. Third, IRRC asked how the Board would determine if a licensee met the continuing education requirement and suggested that the regulation should clarify how the Board makes this determination. The Board is not aware of regulations of any board within the Bureau that specify how the Board determines that its licensees have met the continuing education requirement. The Board intends to follow the same procedure it uses for CRNP continuing education and that the State Board of Medicine uses for physician continuing education—an audit of licensees. Because the enforcement of the act and regulations is a matter left to the

administrative discretion of the Board, and the methods the Board uses to perform this function may change, the Board declines to specify a single procedure that will be used to monitor compliance with this or any other section of the act or regulations.

¶ Regarding § 21.823, IRRC requested that the Board specify in what time frame the Board would grant, deny or grant in part a request for waiver of continuing education requirements. The Board's time frame is determined by its meeting dates, which are set annually, usually in October or November. The Board considers matters at its earliest opportunity, but cannot specify a time frame. If a request was timely made and the inability of the Board to respond to the request resulted in noncompliance, the Board would provide additional time to meet the requirement before discipline would be imposed.

¶ IRRC submitted numerous comments regarding § 21.825. IRRC asked whether the Board considered allowing CNSs to get credit for group or individual research, as RNs may do. The Board did consider this and determined that CNS continuing education should be similar to CRNP continuing education because these two groups of professional nurses have similar educational backgrounds. IRRC asked how one would know that the preapproved continuing education providers and credentialing organizations agreed to abide by §§ 21.826 and 21.827 (relating to requirements for continuing education courses; and continuing education course approval). The Board amended § 21.825(a) to require providers to comply with the provisions.

¶ IRRC next asked what circumstances would result in a reevaluation of approval given to a provider or credentialing organization and what circumstances would warrant a rescission of approval. Reevaluation would result from complaints filed with the Board. Failure to meet the regulatory criteria for continuing education would warrant rescission.

¶ IRRC asked why the time frame for submission of an individual request for continuing education approval from a CNS or CNS provider is different than for an RN or RN provider. The reason is that the Board anticipates licensing several thousand CNS, but licenses 200,000 RNs. Additional time may be needed to process requests from RNs.

¶ IRRC asked how the Board determined that 15 credit hours were sufficient for services such as teaching in a nursing education program or precepting students in a clinical setting. The Board originally thought that nurses providing these services should be able to obtain half of the requirement from the service. Since the rulemaking was published as proposed, the Board has reconsidered. The Board believes that continuing education should advance the knowledge of the practitioner. The Board cannot find that teaching in a nursing education program or precepting students advances the practitioner's knowledge. Therefore, the Board determined that only 4 hours should be credited toward the continuing

education requirement. This provision is consistent with § 21.334(e) (relating to sources of continuing education) which limits CRNPs to obtaining 4 hours of continuing education through teaching or precepting activities.

¶ IRRC next noted that "adequate" in § 21.826(2) is nonregulatory language. The Board amended this paragraph for clarity, requiring an adequate physical facility and appropriate instructional materials to carry out the continuing education course. A facility would be adequate to carry out a course if it was adequately lit and ventilated, of adequate temperature, had sufficient seating to accommodate the number of attendees, the attendees were able to hear the presenters, and the like. The regulated community did not express concern with understanding the provision.

¶ Finally, regarding § 21.827, IRRC noted that it would be impossible for an applicant to know what "other information" the Board would want at the time of initial submittal of the application and suggested that this requirement should be in its own subsection. The Board has made the requested change.

¶ The Board received two comments from individuals. The first commenter, Mr. Legg, inquired whether an individual could be eligible for licensure by endorsement if the individual was not Nationally certified. As amended, section 7(c) of the act (63 P.S. § 217(c)) authorizes the Board to issue a certification to a CNS licensed in another state, territory or possession or a foreign country as deemed equivalent to the Commonwealth's certification requirements. Because the Commonwealth's certification requirements mandate National certification or its equivalent, applicants for licensure by endorsement will be required to demonstrate National certification or its equivalent just as will CNSs who are currently practicing in this Commonwealth.

¶ Mr. Legg next asked about CNSs who received their master's degrees before the American Nurses Credentialing Center (ANCC) required 500 hours of supervised clinical practice in CNS educational programs. This is significant because only individuals who completed programs with at least 500 hours of supervised clinical practice are eligible to sit for ANCC National certification examinations. These individuals would be able to obtain certification in this Commonwealth under § 21.811(2)(i)(B).

¶ Next, Mr. Legg asked why National certification was being required for initial CNS licensure when it was not required for initial CRNP licensure. The General Assembly made this determination when it enacted Act 59 granting title protection to CNSs. Mr. Legg also asked if the Board had considered provisions for CRNPs who do not practice as CRNPs, but whose practice more closely reflects the CNS role; specifically inquiring whether a CRNP could obtain a CNS license. Mr. Legg went on to state that some CRNPs are considering surrendering their CRNP certification because of the costs associated with maintaining malpractice insurance. To Mr. Legg's first question, a CRNP cannot "become" a

CNS through application; to be certified as a CNS requires completion of a CNS educational program and National certification as a CNS. To Mr. Legg's second remark, CNSs are also required, under the statute, to maintain liability insurance.

â€¢The Board also received comments from Ms. Allen. Ms. Allen stated that she held a master's degree in nursing and believed that she had been prepared as a CNS, but did "not have a confirmation that the accreditation focused on the CNS component." Ms. Allen should contact the director of her master's degree program to determine if the program prepared graduates to practice as a CNS. Ms. Allen also expressed concerns about the National certification requirement. Ms. Allen considers as her specialty maternity nursing, for which she states that there is not a National certification examination. Section 21.811(2) allows CNSs for whom there is not a certification examination available in the specialty area to demonstrate equivalency. If there is not a National certification examination for which Ms. Allen is qualified to sit, Ms. Allen may pursue certification under the equivalency requirements.

#### *Fiscal Impact and Paperwork Requirements*

â€¢The final-form rulemaking will not have an adverse fiscal impact on the Commonwealth or its political subdivisions because the costs of the Board's activities are supported by fees charged to licensees and others who benefit from specific activities of the Board. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth or political subdivisions.

#### *Sunset Date*

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

#### *Regulatory Review*

â€¢Under section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on June 4, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 3246, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

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

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)), on May 5, 2010, the final-form rulemaking was approved by the HPLC. On June 2, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on June 3, 2010, and approved the final-form rulemaking.

#### *Additional Information*

Additional information may be obtained by writing to Ann Steffanic, 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 proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.S.L. 769, No. 240) and the regulations promulgated thereunder, 1 Pa.Code §§7.1 and 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 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.S.L. 769, No. 240) (45 P.S. §1201).

(4) These amendments to the regulations of the Board are necessary and appropriate for the regulation of the practice of professional nurses in this Commonwealth.

#### *Order*

The Board orders that:

(a) The regulations of the Board, 49 Pa.Code Chapter 21, are amended by adding §§21.801-21.805, 21.811-21.813, 21.821-21.828 and 21.831 to read as set forth in Annex A.

(b) The Board shall submit a copy of Annex A to the Office of the Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

ANN O'SULLIVAN, Ph.D., FAAN, CRNP,  
Chairperson

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 40 Pa.B. 3471 (June 19, 2010).)

**Fiscal Note:** Fiscal Note 16A-5133 remains valid for the final adoption of the subject regulations.

## **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 H. CLINICAL NURSE SPECIALISTS**

###### **GENERAL PROVISIONS**

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###### **CERTIFICATION REQUIREMENTS**

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###### **MAINTENANCE OF CERTIFICATION**

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## PENALTIES FOR VIOLATION

- 21.831. Penalties for violations.

## GENERAL PROVISIONS

### § 21.801. Definitions.

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

*Act*—The Professional Nursing Law (63 P.S. § 211-225.5), which provides for the certification of CNSs.

*Approved*—Approved by the Board.

*Approved program*—Those educational programs accredited by the NLNAC or CCNE for preparing a professional nurse to practice as a CNS.

*Board*—The State Board of Nursing of the Commonwealth.

*Board-designated specialty*—One of six patient populations, including neonatal, pediatrics, family/across the lifespan, adult/gerontology, women's health/gender-related and psychiatric/mental health.

*Board-recognized*—The Board has determined that an entity meets the Board's quality standards to conduct an activity and has named the entity on the Board's web site.

*Certification*—Certification as a CNS issued by the Board.

*CCNE*—*Commission on Collegiate Nursing Education*—The organization recognized by the United States Secretary of Education as a National accreditation agency that provides a nongovernmental peer review process in

accordance with Nationally recognized standards established for the practice of accreditation in the United States.

â€œCNSâ€ *Clinical nurse specialist*â€ An individual licensed in this Commonwealth to practice professional nursing who meets the educational and examination or equivalency requirements of the act and who is certified by the Board as a clinical nurse specialist.

â€œNLNACâ€ *National League for Nursing Accrediting Commission*â€ The organization that is recognized as the accrediting body for all types of nursing education programs by the United States Department of Education and that is responsible for the specialized accreditation of nursing education programs, both postsecondary and higher degrees.

â€œNational certificationâ€ The credential awarded by a Board-recognized organization evidencing that an individual has passed a National certification examination and has maintained current National certification in a specialty as specified by the organization.

â€œNational certification organizationâ€ An organization recognized by the Board and maintained on the approved list on the Board's website that has as one of its purposes the examination of individuals who will practice as CNSs.

### **Â§ 21.802. Scope.**

â€œIn this subchapter, the Board:

â€œ(1)â€ Provides for certification of CNSs who meet the qualifications set forth in the act.

â€œ(2)â€ Administers the act by providing rules and regulations relating to the issuance and renewal of CNS certification.

â€œ(3)â€ Provides rules and regulations for the conduct of CNSs.

â€œ(4)â€ Regulates the practice of CNSs.

### **Â§ 21.803. Applicability of rules relating to professional nurses.**

â€œSections Â§ 21.1â€21.4a, 21.6 and 21.11â€21.18a apply to nurses certified under this subchapter.

### **Â§ 21.804. Approved educational programs.**

â€œ(a)â€ The Board will approve educational programs as set forth in section 6.2(c) of the act (63 P. S. Â§ 216.2(c)).

â€(b)â€ The Board will maintain a list of approved educational programs on its web site as set forth in section 6.2(c)(2) of the act.

â€(c)â€ Educational programs that prepare nurses to practice as CNSs created after March 20, 2008, shall submit evidence that the program meets the criteria in section 6.2(c)(1) of the act to the Board for inclusion on the list of approved programs.

### **Â§â€21.805.â€ Fees.**

â€(a)â€ The following fees are charged by the Board:

â€ Certification as a CNS  
\$100

â€ Biennial renewal fee  
\$50

â€ Restoration of certificate after sanction  
\$50

â€ Restoration of certificate after lapse of 5 years  
â€â€ for greater  
\$50

â€ Fee for verification of certification  
\$15

â€ Fee for certification of license history  
\$30

â€ Application for approval of a CNS continuing  
â€â€ education activity  
\$75

â€(b)â€ In addition to the application fee prescribed in subsection (a), which is payable directly to the Board, a candidate for National certification will also pay an additional fee to the certifying organization. A candidate may contact the certifying organization for more information regarding the National certification examination and examination fee.

## **CERTIFICATION REQUIREMENTS**

### **Â§â€21.811.â€ Qualifications for initial certification.**

â€¢The Board may certify an applicant for initial certification who files an application on a form provided by the Board and pays the application fee in Â§â€¢21.805 (relating to fees), in accordance with the following:

â€¢(1)â€¢*RN license*. The Board may certify an applicant who has a current, unrestricted license to practice professional nursing in this Commonwealth.

â€¢(2)â€¢*Education*. The Board may certify an applicant who has a master's degree, doctoral degree or post-master's degree or certificate in nursing from an educational program that meets the requirements of section 6.2(c)(1) of the act (63 P.â€¢S. Â§â€¢216.2(c)(1)).

â€¢(3)â€¢*Alternative education*. An applicant for initial certification who completed an educational program in a related discipline previously recognized for National certification as a CNS may be granted certification from the Board in the area of the applicant's current National certification from the American Nurses Association or the American Nurses Credentialing Center.

â€¢(4)â€¢*National certification or equivalence*.

â€¢(i)â€¢The Board may grant initial certification in a Board-designated specialty or other pertinent specialty to an applicant who demonstrates current National certification by examination.

â€¢(ii)â€¢The Board may grant initial certification without specialty to applicants who demonstrate that their educational program does not make them eligible to take a National certification examination and who demonstrate equivalence. For purposes of this section, the Board will determine equivalence on a case-by-case basis after considering the information submitted by the applicant that may include an official transcript, course descriptions, current curriculum vitae, work history in the CNS role, professional recommendations and additional advanced nursing education and certification examinations.

### **Â§â€¢21.812.â€¢Qualifications for certification by endorsement; additional certification.**

â€¢(a)â€¢*Certification by endorsement*. An applicant for certification by the Board who holds an unrestricted license, certificate or authorization to practice as a CNS from another state, territory or possession of the United States or a foreign country, who met initial certification requirements equivalent to the Board's certification requirements and a current RN license in this Commonwealth may be granted certification by endorsement.

â€¢(b)â€¢*Additional certification*. A CNS who is already certified by the Board may apply for an additional certification. To be granted an additional certification,

the CNS shall meet the educational and National certification requirements for the additional certification.

### **Â§â€21.813.â€Application for certification.**

â€(a)â€An applicant for certification shall submit an application form provided by the Board to the Board for its review and approval.

â€(b)â€An applicant for initial certification shall include documentation satisfactory to the Board that the applicant meets the qualifications in Â§â€21.811 (relating to qualifications for initial certification).

â€(c)â€In addition to the documentation in subsections (a) and (b), an applicant for certification by endorsement shall include documentation satisfactory to the Board that the applicant meets the educational qualifications in Â§â€21.812(a) (relating to qualifications for certification by endorsement; additional certification) and the following:

â€(1)â€Verification of unrestricted licensure, certification or authority to practice as a professional nurse and CNS issued by the proper licensing authority of another state, territory or possession of the United States or a foreign country.

â€(2)â€A written statement from the out-of State licensing, credentialing or authorizing entity setting forth the licensure, certification or authorization to practice requirements at the time the applicant was first licensed, certified or authorized to practice by that entity.

â€(d)â€An applicant who holds certification from the Board who is applying for an additional certification under Â§â€21.812(b) shall submit, in addition to the documentation required under subsections (a) and (b), documentation of the following:

â€(1)â€Official transcript from the applicant's CNS program and any additional educational programs, including degree awarded, demonstrating a concentration in the specialty in which the applicant is seeking certification.

â€(2)â€Proof of current National certification as a CNS.

â€(e)â€An applicant shall remit the certification fee in Â§â€21.805 (relating to fees).

â€(f)â€An applicant shall verify compliance with section 8.5(e) of the act (63 P.â€S. Â§â€218.5(e)) on the application for certification.

â€(g)â€An applicant shall submit additional information as identified on the application or as requested in writing by the Board. If supporting material is not

provided within 12 months of the date of application, the applicant will be required to file a new application and remit the certification fee.

## **MAINTENANCE OF CERTIFICATION**

### **§ 21.821. CNS standards of conduct.**

(a) In addition to the standards of conduct for a professional nurse set forth in § 21.18 (relating to standards of nursing conduct), a CNS shall perform only those services that comprise the practice of professional nursing as defined in section 2(1) of the act (63 P.S. § 212(1)).

(b) A CNS practicing in this Commonwealth shall maintain a level of professional liability coverage as set forth in section 8.5(e) of the act (63 P.S. § 218.5(e)).

### **§ 21.822. Biennial renewal of certification.**

(a) The certification of a CNS will expire at the same time as the CNS's professional nursing license as provided in § 21.29 (relating to expiration and renewal of license).

(b) Notice of application for renewal will be forwarded biennially to each active CNS at the CNS's address of record with the Board prior to the expiration date of the current biennial period.

(c) As a condition of biennial renewal, a CNS shall hold a valid, unexpired and unrestricted professional nursing license.

(d) As a condition of biennial renewal, a CNS shall complete a minimum of 30 hours of Board-approved continuing education in the 2 years prior to renewal as required under section 8.5(c)(2) of the act (63 P.S. § 218.5(c)(2)), unless the requirement is waived by the Board under § 21.823(b) (relating to CNS-level continuing education; waiver; sanctions) or the CNS's certification is on inactive status.

(e) The applicant shall remit the required renewal fee in § 21.805 (relating to fees) with the applicant's renewal application forms. Upon approval of the renewal application, the CNS will receive a certification for the current renewal period.

### **§ 21.823. CNS-level continuing education; waiver; sanctions.**

(a) In lieu of meeting the RN continuing education requirements of section 12.1(b) of the act (63 P.S. § 222(b)), a CNS may submit proof of

completion of the CNS continuing education requirement set forth in section 8.5(c)(2) of the act (63 P.S. §218.5(c)(2)).

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

(c) An individual failing to meet the continuing education requirements for a biennial period will be sanctioned in accordance with §43b.18a (related to schedule of civil penalties for nurses).

### **§21.824. Inactive status and reactivation.**

A CNS who places the CNS's certification on inactive status is not required to meet the continuing education requirements in section 8.5(c)(2) of the act (63 P.S. §218.5(c)(2)) during the period the certification is on inactive status. Upon application for reactivation of certification, the CNS shall provide the documentation in §21.828(b) (relating to CNS responsibilities) to demonstrate that the CNS has met the continuing education requirements for the biennial period immediately preceding the request for reactivation.

### **§21.825. Sources of continuing education.**

(a) The following providers of continuing education and credentialing organizations have currently met the standards for course approval for continuing education and, provided that these providers and credentialing organizations comply with §§21.826 and 21.827 (relating to requirements for continuing education courses; and continuing education course approval), they are preapproved to offer creditable continuing education, subject to reevaluation as set forth in subsection (b):

(1) Board-approved CNS educational programs and CNS educational programs approved by other state boards of nursing or that hold current accreditation issued by a National nursing accreditation organization.

(2) National and international nursing organizations and their state and local affiliates.

(3) National and international medical and osteopathic organizations and their state and local affiliates.

(4) National pharmaceutical organizations and their state and local affiliates.

â€“(5)â€”National nursing specialty organizations and programs accredited by National nursing accrediting associations.

â€“(6)â€”Continuing education programs approved by other state boards of nursing for advanced practice nurses or CNSs.

â€“(b)â€”The approval given to the providers and credentialing organizations in subsection (a) is subject to reevaluation. A rescission of provider or credentialing organization approval will be made in accordance with 1 Pa.â€”Code Part II (relating to General Rules of Administrative Practice and Procedure) or by amendment of this section.

â€“(c)â€”CNSs may obtain credit for continuing education offered by providers not indicated in subsection (a) if the provider obtains Board approval of the continuing education prior to its implementation, or the CNS obtains Board approval of the continuing education prior to attending the continuing education. A continuing education provider or CNS may obtain Board approval of continuing education by submitting an application for approval, the fee in Â§â€”21.805 (relating to fees) and the supporting documentation in Â§â€”21.827(b) at least 90 days prior to the course.

â€“(d)â€”CNSs may obtain credit for correspondence courses, taped study courses, and other independent or online study courses if the course is approved under subsection (c).

â€“(e)â€”Up to 4 hours may be approved under subsection (c) for service as a teacher in a nursing education program, preceptor providing direct clinical supervision in a specialty area, lecturer or speaker and for publication in a refereed journal or other scholarly publication relating to the CNS's area of practice.

â€“(f)â€”An hour for the purposes of CNS continuing education is 50 minutes.

â€“(g)â€”The Board will apply Â§â€”21.132(b) (relating to continuing education hours) to determine the number of hours awarded for academic coursework.

### **Â§â€”21.826.â€”Requirements for continuing education courses.**

â€”Each course must have:

â€“(1)â€”An established mechanism to measure its quality, established criteria for selecting and evaluating faculty, and established criteria for the evaluation of each participant who completes the course.

â€“(2)â€”An adequate physical facility and appropriate instructional materials to carry out the continuing education course.

â€(3)â€ An instructor whose area of expertise is in the subject matter being taught.

### **Â§â€21.827.â€ Continuing education course approval.**

â€(a)â€ As a condition of approval, providers and credentialing organizations are required to provide CNSs who complete continuing education courses with a certificate of completion which contains the information in Â§â€21.828(a) (relating to CNS responsibilities).

â€(b)â€ Providers or CNSs requesting Board approval for continuing education as set forth in Â§â€21.825(c) (relating to sources of continuing education) shall pay the fee in Â§â€21.805 (relating to fees) and submit the following information to the Board:

â€(1)â€ The full name and address of the provider.

â€(2)â€ The title of the program.

â€(3)â€ The dates and location of the program.

â€(4)â€ The faculty names, titles, affiliations, degrees and areas of expertise.

â€(5)â€ The schedule of the programâ€™ title of subject, lecturer and time allocated.

â€(6)â€ The total number of hours requested.

â€(7)â€ The method of certifying and assuring attendance, and draft of certificate of attendance to be provided to course participants.

â€(8)â€ The course objectives.

â€(9)â€ The target audience.

â€(10)â€ The core subjects.

â€(11)â€ The instruction and evaluation methods.

â€(c)â€ Providers shall submit other information requested by the Board.

â€(d)â€ The provider shall provide CNSs who successfully complete a course with a certificate of attendance.

â€(e)â€ A separate application shall be submitted whenever a change is made to any information submitted under subsection (b), except for information related to a change in date or location, or both.

### **Â§â€21.828.â€ CNS responsibilities.**

â€(a)â€ A CNS is required to maintain documentation of completion of continuing education, including:

â€(1)â€ CNS's name.

â€(2)â€ Dates attended.

â€(3)â€ Continuing education hours.

â€(4)â€ Title of course.

â€(5)â€ Course provider.

â€(6)â€ Location of course.

â€(b)â€ Primary responsibility for documenting completion of the continuing education requirements rests with the CNS. A CNS seeking to renew certification shall verify compliance with continuing education requirements. Certificates of attendance and other documentation of completion of continuing education requirements must be maintained for 5 years. The Board approval letter sent to the applicant will be considered acceptable documentation of hours obtained through Â§â€21.825(c) or (e) (relating to sources of continuing education).

â€(c)â€ Falsification of information required under this section or failure to complete the continuing education requirements by those who continue to practice as CNSs may result in the institution of formal disciplinary action under section 14(a)(3) of the act (63 P.â€S. Â§â€221(a)(3)) and Â§â€21.831(3) (relating to penalties for violations).

## **PENALTIES FOR VIOLATION**

### **Â§â€21.831.â€ Penalties for violations.**

â€ Certification as a CNS may be suspended, revoked or otherwise restricted, and the Board may order remedial measures when, after notice and opportunity to be heard, the Board finds that:

â€(1)â€ The CNS has engaged in medical diagnosis or the prescription of medical therapeutic or corrective measures prohibited under section 8.6(a) of the act (63 P.â€S. Â§â€218.6(a)).

â€(2)â€ The CNS has performed a service beyond the scope of practice of professional nursing as defined in section 2(1) of the act (63 P.â€S. 212(1)).

â€(3)â€ The CNS has violated the act or this subchapter, or engaged in any conduct prohibited for professional nurses.

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