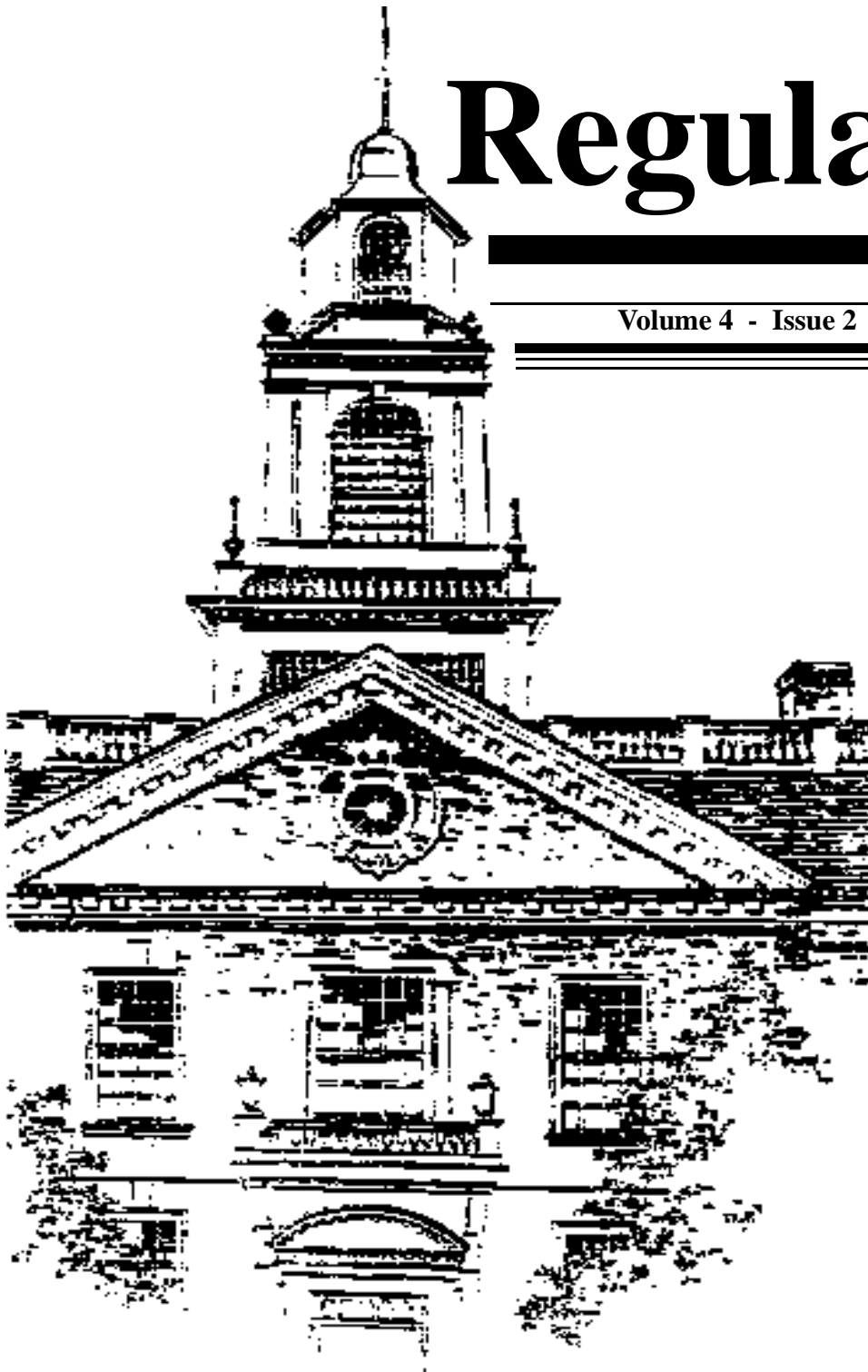

Delaware Register of Regulations

Issue Date: August 1, 2000

Volume 4 - Issue 2

Pages 240 - 372



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- Emergency
- Proposed
- Final

Governor

- Executive Order
- Appointments
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- Calendar of Events &
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Pursuant to 29 Del. C. Chapter 11, Subchapter III, this issue of the Register contains all documents required to be published, and received, on or before July 15, 2000.

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DELAWARE REGISTER OF REGULATIONS

The Delaware Register of Regulations is an official State publication established by authority of 69 Del. Laws, c. 107 and is published on the first of each month throughout the year.

The Delaware Register will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The Register will also publish some or all of the following information:

- Governor's Executive Orders
- Governor's Appointments
- Attorney General's Opinions in full text
- Agency Hearing and Meeting Notices
- Other documents considered to be in the public interest.

CITATION TO THE DELAWARE REGISTER

The Delaware Register of Regulations is cited by volume, issue, page number and date. An example would be:

3 DE Reg. 737 - 742 (12/1/99)

Refers to Volume 3, pages 737 - 742 of the Delaware Register issued on December 1, 1999.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the Delaware Register of Regulations is \$120.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-739-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the Register of Regulations.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
SEPTEMBER 1	AUGUST 15	4:30 P.M.
OCTOBER 1	SEPTEMBER 15	4:30 P.M.
NOVEMBER 1	OCTOBER 15	4:30 P.M.
DECEMBER 1	NOVEMBER 15	4:30 P.M.
JANUARY 1	DECEMBER 15	4:30 P.M.

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**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PHARMACY**

Statutory Authority: 24 Delaware Code,
Section 2509 (24 Del.C. 2509)

PLEASE NOTE: THE JULY ISSUE OF THE REGISTER DID NOT PRINT THE TEXT OF THE FINAL ORDER FOR THE BOARD OF PHARMACY. THE CORRECT TEXT OF THE REGULATORY CHANGES WAS PRINTED. THE ORDER AND TEXT ARE REPRODUCED IN THEIR ENTIRERTY.

A Public Hearing was held to receive comments on April 12, 2000 at the regularly scheduled meeting of the State Board of Pharmacy. The Board considered proposed changes to Regulations I, II and V as published in the Register of Regulations, Vol. 3, Issue 9, March 1, 2000.

**SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The following is a summary of the written comments received and marked as Exhibits:

1. Exhibit 1 is a written record of the testimony presented by Joseph M. Letnauchyn, President & CEO of the Delaware Healthcare Association. The Association recommended that the Board review the report and recommendation of the Automation Subcommittee prior to making any regulatory changes in view of the importance of automation in hospitals, health systems and long term care facilities. A hospital pharmacist has more clinical duties and medication can be safely dispensed through automated systems. It was noted that the National Model Act Task Force on Automation of the National Association of Boards of Pharmacy does not require a final check by a pharmacist. He suggested that automated dispensing machines should be considered floor stock if the regulation were to pass since they would then be exempt and automated dispensing could continue.

2. Exhibit 2 is a letter dated April 9, 2000 submitted by Jeffrey A. Reitz, Pharm.D., President of the Delaware Society of Health System Pharmacists . The letter expresses concern that the proposed Regulation V would prevent efficient use of pharmacy systems which automate some aspects of dispensing in hospitals and long term care facilities. He suggested the Board defer any changes in Regulation V until it considered the recommendations of the Subcommittee on Automation. He suggested the accuracy and efficiency of the automated systems is superior to traditional unit dose cart filing systems.

3. Exhibit 3 is a letter dated March 22, 2000

submitted by Karen Nishi, Director of Regulatory Affairs, Pyxis Corporation. The letter indicates that there is a demonstrated and documented accuracy rate of 99.9% for the Pyxis machine and requiring an additional check by a pharmacist is not warranted. The nurse administering the medication is responsible to check the medication. A comprehensive set of regulations specifically addressing automated medication systems is recommended.

4. Exhibit 4 is a letter dated April 7, 2000 submitted by Alfred E. Pilog, Jr., R.Ph., Director of Pharmacy, the Bayhealth Medical Center. The letter states that using the Pyxis Med Station Rx software and hardware is safe and effective. Regulation V as proposed would have a negative impact on the delivery of patient care at Bayhealth which includes the pharmacist. He thought the Subcommittee on Automation should complete its recommendations before action was taken on any proposed regulation.

5. Exhibit 4 is a letter dated April 12, 2000 and submitted by Stuart Levine, Pharm. D., Director of Pharmacy and Thomas P. Ferry, Administrator, A.I. DuPont Hospital for Children. Any proposed changes should be deferred until the Subcommittee on Automation has the opportunity to make recommendations to the Board. Regulation V no longer adequately addresses the practice of pharmacy in a hospital setting.

6. Exhibit 6 is a letter dated April 12, 2000 submitted by Albert W. Helmeczi, M.S., R.Ph., Administrator Directory of Pharmacy Services, Christiana Care Health Services. The letter describes concern about the proposed change to Regulation V as the definition of container may apply in a hospital setting to prevent the efficient use of hospital pharmacy automation. Pharmacists in hospitals have been integrated into the patient care team by using automated systems. The change should be delayed until there was a more comprehensive review and revision of regulations as they pertain to hospital pharmacy practice in automation.

7. Exhibit 7 is a letter and memorandum dated April 11, 2000 submitted by Walter P. McEville, Jr., Esquire and Susan M. Gordon, Esquire from Stevens and Lee on behalf of Bayhealth Medical Center, Inc. in opposition to the proposed changes to Regulation V. The exhibit describes the checks performed by the pharmacist using the Pyxis Med Station Rx. The equipment as used at Bayhealth has a 99.9% accuracy rate in assuring the proper drug is in the correct pocket of the Med Station Rx. No additional check by a pharmacist is necessary. The White Paper on Automation in Pharmacy by the Automation in Pharmacy Initiative is attached as an exhibit to the memorandum. The role of the pharmacist has developed and now includes more than dispensing; pharmacists are integral members of the health care team. The proposed Regulation should be withdrawn at least until the Subcommittee on Automation studies the

issues and makes proposals.

8. Exhibit 8 is a letter dated April 11, 2000 submitted by Dennis Klima, President and CEO of Bayhealth, Inc. describing the importance of having pharmacists in expanded patient care roles in hospitals. The proposed amendments would not optimize pharmaceutical services or improve patient safety and outcomes. A memorandum dated January 26, 2000 related to patient safety and pharmacists shortages is included. The recommendation from the American Society of Health System Pharmacists is to recruit pharmacists who are capable of working directly in patient care areas and be more accessible to prescribers and staff. The use of the Pyxis Med Station Rx at Bayhealth has permitted pharmacists to be available for consultation in patient care areas. He urged the Board to develop automation regulations through the subcommittee before proposing amendments to Regulation V.

9. Exhibit 9 is a letter dated April 11, 2000 submitted by Michelle Belkin, R.Ph., General Manager of Pharmerica supporting the proposed Regulation requiring a final check and defining the term "container". She believes that it is critical that medications are checked by a pharmacist as the last step before a nurse removes the medication.

10. Exhibit 10 is an e-mail submitted by a writer requesting anonymity. The writer supported having medications "eyeballed" by a pharmacist and quoted a study published by the American Society of Health System Pharmacist in 1998. The study noted that "most medication errors are caused by problems in the medication distribution process" a recommendation in that study for preventing errors was to "insure that the technicians have their work checked by a pharmacist".

11. Exhibit 11 is an e-mail dated March 27, 2000 submitted by Barbara Bonk, R.Ph. Director of Pharmacy, Meadowood Behavioral Hospital. She strongly supports the proposed change to Regulation V to insure that a final check is performed by registered pharmacists. In her view it is an ethical and professional responsibility to do everything in one's power to reduce medication errors.

12. Exhibit 12 is a letter dated April 7, 2000 submitted by John R. Waeger, R.Ph., Pharmacy Clinical Leader/Director of Pharmacy, Nanticoke Memorial Hospital, expressing his concerns over the changes to Regulation V. The change would put an unnecessary burden on hospitals and require reassignments of pharmacists away from patient care toward technical tasks. Clinical activities of the pharmacists improve over all patient care function. He is concerned about moving to automation because of the proposed Regulations. He noted that if the use of a Pxyis Rx is considered floor stock, then the change in the Regulation would be moot. He suggested the Board postponing the decision until the subcommittee on automation look at the

issues.

The following individuals were sworn and testified consistently with their written submissions summarized above:

1. - 8. Joseph Letnaunchyn, President and CEO of Delaware Health Care; John Yeager, Nanticoke Memorial Hospital; Jeffrey Reitz, President of the Delaware Society of Health Systems Pharmacists; Karen Nishi, Director of Regulatory Affairs, Pyxis Corporation; Alfred E. Pilong, Jr., R.Ph. Director of Pharmacy, Bayhealth Medical Center; Stuart Levine, Pharm. D., Director of Pharmaceutical Services at A.I. DuPont Children's Hospital; Albert W. Helmeczi, M.S., R.Ph., Administrative Director, Pharmacy Services, Christiana Care Health Services; and Walter P. McEvelly, Jr., Esquire, Stevens and Lee.

The following individuals were sworn and a summary of their testimony follows:

9. Jack Murphy, R.Ph., a representative of Happy Harry's, agreed that from the perspective of retail pharmacies, Regulation V should be changed to make the pharmacist accountable for the final check. A final check by a pharmacist is necessary to guarantee patient safety.

10. Sam Roberts, Director of the Pharmacy at Beebe Hospital was concerned about the proposed change to Regulation V. Hospital pharmacies are charged to provide good service at a reasonable cost considering reimbursement issues. He referred to the Journal of the American Medical Association in his argument for the benefits of clinical intervention of the pharmacist. He thought there would be a negative effect on patient and financial outcomes if pharmacists were filling machines. Moreover, a clinical setting provides an attractive edge when recruiting hospital pharmacists. He urged the Board to look at all aspects of automation before changing the Regulation.

FINDINGS OF FACT

There were no written or verbal comments addressing Regulation I and Regulation II. These Regulations related to examination requirements, intern responsibilities, the Continued Education Advisory Council, and unprofessional conduct and they were passed unanimously. The new section *J. Electronic Transmission of Prescriptions* which replaces former section *I.8 Prescription Facsimile Transmissions of Regulation V*, was adopted unanimously to implement 24 Del. C. §2511.

Proposed Regulation V. section A.24 which defines container and section D.3.b)3) clarifying the final check are not passed. After considering the verbal and written comments received, a majority of the Board has concluded that making a change before the recommendations of the Subcommittee on Automation concluded its report was premature. It is important to distinguish between hospital and community pharmacy settings in the statute and

regulations.

DECISION AND EFFECTIVE DATE

The Board adopts the changes to Regulation I, II and V. section J., replacing Regulation V. section I.8, to be effective 10 days following final publication in the Register of Regulations.

TEXT AND CITATION

The text of the Regulations hereby promulgated is as it appeared in the Register of Regulations, Vol. 3, Issue 7, March 1, 2000, but omitting the proposed changes to Regulation V. section A.24 and Regulation V. section D.3.b)3).

STATE BOARD OF PHARMACY
Maryanne Holzapfel, R.Ph., President
Calvin Freedman, R.Ph.
Yvonne Brown, R.Ph.
Herb Von Goerres, R.Ph.
Carl June, R.Ph.
Belasco Bossard
Ruth Melvin

Regulation I Pharmacist Licensure Requirements

A. Examination Requirements

1. In order to be eligible for examination for licensure, an applicant must have graduated from an approved school or college of pharmacy. An approved school or college of pharmacy is an institution which has established standards in its undergraduate degree program which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education. Provided, however, that graduates of schools or colleges of pharmacy located outside of the United States, which have not established standards in their respective undergraduate degree programs which are at least equivalent to the minimum standards for accreditation established by the American Council on Pharmaceutical Education, shall be deemed eligible for examination for licensure by providing evidence satisfactory to the Board of Pharmacy of graduation from such school or college and by successfully passing an equivalency examination recognized by the Board of Pharmacy. Certification by the National Association of Boards of Pharmacy Foundation (NABP) Foreign Pharmacy Graduate Examination Committee (FPGEC) meets the equivalency examination requirement.

2. Candidates must obtain a passing grade of 75 on the ~~NABP~~ NAPLEX Examination to be eligible for a license to practice. The Secretary will supply the grade

obtained to the candidate upon receipt of a written request from that person. In addition, candidates must take and obtain a passing grade of 75 on a Jurisprudence Examination.

3. Any applicant who fails the examination shall be entitled to take a re-examination ~~on the Board's next regularly scheduled NAPLEX examination date~~. If an applicant has failed the examination three times, he/she shall be eligible to take the examination ~~at the next regularly scheduled time~~, provided that he/she produces evidence of working full-time as an intern for a period of six months between examinations or has attended an accredited college of pharmacy as a registered student for a minimum of one semester consisting of 12 credits during the interim. A certification of satisfactory completion of such work shall be furnished by the Dean of the College or the preceptor as the case may be. The applicant may continue to sit for the Examination at its regularly scheduled time in the next succeeding years, provided the applicant has fulfilled the requirement for internship or course of study required herein between each examination.

4. Three failures of the Jurisprudence Examination requires three months of internship or one semester college course of Jurisprudence prior to the applicant being eligible to re-take the Jurisprudence examination.

B. Practical Experience Requirements

1. Applicant must submit an affidavit indicating enrollment in good standing as a student entering the first professional year of college of pharmacy or if the applicant is a graduate of a foreign pharmacy school, produce evidence that he has passed an equivalency examination by the Board.

2. Persons who register as interns in the State of Delaware shall, in accordance with the requirements of 24 **Del. C.** §2515, complete not less than 1500 hours of Board approved practical experience under the supervision of a licensed pharmacist. The preceptor must certify that the intern has successfully completed all the requirements outlined in the Responsibilities of the Intern professional assessment form. The registrant must submit an affidavit of hours currently completed and properly notarized 30 days prior to taking the examination. Applicants who have not completed all the practical experience requirements, but who have graduated from an accredited college or have been certified by the NABP Foreign Pharmacy Graduate Examination Committee are eligible to take the examination. However, applicants will not be fully licensed until all the requirements of the Statutes and Regulations are completed.

C. Continuing Education Requirements

1. A pharmacist must acquire 3.0 C.E.U.'s (30 hours) per biennial licensure period. No carry over of credit from one registration period to another period is permitted.

2. Hardship - Hardship exemptions may be granted by the Board of Pharmacy upon receipt of evidence that the individual was unable to complete the requirements due to circumstances beyond his control. ~~The Board may seek the advice of its Continuing Education Advisory Council in determining the granting of or length of the extension.~~

Criteria for Hardship Exemption as Recommended by the ~~Continuing Education Advisory Council~~ Board of Pharmacy:

a) Applicant must notify the Board in writing concerning the nature of the hardship and the time needed for an extension. In case of medical disability, a letter from the physician with supporting documentation to corroborate the condition and the length of time of extension needed.

b) The Board of Pharmacy will review requests. ~~The Continuing Education Advisory Council will review requests and send recommendations to the Board.~~

c) The Board will notify the registrant of its decision.

3. Persons who are newly licensed after the registration period begins, must complete continuing education units proportional to the total number of continuing education units required for the biennial licensure renewal. (1.25 hours/per month)

D. Advisory Council on Continuing Education

~~The Board shall establish a council of six persons to evaluate and approve intrastate programs and to advise the Board on any matters pertinent to continuing education. Three pharmacists are to be recommended by the professional pharmacy organizations of the State; one member will represent independent pharmacists; two shall be members of the Board of Pharmacy; one shall be a pharmaceutical educator from one of the colleges located in Maryland, New Jersey or Pennsylvania. The committee will select a Chairman from among its membership. Appointments shall be for two year periods. No member may serve more than two consecutive terms.~~

E. D. Continuing Professional Educational Programs

1. Topics of Study

Topics of study shall be subject matter designed to maintain and enhance the contemporary practice of pharmacy.

2. Approved Provider

- a. Any provider approved by ACPE.
- b. In-state organization which meets criteria approved by the Board.

3. Application for Delaware State Provider

a. Any in-state organization may apply to the Board on forms provided by the Board for initial qualification as an approved provider. The Board shall accept or reject any such application by written notice to such organization within 60 days after receipt of its

application. If an organization is approved, the Board will issue a certificate or other notification of qualification to it, which approval shall be effective for a period of two years and shall be renewable upon the fulfillment of all requirements for renewal as set forth by the Board.

b. The Board may revoke or suspend an approval of a provider or refuse to renew such approval if the provider fails to maintain the standards and specifications required. The Board shall serve written notice on the provider by mail or personal delivery at its address as shown on its most current application specifying the reason for suspension, revocation, or failure to renew. The provider so affected shall, upon written request to the Board within ten days after service of the notice, be granted a prompt hearing before the Board at which time it will be permitted to introduce matters in person, or by its counsel, to defend itself against such revocation, suspension, or failure to renew, in accordance with the provisions set forth in the State's Administrative Procedures Act.

4. Criteria for Approval of Delaware State Providers

Only applicants who are located within the State of Delaware are eligible. Such Continuing Education providers shall provide evidence of ability to meet the following criteria or approval as a Continuing Pharmaceutical Education Provider. Other persons must apply through ACPE for approval or be acceptable to other Boards of Pharmacy that certify continuing education for relicensure.

a. Administration and Organization

(1) The person who is in charge of making sure that the program meets the quality standards must have a background in the administration of education programs.

(2) There shall be an identifiable person or persons charged with the responsibility of administering the continuing pharmaceutical education program.

(3) Such personnel shall be qualified for such responsibilities by virtue of experience and background.

(4) If an approved provider presents programs in co-sponsorship with other non-approved provider(s), the approved provider has the total responsibility for assurance of quality of that program. If more than one approved provider co-sponsors a program, they have the joint responsibility for assuring quality.

(5) Administrative Requirements include:

(a) The development of promotional materials which state:

1. Educational objectives.
2. The target audience.
3. The time schedule of the activities.
4. Cost to the participant/covered items.
5. Amount of C.E. credit which will be awarded.
6. Credentials of the faculty,

presenters, and speakers.

7. Self-evaluation instruments.

(b) Compliance with a quantitative measure for C.E. credit.

1. The number of C.E.U.'s to be awarded for successful completion shall be determined by the provider and reported in the promotional materials.

2. In cases where the participants' physical presence is required, C.E. credit will only be awarded for that portion of the program which concerns itself with the lecture(s), evaluation and question and answer segments.

3. The measure of credit shall be a fifty-minute contact hour. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

4. In the case of other programs such as home study courses, the amount of credit awarded shall be determined by assessing the amount of time the activity would require for completion by the participant if delivered in a more formal and structured format.

5. The provider must provide the Continuing Education Advisory Council upon request with appropriate records of successful participation in previous continuing education activities.

6. The provider must present to the participant a form or certificate as documentation of the completion of the program. The form must be at least 4" x 6" and no larger than 8 1/2" x 11". That certificate must show the name, address, and license number of the participant, the name of the provider, the title and date of the program, the number of credits earned, and an authorized signature from the provider.

7. The provider must have a policy and procedure for the handling or management of grievances and refunds of tuition.

b. Program Faculty

The selection of program faculty must be based upon proved competency in the subject matter and an ability to communicate in order to achieve a learning experience.

c. Program Content Development

(1) Such programs shall involve effective advance planning. A statement of educational goals and/or behaviors must be included in promotional materials. Such objectives and goals must be measurable and accessible to evaluation. In determining program content, providers shall involve appropriate members of the intended audience in order to satisfy the educational needs of the participants. All programs of approved providers should pertain to the general areas of professional pharmacy practices which should include, but not be limited to:

(a) The social, economic, behavioral, and

legal aspects of health care,

(b) the properties and actions of drugs and drug dosage forms,

(c) the etiology, characteristics, therapeutics and prevention of the disease state,

(d) pharmaceutical monitoring and management of patients.

(2) All ancillary teaching tools shall be suitable and appropriate to the topic.

(3) All materials shall be updated periodically to include up-to-date-practice setting.

(4) It is the responsibility of the provider to be sure that the programs are continuously upgraded to meet educational objectives of the Practice of Pharmacy. The needs of the pharmacist participant must be considered in choosing the method of delivery. Innovation in presentations is encouraged within the limits of budget resources and facilities. Whatever method of delivery is used, it must include the participation of the pharmacist as much as possible within the program, i.e. questions and answers, workshops, etc.

d. Facilities

The facilities shall be adequate for the size of the audience, properly equipped (all appropriate audio/-visual media materials), well lighted and ventilated to induce a proper learning experience.

e. Evaluation

Effective evaluation of programs is essential and is the responsibility of both the provider and participant.

(1) Participant - Some evaluation mechanisms must be developed by the provider to allow the participant to assess his/her own achievement per the program.

(2) Provider evaluation - a provider shall also develop an instrument for the use of the participant in evaluating the effectiveness of the program including the level of fulfillment of stated objectives.

f. Criteria for Awarding Continuing Education Credits

Individual programs must meet the criteria for provider approval in order to be considered. In those cases where the provider is not an ACPE provider, nor a Board of Pharmacy approved provider, a registrant may complete an application provided by the Board for approval of individual programs.

(1) In order to receive full credit for non-ACPE approved programs of one-to-two hour lengths, evidence of a post test must be presented. An automatic 25% deduction if no post test presented.

(2) In order to receive full credit for non-ACPE approved programs of three or more hours in length, evidence of a pre and post test must be presented. Automatic 25% deduction if no pre and post test presented.

(3) The Committee will only assign credit for the core content of the program which explicitly relates to

the contemporary practice of Pharmacy.

(4) A maximum of 2 credit hours will be awarded for First Aid or CPR/BCLS courses one time only per registration period.

(5) Credit for Instructors of Continuing Education

(a) Any pharmacist whose primary responsibility is not the education of health professionals, who leads, instructs or lectures to groups of nurses, physicians, pharmacists or others on pharmacy related topics in organized continuing education or inservice programs, shall be granted continuing education credit for such time expended during actual presentation, upon adequate documentation to the Delaware ~~Continuing Education Advisory Committee~~ of the Board of Pharmacy.

(b) Any pharmacist whose primary responsibility is the education of health professionals shall be granted continuing education credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses or others on pharmacy related topics outside his/her formal course responsibilities (that is, lectures or instructions must be prepared specifically for each program) in a learning institution.

(c) Credit for presentations of in-service training programs or other lectures shall be granted only for topics meeting the criteria for continuing pharmacy education, and shall be granted only once for any given program or lecture. (Any topic completely revised would be eligible for consideration.)

(d) A maximum of 6 hours (0.6 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

(6) Credit for On the Job Training:

(a) ~~The Board of Pharmacy Continuing Education Advisory Council~~ does not as a general rule encourage the submission of "on the job training" for fulfilling the continuing education requirements. All programs meeting this definition shall be reviewed on an individual basis.

(b) All programs that are submitted for credit must meet the criteria for continuing pharmacy education.

(c) No credit shall be awarded for programs required by an employer for continued employment of the employee. (Examples OSHA training, Infection Control Education required by JCAHO.)

(d) A maximum of 4 hours (0.4 C.E.U.'s) in this category may be applied toward fulfilling the total biennial continuing education requirements.

F.E. The Verification of Continuing Education - The pharmacist will be responsible for providing the Board with verification of completion of the required continuing education programs by such means as designated by the

Board.

G.F. Re-Entry - A pharmacist may have his/her license reinstated by completing the following requirements:

1. Payment of any back fees;
2. Successfully obtaining a grade of 75 on an examination on the Practice of Pharmacy if the pharmacist has not practiced in three years;
3. Submission of evidence of completion of at least 20 hours of approved C.E. from the date of application for reinstatement if the pharmacist has practiced within the last three years.

H. G. Reciprocal Requirements

1. The Board will accept an applicant for reciprocity provided that his practical pharmacy experience and his experience in the practice after licensure is at least equivalent to the practical pharmacy experience required by the Delaware Board.

2. Candidates for reciprocity licensure, except those who have been licensed by examination within the last year, must have practiced as a registered pharmacist for at least one year during the last three years or shall be required to pass the Board of Pharmacy's Practice of Pharmacy examination or an examination deemed equivalent by the Board and obtained a minimum grade of 75 percent.

3. Reciprocity applicants who took examinations after June 1, 1979, must have passed the National Association of Boards of Pharmacy standard examination or an examination deemed equivalent by the Board and obtained scores required for applicants for licensure by examination.

4. All reciprocal applicants must take a written jurisprudence examination and obtain a minimum grade of 75 percent. Jurisprudence examinations will be given at such times as determined by the Board. In order to be eligible to take the jurisprudence examination, all necessary paperwork must be completed and received by the Board office at least 10 days prior to the next scheduled examination.

5. Applicants who are licensed by reciprocity must begin accruing continuing education units at a rate of 1.25 hours/per month beginning with the month of licensure.

Regulation II

Grounds For Disciplinary Proceeding

A. Gross Immorality

~~The Board of Pharmacy interprets gross immorality as it appears in 24 Del. C. §2518(A) as including but not being limited to:~~

Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del.C. §2518(A):

1. Knowingly engaging in any activity which violates

State and Federal Statutes and Regulations governing the practice of Pharmacy;

2. Knowingly dispensing an outdated or questionable product;

3. Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;

4. Knowingly charging for more dosage units than is actually dispensed;

5. Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;

6. Knowingly dispensing medication without proper authorization;

7. Knowingly defrauding any persons or government agency receiving pharmacy services;

8. Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information.

B. Unprofessional Conduct

~~Unprofessional conduct shall include but is not limited to the following act(s) of a pharmacist pursuant to 24 Del. C. §2518(A):~~

~~1~~ 4. Fraudulently altering or forging the contents of prescriptions;

~~10~~ 2. Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;

~~11~~ 3. Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);

~~12~~ 4. Unauthorized substitution;

~~13~~ 5. Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;

~~14~~ 6. Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;

~~15~~ 7. Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;

~~16~~ 8. Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;

~~17~~ 9. Knowingly misbranding a drug by using a brand name when a generic is dispensed;

~~18~~ 10. Practicing under the influence of drugs or alcohol;

~~19~~ 11. The placement of an advertisement which the pharmacist knows to be false or misleading;

~~20~~ 12. Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;

~~21~~ 13. Engaging in activities that would discredit the

profession of pharmacy;

~~22~~ 14. Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders.

~~23~~ 15. Using facsimile equipment to circumvent documentation, authenticity, verification or other standards of pharmacy or drug diversion. (Effective 2/29/96)

Regulation V. Dispensing

A. Definitions

1. Dispensing - To furnish or deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner; including the preparation, packaging, labeling or compounding necessary to prepare the drug for that delivery.

2. Pertinent Patient Medication Information - Information which increases the patient's ability to minimize the risks and enhance the benefits of drug use. The type of information the pharmacist should consider is contained in the latest edition of USP DI "Advice for the Patient."

3. Delivery - The transfer of a dispensed prescription to the ultimate user (patient) or his/her agent.

4. Agent - An employee of the pharmacy supervised by the pharmacist or a person acting on behalf of the ultimate user.

5. New Medication - A medication not previously dispensed by the pharmacy for the ultimate user.

6. Patient Counseling - The offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face-to-face communication with the patient or his/her agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.

7. Compounding - The art of the extemporaneous preparation and manipulation of drugs as a result of a practitioner's prescription order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, including the reconstitution of powders for administration and the preparation of drugs in anticipation of drug orders based on routine, regularly observed prescribing patterns. Pharmaceutical compounding must be in compliance with FFDC Section 503A and any regulations promulgated by FDA concerning compounding, pertaining to this section.

8. Supportive personnel - A person who is not registered as an intern or pharmacist with the Board who may perform tasks as authorized by this Regulation.

9. Cell - Any container which holds the medication for automatic dispensing.

10. Prescription - An order for medication which is dispensed to or for an ultimate user, but does not include an order for medication which is dispensed for immediate

administration to the ultimate user, (e.g., an order to dispense a drug to a bed patient for immediate administration in a hospital is not a prescription.)

11. Automated Data Processing System (ADP) - A system utilizing computer software and hardware for the purposes of recordkeeping.

12. CRT - Cathode Ray Tube used to impose visual information on a screen.

13. Computer - Programmable electronic device, capable of multifunctions including but not limited to storage, retrieval and processing of information.

14. Controlled Substance - Those drug items regulated by Federal (CSA of 1970) and/or State Controlled (dangerous) Substances Act.

15. Downtime - That period of time when a computer is not operable.

16. Prescriber - A practitioner authorized to prescribe and acting within the scope of this authorization.

17. Prescription - A written order from a practitioner authorized to prescribe and acting within the scope of this authorization, (other terminology: prescription order) or a telephone order reduced to writing by the pharmacist.

18. Facsimile (FAX) Prescription - A facsimile prescription is an order which is transmitted by an electronic device over telephone lines which sends an exact copy image to the receiver (pharmacy).

19. Reduced to Writing

a. For new prescriptions this means the preparation of a paper document containing all the information required for a written prescription including the State requirement (Section 2553) for drug product selection;

b. For a refill authorization, it may be handled as a new prescription as in (a) above, or by placing on the original prescription or the patient profile (whichever document is consistently used to document refills) the date, a statement "O.K. for 'x' number of additional refills", or words of similar import, and the pharmacist's initials. In no instance, shall the refill authorizations exceed the legal limits established by State and Federal laws.

c. If the prescriber authorizing additional refills differs from the Prescriber whose name appears on the signature line of the original prescription, then that authorization is considered a new prescription and must be handled as described in (a).

20. Regulatory Agency - Any Federal or State agency charged with enforcement of pharmacy or drug laws and regulations.

21. Printout - A hard copy produced by computer that is readable without the aid of any special device.

22. Stop Date - A date established by an appropriate authority which indicates when medication will no longer be administered or dispensed in the absence of a specific time period directed by the prescriber.

23. Common Data Base - A file or data base created by

ADP that enables authorized users to have common access to this file regardless of physical location.

~~[24. Container is that which holds the article, designed to hold a quantity of drug product intended for administration as a single dose, multiple dose, or a single finished device intended for use promptly after the container is opened.]~~

B. The practice of dispensing shall include, but not be limited to the following acts which shall be performed only by a pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated, practical experience program.

1. Receive oral prescriptions and reduce them immediately to writing.

2. Certification of the prescription order - (This involves authenticating the prescription, confirming proper dosage and instructions, and reviewing for incompatibility, etc.)

3. Record refill dates and initials of the dispensing pharmacist on the prescription (or on another appropriate uniformly maintained readily retrievable record such as the medication records.)

C. Patient Counseling

1. Before dispensing or delivering a new medication to a patient or his or her agent, a pharmacist or pharmacy intern under the direct supervision of the pharmacist, shall conduct a prospective drug review. A pharmacist or pharmacy intern may conduct a prospective drug review before refilling a prescription to the extent deemed appropriate by the pharmacist or pharmacy intern in his/her professional judgment. Such review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-drug interactions, including serious interactions with over-the-counter drugs, drug-disease contraindications, if disease is known, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse based on available information received by the pharmacist.

2. Except when a prescriber requests that information regarding a prescribed drug not be given to a specific patient, a pharmacist or a pharmacy intern under the direct supervision of a pharmacist shall, with each new medication dispensed, provide counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following:

a. the name and description of the prescribed drug;

b. the dosage and the dosage form;

c. the method and route of administration;

d. the duration of the prescribed drug therapy;

e. any special directions and precautions for preparation, administration, and use by the patient that the

pharmacist determines are necessary;

f. common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;

g. patient techniques for self-monitoring of the drug therapy;

h. proper storage;

i. prescription refill information;

j. the action to be taken in the event of a missed dose; and

k. current over-the-counter medication use.

3. This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

4. Nothing in this section requires a pharmacist or pharmacy intern under the direct supervision of a pharmacist, to provide patient counseling when a patient or the patient's agent refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling. The record must indicate who made the offer to counsel.

5. If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies) written or printed information shall be included with the prescription. The patient or his/her agent shall be informed that the pharmacist will be available for consultation.

6. The pharmacist shall in his/her professional judgment refill prescriptions in keeping with the number of doses ordered and the directions for use.

7. The pharmacist who dispenses the original prescription shall hand-sign or initial the prescription. Initials mechanically or electronically generated are acceptable in lieu of the above provided that the pharmacist verifies either on a daily printout or in a bound log book daily that the information on the prescription is correct. The verification must be hand-signed and dated by the pharmacist.

D. Supportive personnel

1. Qualifications and training

a) The pharmacist-in-charge is responsible for ensuring proper training of all supportive personnel. The actual training may be delegated to a pharmacist or other trained supportive personnel.

b) The areas of training required are to be determined by the pharmacist-in-charge and will be appropriate to the practice site and responsibilities assigned to the supportive personnel. Areas of training shall include:

- 1) general drug and dosage form knowledge
- 2) medical terminology

3) pharmaceutical calculations

4) prescription labeling requirements

5) general filling/dispensing responsibilities

6) patient profile record system requirements

7) requirements for patient counseling

8) confidentiality

9) safety practices

10) inventory functions

11) knowledge of applicable State and Federal

Statutes and Regulations

12) other site-specific parameters

c) The general content of the training program must be maintained in the policy and procedure manual.

d) Documentation of successful training in specific areas by oral or written evaluation will be maintained and will be available for inspection by the Board of Pharmacy.

2. Supervision

Supportive personnel must be supervised by a registered pharmacist who will be responsible for the activities of these persons.

3. Activities allowed

a) Supportive personnel will be allowed to perform only those duties permitted by this regulation.

b) Supportive personnel may aid in the dispensing of prescriptions as authorized in Section 2513 under the supervision of a pharmacist by performing the following tasks:

1) Obtaining the medication from stock.

2) Typing the label after the pharmacist has interpreted the directions.

3) Counting, pouring and selecting prefabricated medications and selecting individual prepackaged unit dose medication provided that these are not in conflict with the state and federal law (Federal Comprehensive Controlled Substances Act) and that **[such selection is properly checked by the pharmacist before the dose is authorized.]** ~~**[a final check by the pharmacist is made after the medication is placed in the final container prior to dispensing and administration to the patient.]**~~

c) Compounding is the responsibility of the pharmacist or pharmacy intern under the direct supervision of the pharmacist. All compounding must be in compliance with FFCA Section 503A and any regulations promulgated by FDA concerning compounding pertaining to this section. The pharmacist may utilize the assistance of supportive personnel if the following is performed:

1) The formulation is developed by the pharmacist before proceeding with the compounding.

2) The compounding ingredients are checked by the pharmacist before proceeding with the compounding.

3) Every weight and measurement is checked by the pharmacist before proceeding with the compounding.

4) The finished product is checked by the pharmacist before dispensing.

5) A log is maintained showing the identity of the person actually compounding the medication and the identity of the pharmacist who has performed each of the checks indicated above for each step of the procedure. If policies and procedures are in place ensuring adequate checks by the pharmacist per regulation, the requirement for a log will be waived.

d) Only supportive personnel or persons being trained as supportive personnel as required by this regulation, may perform the activities defined by this regulation.

E. Automatic Dispensing Devices

If any automatic counting device is used by a pharmacy, each cell shall have clearly displayed thereon, the date filled, the name of the drug, the batch number, the manufacturer's name, and the expiration date of the particular batch number. No drug can be added to the cell until the present supply is depleted.

F. Authorization for renewal of prescriptions

A prescription written for medication which, pursuant to State and Federal law, may be sold, dispensed, or furnished only upon prescription, shall not be renewed without specific authorization of the prescriber. Refills beyond one year of the date of the original prescription shall not be dispensed without further authorization of the prescriber.

G. Mandatory Patient Profile Record System

1. A patient profile record system must be maintained at all pharmacies for persons for whom prescriptions are dispensed. The patient profile system shall be devised so as to entitle the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing.

2. The following information shall be recorded by a pharmacist or designee:

- a. The family name and first name of the person for whom the medication is intended (the patient);
- b. The address of the patient and phone number;
- c. The patient's age, or date of birth, and gender;
- d. The original date the medication is dispensed pursuant to the receipt of a physician's prescription;
- e. The number or designation identifying the prescription;
- f. The prescriber's name;
- g. The name, strength, quantity, directions and refill information of the drug dispensed;
- h. The initials of the dispensing pharmacist and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the original

prescription;

i. If the patient refuses to give all or part of the required information, the pharmacist shall so indicate and initial in the appropriate area.

j. Pharmacist comments relevant to the patient's drug therapy, including any other information peculiar to the specific patient or drug.

3. The pharmacist or pharmacy intern under the direct supervision of a pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic disease states and frequently used over-the-counter medication as communicated to the pharmacist by the patient. If the answer is none, this must be indicated on the profile.

4. Upon receipt of a new prescription, a pharmacist or pharmacy intern under the direct supervision of a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

5. A patient profile record must be maintained for a period of not less than one year from the date of the last entry in the profile record unless it is also used as a dispensing record.

H. Exchange of Valid Non-Controlled Prescriptions Between Pharmacies

1. Verbal Exchange of Prescriptions - When a pharmacy receives a verbal request for a prescription transfer, it may be honored provided that:

a. The request comes from a registered pharmacist.

b. The copy is immediately reduced to writing and contains the information required on a written prescription as listed in Regulation V, and includes the first and last name of the pharmacist transmitting the information.

c. The prescription used for refills must be clearly identified as a copy.

d. The copy shows the date and the file number of the original prescription and indicates the name and address of the pharmacy providing the copy.

e. The copy shows the last date of dispensing.

f. Only the actual number of refills remaining are indicated.

g. A notation indicating a copy was given and refills are no longer valid must be placed on either the original prescription or patient profile. The document used must be the same one used for the recording of refills per the pharmacy's policy.

2. A copy prepared or transmitted that does not meet the requirements of this Regulation is deemed to be an invalid prescription.

3. Written copies of prescriptions are for information only and are not valid for refilling.

I. Automated Data Processing Systems

1. PROFILES

When ADP's are used to maintain patient profile records, all the requirements of Delaware Pharmacy Regulation V must be met.

2. PRESCRIPTION (Drug Order) INFORMATION

Prescription information (drug order) shall include, but not be limited to:

- a. Original dispensing date
- b. Name and address of patient (patient location if in an institution)
- c. Name of prescriber
- d. DEA number of prescriber in the case of a controlled substance
- e. Name, strength, dosage form and quantity, (or Stop Date), and route of administration if other than oral form of drug prescribed
- f. Renewals authorized
- g. Directions of use for patient

3. RECORDS OF DISPENSING

Records of dispensing for original and refill prescriptions are to be made and kept by pharmacies for three years. Information must be immediately accessible for a period of not less than one year from the date of last entry. Information beyond one year but up to three years from the date of last entry may be maintained off-line but must be produced no later than five days upon request from proper authorities. The information shall include, but not be limited to:

- a. Quantity dispensed
- b. Date of dispensing
- c. Serial Number (or equivalent if an institution)
- d. The identification of the pharmacist responsible for dispensing
- e. Record of renewals to date
- f. Name and strength of medicine

4. RECORD RETRIEVAL (DOCUMENTATION OF ACTIVITY)

Any such ADP system must provide via CRT display and or hard copy printout a current history of all authorized prescription activity. This information shall include, but not be limited to:

- a. Serial number of prescription (equivalent if an institution)
- b. Date of processing
- c. Quantity dispensed
- d. The identification of the pharmacist responsible for dispensing
- e. Medication dispensed

5. AUXILIARY RECORDKEEPING SYSTEM

An auxiliary recordkeeping system shall be established

for the documentation of renewals if the ADP is inoperative for any reason. The auxiliary system shall insure that all renewals are authorized by the original prescription and that the maximum number of renewals are not exceeded. When the ADP is restored to operation, the information regarding prescriptions dispensed and renewed during the inoperative period shall be entered into the automated data processing system.

6. COMMON DATA BASE

Two or more pharmacies may establish and use a common data file or base to maintain required or pertinent dispensing information. Pharmacies using such a common file are not required to transfer prescriptions or information for dispensing purposes between or among pharmacies participating in the same common prescription file or data base; provided however, any such common file must contain complete and adequate records of such prescription and renewals dispensed. Where common data base is used, this shall not be considered a transfer under Board Regulation V for non-controlled substances.

7. TRANSFER OF PRESCRIPTIONS VIA ADP

A pharmacist may transfer a prescription electronically (ADP) for Schedule III, IV, or V controlled substances to another pharmacy for renewal purposes in accordance with Title 21, Code of Federal Regulations Section 1306.26. A pharmacist may transfer a prescription electronically (ADP) for non-controlled drug for renewal purposes in accordance with current State Regulations.

a. Any pharmacy using ADP must comply with all applicable State and Federal regulations.

b. A pharmacy shall make arrangements with the supplier of data processing services or materials to assure that the pharmacy continues to have adequate and complete prescription and dispensing records if the relationship with such supplier terminates for any reason. A pharmacy shall assure continuity in maintenance of records.

c. The computer record shall reflect the fact that the prescription order has been transferred, the name of the pharmacy to which it was transferred, the date of transfer, the name of the pharmacist transferring information, and any remaining refill information, if applicable.

d. The pharmacist receiving the transferred prescription drug order shall reduce it to writing with the following information:

1. Write the word "TRANSFER" on the face of the transferred prescription.

2. Provide all information required to be on the prescription drug order pursuant to State and Federal laws and regulations.

e) To maintain the confidentiality of patient's prescriptions (drug orders) or other pertinent records, there must exist adequate safeguards of security. This shall also pertain to prevent non-user access.

8. FACSIMILE TRANSMISSION OF

PRESCRIPTIONS

Electronically transmitted prescription orders by facsimile transmission shall meet the following requirements:

a. The prescription order shall include, in addition to the State and Federal requirements for non-controlled and controlled prescriptions, the name, fax number, and phone number of the transmitter for verbal confirmation, the time and date of transmission, the number of pages transmitted, the name, phone number, and fax number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating that the fax should not be seen by unauthorized persons. All prescription orders for controlled substances shall be hand-signed by the practitioner.

b. Practitioners or their authorized agents transmitting the prescription must provide voice verification when requested by the pharmacist receiving the prescription order. The receiving pharmacist has the final responsibility of determining validity of the transmission.

e. If the original prescription is given to the patient, it must be noted on the face of the prescription that the prescription order was faxed, the name of the receiving pharmacy, and the initials of the person who faxed the order.

d. An electronically transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

e. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist authorized prescriber confidentiality and security.

J. ELECTRONIC TRANSMISSION OF PRESCRIPTIONS

1. All Prescription Drug Orders communicated by way of Electronic Transmission shall:

a. be transmitted directly to a Pharmacist in a licensed Pharmacy of the patient's choice with no intervening Person having access to the Prescription Drug Order.

b. identify the transmitter's phone number for verbal confirmation, the time and date of transmission, and the identity of the Pharmacy intended to receive the transmission, as well as any other information required by Federal or State law;

c. be transmitted by an authorized Practitioner or his designated agent; and

d. be deemed the original Prescription Drug Order provided it meets the requirements of this subsection.

2. The prescribing Practitioner may authorize his agent to communicate a Prescription Drug Order orally or by way of Electronic Transmission to a Pharmacist in a licensed Pharmacy, provided that the identity of the transmitting agent is included in the order.

3. The Pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the Prescription Drug Order communicated by way of Electronic Transmission consistent with existing Federal or State laws and rules.

4. All electronic equipment for receipt of Prescription Drug Orders communicated by way of Electronic Transmission shall be maintained so as to ensure against unauthorized access.

5. Persons other than those bound by a confidentiality agreement pursuant to Section 2.A. (2)(k) shall not have access to Pharmacy records containing Confidential Information or personally identifiable information concerning the Pharmacy's patients.

6. Controlled substance prescriptions may only be electronically transmitted via a facsimile.

7. Facsimile prescriptions must meet the following requirements in addition to the above listed electronic Transmission requirements.

a. The prescription order shall include the fax number of the transmitter, the number of transmitted pages, the name, phone number, and electronic number of the pharmacy intended to receive the transmission, and a confidentiality statement in bold type stating the electronic transmission should not be seen by unauthorized persons.

b. Unless the prescription is written for a schedule II controlled substance, the prescriber should not issue the written prescription to the patient.

c. A facsimile transmitted prescription order must be reduced to writing, unless received as a non-fading document, with a notation that the order was received by facsimile.

d. The receiving facsimile machine must be in the prescription department to protect patient-pharmacist-authorized prescriber confidentiality and security.

e. Both non-controlled and controlled substance prescriptions may be transmitted via facsimile following state and federal requirements. All prescription orders for controlled substances shall be hand-signed by the practitioner.

J. K. Return of Medications and Supply

1. Prescriptions and items of personal hygiene shall not be accepted for return or exchange by any pharmacist or pharmacy after such prescription or items of personal hygiene have been taken from the premises where sold, distributed or dispensed.

2. Products under the direct control of a health care professional which are packaged in manufacturer unit dose or tamper-proof unopened bulk containers, tamper proof seal in tact, including unused multi-dose punch cards, may be redispensed in accordance with expiration dating in customized patient medication package. Partially used products may not be redispensed. Nothing in this regulation

precludes the Federal laws and regulations.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section D revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 **Del.C.** 10027)

PLEASE NOTE: IN 3 DE REG. 1520 (5/1/00) THE FIRST SENTENCE OF RULE 6.3.3.13 WAS INDICATED AS BEING ADOPTED. THE FIRST SENTENCE OF RULE 6.3.3.13 WAS NOT ADOPTED BY THE COMMISSION. IN THE SAME REGISTER THE COMMISSION REJECTED THE LANGUAGE "IN A TWELVE MONTH PERIOD" CONTAINED IN RULE 8.3.5.9.4. THE LANGUAGE WAS ERRONEOUSLY INCLUDED IN THE REGULATION.

6.3 Claiming Races

6.3.1 General Provisions

6.3.1.1 No horse will be eligible to start in a claiming race unless the owner has provided written authorization, which must include the minimum price for which the horse may be claimed, to the racing secretary at least one hour prior to post time of its race. If the horse is owned by more than one party, all parties must sign the authorization. Any question relating to the validity of a claiming authorization shall be referred to the judges who shall have the authority to disallow a declaration or scratch the horse if they deem the authorization to be improper.

6.3.1.2 Except for the lowest claiming price offered at each meeting, conditions and allowances in claiming races may be based only on age and sex. Whenever possible, claiming races shall be written to separate horses five years old and up from young horses and to separate males from females. If sexes are mixed, mares shall be given a price allowance; provided, however, that there shall be no price allowance given to a spayed mare racing in a claiming race.

6.3.1.3 Registration certificate in current ownership, together with the application for transfer thereon duly endorsed by all registered owners, must be filed in the office of the racing secretary for all horses claimed within a reasonable time after the race from which the horse was claimed.

6.3.1.4 The price allowances that govern for claiming races must be approved by the Commission. Claiming prices recorded on past performance lines in the

daily race program and on eligibility certificates shall not include allowances.

6.3.1.5 The claiming price, including any allowances, of each horse shall be printed on the official program adjacent to the horse's program number and claims shall be for the amount designated, subject to correction if printed in error.

6.3.1.6 In handicap claiming races, in the event of an also eligible horse moving into the race, the also eligible horse shall take the place of the horse that it replaces provided that the handicap is the same. In the event the handicap is different, the also eligible horse shall take the position on the outside of horses with a similar handicap, except when the horse that is scratched is a trailing horse, in which case the also eligible horse shall take the trailing position, regardless of its handicap. In handicap claiming races with one trailer, the trailer shall be determined as the fourth best post position.

6.3.1.7 To be eligible to be claimed a horse must start in the event in which it has been declared to race, except as provided in 6.3.1.8 of this subsection.

6.3.1.8 The successful claimant of a horse programmed to start may, at his option, acquire ownership of a claimed horse, even though such claimed horse was scratched and did not start in the claiming race from which it was scratched. The successful claimant must exercise his/her option by 9:00 a.m. of the next day following the claiming race to which the horse was programmed and scratched. Upon notification that the successful claimant has exercised his/her option, the owner shall present the horse for inspection, and the claim shall not be final until the successful claimant has had the opportunity to inspect the horse. No horse may be claimed from a claiming race unless the race is contested.

6.3.1.9 Any licensed owner or the authorized agent of such person who holds a current valid Commission license may claim any horse or any person who has properly applied for and been granted a claiming certificate shall be permitted to claim any horse. Any person or authorized agent eligible to claim a horse shall be allowed access to the grounds of the association, excluding the paddock, in order to effect a claim at the designated place of making claims and to take possession of the horse claimed.

6.3.1.10 Claiming certificates are valid on day of issue and expire at the end of the race meeting for which it was granted. These certificates may be applied for at the office designated by the association prior to post time on any day of racing.

6.3.1.11 There shall be no change of ownership or trainer once a horse is programmed.

6.3.2 Prohibitions on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or

indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.3 Claiming Procedure

6.3.3.1 A person desiring to claim a horse must have the required amount of money, in the form of cash or certified check, on deposit with the association at the time the completed claim form is deposited. Such deposit also may be made by wire transfer prior to 2:00 p.m. on the day of the claiming race.

6.3.3.2 The claimant shall provide all information required on the claim form provided by the association.

6.3.3.3 The claim form shall be completed and signed by the claimant prior to placing it in an envelope provided for this purpose by the association and approved by the Commission. The claimant shall seal the envelope and identify on the outside the date, time of day, race number and track name only.

6.3.3.4 The envelope shall be delivered to the designated area, or licensed delegate, at least fifteen (15) minutes before post time of the race from which the claim is being made. That person shall certify on the outside of the envelope the time it was received, the current license status of the claimant and whether credit in the required amount has been established.

6.3.3.5 It shall be the responsibility of the association to ensure that all such claim envelopes are delivered unopened or otherwise undisturbed to the judges prior to the race from which the claim is being made. The association shall provide for an agent who shall, immediately after closing, deliver the claim to the judges' stand.

6.3.3.6 The claim shall be opened and the claims, if any, examined by the judges prior to the start of the race. The association's auditor, or his/her agent, shall be prepared to state whether the claimant has on deposit, the amount equivalent to the specified claiming price and any other required fees and taxes.

6.3.3.7 The judges shall disallow any claim made on a form or in a manner which fails to comply with all requirements of this rule.

6.3.3.8 Documentation supporting all claims for horses, whether successful or unsuccessful, shall include details of the method of payment either by way of a photostatic copy of the check presented, or written detailed information to include the name of the claimant, the bank, branch, account number and drawer of any checks or details of any other method of payment. This documentation is to be kept on file at race tracks for three (3) years and is to be produced to the Commission for inspection at any time during the period.

6.3.3.9 When a claim has been lodged it is irrevocable, unless otherwise provided for in these rules.

6.3.3.10 In the event more than one claim is submitted for the same horse, the successful claimant shall be determined by lot by the judges, and all unsuccessful claims involved in the decision by lot shall, at that time, become null and void, notwithstanding any future disposition of such claim.

6.3.3.11 Upon determining that a claim is valid, the judges shall notify the paddock judge of the name of the horse claimed, the name of the claimant and the name of the person to whom the horse is to be delivered. Also, the judges shall cause a public announcement to be made.

6.3.3.12 Every horse entered in a claiming race shall race for the account of the owner who declared it in the event, but title to a claimed horse shall be vested in the successful claimant from the time the horse is deemed to have started, and the successful claimant shall become the owner of the horse, whether it be alive or dead, or sound or unsound, or injured during or after the race. If a horse is claimed out of a heat or dash of an event having multiple

heats or dashes, the judges shall scratch the horse from any subsequent heat or dash of the event.

6.3.3.13 **[A post-race urinalysis test may be taken from any horse claimed out of a claiming race. The trainer of the horse at the time of entry for the race from which the horse was claimed shall be responsible for the claimed horse until the post-race urine sample is collected.] ~~[Any claimed horse not otherwise selected for testing by the State Steward or judges shall be tested if requested by the claimant at the time the claim form is submitted in accordance with these rules.]~~** The successful claimant shall have the right to void the claim should the forensic analysis be positive for any prohibited substance or an illegal level of a permitted medication. The horse's halter must accompany the horse. Altering or removing the horse's shoes will be considered a violation^[.] and, until the Commission chemist issues a report on his forensic analysis of the samples taken from the horse, the claimed horse shall not be permitted to be entered to race.

3 DE Reg 1520 (5/1/00)

6.3.3.14 Any person who refuses to deliver a horse legally claimed out of a claiming race shall be suspended, together with the horse, until delivery is made.

6.3.3.15 A claimed horse shall not be eligible to start in any race in the name or interest of the owner of the horse at the time of entry for the race from which the horse was claimed for thirty (30) days, unless reclaimed out of another claiming race. Nor shall such horse remain in or be returned to the same stable or care or management of the first owner or out of another claiming race. Further, such horse shall be required to continue to race the track where claimed for a period of 60 days or the balance of the current racing meet, whichever comes first, unless released by the Racing Secretary.

2 DE Reg. 1765 (1/1/98)

3 DE Reg 1520 (5/1/00)

6.3.3.16 The claiming price shall be paid to the owner of the horse at the time entry for the race from which the horse was claimed only when the judges are satisfied that the successful claim is valid and the registration and eligibility certificates have been received by the racing secretary for transfer to the new owner.

6.3.3.17 The judges shall rule a claim invalid:

6.3.3.17.1 at the option of the claimant if the official racing chemist reports a positive test on a horse that was claimed, provided such option is exercised within 48 hours following notification to the claimant of the positive test by the judges;

2 DE Reg. 1243 (01/01/99)

6.3.3.17.2 if the horse has been found ineligible to the event from which it was claimed, regardless of the position of the claimant.

2 DE Reg. 1243 (01/01/99)

6.3.3.18 Mares and fillies who are in foal are

ineligible to claiming races. Upon receipt of the horse, if a claimant determines within 48 hours that a claimed filly or mare is in foal, he/she may, at their option, return the horse to the owner of the horse at the time of entry for the race from which the horse was claimed.

6.3.3.19 When the judges rule that a claim is invalid and the horse is returned to the owner of the horse at the time of entry for the race in which the invalid claim was made:

6.3.3.19.1 the amount of the claiming price and any other required fees and/or taxes shall be repaid to the claimant;

6.3.3.19.2 any purse monies earned subsequent to the date of the claim and before the date on which the claim is ruled invalid shall be the property of the claimant; and

6.3.3.19.3 the claimant shall be responsible for any reasonable costs incurred through the care, training or racing of the horse while it was in his/her possession.

8.3.6 5.9 Bleeder List

8.3.6 5.9.1 The State Commission veterinarian shall maintain a Bleeder List of all horses which have demonstrated external evidence of exercise induced pulmonary hemorrhage (EIPH) or the existence of hemorrhage in the trachea post exercise upon:

8.3.65.9.1.1 visual examination wherein blood is noted in one or both nostrils either:

8.3.6 5.9.1.1.1 during a race;

8.3.6 5.9.1.1.2 immediately post-race or post-exercise on track; or

8.3.6 5.9.1.1.3 within one hour post-race or post-exercise in paddock and/or stable area, confirmed by endoscopic examination; or

8.3.6 5.9.1.2 endoscopic examination, which may be requested by the owner or trainer who feels his or her horse is a bleeder. Such endoscopic examination must be done by a practicing veterinarian, at the owner's or trainer's expense, and in the presence of the State Commission veterinarian or Lasix veterinarian. Such an examination shall take place within one hour post-race or post-exercise; or

8.3.6 5.9.1.3 presentation to the State Commission veterinarian, at least 48 hours prior to racing, of a current Bleeder Certificate from an official veterinarian from any other jurisdiction, which show the date, place and method -- visual or endoscopy -- by which the horse was determined to have bled, or which attests that the horse is a known bleeder and receives bleeder medication in that jurisdiction, provided that such jurisdiction's criteria for the identification of bleeders are satisfactory to the State veterinarian.

8.3.6 5.9.2 The confirmation of a

bleeder horse must be certified in writing by the State Commission veterinarian or the Lasix veterinarian and entered on the Bleeder List. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's eligibility certificate.

8.3.6. 5.9.3 Every confirmed bleeder, regardless of age, shall be placed on the Bleeder List, and Lasix must be administered to the horse in accordance with these rules prior to every race, including qualifying races, in which the horse starts.

8.3.6. 5.9.4 A horse which bleeds ~~in a twelve month period~~ based on the criteria set forth in 8.3.6. 5.9.1 above shall be restricted from racing at any facility under the jurisdiction of the Commission, as follows:

8.3.6. 5.9.4.1 1st time - 10 days;

8.3.6. 5.9.4.2 2nd time - 30 days, provided that the horse must be added to or remain on the Bleeder List, and must complete a satisfactory qualifying race before resuming racing;

8.3.6. 5.9.4.3 3rd time - 30 days, and the horse shall be added to the Steward's List, to be removed at the discretion of the State Commission veterinarian following a satisfactory qualifying race after the mandatory 30-day rest period; and

8.3.6. 5.9.4.4 4th time - barred for life.

8.3.6. 5.9.5 An owner or trainer must notify the State Commission veterinarian immediately of evidence that a horse is bleeding following exercise or racing.

8.3.6. 5.9.6 A horse may be removed from the Bleeder List at the request of the owner or trainer, if the horse completes a 10-day rest period following such request, and then re-qualifies.

8.3.6. 5.9.7 Any horse on the Bleeder List which races in a jurisdiction where it is not eligible for bleeder medication, whether such ineligibility is due to the fact that it does not qualify for bleeder medication in that jurisdiction or because bleeder medication is prohibited in that jurisdiction, shall automatically remain on the Bleeder List at the discretion of the owner or trainer, provided that such decision by the owner or trainer must be declared at the time of the first subsequent entry in Delaware, and the Lasix symbol in the program shall appropriately reflect that the horse did not receive Lasix its last time out. Such an election by the owner or trainer shall not preclude the State Commission veterinarian, State Steward or Presiding Judge from requiring re-qualification whenever a horse on the Bleeder List races in another jurisdiction without bleeder medication, and the integrity of the Bleeder List may be questioned.

8.3.6. 5.9.8 Any horse on the Bleeder List which races without Lasix in any jurisdiction which

permits the use of Lasix shall automatically be removed from the Bleeder List. In order to be restored to the Bleeder List, the horse must demonstrate EIPH in accordance with the criteria set forth in subdivision 1 above. If the horse does demonstrate EIPH and is restored to the Bleeder List, the horse shall be suspended from racing in accordance with the provisions of 8.3.6.4 above.

8.3.6. 5.9.9 The State Steward or Presiding Judge, in consultation with the State Commission veterinarian, will rule on any questions relating to the Bleeder List.

8.3.7 5.10 Medication Program Entries

It is the responsibility of the trainer at the time of entry of a horse to provide the racing secretary with the bleeder medication status of the horse on the entry blank, and also to provide the State Commission veterinarian with a bleeder certificate, if the horse previously raced out-of-state on bleeder medication.

Symbol Key

Roman type indicates the text existing prior to the emergency regulation being promulgated. Italic type indicates new text. Language which is stricken through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119, if an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by 29 **Del.C.** §10115, then the following rules shall apply: (1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable; (2) The order adopting, amending or repealing a regulation shall state in writing the reasons for the agency's determination that such emergency action is necessary; (3) the order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days; (4) When such an order is issued without any of the public procedures otherwise required or authorized by Chapter 101 of Title 29, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and (5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the Register of Regulations.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES****DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Statutory Authority: 13 Delaware Code,
Sections 707 and 708 (13 **Del.C.** §§707, 708)

In the Matter Of: |
Regulations on Establishment |
Of Delegation of Power of |
Relative Caregivers to |
Consent to Medical |
Treatment of Minors |
13 **Del.C.** §707,708

Nature of the Proceedings

Delaware Health and Social Services has determined that a threat to the public welfare exists if regulations are not promulgated immediately to allow grandparent and relative caregivers who do not have custody or guardianship to approve medical treatment for children in their care. Failure to do so in a timely manner creates the opportunity for minor medical problems to become more serious due to lack of medical treatment.

Summary/purpose of Emergency Regulations

The promulgation of these regulations will put 13 **Del.C.** §707 and 708 into effect so that grandparents and relative caregivers without custody or guardianship can approve medical treatment for children in their care. Promulgation of these regulations will allow the law to

establish a system known to providers and consumers throughout the state, encourage well child Doctor's visits, visits to the Doctor before a condition worsens, and fewer visits to hospital emergency rooms.

Finding of Fact

The Department finds that these regulations should be promulgated in the best interest of the general public of the State of Delaware. The Department will receive, consider, and respond to petitions by any interested person for the reconsideration or revision thereof. Such petitions or other written comments must be forwarded by August 31, 2000, to Carol Boyer, Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities, 1901 North Du Pont Highway, New Castle, Delaware, 19720.

The Department will also conduct a public hearing on these regulations at the new Facilities Management Building, 149 Transportation Circle, Dover. Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Parade Center and the Motor Vehicle facility. This public hearing will take place on Tuesday, August 22, 2000, from 11:30 a.m. to 1:30 p.m. Notice of this hearing will be advertised in the *News Journal* and the *Delaware State News*.

THEREFORE, IT IS ORDERED, that these regulations be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

Gregg C. Sylvester, MD
Secretary
June 28, 2000

Emergency Regulations:

I. Definitions for terms used in 13 Del.C. section 707(a):

(1)(a) Medical treatment includes the use of prescription drugs.

Disease – a pathological condition of a body part, an organ, or a system resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms or life.

Pathology – the medical science concerned with all aspects of disease with an emphasis on the essential nature, causes, and development of abnormal conditions, as well as with the structural and functional changes that result from disease processes. It is also the anatomical or functional manifestations of a disease.

(1)(b) Public clinics include school wellness centers.

This authorization also applies to medical care provided in schools that do not have wellness centers as well as medical care required at school-related activities.

II. Definition for terms used in 13 Del.C. section 708:

(1) Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors (also known as Caregivers’ Medical Authorization) – An affidavit of written or printed declaration or statement of acts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or other person who has been duly authorized to do so.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child will include one of the following:

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

(5) If none of the above are feasible, the caregiver’s signature on this affidavit is his or her sworn statement that

the parent(s), custodian, or guardian cannot be found.

IV. Affidavit:

Delaware Health and Social Services will maintain the affidavit required for caregivers to obtain a Caregivers’ Medical Authorization. Anyone who wishes to obtain this affidavit may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities or a Delaware Health and Social Services Public Health clinic.

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES

Statutory Authority: 14 Delaware Code, Section 202 (14 Del.C. §202)

In the Matter Of: Regulations on Establishment Of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School 14 Del.C./ § 202

Nature of the Proceedings

Delaware Health and Social Services has determined that a threat to the public welfare exists if regulations are not promulgated immediately to allow grandparent and relative caregivers who do not have custody or guardianship to register children in their care for school. Failure to do so will create undue hardship to those caregivers who seek to fulfill their obligation to register their children in a timely manner for the 2000 – 2001 school year, in accordance with Delaware Code.

Purpose and Summary of Emergency Order

The promulgation of these regulations will put 14 Del.C. §202 in effect so that grandparents and relative caregivers without custody or guardianship can register children in their care for the school year beginning September 2000. Doing so will put these caregivers in compliance with 27 Del.C. §2702, which states that children “between five years of age and sixteen years of age” shall be enrolled in a free public school.

Finding of Fact:

The Department finds that these regulations should be promulgated in the best interest of the general public of the State of Delaware. The Department will receive, consider,

and respond to petitions by any interested person for the reconsideration or revision thereof. Such petitions or other written comments must be forwarded by August 31, 2000, to Carol Boyer, Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities, 1901 North Du Pont Highway, New Castle, Delaware, 19720.

The Department will also conduct a public hearing on these regulations at the new Facilities Management Building, 149 Transportation Circle, Dover. Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Parade Center and the Motor Vehicle facility. This public hearing will take place on Tuesday, August 22, 2000, from 11:30 a.m. to 1:30 p.m. Notice of this hearing will be advertised in the *News Journal* and the *Delaware State News*.

THEREFORE, IT IS ORDERED, that these regulations be adopted on an emergency basis, without prior notice or hearing, and shall become effective immediately.

Gregg C. Sylvester, MD
Secretary
June 28, 2000

Text of Emergency Regulations:

I. Definitions for terms used in 14 Del.C. section 202:

Establishment of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School (also known as Caregivers' School Authorization) (found in subsection (e)(1) c of section 202)– An affidavit of written or printed declaration or statement of acts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or a notary public or other person who has been duly authorized so to act.

II. Proof of relationship and Proof of caregiving: (found in subsection (2)(f)(1))

There must be two different forms of documentation, one from each column. One must show proof of relationship and the other proof of caregiving. These documents, or other similar documents as approved by the school district, must be presented for registration.

PROOF OF RELATIONSHIP	PROOF OF CAREGIVING
Birth certificate of caregiver, the adult child, and birth certificate of the child.	

Medical records where a caregiver is required to give approval, such as shots. Such records must show the relationship between the caregiver and the child.	Medical records where a caregiver's authorization to give approval for services such as shots was acceptable.
A Will which lists the child and the relationship between the caregiver and child.	
Insurance for the caregiver or child which includes the relationship between the caregiver and child.	
A letter from a social worker, lawyer, religious leader, or previous school district which verifies the relationship of the child to the caregiver.	A letter from a social worker, lawyer, religious leaders, or neighbor confirming the child is being cared for by the caregiver.
Free and Reduced lunch program application.	
Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is included.	Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is given.
Caregiver receives Child-only Temporary Aid for Needy Families (TANF) grant for this child.	Caregiver received Child-only Temporary Aid for Needy Families (TANF) grant for this child.
Child claimed on Federal Income Tax return.	Child claimed on Federal Income Tax return.
Caregiver receives Earned Income Tax Credit for the child.	Caregiver receives Earned Income Tax Credit for the child.
	Child's Social Security survivor death benefits are received by the caregiver for the child.

Hospital, clinic, or Public Health records showing the relationship between the caregiver and the child.	Hospital, clinic, or Public Health records where a caregiver's authorization to give approval for services such as shots was acceptable.
Division of Services for Children, Youth and their Families' records specifying the relationship between the caregiver and child.	Division of Services for Children, Youth and their Families' records showing that the caregiver is the contact for this child.
Military or veterans records which specify relationship	
Or other documents as approved by the school district.	Or other documents as approved by the school district.

IV. Affidavit:

Delaware Health and Social Services will maintain the affidavit required for caregivers to obtain a Caregivers' School Authorization. Anyone who wishes to obtain this affidavit may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities or their local school district office.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child:

Reasonable effort to locate the parent(s), guardian, or custodian of the child will include one of the following:

- (1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.
- (2) A notice is placed in the News Journal saying the caregiver is looking for the parent(s), custodian, or guardian of (child's name) because he or she intends to take educational responsibility of the child. If the parent(s), custodian, or guardian does not respond within 8 days, the caregiver would write about the notice and lack of response where requested on the affidavit. Include a copy of the newspaper notice in the application.
- (3) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.
- (4) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the Register of Regulations pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the Register of Regulations. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation; The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH**

Statutory Authority: 24 Delaware Code,
Section 3006(a)(1) (24 **Del.C.** §3006(a)(1))

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3006(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes to revise its rules and regulations. Please note that the following rules and regulations are a substantial revision to existing regulations in order to comply with and implement and clarify the Board's authorizing law, 24 **Del.C.** Chapter 30, as revised effective February 4, 2000, and these rules will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in and clarification of the Professional Counseling experience requirement for licensure, including direct supervision requirements; deletion of provisions regarding reactivation of expired license and temporary suspension pending hearing; adoption of a code of ethics; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); and procedural rules have been established pertaining to disciplinary matters and hearings before the Board. In addition, certain terms have been changed to provide consistency with the terminology used in the statute.

A public hearing will be held on the proposed Rules and

Regulations on Friday, September 8, 2000 at 3:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Board of Professional Counselors of Mental Health

1.0 Meetings And Elections

1.1 Meetings - Regular meetings of the Board shall be held on a monthly basis as needed, at least in June and December, at a time and place designated by the Board.

1.2 Election of Officers - The Board shall elect officers annually at the regular December meeting.

Statutory authority: 24 *Del.C.* §3004

2.0 LICENSURE BY CERTIFICATION

~~Applicants for LPCMH licensure by certification shall fulfill the following requirements:~~

~~2.1 Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization.~~

~~Certifying Organization~~—A certifying organization shall be defined as a national mental health specialty certifying organization acceptable to the Board. This shall include the National Board for Certified Counselors, Inc. (NBCC); Academy of Clinical Mental Health Counselors (ACMHC); formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), and other organizations that meet all of the following criteria:

2.1.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.1.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.1.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.1.4 The organization shall require the minimum of a master's degree in the counseling or behavioral science field. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.2 Graduate Transcript — The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.3 Clinical Experience — Clinical experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

~~Designated Objective Agent~~ — A designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

~~Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" or the "Verification of Self Employment" form.~~

2.4 Supervised Clinical Experience — Supervised clinical experience shall be the accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised clinical experience acceptable to the Board shall be defined as follows:

2.4.1 Supervised clinical experience shall consist of 1,600 hours of clinical experience concurrent with 100 hours of clinical supervision over a period of no more than four (4) years.

2.4.2 In no case shall the applicant have less than 1,600 hours of the required post-master's degree supervised professional clinical experience.

~~Clinical Supervision~~ — Clinical supervision shall be ongoing, regularly scheduled meetings with a designated, approved clinical supervisor for the purpose of oversight, guidance and review of clinical practice. Consultation and/or informal case reviews are not acceptable as clinical supervision. Clinical supervision may take place in individual and/or group settings, defined as follows:

2.4.3 Individual Supervision — Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.4.4 Group Supervision — Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

~~Supervisory Setting~~ — No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

Supervision shall be verified by the "Clinical Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

2.0 Licensure By Certification

Applicants for LPCMH licensure by certification shall fulfill the following requirements:

2.1 Certification - The applicant shall be certified by NBCC as a National Certified Counselor (NCC), by ACMHC as a Certified Clinical Mental Health Counselor (CCMHC), or by a certifying organization acceptable to the Board.

2.2 Certifying Organization - Certifying organizations acceptable to the Board shall include the National Board for Certified Counselors, Inc. (NBCC), Academy of Clinical Mental Health Counselors (ACMHC), formerly the National Academy for Certified Clinical Mental Health Counselors (NACCMHC), International Christian Institute Certification Board, Commission on Rehabilitation Counselor Certification Board, and other certifying organizations that

meet all of the following criteria:

2.2.1 The organization shall be a national professional mental health organization recognized as setting national standards of clinical competency.

2.2.2 The organization shall require the applicant to take a standardized examination designed to test his/her understanding of the principles involved in the mental health specialty for which he/she is being certified. Certification shall be based upon the applicant's attaining the minimum passing score set by the organization.

2.2.3 The organization shall prescribe a code of ethics substantially equivalent to that of the NBCC.

2.2.4 The organization shall require the minimum of a master's degree in the counseling or behavioral science field. This certification shall be verified by the "NBCC Certification Form," the "ACMHC Certification Form" or the "Certifying Organization Certification Form," submitted directly to the Board by the certifying organization.

2.3 Graduate Transcript - The applicant's master's degree in a counseling or behavioral science field, required by his/her certifying organization for certification, shall be documented by an official transcript submitted directly to the Board by the accredited educational institution granting the degree.

2.4 Professional Counseling Experience - Professional Counseling experience shall be defined as the accumulation of hours spent providing mental health counseling services in a professional mental health clinical counseling setting, including face-to-face interaction with clients and other matters directly related to the treatment of clients.

2.4.1 Designated Objective Agent - For purposes of professional counseling experience obtained through self-employment, a designated objective agent shall be a professional colleague, supervisor or other individual with personal knowledge of the extent of the professional practice of the applicant, who certifies or attests to such professional practice. Under no circumstances shall a spouse, former spouse, parent, step-parent, grand-parent, child, step-child, sibling, aunt, uncle, cousin or in-law of the applicant be acceptable as a designated objective agent.

2.4.2 Thirty (30) graduate semester hours or more attained beyond the master's degree, may be substituted for up to 1,600 hours of the required clinical experience, provided that hours are clearly related to the field of counseling and are acceptable to the Board. Graduate credit hours shall be verified by an official transcript submitted directly to the Board by the accredited educational institution at which the course work was done.

2.4.3 Supervised clinical experience or post-master's degree alternative shall be verified by the "Professional Experience Reference Form" and/or the "Verification of Self Employment" form.

2.5 Supervised Professional Counseling Experience - Supervised professional counseling experience shall be the

accumulation of hours spent providing mental health counseling services while under the supervision of an approved clinical supervisor. Supervised professional counseling experience acceptable to the Board shall be defined as follows:

2.5.1 Supervised professional counseling experience shall consist of 1,600 hours of clinical experience, directly supervised by a LPCMH. Where direct supervision by a LPCMH is not available, a licensed clinical social worker, licensed psychologist or licensed physician specializing in psychiatry may supervise the applicant.

2.5.2 Direct Supervision - 1600 hours of direct supervision acceptable to the Board, for purposes of §3008(a)(2) shall mean supervision overseeing the supervisee's application of clinical counseling principles, methods or procedures to assist individuals in achieving more effective personal and social adjustment. At least 100 of the 1600 hours of supervision shall consist of face to face consultation between the supervisor and the supervisee. Direct supervision may take place in individual and/or group settings, defined as follows:

2.5.2.1 Individual Supervision - Individual supervision shall consist of one-to-one, face-to-face meetings between supervisor and supervisee.

2.5.2.2 Group Supervision - Group supervision shall consist of face-to-face meetings between supervisor and no more than six (6) supervisees.

2.5.2.3 Supervisory Setting - No more than forty (40) hours of group supervision shall be acceptable toward the 100-hour requirement. The entire 100-hour requirement may be fulfilled by individual supervision.

2.5.3 Supervision shall be verified by the "Direct Supervision Reference Form," submitted directly to the Board by the approved clinical supervisor.

Statutory authority: 24 Del.C. §3008.

3.0 Licensure By Reciprocity

Applicants for LPCMH licensure by reciprocity (i.e., those requesting licensure based upon active licensure status in another state) shall meet the following requirements:

3.1 Proof of Licensure Status - The applicant shall hold an active professional counseling license in good standing from another state. Verification of licensure status shall be submitted directly to the Board by that state on the "Verification of Licensure or Certification from Another State" form.

3.2 Notarized Statement of Prior Licensing Jurisdictions - The applicant shall submit a notarized statement listing all licensing jurisdictions in which he/she formerly practiced and a signed "Release of Information" granting the Board permission to contact said jurisdictions for verification of disciplinary history and current status.

3.3 Determination of ~~Equivalency~~ Substantial

Similarity of Licensing Standards- The applicant shall submit a copy of the statute and rules of licensure from the state issuing his/her license. The burden of proof is upon the applicant to demonstrate that the statute and rules of the licensing state are at least equivalent to the requirements of the state in which the applicant is seeking licensure to meet all educational, experience and supervision requirements set forth in Title 24, *Delaware Code*, Chapter 30. Based upon the information presented, the Board shall make a determination regarding whether the requirements of the licensing requirements of Title 24, Delaware Code, Chapter 30, and those of the applicant's licensing state are substantially similar to those of Delaware.

3.4 ~~Non-Equivalency~~ LACMH Option - If the Board determines that the requirements of the applicant's licensing state are not equivalent with regard only to the required 1,600 hours of supervised experience requirements of §3008(a)(2), then the applicant shall be eligible for licensure as a LACMH, in which case he/she shall have four (4) years to complete the supervision requirements of §3008(a)(2), to obtain the balance of the supervised experience required. The applicant shall be given full credit for such properly documented supervised experience and/or supervised experience as was required for licensure in his/her licensing state. ~~In such situation, the Board shall allow for disruption in the requirements that the applicant's supervised experience be completed within a four (4) year period.~~

Statutory authority: 24 *Del.C.* §§3010.

4.0 Licensure Of Associate Counselors Of Mental Health

4.1 Written Plan - The applicant shall submit a written plan for supervised professional experience, on the "Written Plan for Professional Counseling Experience and Supervision" form, supplied by the Board, written according to the "Licensed Associate Counselor of Mental Health Guidelines for Written Plan for Supervision," and signed by the approved professional supervisor.

Statutory authority: 24 *Del.C.* §3009.

5.0 Application And Fee, Affidavit And Time Limit

When applying for licensure, the applicant shall complete the following:

5.1 Application and Fee - The applicant shall submit a completed "Application for Licensure," accompanied by a non-refundable application fee.

5.2 Affidavit - The applicant shall submit a signed, notarized "Affidavit," affirming the following:

5.2.1 that he/she has not violated any rule or regulation set forth by the Delaware Board of Professional Counselors of Mental Health;

5.2.2 that he/she has not been the recipient of any administrative penalties from any jurisdiction in connection with licensure, registration or certification as a mental health provider;

5.2.3 that he/she does not have any impairment

related to drugs, alcohol or a finding of mental incompetence by a physician that would limit the applicant's ability to safely act as a LPCMH or LACMH.

5.2.4 that he/she has not been convicted of any felony and that he/she does not have any criminal conviction or pending criminal charge, whether felony or misdemeanor, which is substantially related to fitness to practice as a mental health provider; and

5.2.5 that the applicant has not been penalized for any willful violation of any code of ethics or professional mental health counseling standard.

5.3 Time Limit for Completion of Application - Any application not completed within one (1) year shall be considered null and void.

Statutory authority: 24 *Del.C.* §§3008, 3009, 3010.

6.0 Renewal Of Licensure

6.1 Renewal Date - The LPCMH license shall be renewable biennially on September 30 of even-numbered years, beginning with September 30, 1994.

6.2 Requirements for Renewal - Requirements for licensure renewal are as follows:

6.2.1 Certification - The candidate for renewal shall hold current certification in good standing as of the date of licensure renewal in NBCC, ACMHC or other certifying organization acceptable to the Board. This certification shall be verified by the appropriate "Verification of Certification Form," submitted directly to the Board by the certifying organization.

6.2.2 Continuing Education

6.2.2.1 Requirement - The candidate for renewal shall have completed no less than forty (40) clock hours of acceptable continuing education per two (2) year licensure renewal period. Continuing education requirements for initial licensure periods of less than two (2) years shall be prorated.

6.2.2.2 Acceptable Continuing Education - Acceptable continuing education shall include the following:

6.2.2.2.1 Continuing education hours approved by a national mental health organization, such as NBCC, ACMHC, APA, shall be acceptable. Other training programs may apply for continuing education oriented towards enhancement, knowledge and practice of counseling. Hours are to be documented by a certificate signed by the presenter, or by designated official of the sponsoring organization.

6.2.2.2.2 Academic course work, and presentation of original papers providing training and clinical supervision may be applied for up to twenty (20) clock hours of the continuing education requirement. These hours are to be documented by an official transcript, syllabus, or a copy of the published paper presented.

Under no circumstances, may there be less than twenty (20) hours of face-to-face participation in

continuing education as outlined above.

6.2.2.3 **Make-Up of Disallowed Hours** - In the event that the Board disallows certain continuing education clock hours, the candidate for renewal shall have three (3) months after the licensure renewal date to complete the balance of acceptable continuing education hours required.

6.2.3 **Verification** - Verification of continuing education hours shall be by the "Continuing Education Form for Licensed Professional Mental Health Counselors," with appropriate documentation for each item listed attached to the form.

6.2.4 **Fees** - The candidate for renewal shall make payment of a renewal fee in an amount prescribed by the Division of Professional Regulation for that licensure renewal period. A fifty percent (50%) late charge shall be imposed upon any fee paid after the renewal date.

6.2.5 It shall be the responsibility of all licensees to keep the Division informed of any change of address. Renewal applications will be sent to the last address on file with the Division.

Statutory authority: 24 *Del.C.* §§3006(a)(5), 3012.

7.0 REACTIVATION OF LICENSURE

~~7.1 **Reactivation** - An expired license shall be reactivated as follows:~~

~~7.1.1 **Within Five (5) Years** - An expired license shall be reactivated within five (5) years following the expiration date upon fulfillment of the following requirements:~~

~~7.1.1.1 **Written Request** - Written request to the Board requesting reactivation of licensure.~~

~~7.1.1.2 **Certification** - Current certification in good standing, as of the date of the request for licensure reactivation in NBCC, ACMHC or other certifying organization.~~

~~7.1.1.3 **Continuing Education** - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for reactivating.~~

~~7.1.1.4 **Fees** - Payment of renewal fees for any licensure renewal periods which have elapsed since expiration of licensure, plus a late charge of fifty percent (50%) of the most recent licensure renewal fee.~~

7.0 Ethics

7.1 The Board hereby adopts the current version of National Board for Certified Counselors Code of Ethics ("Code").

7.2 The practice of all persons licensed as an LPCMH or LAMCH shall conform to the principles of the Code. Violation of the Code shall constitute grounds for discipline.

Statutory authority: 24 *Del.C.* §§3006(b), 3013.

8.0 Return To Active Status

8.1 **Return to Active Status** - Return to active status from inactive status shall be granted upon fulfillment of the following requirements:

8.1.1 **Written Request** - Written request to the Board requesting return to active status.

8.1.2 **Certification** - Current certification in good standing, as of the date of the request for return to active status, in NBCC, ACMHC or other certifying organization.

8.1.3 **Continuing Education** - Completion of forty (40) hours of acceptable continuing education, obtained within the two (2) year period prior to the request for return to active status.

8.1.4 **Fee** - Payment of the current fee for licensure renewal. No late fee shall be assessed for return to active status.

Statutory authority: 24 *Del.C.* §30012(d).

~~**9.0 TEMPORARY SUSPENSION PENDING HEARING**~~

~~No order temporarily suspending a practitioner's license shall be issued by the Board with less than twenty-four (24) hours prior written or oral notice to the practitioner or the practitioner's attorney, so that the practitioner or the attorney may be heard in opposition to the proposed suspension and unless at least four (4) members of the Board vote in favor of such a temporary suspension.~~

~~An order of temporary suspension pending a hearing shall remain in effect for a period of time no longer than sixty (60) days from the date of the issuance of said order, unless the suspended practitioner requests a continuance of the date for the convening of the hearing panel. In such event, the order of temporary suspension pending a hearing shall remain in effect until the hearing panel has convened and a decision rendered.~~

9.0 Disciplinary Proceedings And Hearings

9.1 Disciplinary proceedings against any licensee may be initiated by an aggrieved person by submitting a complaint in writing to the Director of the Division of Professional Regulation as specified in 29 *Del. C.* §8807(h)(1)-(3).

9.1.1 A copy of the written complaint shall be forwarded to the administrative assistant for the Board. At the next regularly scheduled Board meeting, a contact person for the Board shall be appointed and a copy of the written complaint given to that person.

9.1.2 The contact person appointed by the Board shall maintain strict confidentiality with respect to the contents of the complaint and shall not discuss the matter with other Board members or with the public. The contact person shall maintain contact with the investigator or deputy attorney general assigned to the case regarding the progress of the investigation.

9.1.3 In the instance when the case is being closed by the Division, the contact person shall report the facts and conclusions to the Board without revealing the identities of the parties involved. No vote of the Board is necessary to close the case.

9.1.4 If a hearing has been requested by the Deputy Attorney General, a copy of these Rules and Regulations shall be provided to the respondent upon request. The notice of hearing shall fully comply with 29 Del. C. Sec. 10122 and 10131 pertaining to the requirements of the notice of proceedings. All notices shall be sent to the respondent's address as reflected in the Board's records.

9.1.5 At any disciplinary hearing, the respondent shall have the right to appear in person or be represented by counsel, or both. The Respondent shall have the right to produce evidence and witnesses on his or her behalf and to cross examine witnesses. The Respondent shall be entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of documents on his or her behalf.

9.1.6 No less than 10 days prior to the date set for a disciplinary hearing, the Department of Justice and the respondent shall submit to the Board and to each other, a list of the witnesses they intend to call at the hearing. Witnesses not listed shall be permitted to testify only upon a showing of reasonable cause for such omission.

9.1.7 If the respondent fails to appear at a disciplinary hearing after receiving the notice required by 29 Del.C. §10122 and 10131, the Board may proceed to hear and determine the validity of the charges against the respondent.

Statutory authority: 24 Del.C. §§3013 and 3016; 29 Del.C. §§10111, 10122 and 10131

9.2. Hearing procedures

9.2.1 The Board may administer oaths, take testimony, hear proofs and receive exhibits into evidence at any hearing. All testimony at any hearing shall be under oath.

9.2.2 Strict rules of evidence shall not apply. All evidence having probative value commonly accepted by reasonably prudent people in the conduct of their affairs shall be admitted.

9.2.3 An attorney representing a party in a hearing or matter before the Board shall notify the Board of the representation in writing as soon as practicable.

9.2.4 Requests for postponements of any matter scheduled before the Board shall be submitted to the Board's office in writing no less than three (3) days before the date scheduled for the hearing. Absent a showing of exceptional hardship, there shall be a maximum of one postponement allowed to each party to any hearing.

9.2.5 A complaint shall be deemed to "have merit" and the Board may impose disciplinary sanctions against the licensee if at least four members of the Board

find, by a preponderance of the evidence, that the respondent has committed the act(s) of which he or she is accused and that those act(s) constitute grounds for discipline pursuant to 24 Del.C. §515.

9.2.6 Any decision by the Board to suspend or revoke a license shall be made public by publishing notice of the suspension or revocation in at least two (2) Delaware newspapers of general circulation. Such publication shall take place following the Board's execution of the final order.

Statutory authority: 24 Del.C. §§3004, 3013, 3015, 3016; 29 Del.C. §§10111

10.0 Voluntary Treatment Option For Chemically Dependent Or Impaired Professionals

10.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

10.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

10.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

10.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

10.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

10.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

10.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

10.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

10.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

10.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

10.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's

chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

10.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

10.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

10.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

10.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

10.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

10.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

10.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION**BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(1) (24 Del.C. §1906(1))
24 Delaware Code, Chapter 19A (Article VI(d))
(24 Del.C. Ch. 19A (Article VI(d)))

The Delaware Board of Nursing in accordance with 24 Del.C., Subsection 1906(1) and 24 Del.C. Chapter 19A (Article VI(d)) has proposed to promulgate Rules and Regulations related to the Nurse Licensure Compact.

These proposed rules and regulations which have been developed by the license compact administrators define primary state of residence, outline the process of licensure issuance, list limitations on the multi-state licensure privilege, and provide levels of access, reporting requirements and review opportunities of the information system.

A public hearing will be held on Wednesday, September 13, 2000 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be September 13, 2000.

14.0 Nurse Licensure Compact Rules and Regulations

24 Del. C., Chapter 19A, Articles 6D and 8C of the Nurse Licensure Compact grant authority to the Compact Administrators to develop uniform rules to facilitate and coordinate implementation of the Compact.

14.1 Definition of terms in the Compact:**14.1.1 For the Purpose of the Compact:**

14.1.1.1 "Board" means party state's regulatory body responsible for issuing nurse licenses.

14.1.1.2 "Information system" means the coordinated licensure information system.

14.1.1.3 "Primary state of residence" means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

14.1.1.4 "Public" means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

14.1.2 Other terms used in these rules are to be defined as in the Interstate Compact.

14.2 Issuance of a license by a Compact party state.**14.2.1 For the purpose of this Compact:**

14.2.1.1 A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include but is not limited to:

14.2.1.1.1 Driver's license with a home address;

14.2.1.1.2 Voter registration card displaying a home address; or

14.2.1.1.3 Federal income tax return declaring the primary state of residence.

(Statutory basis: 24 Del. C., Chapter 19A, Articles 2E, 4C, and 4D)

14.2.1.2 A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty(30) days. (Statutory basis: 24 Del. C., Chapter 19A, Articles 4B, 4C, and 4D[1])

14.2.1.3 The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the thirty-(30) day period in section 2b shall be stayed until resolution of the pending investigation.

(Statutory basis: 24 Del. C., Chapter 19A, Article 5[B])

14.2.1.4 The former home state license shall no longer be valid upon the issuance of a new home state license. (Statutory basis: 24Del. C., Chapter 19A, Article 4D[1])

14.2.1.5 If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days and the former home state may take action in accordance with that state's laws and rules.

14.3 Limitations on multi-state licensure privilege.

Home state Boards shall include in all licensure disciplinary orders and/or agreements that limit practice and/or require monitoring the requirement that the licensee subject to said order and/or agreement will agree to limit the licensee's practice to the home state during the pendency of the disciplinary order and/or agreement. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards. (Statutory basis: 24 Del. C., Chapter 1902A)

14.4 Information System.**14.4.1 Levels of access**

14.4.1.1 The Public shall have access to nurse licensure information limited to:

14.4.1.1.1 the nurse's name,

14.4.1.1.2 jurisdiction(s) of licensure,

14.4.1.1.3 license expiration date(s),

14.4.1.1.4 licensure classification(s) and

status(es).

14.4.1.1.5 public emergency and final disciplinary actions, as defined by contributing state authority, and

14.4.1.1.6 the status of multi-state licensure privileges.

14.4.1.2 Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by contributing party state authority.

14.4.1.3 Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party state authority. (Statutory basis: 24 Del. C., Chapter 19A, Article 7G)

14.4.2. The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him or her is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten (10) business days correct inaccurate data to the Information System. (Statutory basis: 24 Del. C., Chapter 19A, Article 7G)

14.4.3 The Board shall report to the Information System within ten (10) business days

14.4.3.1 disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements and orders relating to participation in alternative programs required to remain nonpublic by contributing state authority).

14.4.3.2 dismissal of complaint, and

14.4.3.3 changes in status of disciplinary action, or licensure encumbrance. (Statutory basis: 24 Del. C., Chapter 19A, Article 7B)

14.4.4 Current significant investigative information shall be deleted from the Information System within ten(10) business days upon report of disciplinary action, agreement or order requiring participation in alternative programs or agreements which limit practice or require monitoring or dismissal of a complaint. (Statutory basis: 24 Del. C., Chapter 19A, Articles 7B, 7F)

14.4.5 Changes to licensure information in the Information System shall be completed within ten (10) business days upon notification by a Board. (Statutory basis: 24 Del. C., Chapter 19A, Articles 7B, 7F)

DIVISION OF PROFESSIONAL REGULATION BOARD OF EXAMINERS OF PSYCHOLOGISTS

Statutory Authority: 24 Delaware Code,
Section 3506(a)(1) (24 Del.C. §3506(a))

PLEASE TAKE NOTICE, pursuant to 29 Del.C. Chapter 101 and 24 Del.C. Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to revise its rules and regulations. Substantive changes to the regulations include clarification of the acceptable passing score on the EPPP examination; a requirement that candidates with non U.S. degrees have their credentials evaluated for equivalency to a U.S. degree acceptable under 24 Del.C. §3508(a), creation of a hardship allowance for additional time to complete continuing education for good cause shown, and clarification of procedural requirements for license renewal.

A public hearing will be held on the proposed Rules and Regulations on **Monday, September 11, 2000 at 9:00 a.m.** in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

Board Of Examiners Of Psychologists

1.0 General Rules and Regulations

The Board of Examiners of Psychologists has been established under the 24 Del.C. Ch. 35, and current amendments to that Law. Within the framework of the Law, the Board has the responsibility for interpreting and implementing the legal provisions and requirements of the Law through the establishment of operating Rules and Regulations. The Board and the public may propose changes in the Rules and Regulations in accordance with the Administrative Procedures Act, 29 Del.C. Ch. 101.

2.0 Official Board Office

The official office of the Board of Examiners shall be in Dover in the Division of Professional Regulation and all correspondence must be addressed to this office in written form before official action can be taken. In addition, the Division of Professional Regulation will provide an Administrative Assistant who will take notes at Board

meetings, keep the records for the Board, and serve as a liaison between the Board and members of the public who have questions for the Board. The Division of Professional Regulation will also set fees to defray the cost of regulation.

3.0 Meetings of the Board

The Board will hold such meetings during the year as it may deem necessary to review licensure applications and psychological assistant applications, evaluate continuing education, hold disciplinary hearings, or conduct other Board business. Either the President, or the majority of the Board may call a Board meeting. The Division of Professional Regulation, Board members, and the public shall be notified of the meeting agenda, time and location in accordance with the Freedom of Information Act.

4.0 Officers of the Board

The Board elects its own officers at the first meeting of each calendar year. The President of the Board sets the agendas of the meetings, chairs meetings, and represents the Board at state regulatory meetings, the American Association of State and Provincial Psychology Boards, and other organizations that may interface with the Board unless someone else is designated to attend in place of the President. The Vice President or Secretary acts for the President in the President's absence. The Secretary of the Board, in conjunction with the Administrative Assistant from the Division of Professional Regulation, is responsible for taking care of Board correspondence.

5.0 Procedures for Licensure

5.1 Application - Initial Licensure

An applicant who is applying for licensure as a psychologist shall submit evidence showing that he/she meets the requirements of 24 **Del.C.** §3508. The applicant must submit the following:

5.1.1 An application for licensure, which shall include:

5.1.1.1 Academic credentials documented by official transcripts showing completion of an educational program meeting the requirements of 24 **Del.C.** §3508(a)(1).

5.1.1.2 Supervised experience documented by having each supervisor complete a Supervisory Reference Form.

5.1.1.3 Evidence that the applicant passed the written "Examination for Professional Practice in Psychology", developed by the Association of State and Provincial Psychology Boards (ASPPB), by achieving the passing score recommended by the ASPPB at the time of the application for licensure. Candidates who are not licensed in any other state must have passed the written examination within five (5) years of application for licensure in Delaware. Applicants who have not taken the examination must submit all other required documents to the Board for

review prior to sitting for the examination. Only those applicants the Board determines are otherwise eligible for Delaware licensure shall be approved to sit for the examination, subject to the administration policies and procedures of the ASPPB. After sitting for the examination, applicants must supplement their application materials by submitting evidence of their passing score as recommended by the ASPPB.

See 3 DE Reg 1067 (2/1/00)

5.1.1.4 Verification that the applicant has no past or pending disciplinary proceedings. [24 **Del.C.** §3508(a)(4)]

5.1.1.5 The application shall not be considered complete until all materials are received by the Board for review at an officially scheduled meeting. The applicant will have twelve (12) months from the date of initial submission of the application and fee to complete the application process.

5.1.2 Completed certification form. The applicant will be notified, once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

5.2 Application - By Reciprocity

An applicant who is applying for licensure as a psychologist by reciprocity, as defined in 24 **Del.C.** §3511, shall submit evidence that he/she meets the following requirements:

5.2.1 An application for licensure, which shall include:

5.2.1.1 Evidence that the applicant is licensed or certified in another state and that the applicant has practiced continuously, as a doctoral-level psychologist, in good standing in that jurisdiction for two (2) years.

5.2.1.2 Evidence that the applicant passed the written Examination for Professional Practice of Psychology (EPPP). ~~by achieving the passing score as required by their state of original licensure.~~ The Board shall accept a score of 70% or better, or, for examinations taken prior to 1992, the minimum passing score accepted by the Delaware Board in the year the examination was taken.

5.2.2 Completed certification form. The applicant will be notified once his/her application is complete and available for the Board's review. The certification form must be submitted before any further action can be taken.

6.0 Evaluation of Credentials

6.1 Candidates for licensure as psychologists in the State of Delaware shall:

6.1.1 Have received a doctoral degree based on a program of studies which is psychological in content and specifically designed to train and prepare psychologists. The doctoral degree must be from a college or university, accredited as required by 24 **Del.C.** Section 3508(a)(1) having a graduate program which states its purpose to be the

training and preparation of psychologists. Graduates of non-United States (U.S.) degree programs will be required to have their credentials evaluated by a credential evaluation service approved by the National Association of Credential Evaluation Services, to determine equivalency to the accreditation requirements of §3508(a)(1) and equivalency of psychological content and training. The Board will consider programs to be psychological in content by the criteria established by the joint designation project of the Association of State and Provincial Psychology Boards and the Council for the National Register of Health Service Providers in Psychology, as follows:

See 2 DE Reg. 776 (11/1/98)

6.1.1.1 Programs that are accredited by the American Psychological Association are recognized as meeting the definition of a professional psychology program. The criteria for accreditation serves as a model for professional psychology training.

6.1.1.2 Or, all of the following criteria, (1) through (9):

6.1.1.2.1 Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education.

6.1.1.2.2 The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.

6.1.1.2.3 The psychology program must stand as a recognizable, coherent organizational entity within the institution.

6.1.1.2.4 There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.

6.1.1.2.5 The program must be an integrated, organized sequence of study.

6.1.1.2.6 There must be an identifiable psychology faculty and a psychologist responsible for the program.

6.1.1.2.7 The program must include a body of students who are matriculated in that program for a degree.

6.1.1.2.8 The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology.

6.1.1.2.9 The curriculum shall encompass a minimum of three (3) academic years of full time graduate study. In addition to instruction in scientific and professional ethics and standards research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three or more graduate semester hours (5 or more graduate

quarter hours) in each of these 4 substantive content areas:

6.1.1.2.9.1 Biological bases of behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology.

6.1.1.2.9.2 Cognitive-affective bases of behavior: Learning, thinking, motivation, emotion.

6.1.1.2.9.3 Social bases of behavior: Social psychology, group processes, organizational and systems theory.

6.1.1.2.9.4 Individual differences: Personality theory, human development, abnormal psychology.

6.1.1.3 In addition, all professional education programs in psychology will include course requirements in specialty areas.

See 2 DE Reg. 776 (11/1/98)

6.2 Have had, after receiving the doctoral degree, at least 2 years of supervised experience in psychological work satisfactory to the Board; and

See 2 DE Reg. 776 (11/1/98)

6.3 Have achieved the passing score on the written standardized Examination for Professional Practice in Psychology (EPPP) developed by the Association of State and Provincial Psychology Boards (ASPPB) or its successor; or

See 2 DE Reg. 776 (11/1/98)

6.4 The Board will qualify for licensing without examination any person who applies for licensure and who is a Diplomate of the American Board of Professional Psychology. All such applicants must meet all other requirements for licensure.

See 2 DE Reg. 776 (11/1/98)

7.0 Supervised Experience

The types of supervision pertinent to licensure as a psychologist or registration as a psychological assistant are comprised of three types of supervisory experiences:

7.1 Predoctoral internship supervision as required by doctoral programs in psychology. The predoctoral internship consists of a minimum of 1,500 hours of actual work experience completed in not less than 48 weeks, nor more than 104 weeks. At least 50% of the predoctoral supervised experience must be in clinical services such as treatment, consultation, assessment, and report writing, with at least 25% of that time devoted to face-to-face direct patient/client contact. No more than 25% of time shall be allocated for research.

7.2 Postdoctoral supervision is required for initial licensure as a psychologist. Postdoctoral experience must consist of 3,000 hours of actual work experience. This experience is to be completed in not less than two years and not more than three calendar years, save for those covered under 24 Del.C. §3519(e). For those individuals the accrual

of 3,000 hours of supervised postdoctoral experience must take place within six calendar years from the time of hire. There is to be one hour of face-to-face supervision for every 1-10 hours of clinical work. This experience shall consist of at least twenty-five percent and not more than sixty percent of the time devoted to direct service per week in the area of the applicant's academic training. "Direct service" consists of any activity defined as the practice of psychology or the supervision of graduate students engaging in activities defined as the practice of psychology. Not more than 25% of this supervision can be done by other licensed mental health professionals besides psychologists.

The purpose of the postdoctoral supervision is to train psychologists to practice at an independent level. This experience should be an organized educational and training program with explicit goals and a clear plan to meet those goals. There should be regular written evaluations based on this program.

7.3 Supervision of psychological assistants is required at the frequency of one hour of face-to-face supervision for every 1-10 hours of clinical work by the psychological assistants, as required by Section 9 of the Rules and Regulations. An individual registered as a psychological assistant may or may not be receiving supervision in pursuit of independent licensure as a psychologist.

7.4 A psychologist providing either postdoctoral supervision or supervision of psychological assistants must have been in practice for two years post licensure in this or any other state without having been subject to any disciplinary actions. He/she must provide 24-hour availability to both the supervisee and the supervisee's clients, or ensure that adequate alternative coverage is provided in the supervisor's absence. The supervising psychologist shall have sufficient knowledge of all clients including face-to-face contact when necessary and must be employed or under contract in the setting where the clinical service takes place and the supervision must occur within that setting.

See 2 DE Reg. 776 (11/1/98)

8.0 Failure to Pass Examination

Applicants may take the Examination for the Professional Practice in Psychology as many times as they choose. Intervals between testing will be determined by the testing agency and the ASPPB.

9.0 Psychological Assistants

9.1 A psychological assistant is an individual who meets the requirements of 24 **Del.C.** Section 3509(2a-2e). This individual may be registered as a psychological assistant in order to receive supervision to be eligible for later licensure to practice independently as a psychologist and/or for any other reason as recognized by law.

9.2 Psychological assistants are supervised, directed,

and evaluated by a Delaware licensed psychologist who assumes professional and legal responsibility for the services provided.

9.2.1 Any Delaware licensed psychologist who has had a least two (2) years of experience following the granting of licensure in this or in any other state may supervise a maximum of seven (7) psychological assistants.

9.2.2 It is the responsibility of the supervising psychologist in conjunction with the psychological assistant to diagnose and form treatment plans for patients seen by the psychological assistant and to file such plan in the patient/client's chart.

9.2.3 The patient/client must be informed that services are being delivered by a psychological assistant and that the licensed psychologist is responsible for the treatment.

9.2.4 The patient/client shall sign a statement of informed consent attesting that he/she understands that the services are being delivered by a psychological assistant and that the licensed psychologist is ultimately responsible for his/her treatment. This document shall include the supervising psychologist's name and the telephone number where he/she can be reached. One copy shall be filed with the patient/client's record and another given to the patient.

9.3 The Delaware licensed psychologist is identified as the legally and ethically responsible party in all advertising, public announcements, and billings. In addition, billings and advertisements will clearly indicate that the service is being provided by a psychological assistant. All treatment and evaluation reports prepared by the psychological assistant must be signed by the psychologist and the psychological assistant.

9.4 The Delaware licensed psychologist who accepts the responsibility of using a psychological assistant shall develop and maintain a current, written job description delineating the range and type of duties, educational practicum and clinical experience to be assigned to the psychological assistant, limits of independent action, emergency procedures for contacting the supervising psychologist, and the amount and type of supervision to be provided. This job description must be signed by the psychologist and the psychological assistant and will be filed in the Division of Professional Regulation, along with an official copy of the psychological assistant's college transcript, and proof of a 450-hour clinical practicum supervised by a licensed psychologist or by a faculty member in a nationally accredited doctoral level clinical training program in the State of Delaware who is actively pursuing licensure. The psychological assistant will also provide a statement under oath as outlined in 24 **Del.C.** §3509(b1 - b3).

9.5 The Board will then review credentials, job description and supervisory arrangements, and if the arrangements are acceptable, will inform the psychologist in

writing that the psychological assistant can begin work. No psychological assistant shall begin work until the Board has approved the application. Registration for psychological assistants expires biennially and continued performance of the duties of a psychological assistant requires proof of twenty (20) hours of continuing education and payment of the renewal fee.

9.6 Supervision of the psychological assistant by the Delaware licensed psychologist is to be a regular and formal process. It is required that the licensed psychologist and the psychological assistant have weekly one-on-one, face-to-face supervision with review of each case served by the psychological assistant. The supervising psychologist should be familiar with each patient/client seen by the psychological assistant and with the ongoing progress of treatment. One hour of supervision for every ten hours, or fraction thereof, of direct clinical work by the psychological assistant is required as a minimum. For example, if a psychological assistant provides eight (8) hours of direct clinical service, he or she must receive a minimum of one (1) hour of supervision. Likewise, a psychological assistant, who has fifteen (15) hours of direct clinical contact, must receive at least two (2) hours of supervision. This supervision must be documented in writing on patient records. In addition, the supervising psychologist shall submit at the time of relicensure and at the termination of the supervision relationship a supervision report on a form provided by the Board which will become a part of the public record. It will contain information describing the date and amount of supervision and any unscheduled supervisory contact, as well as a brief assessment of the psychological assistant's functioning. The Board will consider requests to substitute group supervision for some portion of the one-to-one, face-to-face supervision requirement. A supervising psychologist must petition the Board and show good cause for this substitution. If the supervising psychologist's request is granted, no more than five (5) psychological assistants may meet with the supervising psychologist at one time and there must be two (2) hours of group supervision in place of every one (1) hour of individual supervision. All psychological assistants must have at least one (1) hour of individual supervision per week. The Board reserves the right to withdraw their permission for the substitution at any time.

9.7 Psychological Assistants are to work in the office of the licensed psychologist so as to have regular and continued supervision. When the licensed psychologist is not in the office, he or she is expected to provide clear contingency plans for consultation for the psychological assistant. It is assumed that the psychologist will be available to the psychological assistant under most circumstances; therefore, arrangements in which the supervising psychologist is employed full time elsewhere will not be approved, unless it can be demonstrated that there will be adequate supervision

and contingency coverage of the psychological assistant. Supervising psychologists will be expected to describe in their application for the psychological assistant how much supervision they will provide and how that supervision will be provided.

9.8 Psychological assistants who work for agencies must be supervised by a psychologist employed by or under contract to the agency. Supervision must occur on site, and the agency must have clearly spelled out plans for providing consultation and backup when the supervising psychologist is not on site. A psychological assistant, who provides services that are under the direction of different psychologists, must be registered as a psychological assistant by all of the psychologists who are directly supervising the clinical work.

9.9 When there is a complaint of incompetent, improper, or unethical behavior on the part of the psychological assistant, in addition to the disciplinary action against the psychological assistant, disciplinary action may be taken against the supervising psychologist for failing to provide adequate supervision of the psychological assistant. The Board reserves the right to suspend or revoke the Delaware licensed psychologist's privilege of hiring a psychological assistant when just cause has been established through a formal hearing. Violation of this regulation may constitute cause for suspending or revoking the future privilege of hiring a psychological assistant.

9.10 Patients/clients are always the responsibility of the supervising psychologist. Termination or transfer plans must be worked out with the approval of the supervising psychologist. A psychological assistant will be considered to be working for the supervising psychologist until the Board of Examiners is notified in writing of the change in arrangements. The letter terminating a psychological assistant arrangement must also specify when the supervising psychologist is terminating the arrangement because of concerns about the ethical or professional behavior of the psychological assistant.

See 2 DE Reg. 776 (11/1/98)

10.0 Continuing Education

10.1 Psychologists must obtain 40 hours of continuing education every two years in order to be eligible for renewal of license. Psychologists will be notified in January that they may submit their documentation beginning March 1st. Continuing education credit must be submitted for the period of August 1st of the year of renewal to July 31st of the second year. Individuals licensed within the two year period will be notified by the Board of the prorated amount to submit.

10.2 Psychological assistants must obtain 20 hours of continuing education every two years for re-registration. Psychological assistants may submit their documentation beginning March 1st. The appropriate period for credits to

be accrued is from August 1st of the year of renewal to July 31st of the second year. Psychological assistants registered within the two year period will be notified by the Board of the prorated amount to submit.

10.3 Psychologists or psychological assistants who have not submitted their material by July 31st will be allowed to reapply for licensure or registration until August 31st. In the situation where the appropriate amount of documentation has been submitted in a timely fashion and in good faith and with reasonable expectation of renewal but has been found to be inadequate, the practitioner has 30 days from the notification of inadequacy to submit valid continuing education credit in the amount specified, or until August 31st of that year, whichever is later.

Hardship. An applicant for license renewal or registered psychological assistant may be granted an extension of time in which to complete continuing education hours upon a showing of good cause. "Good Cause" may include, but is not limited to, disability, illness, extended absence from the jurisdiction and exceptional family responsibilities. Requests for hardship consideration must be submitted to the Board in writing prior to the end of the licensing period, along with payment of the appropriate renewal fee. No extension shall be granted for more than 120 days after the end of the licensing period. A license shall be renewed upon approval of the hardship extension by the Board, but the license shall be subject to revocation if the licensee does not complete the requisite continuing education pursuant to the terms of the extension.

10.4 It is the responsibility of the psychologist or psychological assistant to file a record of his/her continuing education. Documentation of continuing education will consist of letters/certificates of attendance from the sponsoring entity.

10.5 The subject of the continuing education must contribute directly to the professional competency of a person licensed to practice as a psychologist or registered as a psychological assistant. The activity must have significant intellectual or practical content and deal with psychological techniques, issues or ethical standards relevant to the practice of psychology.

10.6 Activities from APA-approved continuing education sponsors will be automatically accepted. The following may be eligible:

10.6.1 Other programs which are not APA-approved sponsors but where the material is relevant to professional practice and provides the equivalent of APA-defined credit. An applicant must provide a brochure or other documentation that supports the following criteria: relevance, stated objectives, faculty and educational objectives. To document attendance and completion, a certificate of attendance is required. In these circumstances, hours will be accrued on the basis of clock hours involved in

the training.

10.6.2 Graduate courses relevant to professional practice taken for educational credit offered by a regionally accredited academic institution of higher education. Each credit hour of a course is equivalent to 5 CE hours.

10.6.3 Teaching an undergraduate or graduate level course in applied psychology at an accredited institution. Teaching a 3 hour semester or quarter course is considered the equivalent of 5 CE credits. No more than 5 CE credits may be completed in this manner for any renewal period and can be submitted only for the first time that a course is presented. Appropriate documentation of teaching must include the listing of the course in the school catalog and a letter from the academic institution stating that the course was taught.

10.6.4 Teaching of a workshop or conduction of a seminar on a topic of pertinence to the practice of psychology. Credit earned for one day is a maximum of 2 credits, two days is a maximum of 3 credits, and three days or more is a maximum of 5 credits. However, credit can be earned only once for teaching a particular seminar or workshop and not be eligible for re-submission at any time. Appropriate documentation is considered to be the brochure and demonstration of the workshop being held by the sponsoring entity.

10.6.5 Authorship, editing or reviewing of a publication. Credit may be earned only in the year of the publication and is limited to the following:

10.6.5.1 Author of a book (maximum of 40 CE hours)

10.6.5.2 Author of a book chapter or journal article (maximum of 15 CE hours)

10.6.5.3 Editor of a book (maximum of 25 CE hours)

10.6.5.4 Editor of or reviewer for a scientific or professional journal recognized by the Board (maximum 25 CE hours)

10.6.5.5 Proof of the above (10.6.5.1 - 10.6.5.4) must include the submission of the work or documentation of authorship by copy of title pages.

10.6.6 Preparing and presenting a scientific or professional paper or poster at a meeting of a professional or scientific organization. Up to 2 hours may be claimed for a poster presentation. Up to 3 hours of credit may be claimed for each hour of paper presentation, with a maximum of 8 CE hours per paper. Listing within the program and certificate letters of attendance at the meeting is appropriate documentation for both a paper or poster presentation.

See 2 DE Reg. 776 (11/1/98)

10.7 The Board reserves the right to reject any CE program, if it is outside the scope of the practice of psychology.

10.8 The following will not be considered for credit: service to organizations; attending business meetings of

professional organizations; business management or office administration courses; group supervision; or case conferences.

11.0 Professional Conduct

Psychologists and psychological assistants may be disciplined for violations of provisions of 24 **Del.C.** §3514.

12.0 Complaint Procedures

12.1 Complaints against psychologists and psychological assistants will be investigated as provided by 29 **Del.C.** §8807 and all hearings shall be conducted in accordance with the Administrative Procedures Act, 29 **Del.C.** Chapter 101.

12.2 Complaints must be filed, in writing, with the Division of Professional Regulation.

13.0 License Renewal

13.1 Renewal notices will be mailed to the current address on file in the Board's records in a timely fashion to all psychologists and psychological assistants who are currently licensed or registered. It shall be the responsibility of each psychologist and psychological assistant to advise the Board, in writing, of any change of name or address.

13.2 Continuing education requirements must be fulfilled as detailed in Section 10 of the Rules and Regulations and submitted along with the established fee for renewal to be approved. The Board may, in its discretion, grant a license renewal under the terms of a continuing education hardship extension pursuant to rule 10.3. Should any psychologist fail to renew or obtain a hardship extension and continue to make representation as a licensed psychologist beyond July 31st, that individual is practicing without a license. Should any psychological assistant fail to renew or obtain a hardship extension and continue to make representation as a registered psychological assistant beyond July 31st, that individual is considered no longer to be registered, and his/her supervising psychologist is in violation of the law.

14.0 Procedures for Licensure Applicable to Full Time Faculty Members in a Nationally Accredited Doctoral Level Clinical Training Program in the State of Delaware

14.1 University faculty employed full time in a nationally accredited doctoral level clinical training program in the State of Delaware, as specified in 24 **Del.C.** §3519(e), who are not licensed, are subject to the following rules and regulations:

14.1.1 Notification. Such individuals must notify the Board of Examiners of Psychologists no later than 30 days after the commencement of employment, indicating employer, position and date employment began. At that time they will receive a copy of the statute and Rules and

Regulations which detail the exemption under which they operate.

14.1.2 Professional Activities. These individuals may participate in activities defined by statute as the practice of psychology (including the supervision of matriculated graduate students) only within the context of a clinical training program. They may conduct any research and teaching activities related to the activities of such a program.

14.1.3 Education. Such individuals must have completed the doctoral degree at the time employment commences consistent with 24 **Del.C.** §3508(a).

14.1.4 Active Pursuit of Licensure. Such individuals are required to be in active pursuit of licensure for a period not to exceed six (6) years. The six year time frame for the completion of licensure requirements commences with the initial date of employment. The six-year time frame for individuals employed as of June 12, 1995 commenced on that date.

14.1.5 Supervision. The supervised experience required for licensure of such individuals is described in Section 7.0 of the Rules and Regulations.

See 2 DE Reg. 776 (11/1/98)

15.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

15.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

15.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

15.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

15.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary,

only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

15.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

15.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

15.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

15.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

15.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

15.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the

Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

15.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

15.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

15.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

15.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

15.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

15.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

15.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

15.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise

specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

APPENDIX A

“Professional psychology” refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

“Professional psychology” refers to psychology as a profession. The term is not intended in the more restrictive sense of applied or practice areas of psychology since the intent is for a generic designation system.

6.1.1.2.1 refers to an institution with regional accreditation in the United States, an institution with provincial authorization in Canada, or in other countries, or an institution that is accredited by a body which was deemed by the ASPPB/National Register Joint Designation Committee to be performing a function equivalent to U.S. regional accrediting bodies.

In reference to “instruction in scientific and professional ethics and standards” rule 6.1.1.2.9, it is understood that a course of three or more graduate semester hours (five or more graduate quarter hours) or its equivalent is highly desirable; substantial instruction in these issues is required.

It is understood that rule 6.1.1.2.9 includes the requirement of a minimum of one year’s residency at the educational institution granting the doctoral degree.

**DEPARTMENT OF HEALTH AND
SOCIAL SERVICES**

**DIVISION OF SERVICES FOR AGING AND ADULTS
WITH PHYSICAL DISABILITIES**

Statutory Authority: 13 Delaware Code,
Sections 707 and 708 (13 Del.C. §§707, 708)

Regulations on Establishment |
Of Delegation of Power of |
Relative Caregivers to |
Consent to Medical |
Treatment of Minors |
13 Del.C. §707,708 |

Nature of the Proceedings:

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

Summary/Purpose of Regulations:

The promulgation of these regulations will put 13 Del.C. §707 and 708 into effect so that grandparents and relative caregivers without custody or guardianship can approve medical treatment for children in their care. Promulgation of these regulations will allow the law to establish a system known to providers and consumers throughout the state, encourage well child Doctor’s visits, visits to the Doctor before a condition worsens, and fewer visits to hospital emergency rooms.

Notice Of Comment Period

Public Hearings will be held as follows:

Date: Tuesday, August 22, 2000
Time: 11:30 AM to 1:30 PM
Place: Facilities Management Building
Location: 149 Transportation Circle, Dover.

Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Paradee Center and the Motor Vehicle facility.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical
Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway
New Castle, DE

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical
Disabilities
Milford State Service Center
18 North Walnut Street
First Floor
Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
Delaware Health & Social Services
Division of Services for Aging and
Adults with Physical Disabilities
Administration Bldg., Annex
1901 N DuPont Highway
New Castle, DE 19720

Such comments must be received by close of business on Thursday, August 31, 2000.

Regulations:

I. Definitions for terms used in 13 Del.C. section 707(a):

(1)(a) Medical treatment includes the use of prescription drugs.

Disease – a pathological condition of a body part, an organ, or a system resulting from various causes, such as infection, genetic defect, or environmental stress, and characterized by an identifiable group of signs or symptoms or life.

Pathology – the medical science concerned with all aspects of disease with an emphasis on the essential nature, causes, and development of abnormal conditions, as well as with the structural and functional changes that result from disease processes. It is also the anatomical or functional manifestations of a disease.

(1)(b) Public clinics include school wellness centers.

This authorization also applies to medical care provided in schools that do not have wellness centers as well as medical care required at school-related activities.

II. Definition for terms used in 13 Del.C. section 708:

(1) Affidavit of Establishment of Power to Relative Caregivers to Consent to Medical Treatment of Minors (also known as Caregivers’ Medical Authorization) – An affidavit of written or printed declaration or statement of acts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or other person who has been duly authorized to do so.

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child will include one of the following:

(1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by that name lives at this address.

(2) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(3) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

(4) Other documents or confirmations that show the parent(s), custodian, or guardian cannot be found.

(5) If none of the above are feasible, the caregiver’s signature on this affidavit is his or her sworn statement that the parent(s), custodian, or guardian cannot to be found.

IV. Affidavit:

Delaware Health and Social Services will maintain the affidavit required for caregivers to obtain a Caregivers’ Medical Authorization. Anyone who wishes to obtain this affidavit may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities or a Delaware Health and Social Services Public Health clinic.

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES

Statutory Authority: 14 Delaware Code, Section 202 (14 Del.C.§202)

Regulations on Establishment Of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School 14 Del.C. § 202

Nature of the Proceedings:

Delaware Health and Social Services has implemented on an emergency basis the below proposed regulations and is now accepting comments in preparation for adoption of these changes on a permanent basis.

Summary/purpose of Regulations:

The promulgation of these regulations will put 14 Del.C. §202 in effect so that grandparents and relative caregivers without custody or guardianship can register children in their care for the school year beginning September 2000. Doing so will put these caregivers in compliance with 27 Del.C. §2702, which states that children “between five years of age and sixteen years of age” shall be enrolled in a free public school.

Notice Of Comment Period

Public Hearings will be held as follows:

Date: Tuesday, August 22, 2000
Time: 11:30 AM to 1:30 PM
Place: Facilities Management Building

Location: 149 Transportation Circle, Dover.

Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Paradee Center and the Motor Vehicle facility.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
 Division of Services for Aging and Adults with Physical Disabilities
 Herman M. Holloway Sr. Campus
 Administration Building, Annex
 1901 N DuPont Highway
 New Castle, DE

Delaware Health and Social Services
 Division of Services for Aging and Adults with Physical Disabilities
 Milford State Service Center
 18 North Walnut Street
 First Floor
 Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
 Delaware Health & Social Services Division of Services for Aging and Adults with Physical Disabilities
 Administration Bldg., Annex
 1901 N DuPont Highway
 New Castle, DE 19720

Such comments must be received by close of business on Thursday, August 31, 2000.

Text of Regulations:

I. Definitions for terms used in 14 Del.C. section 202:

Establishment of Delegation of Power of Relative Caregivers to Consent for Registering Minors for School (also known as Caregivers' School Authorization) (found in subsection (e)(1) c of section 202)– An affidavit of written or printed declaration or statement of acts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation, such as an officer of the court or a notary public or other person who has been duly authorized so to act.

II. Proof of relationship and Proof of caregiving: (found in subsection (2)(f)(1))

There must be two different forms of documentation, one from each column. One must show proof of relationship and the other proof of caregiving. These documents, or other similar documents as approved by the school district, must be presented for registration.

<u>PROOF OF RELATIONSHIP</u>	<u>PROOF OF CAREGIVING</u>
<u>Birth certificate of caregiver, the adult child, and birth certificate of the child.</u>	
<u>Medical records where a caregiver is required to give approval, such as shots. Such records must show the relationship between the caregiver and the child.</u>	<u>Medical records where a caregiver's authorization to give approval for services such as shots was acceptable.</u>
<u>A Will which lists the child and the relationship between the caregiver and child.</u>	
<u>Insurance for the caregiver or child which includes the relationship between the caregiver and child.</u>	
<u>A letter from a social worker, lawyer, religious leader, or previous school district which verifies the relationship of the child to the caregiver.</u>	<u>A letter from a social worker, lawyer, religious leaders, or neighbor confirming the child is being cared for by the caregiver.</u>
<u>Free and Reduced lunch program application.</u>	
<u>Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is included.</u>	<u>Child is listed as occupant in an apartment or other housing and his/her relationship to the caregiver is given.</u>

PROPOSED REGULATIONS

<u>Caregiver receives Child-only Temporary Aid for Needy Families (TANF) grant for this child.</u>	<u>Caregiver received Child-only Temporary Aid for Needy Families (TANF) grant for this child.</u>
<u>Child claimed on Federal Income Tax return.</u>	<u>Child claimed on Federal Income Tax return.</u>
<u>Caregiver receives Earned Income Tax Credit for the child.</u>	<u>Caregiver receives Earned Income Tax Credit for the child.</u>
	<u>Child's Social Security survivor death benefits are received by the caregiver for the child.</u>
<u>Hospital, clinic, or Public Health records showing the relationship between the caregiver and the child.</u>	<u>Hospital, clinic, or Public Health records where a caregiver's authorization to give approval for services such as shots was acceptable.</u>
<u>Division of Services for Children, Youth and their Families' records specifying the relationship between the caregiver and child.</u>	<u>Division of Services for Children, Youth and their Families' records showing that the caregiver is the contact for this child.</u>
<u>Military or veterans records which specify relationship</u>	
<u>Or other documents as approved by the school district.</u>	<u>Or other documents as approved by the school district.</u>

III. Reasonable effort to locate the parent(s), guardian, or custodian of the child:

Reasonable effort to locate the parent(s), guardian, or custodian of the child will include one of the following:

- (1) Certified mail receipt of a written notice from the caregiver that he or she intends to take medical responsibility for the child. The notice should be sent to the last known address of the parent(s), custodian, or guardian. Proof of this step will be the notice and the return receipt saying that the letter was not deliverable because no one by

that name lives at this address.

(2) A notice is placed in the News Journal saying the caregiver is looking for the parent(s), custodian, or guardian of (child's name) because he or she intends to take educational responsibility of the child. If the parent(s), custodian, or guardian does not respond within 8 days, the caregiver would write about the notice and lack of response where requested on the affidavit. Include a copy of the newspaper notice in the application.

(3) The caregiver or someone acting in his or her place makes an actual visit to the last known address of the parent(s), custodian, or guardian. The individual making this visit will need to describe what was found at this address and to whom he or she spoke regarding the missing parent(s), custodian, or guardian.

(4) Contact with social service agencies, place of employment, health care provider, or friends verified by a written statement signed by that party confirming that the location of the parent(s), custodian, or guardian is unknown.

IV. Affidavit:

Delaware Health and Social Services will maintain the affidavit required for caregivers to obtain a Caregivers' School Authorization. Anyone who wishes to obtain this affidavit may do so by contacting Delaware Health and Social Services, Division of Services for Aging and Adults with Physical Disabilities or their local school district office.

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION
Statutory Authority: 7 Delaware Code,
Chapter 60 (7 Del.C. Ch. 60)

SAN # 00-07

1. Title of the Regulations:

Regulation No. 38 - "Emission Standards for Hazardous Air Pollutants for Source Categories"

2. Brief Synopsis of the Subject, Substance and Issues:

Regulation No. 38 establishes emission limitations and work practice standards, as well as, the compliance, notification, monitoring, recordkeeping and reporting requirements, including the title V operating permit requirements for affected area sources. In December 1999, the underlying federal requirement was changed to defer title V operating permit requirements for these area sources from

12/9/99 to 12/9/04. This action is being taken to make Regulation No. 38 consistent with the recent federal change.

3. Possible Terms of the Agency Action:

None

4. Statutory Basis or Legal Authority to Act:

7 Delaware Code, Chapter 60

5. Other Regulations That May Be Affected by the Proposal:

None

6. Notice of Public Comment:

The public comment period for this proposed amendment will extend through August 31, 2000. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, August 23, 2000 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

7. Prepared by:

James R. Snead (302) 323-4542 June 30, 2000

Regulation No. 38

Emission Standards for Hazardous Air Pollutants for Source Categories

~~6/30/99~~ 10/11/00

Subpart M Perchloroethylene Air Emission Standards for Dry Cleaning Facilities

The provisions of Sections 63.320 through 63.325 in Subpart M, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1997 are hereby adopted by reference with the following changes:

(a) Except in section 63.325 of this subpart, "Department" shall replace "Administrator".

(b) Paragraph 63.320(b) shall be replaced with the following language: "Each dry cleaning system that commences construction or reconstruction on or after December 9, 1991, shall be in compliance with the provisions of this subpart beginning on June 30, 1999 or immediately upon startup, whichever is later, except for dry cleaning systems complying with section 112(i)(2) of the Clean Air Act."

(c) Paragraph 63.320(c) shall be replaced with the following language: "Each dry cleaning system that commenced construction or reconstruction before December 9, 1991, and each new transfer machine system and its

ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall be in compliance with the provisions of this subpart beginning on June 30, 1999."

(d) Dry cleaning machine systems subject to paragraphs 63.320(d) or 63.320(e) shall also be subject the requirements of 63.324(c).

(e) Paragraph 63.320(f) shall be replaced with the following language: "(f)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (d) or (e) of this section, but later exceeds those amounts, the existing dry cleaning system(s) and new transfer machine system(s) and its (their) ancillary equipment installed between December 9, 1991 and September 22, 1993 in the dry cleaning facility must comply with Sec. 63.322, Sec. 63.323, and Sec. 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (f)(1), if there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (d) or (e) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (d) or (e)."

(f) Paragraph 63.320(i) shall be replaced with the following language: "(i)(1) If the total yearly perchloroethylene consumption of a dry cleaning facility determined according to Sec. 63.323(d) is initially less than the amounts specified in paragraph (g) of this section, but then exceeds those amounts, the dry cleaning facility becomes a major source and all dry cleaning systems located at that dry cleaning facility must comply with the appropriate requirements for major sources under Secs. 63.322, 63.323, and 63.324 by 180 calendar days from the date that the facility determines it has exceeded the amounts specified, or by June 30, 1999, whichever is later.

(2) Following review of notification submitted in accordance with 63.324(c)(1), the Department may determine that the dry cleaning facility shall not be subject to the additional requirements imposed under paragraph (i)(1), if there has been no exceedance during the prior 36 months and ---

(i) The total yearly perchloroethylene consumption falls below and remains below the amounts specified in paragraph (g) before and after the next purchase of perchloroethylene, or

(ii) The exceedance occurred due to the initial filling of a newly installed dry-to-dry machine and the total yearly perchloroethylene consumption, exclusive of the quantity of perchloroethylene purchased to initially fill the newly installed dry-to-dry machine, remains below the amounts specified in paragraph (g)."

(g) Paragraph 63.320(j) shall be replaced with the following language: "(j)(1) All coin-operated dry cleaning machines are exempt from Sec. 63.320(f), Sec. 63.322, Sec. 63.323, and Sec. 63.324, except paragraphs 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323(d), and 63.324 (a), (b), (c), (d)(1), (d)(2), (d)(3), (d)(4), and (e).

(2) Facilities consisting of only coin-operated dry cleaning machines, unless otherwise subject to Regulation 30 permitting requirements, are exempt from paragraph 63.320(k)."

(h) Paragraph 63.320(k) shall be replaced with the following language: "The owner or operator of any source subject to the provisions of this subpart M is subject to Regulation 30 permitting requirements. These affected sources, if not major or located at major sources as defined under Regulation 30, are deferred by the Department from Regulation 30 permitting requirements until December 9, ~~1999~~ 2004. All sources receiving deferrals shall submit Regulation 30 permit applications by December 9, ~~2000~~ 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.320."

(i) The definition of Administrator found in Section 63.321 shall be replaced with the following language: "*Administrator* means the Administrator of the United States Environmental Protection Agency."

(j) The definition of Department is added to the list of definitions found in Section 63.321 with the following language: "*Department* means the Department of Natural Resources and Environmental Control as defined in Title 29, Delaware Code, Chapter 80, as amended."

(k) The definition of Diverter valve found in Section 63.321 shall be replaced with the following language: "*Diverter valve* means a flow control device or flow control devices that prevents room air from passing through a refrigerated condenser when the door of the dry cleaning machine is open."

(l) The opening to paragraph 63.322(b) shall be replaced with the following language: "The owner or operator of each new dry-to-dry machine and its ancillary equipment and of each new transfer machine system and its ancillary equipment installed on or after September 22, 1993:"

(m) Paragraph 63.322(m) shall be replaced with the following language: "The owner or operator of a dry

cleaning system shall repair all perceptible leaks detected under paragraph (k) or (l) of this section within 24 hours. If repair parts must be ordered, either a written or verbal order for those parts shall be initiated within 2 working days of detecting such a leak. Such repair parts shall be installed within 5 working days after receipt."

(n) The opening to paragraph 63.323(b) shall be replaced with the following language: "When a carbon adsorber is used to comply with Sec. 63.322(a)(2), Sec. 63.322(h) or exhaust is passed through a carbon adsorber immediately upon machine door opening to comply with Sec. 63.322(b)(3), the owner or operator shall measure the concentration of perchloroethylene in the exhaust of the carbon adsorber weekly with a colorimetric detector tube, while the dry cleaning machine is venting to that carbon adsorber at the end of the last dry cleaning cycle prior to desorption of that carbon adsorber to determine that the perchloroethylene concentration in the exhaust is equal to or less than 100 parts per million by volume. The owner or operator shall:"

(o) The opening to paragraph 63.324(a) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall notify the Department in writing by June 30, 1999 or upon startup, whichever is later, and provide the following information:"

(p) The opening to paragraph 63.324(b) shall be replaced with the following language: "Each owner or operator of a dry cleaning facility shall submit to the Department on or before the 30th day following start-up or June 30, 1999, whichever is later, a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:"

(q) Paragraph 63.324(c) shall be replaced with the following language: "(c)(1) Each owner or operator of an area source dry cleaning facility that exceeds the solvent consumption amounts specified in paragraphs 63.320 (d), (e) or (g) shall notify the Department not later than 30 days after the exceedance occurred. The notification shall provide the following information and shall be signed by a responsible official who shall certify its accuracy:

(i) The name and address of the dry cleaning facility;

(ii) A copy of the yearly perchloroethylene consumption records that indicate that there was an exceedance of the applicable amount specified in paragraphs 63.320 (d), (e) or (g);

(iii) The circumstances that led to the exceedance; and

(iv) A statement that all information contained in the notification is true and accurate.

(2) Each owner or operator of an area source dry cleaning facility that becomes subject to additional requirements under Sec. 63.320 (f)(1) or (i)(1) shall submit

to the Department on or before the dates specified in Sec. 63.320 (f)(1) or (i)(1), a notification of compliance status providing the following information and signed by a responsible official who shall certify its accuracy:

(i) The new yearly perchloroethylene solvent consumption limit based upon the yearly solvent consumption calculated according to Sec. 63.323(d);

(ii) Whether or not they are in compliance with each applicable requirement of Sec. 63.322; and

(iii) All information contained in the statement is accurate and true.”

(r) The opening to paragraph 63.325(a) shall be replaced with the following language: “Any person requesting that the use of certain equipment or procedures be considered equivalent to the requirements under Sec. 63.322 shall collect, verify, and submit to the Administrator (with copy to the Department) the following information to show that the alternative achieves equivalent emission reductions:”.

~~9/11/99~~ 10/11/00

Subpart N Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

The provisions of Sections 63.340 through 63.347 in Subpart N, of Title 40, Part 63 of the Code of Federal Regulations, dated July 1, 1998 are hereby adopted by reference with the following changes:

(a) Except as shown in Table N-1 of this subpart, “Department” shall replace “Administrator”.

(b) Paragraph 63.340(b) shall be replaced with the following language: “Owners or operators of affected sources subject to the provisions of this subpart must also comply with the requirements of subpart A of this regulation, according to the applicability of subpart A of this regulation to such sources, as identified in Table 1 of this subpart.”

(c) The opening sentence of paragraph 63.340(e)(1) shall be replaced with the following language: “The Department has determined, pursuant to the criteria under Sec. 3 of Regulation 30 of the State of Delaware “Regulations Governing the Control of Air Pollution”, that an owner or operator of the following types of operations that are not by themselves major sources and that are not located at major sources, as defined in Regulation 30, is permanently exempt from title V permitting requirements for that operation:”.

(d) Paragraph 63.340(e)(2) shall be replaced with the following language: “An owner or operator of any other affected source subject to the provisions of this subpart is subject to title V permitting requirements of Regulation 30. These affected sources, if not major or located at major sources as defined in Regulation 30, are deferred by the

Department from title V permitting requirements until December 9, ~~1999~~ 2004. All sources receiving deferrals shall submit title V permit applications by December 9, ~~2000~~ 2005. All sources receiving deferrals still must meet the compliance schedule as stated in Sec. 63.343.”

(e) The opening sentence of Section 63.341(a) shall be replaced with the following language: “Terms used in this subpart are defined in the Act, in subpart A of this regulation, or in this section. For the purposes of subpart N of this regulation, if the same term is defined in subpart A of this regulation and in this section, it shall have the meaning given in this section.”

(f) Paragraph 63.341(b)(10) shall be replaced with the following language: “ VR_{tot} = the average total ventilation rate for the three test runs as determined at the outlet by means of the Method 306 in appendix A of 40 CFR part 63 in dscm/min.”

(g) The first sentence of paragraph 63.342(f)(3)(i) shall be replaced with the following language: “The owner or operator of an affected source subject to the work practices of paragraph (f) of this section shall prepare an operation and maintenance plan to be implemented no later than September 11, 1999.”

(h) Replace all “Table 1 of this section” and “Table 1 of Sec. 63.342” with “Table 342-1 of this section” and “Table 342-1 of Sec. 63.342”, respectively.

(i) paragraph 63.342(f)(3)(i)(C) shall be replaced with the following language: “If the specific equipment used is not identified in Table 342-1 of this section, the plan shall incorporate proposed work practice standards. These proposed work practice standards shall be submitted to the Administrator (with copy to the Department) for approval as part of the submittal required under Sec. 63.343(d);”.

(j) The first sentence of paragraph 63.342(f)(3)(iii) shall be replaced with the following language: “Recordkeeping associated with the operation and maintenance plan is identified in Sec. 63.346(b) and paragraph (f)(3)(v) of this section.”

(k) Replace the title of table in Section 63.342 with the following title: “Table 342-1 to Sec. 63.342.--Summary of Work Practice Standards”.

(l) The following errata found in Table 342-1 as published in the Federal Register and the Code of Federal Regulations shall be corrected as follows:

- (i) Replace “chronic” with “chromic”;
- (ii) Replace “PSB” with “PBS”; and
- (iii) Replace “manufacturers” with

“manufacturer’s”.

(m) Replace each “this part” found in Sections 63.343 and 63.344 with “40 CFR part 63”.

(n) Paragraph 63.343(a)(1) shall be replaced with the following language: “The owner or operator of an existing affected source shall comply by September 11, 1999 with the emission limitations in Sec. 63.342.”

(o) Paragraphs 63.343(a)(1)(i) and (ii) shall be deleted.

(p) Paragraph 63.343(a)(2) shall be replaced with the following language: "The owner or operator of a new or reconstructed affected source that has an initial startup after January 25, 1995, shall comply by September 11, 1999 or immediately upon startup of the source, whichever is later. The owner or operator of a new or reconstructed affected source that has an initial startup after December 16, 1993 but before January 25, 1995, shall comply by September 11, 1999."

(q) Paragraph 63.343(a)(5) shall be replaced with the following language: "An owner or operator of an existing hard chromium electroplating tank or tanks located at a small, hard chromium electroplating facility that increases its maximum cumulative potential rectifier capacity, or its actual cumulative rectifier capacity, such that the facility becomes a large, hard chromium electroplating facility must comply with the requirements of Sec. 63.342(c)(1)(i) for all hard chromium electroplating tanks at the facility no later than 1 year after the month in which monthly records required by Secs. 63.342(c)(2) and 63.346(b)(12) show that the large designation is met."

(r) Paragraph 63.343(a)(6) shall be replaced with the following language: "An owner or operator of an affected source or sources that requests an extension of compliance shall do so in accordance with the applicable paragraphs of Sec. 63.6(i) of subpart A. When the owner or operator is requesting the extension for more than one affected source located at the facility, then only one request may be submitted for all affected sources at the facility."

(s) Paragraph 63.343(a)(6)(i) shall be deleted.

(t) Paragraph 63.343(a)(6)(ii) shall be deleted.

(u) Paragraph 63.343(b)(1) shall be replaced with the following language: "Except as provided in paragraphs (b)(2) and (b)(3) of this section, an owner or operator of an affected source subject to the requirements of this subpart is required to conduct an initial performance test as required under Sec. 63.7 of subpart A using the procedures and test methods listed in Secs. 63.7 of subpart A and 63.344 of this subpart."

(v) The first sentence of paragraph 63.343(c)(1)(ii) shall be replaced with the following language: "On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the composite mesh-pad system once each day that any affected source is operating."

(w) The first sentence of paragraph 63.343(c)(2)(ii) shall be replaced with the following language: "On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the velocity

pressure at the inlet to the packed-bed system and the pressure drop across the scrubber system once each day that any affected source is operating."

(x) The first sentence of paragraph 63.343(c)(4)(ii) shall be replaced with the following language: "On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source, or group of affected sources under common control, shall monitor and record the pressure drop across the fiber-bed mist eliminator, and the control device installed upstream of the fiber bed to prevent plugging, once each day that any affected source is operating."

(y) The first sentence of paragraph 63.343(c)(5)(ii) shall be replaced with the following language: "On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source shall monitor the surface tension of the electroplating or anodizing bath."

(z) The first sentence of paragraph 63.343(c)(6)(ii) shall be replaced with the following language: "On and after the date on which the initial performance test is required to be completed under Sec. 63.7 of subpart A, the owner or operator of an affected source shall monitor the foam blanket thickness of the electroplating or anodizing bath."

(aa) Paragraph 63.343(c)(8)(i) shall be replaced with the following language: "Requests and approvals of alternative monitoring methods shall be considered in accordance with Sec. 63.8(f)(1), (f)(3), (f)(4), and (f)(5) of subpart A."

(bb) Paragraph 63.343(d) shall be replaced with the following language: "An owner or operator who uses an air pollution control device not listed in this section shall submit to the Administrator (with copy to the Department) a description of the device, test results collected in accordance with Sec. 63.344(c) verifying the performance of the device for reducing chromium emissions to the atmosphere to the level required by this subpart, a copy of the operation and maintenance plan referenced in Sec. 63.342(f) including proposed work practice standards, and appropriate operating parameters that will be monitored to establish continuous compliance with the standards. The monitoring plan submitted identifying the continuous compliance monitoring is subject to the Administrator's approval."

(cc) The first sentence of paragraph 63.344(a) shall be replaced with the following language: "Performance tests shall be conducted using the test methods and procedures in this section and Sec. 63.7 of subpart A."

(dd) The last sentence of paragraph 63.344(c)(2)(iii) shall be replaced with the following language: "The other requirements of Sec. 63.7 of subpart A that apply to affected sources, as indicated in Table 1 of this subpart, must also be met."

(ee) The last sentence of paragraph 63.344(c)(4) shall

be replaced with the following language: "Procedures for requesting and obtaining approval are contained in Sec. 63.7(f) of subpart A."

(ff) The second sentence of paragraph 63.344(d)(4)(i) shall be replaced with the following language: "The port shall be located as close to the control system as possible, and shall be placed a minimum of 2 duct diameters downstream and 0.5 duct diameter upstream of any flow disturbance such as a bend, expansion, or contraction (see Method 1, 40 CFR part 60, appendix A)."

(gg) Paragraph 63.344(e)(2) shall be replaced with the following language: "When multiple affected sources performing the same type of operation (e.g., all are performing hard chromium electroplating) and subject to the same emission limitation are controlled with an add-on air pollution control device that is not controlling emissions from any other type of affected operation or from any nonaffected sources, the applicable emission limitation identified in Sec. 63.342 must be met at the outlet of the add-on air pollution control device."

(hh) The opening of paragraph 63.344(e)(3)(iv) shall be replaced with the following language: "Determine the total ventilation rate from the affected sources (VR_{inlet}) by using equation 1:

$$VR_{tot} \times IDA_i / IA_{total} = VR_{inlet} \text{ (1) where"}$$

(ii) Replace "Sigma VR_{inlet} " in paragraph 63.344(e)(3)(v) with " VR_{inlet} ".

(jj) The opening of paragraph 63.344(e)(4)(ii) shall be replaced with the following language: "Determine the total ventilation rate for each type of affected source ($VR_{inlet,a}$) using equation 3:

$$VR_{tot} \times IDA_{i,a} / IA_{total} = VR_{inlet,a} \text{ (3)where"}$$

(kk) The opening of paragraph 63.344(e)(4)(iii) shall be replaced with the following language: "Establish the allowable mass emission rate in mg/hr for each type of affected source (AMR_i) that is controlled by the add-on air pollution control device using equation 4, 5, 6, or 7 as appropriate:"

(ll) The opening of paragraph 63.344(e)(4)(iv) shall be replaced with the following language: "Establish the allowable mass emission rate (AMR_{sys}) in mg/hr for the system using equation 8, including each type of affected source as appropriate:"

(mm) Paragraph 63.345(b) shall be replaced with the following language: "New or reconstructed affected sources. The owner or operator of a new or reconstructed affected source is subject to applicable paragraphs of Sec. 63.5, as noted in Table 1 of subpart N, as well as the provisions of this section."

(nn) The first sentence of paragraph 63.345(b)(1) shall be replaced with the following language: "After September 11, 1999, whether or not an approved permit program is

effective in the State in which an affected source is (or would be) located, no person may construct a new affected source or reconstruct an affected source subject to this subpart, or reconstruct a source such that it becomes an affected source subject to this subpart, without submitting a notification of construction or reconstruction to the Department."

(oo) Paragraph 63.345(b)(2)(iii) shall be replaced with the following language: "A notification of intention to construct a new affected source or make any physical or operational changes to an affected source that may meet or has been determined to meet the criteria for a reconstruction as defined in Sec. 63.2 of subpart A;"

(pp) Paragraph 63.345(b)(2)(iv) shall be replaced with the following language: "An identification of subpart N of this regulation as the basis for the notification;"

(qq) Paragraph 63.345(b)(4), in its entirety, shall be replaced with the following language: "(4)(i) The owner or operator of a new or reconstructed affected area source that submits a notification in accordance with paragraphs (b)(1) through (3) of this section is not subject to approval by the Department. Construction or reconstruction is subject only to notification and can begin upon submission of a complete notification.

(ii) The owner or operator of a new or reconstructed affected major source that submits a notification in accordance with paragraphs (b)(1) through (3) of this section and an application for approval of construction or reconstruction in accordance with requirements of Sec. 63.5 of subpart A is subject to approval by the Department. Construction or reconstruction can not commence prior to receipt of the Department's approval of the application for approval of construction or reconstruction and/or approval of the Regulation 2 permit to construct application.

(iii) Additionally, the owner or operator of a new or reconstructed affected source may be required to obtain an approved construction permit under Regulation 2 of the State of Delaware "Regulations Governing the Control of Air Pollution", before commencing construction or reconstruction."

(rr) Paragraph 63.345(b)(5), in its entirety, shall be replaced with the following language: "(5) Submittal timeframes. After September 11, 1999, whether or not an approved permit program is effective in the State in which an affected source is (or would be) located, an owner or operator of a new or reconstructed affected source shall submit the notification of construction or reconstruction required by paragraph (b)(1) of this section and/or the application for approval of construction or reconstruction required by Sec. 63.5 of subpart A according to the following schedule:

(i) If construction or reconstruction commences after September 11, 1999, the notification and/or application shall be submitted as soon as practicable before the

construction or reconstruction is planned to commence.

(ii) If the construction or reconstruction had commenced and initial startup had not occurred before September 11, 1999, the notification and/or application shall be submitted as soon as practicable after September 11, 1999."

(ss) Paragraph 63.346(a) shall be replaced with the following language: "The owner or operator of each affected source subject to these standards shall fulfill all recordkeeping requirements outlined in this section and in subpart A of this regulation as identified in Table 1 of this subpart."

(tt) Paragraph 63.346(b)(15) shall be replaced with the following language: "Any information demonstrating whether a source is meeting the requirements for a waiver of recordkeeping or reporting requirements, if the source has been granted a waiver under Sec. 63.10(f) of subpart A; and".

(uu) Paragraph 63.346(b)(16) shall be replaced with the following language: "All documentation supporting the notifications and reports required by Sec. 63.9 and Sec. 63.10 of subpart A and Sec. 63.347 of this subpart."

(vv) Paragraph 63.346(c) shall be replaced with the following language: "All records shall be maintained for a period of 5 years in accordance with Sec. 63.10(b)(1) of subpart A."

(ww) Paragraph 63.347(a) shall be replaced with the following language: "The owner or operator of each affected source subject to these standards shall fulfill all reporting requirements outlined in this section and in subpart A of this regulation as identified in Table 1 of this subpart. These reports shall be mailed to the Administrator at the appropriate address as identified in Sec. 63.13 and to the Department, in accordance with 63.10(a)(4) of subpart A."

(xx) Paragraph 63.347(a)(1) shall be replaced with the following language: "Reports required by subpart A of this regulation and this section may be sent by U.S. mail, fax, or by another courier."

(yy) the opening of paragraph 63.347(c)(1) shall be replaced with the following language: "The owner or operator of an affected source that has an initial startup before September 11, 1999, shall notify the Department in writing that the source is subject to this subpart. The notification shall be submitted no later than September 11, 1999, and shall contain the following information:".

(zz) Paragraph 63.347(c)(1)(iii) shall be replaced with the following language: "A statement that subpart N of this regulation is the basis for this notification;".

(aaa) Paragraph 63.347(c)(1)(vi) shall be replaced with the following language: "For sources performing hard chromium electroplating, the maximum cumulative potential rectifier capacity;".

(bbb) Paragraph 63.347(c)(1)(vii) shall be replaced with the following language: "For sources performing hard

chromium electroplating, a statement of whether the affected source(s) is located at a small or a large, hard chromium electroplating facility and whether this will be demonstrated through actual or maximum cumulative potential rectifier capacity;".

(ccc) Paragraph 63.347(c)(1)(viii) shall be replaced with the following language: "For sources performing hard chromium electroplating, a statement of whether the owner or operator of an affected source(s) will limit the maximum cumulative potential rectifier capacity in accordance with Sec. 63.342(c)(2) such that the hard chromium electroplating facility is considered small; and" .

(ddd) Paragraph 63.347(c)(1)(ix) shall be replaced with the following language: "A statement of whether the affected source is located at a major source or an area source as defined in Sec. 63.2 of subpart A."

(eee) Paragraph 63.347(c)(2), in its entirety, shall be replaced with the following language: "(2) The owner or operator of a new or reconstructed affected source that has an initial startup after January 25, 1995 shall submit an initial notification, in addition to the notification of construction or reconstruction required by Sec. 63.345(b), as follows:

(i) A notification of the date when construction or reconstruction was commenced, shall be submitted simultaneously with the notification of construction or reconstruction, if construction or reconstruction was commenced before September 11, 1999;

(ii) A notification of the date when construction or reconstruction was commenced, shall be submitted no later than 30 calendar days after such date, if construction or reconstruction was commenced after September 11, 1999; and

(iii) A notification of the actual date of startup of the source shall be submitted by September 11, 1999 or within 30 calendar days after startup, whichever is later."

(fff) Paragraph 63.347(d)(2) shall be replaced with the following language: "In the event the owner or operator is unable to conduct the performance test as scheduled, the provisions of Sec. 63.7(b)(2) of subpart A apply."

(ggg) The opening of paragraph 63.347(e)(2) shall be replaced with the following language: "If the State in which the source is located has not been delegated the authority to implement the rule, each time a notification of compliance status is required under this part, the owner or operator of an affected source shall submit to the Administrator (with copy to the Department) a notification of compliance status, signed by the responsible official (as defined in Sec. 63.2 of subpart A) who shall certify its accuracy, attesting to whether the affected source has complied with this subpart. If the State has been delegated the authority, the notification of compliance status shall be submitted to the Department. The notification shall list for each affected source:".

(hhh) Paragraph 63.347(e)(3) shall be replaced with the

following language: "For sources required to conduct a performance test by Sec. 63.343(b), the notification of compliance status shall be submitted to the Department no later than 90 calendar days following completion of the compliance demonstration required by Sec. 63.7 of subpart A and Sec. 63.343(b) of this subpart."

(iii) Paragraph 63.347(e)(4) shall be replaced with the following language: "For sources that are not required to complete a performance test in accordance with Sec. 63.343(b), the notification of compliance status shall be submitted to the Department no later than 30 days after the compliance date specified in Sec. 63.343(a)."

(jjj) Paragraph 63.347(f)(1) shall be replaced with the following language: "If the State in which the source is located has not been delegated the authority to implement the rule, the owner or operator of an affected source shall report to the Administrator (with copy to the Department) the results of any performance test conducted as required by Sec. 63.7 of subpart A or Sec. 63.343(b) of this subpart. If the State has been delegated the authority, the owner or operator of an affected source should report performance test results to the Department."

(kkk) Paragraph 63.347(g)(2)(i)(B) shall be replaced with the following language: "The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of subpart A of this regulation and this subpart; and".

(lll) The opening sentence of paragraph 63.347(h) shall be replaced with the following language: "The requirements of this paragraph do not alleviate affected area sources from complying with the requirements of Regulation 2 and 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"."

(mmm) Paragraph 63.347(h)(3)(i)(B) shall be replaced with the following language: "The owner or operator continues to comply with all applicable recordkeeping and monitoring requirements of subpart A of this regulation and this subpart; and".

(nnn) The first sentence of paragraph 63.347(i) shall be replaced with the following language: "The requirements of this paragraph do not alleviate affected sources from complying with the requirements of Regulation 2 and 30 of the State of Delaware "Regulations Governing the Control of Air Pollution"."

(ooo) Paragraph 63.347(i)(1), in its entirety, shall be replaced with the following language: "(1) Not later than September 11, 1999, submit an initial notification that includes:

- (i) The same information as is required by paragraphs (c)(1)(i) through (v) of this section;
- (ii) A statement that a trivalent chromium process that incorporates a wetting agent will be used to comply with Sec. 63.342(e); and
- (iii) The list of bath components that comprise the

trivalent chromium bath, with the wetting agent clearly identified."

(ppp) Paragraph 63.347(i)(2) shall be replaced with the following language: "Within 30 days of the compliance date specified in Sec. 63.343(a) or by September 11, 1999, whichever is later, a notification of compliance status that contains an update of the information submitted in accordance with paragraph (i)(1) of this section or a statement that the information is still accurate."

(qqq) Replace the title of table following Section 63.347 with the following title: "Table 1 of Subpart N of Regulation 38 -- Subpart A (General Provisions) Applicability to Subpart N".

(rrr) The following errata found in Table 1 of Subpart N as published in the Federal Register and the Code of Federal Regulations shall be corrected as follows:

(i) "Sec. 63.345(c)(5)" noted in comments for 63.5(d)(1)(i) shall be replaced with "Sec. 63.5(b)(5)";

(ii) "Sec. 63.345(c)(5)" noted in comments for 63.5(f)(2) shall be replaced with "Sec. 63.5(b)(5)";

(iii) "part A" noted in comments for 63.6(b)(1)-(2) shall be replaced with "subpart A";

(iv) Reference to "63.6(i)(12)(ii)-(iii)" shall be replaced with "63.6(i)(12)(ii)-(iv)"; and

(v) Reference to "63.8(c)(4)-(7)" shall be replaced with "63.8(c)(4)-(8)".

(sss) In Table 1 of Subpart N, delete any "Comment" and change the applicability from "Yes" to "No" for the following "General provision references":

(i) "63.6(i)(2)";

(ii) "63.6(i)(5)";

(iii) "63.6(i)(6)(ii)";

(iv) "63.6(i)(10)(v)(B)";

(v) "63.6(i)(12)(i)"; and

(vi) "63.6(i)(12)(ii-iv)".

(ttt) In Table 1 of Subpart N, delete the "Comment" for the "General provision reference", "63.6(i)(4)(i)".

(uuu) In Table 1 of Subpart N, replace the "Comment" with the following language: "This paragraph only references "paragraph (i)(4)(ii) of this section" for compliance extension provisions." for the following "General provision references":

(i) "63.6(i)(6)(i)";

(ii) "63.6(i)(8)";

(iii) "63.6(i)(9)"; and

(iv) "63.6(i)(10)(v)(A)".

Table N-1 of Subpart N - Exceptions to "Department" as replacement of "Administrator" under Subpart N (a)

P.I. Number: 21.99

Reference	"Administrator" means "Administrator"	Comment
63.342(f)(3)(i)(C)	Yes	As replaced
Table 342-1 To Sec. 63.342	Yes	
63.343(c)(8)(i)	Yes	
63.343(d)	Yes	As replaced
63.344(c)(4)	Yes	
63.347(a)	Yes	As replaced
63.347(e)(2)	Yes	As replaced
63.347(f)(1)	Yes	As replaced
In Table 1 of Subpart N in comments for 63.8(f)(2)	Yes	

DEPARTMENT OF TRANSPORTATION

DIVISION OF HIGHWAY OPERATIONS

Statutory Authority: 2 Delaware Code,
Chapter 13 (2 Del.C. Ch. 13)

The Department of Transportation is proposing to adopt a Toll Exemption Policy approved by the Department of Transportation Policy Committee and signed by the Secretary, to be effective July 1, 2000, if applicable upon compliance with the regulatory process required by the Administrative Procedure Act (29 Del.C. Ch. 101).

Any comments or questions regarding the attached proposed Toll Exemption Policy should be directed to:

P.J. Wilkins, Toll Operations Manager
Delaware Department of Transportation
1200 Whitaker Road
Newark, DE 19702
(302) 631-4000
(302) 631-4004 (fax)
SMTP:PJWilkins@mail.dot.state.de.us

I. Purpose

The Purpose of this policy is to document toll exemption and emergency toll suspension guidelines. This policy establishes the use of E-ZPass for exempted travel to the extent possible.

II. Policy

Toll Exemption Guidelines:

A) Listed below are those individuals and/or vehicles whom/which shall be exempt from tolls on both I-95 and Route 1 while in the discharge of official duties in the normal course of business. (Discharge of official duties shall not include commuting to/from work, except for Toll Operations personnel.)

- Department of Transportation personnel (on official business only);
- Fire department, police department, and rescue squad of any state or political subdivision or municipality thereof;
- Ambulances;
- Employees of lessees located at the Newark Service Plaza on I-95;
- Agents and independent contractors performing work on the Delaware Turnpike portion of I-95 (between the Route 141 Interchange and Maryland State Line) or Route 1, pursuant to a contract with the Department of Transportation, while in the performance of such work;
- Delaware Transit Corporation Buses; and
- Funeral processions – to use the outside lanes whenever possible.

Non-revenue E-ZPass accounts shall be used for all individuals/vehicles listed above as operationally feasible, except that emergency vehicles responding to an emergency should use the outside lanes when passing through the toll plaza when ever possible.

B) For ease of clarification, the following individuals or vehicles are required to pay the toll:

- General motoring public;
- Personnel employed by other state agencies;
- All military and federal government personnel, including dignitaries;
- Armored car service;
- School and charter buses.

Emergency Toll Suspension:

A) The Director of the Division of Highway Operations

or designee has the limited authority to temporarily suspend the collection of tolls on any and all Delaware Toll Roads, in the event of an emergency condition. This authority is specifically limited to:

- Emergency conditions which effect the movement of traffic on the transportation system.
- Emergency conditions which are unforeseen and nonrecurring.
- Specific and clearly established periods of time sufficient to effectively manage the movement of traffic during the emergency condition.

B) The Director of the Division of Highway Operations or designee has the limited authority to exempt specific eleemosynary organizations (for example Red Cross) from tolls while they are engaged in specific and defined emergency relief efforts.

C) Toll Operations management is responsible and authorized to develop operating procedures and protocols to administer this policy implement and account for the exempted travel.

III. Justification

The Department of Transportation recognizes the need to provide an exemption from tolls for certain vehicles using the I-95/Route 1 toll roads. The Department also realizes that this need must be balanced with its requirement to preserve the financial integrity of these revenue producing assets of the State while adhering to all trust agreements governing the collection of pledged revenues of the Transportation Trust Fund.

IV. Approval by Policy Committee

This policy revision was reviewed and approved by the Department's Policy Committee on November 2, 1999.

V. Responsibility

The Division of Highway Operations shall have primary responsibility for implementation of this policy. Implementation shall also include an annual review of the effectiveness of the policy and a recommendation to the Policy Committee whether the policy should be amended or retained without change.

VI. Effective Date

This policy shall become effective thirty days after signature by the Secretary, or, if applicable, upon compliance with the regulatory process required by the Administrative Procedures Act (29 Del.C. Ch. 101).

Reviewed

Gregory P. Oliver, Assistant Director of Policy

Accepted

John J. Gilbert, Director, Division of Highway Operations

Approved

Anne P. Canby, Secretary

Approved as to Form

Frederick H. Schranck, Esq., Deputy Attorney General

Symbol Key

Roman type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. [**Bracketed Bold language**] indicates text added at the time the final order was issued. [~~Bracketed stricken through~~] indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the Register of Regulations. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the Register of Regulations, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

Statutory Authority: 24 Delaware Code,
Section 1906(19) (24 Del.C. 1906(19))

**BEFORE THE JOINT PRACTICE COMMITTEE OF
THE BOARD OF NURSING**

Order

WHEREAS, pursuant to 24 Del.C. § 1906(19) the Board of Nursing is empowered to create a regulatory committee entitled the Joint Practice Committee which, with the approval of the Board of Medical Practice, has the responsibility for promulgating Rules and Regulations regarding advance practice nurses who have independent practice and/or independent prescriptive authority; and,

WHEREAS, the Committee has proposed to adopt amendments to the Rules and Regulations which govern advance practice nurses who have independent practice and/or independent prescriptive authority, as more specifically set forth in the Notice appearing in the Delaware *Register of Regulations* published June 1, 2000; and,

WHEREAS, pursuant to 29 Del.C. § 10115, notice was given to the public that a hearing would be held on July 5, 2000, at 5:30 p.m. in the Conference Center at the Delaware

Technical and Community College Stanton Campus, 400 Christiana-Stanton Road, Newark, Delaware to consider the proposed Rules and Regulation changes; and,

WHEREAS, the notice invited interested persons to submit comments orally or in writing regarding the proposed amendments; and,

WHEREAS, a hearing was held on July 5, 2000 at which a quorum of the Joint Practice Committee was present; and,

WHEREAS, there were no written comments submitted by the public at the public hearing. There were written comments filed by the Executive Director of the Board of Medical Practice which are addressed below; and

WHEREAS, the Joint Practice Committee finds the proposed amendments serve to clarify its Rules and Regulations and to ensure that its Rules and Regulations are in compliance with 29 Del.C. §8807(n) and Chapter 19 of Title 24 (The Nurse Practice Act).

NOW, THEREFORE, based on the authority of the Joint Practice Committee to promulgate, adopt and revise rules and regulations pursuant to 24 Del.C. §1906(19), it is the decision of the Joint Practice Committee of the Board of Nursing, subject to the approval of the Board of Medical Practice, to adopt the proposed Rules and Regulations, a copy of which are attached hereto as Exhibit "A" and incorporated herein. The suggested addition from the Executive Director of the Board of Medical Practice that there be a definition of a "licensed physician, dentist, or podiatrist" which identified the various licensing Boards,

can and will be accommodated by the addition of the word “duly” prior to the term “licensed Delaware physician...” to make it explicit that the individual holds the appropriate license to authorize practice in the State of Delaware. This is a non-substantive modification. The effective date of these Rules and Regulations as modified is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 Del.C. § 10118(e).

IT IS SO ORDERED this 5th day of July, 2000.

Joint Practice Committee Of The Board Of Nursing
(As authenticated by a quorum of the Committee):

BEFORE THE BOARD OF MEDICAL PRACTICE

Order

AND NOW, to-wit, this 11th day of July, 2000, the Board of Medical Practice having considered the hereto attached Rules and Regulations promulgated and approved by the Joint Practice Committee of the Board of Nursing, said Rules and Regulations are hereby APPROVED.

BY ORDER OF THE BOARD:

- Jose S. Barriocanal, M.D., Board Member
- Stephen Fanto, M.D., Board Treasurer, Board Member
- Constantine O. Michell, D.O., Board Member
- Bruce Bolasny, M.D., Board Member
- Janet Kramer, M.D., Board Member
- Venerando J. Maximo, M.D., Board Member
- Edward J. McConnell, M.D., Board Vice President
- Carolyn E. McKown, Board Member
- Bentley A. Hollander, M.D., Board Member
- Vance Daniels, Board Member
- Garrett Colmorgan, M.D., Board Member
- Cleo Fountain, Board Member
- Lois W. Dow, M.D., Board Member
- Catherine Hickey, Esquire, Board President

- 1.0 General Provisions for the Operation of the Board of Nursing
- 2.0 Nursing Education Programs
- 3.0 Nursing Refresher Courses
- 4.0 Alternate Supervised Practice Plan for Nurses Inactive in Practice Five or More Years if No Refresher Course is Available
- 5.0 Guidelines for Courses Related to Assistance with Medications
- 6.0 Requirements and Procedures for Licensure
- 7.0 Standards of Nursing Practice
- 8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of

- Delaware
- 9.0 Rules and Regulations Pertaining to Mandatory Continuing Education
- 10.0 Disciplinary Proceedings
- 11.0 Public Records
- 12.0 Advisory Committees
- 13.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 General Provisions for the Operation of the Delaware Board of Nursing

These Rules and Regulations are adopted by the Delaware Board of Nursing by authority of the Delaware Nurse Practice Act, 24 Del.C. §1906(1).

1.1 Officers

The officers of the Board shall be the President and the Vice-President to be elected each year during the month of June and to assume their duties as of July 1.

1.1.1 The President of the Board shall:

1.1.1.1 Chair all regular and disciplinary hearings of the Board;

1.1.1.2 Represent the Board at the National Council of State Boards of Nursing (NCSBN) Delegate Assembly as a voting delegate, certain professional and/or community functions, and regional or national meetings, or shall designate a member or the Executive Director to represent the Board;

1.1.1.3 Sign all correspondence conveying rulings of the Board to nursing service agencies and educational institutions;

1.1.1.4 Execute those functions delegated to the President elsewhere in these rules and regulations, or otherwise by law;

1.1.1.5 Review the agenda for the Board meeting with the Executive Director prior to distribution.

1.1.2 The Vice-President of the Board shall:

1.1.2.1 Chair meetings and hearings in the absence of the President;

1.1.2.2 Execute those functions delegated to the Vice-President elsewhere in these rules and regulations, or otherwise by law;

1.1.2.3 Represent the Board at the NCSBN Delegate Assembly, and other meetings as delegated by the President or the Board, as a voting delegate.

1.1.3 Filling Vacancies:

1.1.3.1 In the event of a resignation, termination or departure of one of the officers, a replacement shall be elected at the next Board meeting or at a meeting called for that purpose. A quorum of the Board is required.

1.1.3.2 In the event one of the officers shall not be available to fulfill their duties for a period not exceeding three months, the Board shall nominate one of its members to serve for the interim period.

1.2 Members

1.2.1 All members appointed to the Board share the responsibility vested in the Board. The President of the Board shall consider qualifications and educational preparation in delegating certain duties to individual members of the Board.

1.2.2 Board members in executive session may review drafts of National Council Licensure Examination questions for Registered Nurses and Licensed Practical Nurses.

1.2.3 Two Board members, one a Registered Nurse and one a Licensed Practical Nurse, shall be chosen as alternate voting delegates to the NCSBN Delegate Assembly if one of the voting delegates can not attend.

1.2.4 The members of the Board shall attend all scheduled Board business meetings. If there are extenuating circumstances which prevent a member from attending all or part of a scheduled meeting, the Executive Director should be informed in writing, if time permits, or by telephone, in advance of the meeting.

1.2.5 All members are expected to be aware of and follow their obligations under the State Employees', Officers' and Officials' Code of Conduct.

1.3 Duties of the Executive Director

1.3.1 The Division of Professional Regulation prescribes the duties of the Executive Director. See 29 **Del.C.** §8810(a).

1.4 Meetings

1.4.1 The Board of Nursing shall meet as often as necessary to transact the regular business of the Board.

1.4.2 Special meetings may be called at the request of the president or any two Board members.

1.4.3 An agenda shall be mailed to Board members prior to each meeting and notice of each meeting shall be given in accordance with the Freedom of Information Act.

1.4.4 The order of business for all regular meetings shall be:

- 1.4.4.1 Call to Order
- 1.4.4.2 Disposition of Minutes
- 1.4.4.3 Adoption of the Agenda
- 1.4.4.4 Activities Report
- 1.4.4.5 Unfinished Business
- 1.4.4.6 Committee Reports
- 1.4.4.7 President's Report
- 1.4.4.8 Executive Director's Report
- 1.4.4.9 Licensee Applicant Reviews
- 1.4.4.10 Licensee Reviews
- 1.4.4.11 Other Business
- 1.4.4.12 Licensee Approval
- 1.4.4.13 Next Meeting
- 1.4.4.14 Public Comment
- 1.4.4.15 Adjournment

1.4.5 Hearings shall be included in 1.4.4.10 for information purposes.

1.5 Requests for Meeting with the Board

1.5.1 The Board shall meet, upon request, with any group. The group asking for a meeting shall be asked to submit, in advance, items of interest for the agenda and shall receive a copy of the minutes. A request for a meeting shall be honored at the earliest convenience of the Board.

2.0 Nursing Education Programs

2.1 Definitions

"Board" - the Delaware Board of Nursing.

"Conditional Approval" - the status granted to a program that is determined to be deficient in a specified area. When this determination is made by the Board, written notice shall be sent to the program specifying the deficient areas, and the time limit within which the deficiencies are to be corrected.

"Full Approval" - the status granted to a program that meets the requirements of the Law and the Rules and Regulations of the Board. Continuation of full approval is contingent upon annual review of the program and continuing to meet the criteria.

"Initial Approval" - authorization to admit students and enter into contractual agreements for clinical facilities. It is granted only after an application has been submitted, reviewed and a survey visit made by the Board. No students shall be admitted to the program until the institution has received written notification that initial approval has been granted. Failure to comply will delay initial approval.

"National Accrediting Agency For Nursing Education"- a national accrediting agency for nursing education that is recognized by the Council on Postsecondary Accreditation and by the U.S. Department of Education.

See 1 DE Reg 1879 (6/1/98)

"Nursing education program" - as defined in 24 **Del.C.** Ch. 19.

2.2 Authority Designated to Board of Nursing

2.2.1 In accordance with 24 **Del.C.** Ch. 19, the Board may:

2.2.1.1 Approve curricula and develop criteria and standards for evaluating nursing education programs;

2.2.1.2 Provide for surveys of such programs at such time as it may deem necessary;

2.2.1.3 Approve such programs to meet the requirements of the Chapter and of the Board; and

2.2.1.4 Deny or withdraw approval from nursing education programs for failure to meet prescribed curriculum or other standards. (Subsections 1906 (b), (c), (e)).

2.3 Purposes of Approval

2.3.1 The state requires that nursing education programs be approved in order to:

2.3.1.1 Provide for the safe practice of

nursing by setting minimum requirements for the programs that prepare the licensee.

2.3.1.2 Encourage self-evaluation for the improvement of a nursing education program.

2.3.1.3 Provide for the public a list of nursing education programs that meet the requirements set by the Board.

2.3.1.4 Assure the graduates of approved nursing programs of their eligibility to apply for admission to the licensing examination and to facilitate their licensure by endorsement in other states.

2.4 Procedure for Establishing a Nursing Education Program

2.4.1 Phase I

2.4.1.1 An administrative officer of the institution shall complete the appropriate application form and forward three copies to the Executive Director of the Board at least 12 months prior to enrollment of students.

2.4.1.2 The Board shall review the application and conduct a site visit. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.4.1.2.1 Alternatively, the institution desiring to establish a nursing education program may elect to have the site visit made by a Board member(s) and a nursing education consultant, the latter with special expertise in the same type of nursing education as the program. The consultant shall be from a list of qualified persons approved by the Board. Costs associated with the visit of the consultant shall be borne by the nursing education program requesting same.

2.4.1.3 The purpose of the site visit is to validate the information recorded on the application.

2.4.1.4 The site visitation team shall make a written report to the Board.

2.4.1.5 The Board shall report to the institution within 90 days after all requirements of Phase I have been met.

2.4.2 Phase II

2.4.2.1 The institution shall notify the Board of the appointment of a qualified nurse as director of the program at least nine months in advance of the anticipated enrollment of students in nursing courses.

2.4.2.2 The director shall be responsible for planning the program and providing the information required in Part II of the application form, which must be resubmitted at least three months prior to the anticipated enrollment of students.

2.4.2.3 The Board shall review the application and supporting information at a regularly scheduled meeting and determine if the program is prepared to admit students. If it is so determined, initial approval will be granted.

2.4.3 Phase III

2.4.3.1 Following initial approval, the director of the program shall submit five copies of a progress report to the Board every six months. This shall be a general report of progress to date to include number of students enrolled, attrition rate, faculty credentials, curriculum design, and use of clinical facilities. After the admission of students, these reports shall continue to be submitted at six month intervals until discontinued by the Board.

2.4.3.2 The institution shall appoint other qualified nurse faculty members no less than four months in advance of enrollment of students in nursing courses to participate in determining the theoretical framework and in developing the curriculum plan and course content.

2.4.3.2.1 The program shall be developed according to criteria in accordance with 2.5 of these Regulations. The curriculum plan, including course descriptions, shall be submitted for Board review and approval three months in advance of enrollment of students in nursing courses.

2.4.3.3 Following the graduation of the first class, the nurse faculty shall prepare and submit five copies of a self evaluation report to the Board for review. The Board will conduct a survey visit to consider full approval of the program.

2.4.3.3.1 The Board's decision regarding approval status shall be sent in writing to the appropriate administrative officers and to the director of the nursing education program.

2.5 Standards for Approval

2.5.1 Organization and Administration.

2.5.1.1 The school shall be authorized to conduct a nursing education program by charter or articles of incorporation of the controlling institution, by resolution of its board of control, or by the school's own charter or articles of incorporation.

2.5.1.2 Universities, colleges, community or junior colleges, and public schools offering programs in nursing shall be accredited by their appropriate agencies.

2.5.1.3 Hospitals conducting a nursing education program shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association.

2.5.1.4 Any agency or institution that is used by a nursing education program shall be authorized to conduct business in the state of Delaware, or in the state in which the agency or institution is located.

2.5.1.5 The authority and responsibility for the operation of the nursing education program shall be vested in a director who is duly licensed to practice professional nursing in Delaware and who is responsible to the controlling board, either directly or through appropriate administrative channels.

2.5.1.6 A written organization plan shall be prepared and submitted to the Board and shall indicate the

lines of authority and communication of the program to the controlling body, other departments within the controlling institution, the affiliating and cooperating agencies, and to the advisory committee, if one exists.

2.5.1.7 Adequate funds shall be allocated by the controlling agency to carry out the stated purposes of the program. The director of the nursing program shall be responsible for budget recommendations and administration, consistent with the established policies of the controlling agency.

2.5.1.8 When the program uses educational or clinical resources that are under the control of another authority, there shall be written agreements with each resource provider. Such agreements shall be developed jointly with the provider, reviewed periodically according to the policies of the program and the agency, and include provision for adequate notice of termination.

2.5.1.9 Clerical services shall be provided to support the program with a minimum of one full-time secretary and additional secretarial staff as needed.

2.5.2 Philosophy and Objectives

2.5.2.1 Philosophy and objectives shall be clearly stated in writing.

2.5.3 Faculty

2.5.3.1 Minimum Qualifications

2.5.3.1.1 All nursing faculty members, including the director, shall hold current licenses to practice as Registered Nurses in Delaware.

2.5.3.1.2 The director and each member of the nursing faculty shall be academically and professionally qualified for the position to which appointed. All nursing faculty members shall maintain professional competence in their area(s) of teaching responsibility through professional development activities such as nursing practice, participation in professional meetings, workshops, formal college courses, and nursing research.

2.5.3.1.3 The director of a baccalaureate degree program shall hold an earned doctoral degree or have a specific plan for completing a doctoral degree and shall hold a degree in nursing at the Master's level or higher. The director shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

2.5.3.1.4 The director of a nursing education program shall hold a minimum of a Master's degree. The director shall hold a degree in nursing at the baccalaureate level or higher and shall have experience in nursing practice, nursing education and shall give evidence of ability in providing leadership. A director employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining

in the employ of that school.

2.5.3.1.5 Each member of the nursing faculty shall hold a baccalaureate degree in nursing or a Master's in nursing. Faculty employed by the school prior to the promulgation of these Rules and Regulations shall be exempt from this rule while remaining in the employ of that school.

2.5.3.1.6 Non-nurse members of the faculty shall hold academic and professional credentials in their field of specialization.

2.5.3.2 Number

2.5.3.2.1 The number of faculty members shall be sufficient to prepare the students for licensure, to achieve the objectives as stated in the school's application, and reasonably proportionate to:

2.5.3.2.1.1 Number of students enrolled;

2.5.3.2.1.2 Frequency of admissions;

2.5.3.2.1.3 Education and experience of faculty members;

2.5.3.2.1.4 Number and location of clinical facilities; and

2.5.3.2.1.5 Total responsibilities of the faculty members.

2.5.3.3 Conditions of employment

2.5.3.3.1 Qualifications and responsibilities for faculty member positions shall be defined in writing.

2.5.3.3.2 Written personnel policies shall be consistent with the policies of the sponsoring institution.

2.5.3.3.3 Faculty assignments shall allow time for class and laboratory preparation, teaching, program evaluation, improvement of teaching methods, guidance of the students, participation in faculty organizations and committees, attendance at professional meetings, and participation in continuing education activities.

2.5.3.4 Functions

2.5.3.4.1 The principal functions of the faculty shall be to:

2.5.3.4.1.1 Develop the philosophy and objectives of the nursing program;

2.5.3.4.1.2 Develop, implement, evaluate and revise the curriculum;

2.5.3.4.1.3 Participate in the recruitment, admission and retention of students in the nursing program;

2.5.3.4.1.4 Establish criteria for promotion and completion of the program in nursing;

2.5.3.4.1.5 Evaluate student achievement on the basis of established criteria;

2.5.3.4.1.6 Recommend successful

candidates for degree, diploma and other forms of recognition; and

2.5.3.4.1.7 Participate in appropriate activities of the controlling institution.

2.5.3.5 Organization

2.5.3.5.1 The nursing faculty shall attend regular meetings of the faculty for the purpose of developing, implementing and evaluating the nursing curriculum.

2.5.3.5.2 Committees shall be established as needed.

2.5.3.5.3 Written rules or bylaws shall govern the conduct of nursing faculty meetings and committees.

2.5.3.5.4 Minutes of faculty and committee meetings, including action taken, shall be recorded and available for reference.

2.5.3.5.5 Provision shall be made for nursing student membership and participation on faculty committees and in committee meetings as appropriate.

2.5.3.5.6 Where nursing practice/education (advisory) committees are established, their functions and relationship to the board of control and to the program shall be clearly defined

2.5.3.5.7 Written rules shall govern the activities of the nursing practice/education (advisory) committee(s) and minutes of the meetings shall be on file in the administrative office of the program.

2.5.4 Students

2.5.4.1 Admission, Promotion and Graduation

2.5.4.1.1 Criteria

2.5.4.1.1.1 Policies and procedures related to the selection and admission of students are the responsibility of the individual school.

2.5.4.1.1.2 Students shall be admitted on the basis of established criteria and without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

2.5.4.1.1.3 There shall be written policies for the admission and re-admission of students.

2.5.4.1.1.4 Schools granting advanced standing after admission via challenge examinations, College Level Examination Program, teacher made tests or any other method shall have written criteria for granting course credit.

2.5.4.1.1.5 The policies for promotion, retention and graduation shall be published in the school catalogue or in other appropriate documents that are available to students.

2.5.4.1.1.6 All candidates in a program that requires applicants to be registered nurses must be licensed in Delaware if any clinical experiences occur in the State.

2.5.4.2 Services

2.5.4.2.1 There shall be written policies for student welfare as related to health, counseling and guidance, financial aid, and residence life, if offered.

2.5.4.2.2 There shall be well-defined written policies governing payment and refund of tuition and other fees.

2.5.5 Information

2.5.5.1 Annual Report

2.5.5.1.1 By October 1 of each year, five copies of an annual report of the nursing education program shall be sent to the Board, using the format supplied by the Board. The report will include information from August 1 of the previous year through July 31 of the current academic year.

See 3 DE Reg 1373 (4/1/00)

2.5.5.2 School Records

2.5.5.2.1 A nursing education program shall maintain a system of records which shall contain all data relating to approval by any agency or body. The data shall include, but not be limited to, course outlines, minutes of faculty and committee meetings, pertinent correspondence, reports of standardized tests and survey reports. Such data shall be available to the Board representatives during the course of a site survey visit subject to applicable provisions of state and federal law.

2.5.5.3 Student Records

2.5.5.3.1 The school shall maintain a record for each student. Subject to applicable provisions of law, such records shall be available to Board representatives during the course of a site survey visit.

2.5.5.3.2 A final transcript for each student shall be retained in the permanent records of the school.

2.5.5.3.3 Provision shall be made for the protection of records against loss, destruction and unauthorized use.

2.5.5.4 School Bulletin or Catalogue

Current information about the school shall be published periodically and distributed to students, applicants for admission and to the Board. It should include a general description of the program, philosophy and objectives of the controlling institution and of the nursing programs, admission and graduation requirements, fees, expenses, and financial aid, educational facilities, living accommodations, student activities and services, curriculum plan, course descriptions, and faculty staff roster.

2.5.6 Curriculum

The following shall apply to nursing education programs:

2.5.6.1 Nursing Education Programs

2.5.6.1.1 The curriculum shall reflect the stated philosophy and objectives of the school and evidence of an organized pattern of instruction and

appropriate supervised nursing practice consistent with sound educational practices and principles of learning.

2.5.6.1.2 LPN and RN programs shall provide for concurrent or correlated theory and clinical practice in the physical and/or mental health care of individuals of all ages, the nursing care of mothers and newborns, children, adults, the aged, individuals with mental health problems, and individuals in diverse settings, not necessarily in separate courses.

2.5.6.1.2.1 Clinical experiences shall include preventive aspects of illness, nursing care of persons with acute and chronic illnesses and rehabilitative care. Opportunities shall be provided for the student to participate in patient teaching in a variety of settings with individuals, families and other groups.

2.5.6.1.2.2 Concurrent and or correlated theory shall include the history of nursing, health care issues, and legal-ethical issues.

2.5.6.1.3 The RN curriculum shall provide instruction in the following fields:

2.5.6.1.3.1 Physical and biological sciences including content from the areas of anatomy and physiology, chemistry, microbiology, pharmacology and nutrition, which may be integrated, combined or presented as separate courses, and

2.5.6.1.3.2 Social and behavioral sciences including content drawn from the fields of communication theory, psychology and sociology and shall serve as a basis for the selection of learning experiences which develop abilities and skills in observation, interviewing, interpersonal relations, and problem-solving.

2.5.6.1.3.3 Professional nursing responsibilities.

2.5.6.1.3.4 Nursing research and nursing leadership in BSN programs.

2.5.6.1.4 The LPN curriculum shall provide instruction in the following fields:

2.5.6.1.4.1 Essential facts and principles in the biological, physical and social sciences including body structure and functions, elementary microbiology, pharmacology and nutrition, signs of emotional and mental health, human growth and development, and administration of medications.

2.5.7 Evaluation

2.5.7.1 Evaluation as a basis for curriculum revision and change in practices is a continuous process and an inherent responsibility of the faculty. The degree to which the faculty accomplishes its objectives shall be determined through evaluation of curriculum content, teaching methodologies, clinical and other learning experiences, student progress, success of graduates on the licensing examination, promotion, retention and degree of nursing competence of the graduate.

2.5.8 Educational Facilities

2.5.8.1 Classrooms, laboratories, and conference rooms shall be adequate in number, size and type for the number of students and educational purposes for which the rooms are used.

2.5.8.2 Offices

2.5.8.2.1 Offices shall be available and adequate in size, number and type to provide faculty with opportunities for uninterrupted work and privacy for conferences with students.

2.5.8.2.2 Space for clerical staff, records, files and other equipment shall be adequate for the needs of the program.

2.5.8.3 Learning Resources

2.5.8.3.1 The library shall have recent, pertinent and sufficient holdings to meet the learning needs of students and faculty.

2.5.8.3.1.1 Provision shall be made for regular additions to and deletions from the library collection.

2.5.8.3.1.2 Library facilities and policies shall be conducive to effective use.

2.5.8.3.2 Equipment shall be available so that a multimedia approach to learning is afforded.

2.5.8.4 Clinical Facilities

2.5.8.4.1 The clinical facility to which the student is assigned for clinical practice is considered an integral part of the nursing program.

2.5.8.4.1.1 Clinical facilities shall be selected by the faculty to provide learning experiences essential to achieve the stated purposes of the program and the stated objectives for each clinical course. They may include, but are not limited to:

2.5.8.4.1.1.1 Inpatient facilities such as acute care hospitals, specialized hospitals, long term and extended care facilities.

2.5.8.4.1.1.2 Outpatient facilities such as hospital based clinics, community health centers, mental health clinics and physicians' offices.

2.5.8.4.1.1.3 Other community agencies such as hospices, health maintenance organizations, day care centers, senior centers and prisons.

2.5.8.4.1.2 The following criteria for clinical facility use must be met:

2.5.8.4.1.2.1 There shall be an environment in which effective learning can take place and in which the student is recognized as a learner.

2.5.8.4.1.2.2 There shall be an adequate number of qualified professional and other nursing personnel not including the student, to ensure safe care of the patient.

2.5.8.4.1.2.3 There shall be a sufficient number and variety of patients to provide adequate learning experiences.

2.5.8.4.1.3 Hospital facilities shall be accredited by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association. Other facilities such as specialized hospitals, long term and extended care facilities and community health agencies shall be licensed or approved by the appropriate approving authority.

2.5.8.4.1.4 Facilities used for clinical experience shall be approved by the Board prior to the assignment of students. Approval shall be based on information provided by the school on forms furnished by the Board. A visit by Board representatives to the clinical site may be scheduled.

2.5.8.4.1.5 Clinical facilities used in another state require written notification to that jurisdiction's Board of Nursing.

2.5.8.4.1.6 Written agreements between the school and agencies involved shall:

2.5.8.4.1.6.1 Ensure that the faculty are ultimately responsible for the students' learning experiences.

2.5.8.4.1.6.2 Provide for continuous planning for students in cooperation with the director of nursing and appropriate nursing staff of the agency.

2.5.8.4.1.6.3 Provide adequate space for the number of students and faculty to conduct educational conferences.

2.5.8.4.1.7 Observational experiences shall be planned in cooperation with the agency to meet stated objectives.

2.5.9 Program Changes

2.5.9.1 Program Changes Requiring Board of Nursing Prior Approval

2.5.9.1.1 Changes in the philosophy and/or objectives of the program.

2.5.9.1.2 Changes in the overall curriculum plan.

2.5.9.1.3 Changes in the administrative sponsorship of the program.

2.5.9.2 Procedure for Approval of Program Change

2.5.9.2.1 When a program change is contemplated, consultation from the Board is available.

2.5.9.2.2 When any program change is proposed, a written plan shall be submitted to the Board including the:

2.5.9.2.2.1 Description of the change

2.5.9.2.2.2 Rationale for the change

2.5.9.2.2.3 Relationship of the proposed change to the present program.

2.5.9.3 Three copies of these materials shall be submitted to the Board at least one month prior to the

Board meeting at which time the request will be considered.

2.5.10 Procedure for Continuing Full Approval

2.5.10.1 Each nursing education program that is accredited by a Board-approved national accrediting agency for nursing education must submit a copy of the self-study document and the letter of notification of accreditation status by October following the reaccreditation visit. This is contingent on the program remaining accredited and sharing copies of all correspondence related to compliance with the national accrediting agency's recommendations. Extraneous material will be disseminated to Board Members at the discretion of the Executive Director in consultation with the President.

See 1 DE Reg 1883 (6/1/98)

See 3 DE Reg 1373 (4/1/00)

2.5.10.2 Each nursing education program that does not have Board approved national accreditation will be re-evaluated at least every five years. Survey visits may be scheduled as determined by the Board.

See 1 DE Reg 1884 (6/1/98)

2.5.10.2.1 Representative(s) of the Board will conduct a survey visit on a date mutually acceptable to the nursing program and the Board.

2.5.10.2.2 The Board shall notify the director of the nursing education program of the intended survey visit by June of the year preceding the survey visit. The Director shall coordinate an agenda for the visit with the Board and submit it to the Board office three weeks prior to the visit for distribution to the team.

2.5.10.2.3 The school shall submit five copies of a comprehensive self-evaluation report, following the format supplied by the Board, by October 1 of the survey year.

See 3 DE Reg 1373 (4/1/00)

2.5.10.3 Interim visits may be made at any time within the five-year period either by request or as deemed necessary by the Board, with advance notice. At least one of the visitors shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.5.10.4 If the Board determines that a program is not maintaining the standards of Section 2.5 of these Rules and Regulations, the program shall be granted conditional approval and given a reasonable period of time to correct deficiencies.

2.5.10.5 A failure to attain an eighty percent pass rate on the licensure examination for first time candidates as reflected in two consecutive annual reports will require presentation to the Board of a plan to identify and correct deficiencies. Progress reports will be required.

2.5.10.5.1 A program reporting five or fewer candidates in a 12 month period with a failure to attain an eighty percent pass rate as reflected in two consecutive annual reports must provide a written explanation to the

Board for action.

2.5.10.6 Deficiencies sufficient to warrant a determination of conditional approval (probation) may include one or more of the following:

2.5.10.6.1 Failure to adhere to the school's stated philosophy and curriculum objectives.

2.5.10.6.2 Repeated violations of stated academic and/or admission policies.

2.5.10.6.3 Failure to maintain a faculty and administration of adequate size and qualifications.

2.5.10.6.4 Use of students for nursing services or other purposes that are not primarily educational.

2.5.10.6.5 Failure to provide adequate resources for cognitive learning and clinical practice.

2.5.10.6.6 Failure to admit and retain students and/or hire and promote faculty and other personnel without discrimination as to age, race, religion, sex, sexual preference, national origin, or disability.

2.5.10.6.7 Failure to attain an eighty percent pass rate on the licensure examination for first time candidates in any three consecutive calendar years.

2.5.10.6.8 Any other deficiencies that, in the opinion of the Board, detrimentally affect the educational process.

2.5.10.7 Upon notification of conditional approval (probation), the program administrator shall submit an action plan no less than two weeks preceding the Board meeting designated in the notification. The action plan shall include identification of the deficiency(ies), proposed corrective action, and projected timeline to remediate the deficiency(ies). The program administrator will be invited to present the action plan at the designated Board meeting. The Board may approve the plan as submitted, recommend revisions, or reject the plan. The program shall submit progress reports as specified by the Board during the term of conditional approval (probation). Prior to the expiration of the probationary period, the program administrator will be invited to meet with the Board to review the status of the plan relative to remediation of the deficiency(ies). A program becomes eligible for unconditional approval when the Board is satisfied that the stated deficiency(ies) has been corrected. If satisfactory remediation has not occurred in the stated timeline, the program administrator will submit an explanation and revised plan with projected timeline. The Board may approve the plan as submitted, or with revisions, or reject the plan and propose to withdraw program approval.

See 3 DE Reg 1373 (4/1/00)

2.5.10.8 A program that fails to correct these deficiencies to the satisfaction of the Board within a reasonable time shall be discontinued after a hearing in which facts regarding such deficiencies are established.

See 3 DE Reg 1373 (4/1/00)

2.5.10.9 Provisions of Rules 2.6.1.1.2,

2.6.1.1.2.3, 2.6.1.1.2.4, and 2.6.1.1.2.5 shall prevail for any program for which Board approval has been discontinued.

See 3 DE Reg 1373 (4/1/00)

2.6.1 Termination of a Nursing Program

2.6.1.1 The controlling institution shall:

2.6.1.1.1 Submit written notification to the Board of its intent to terminate or interrupt the nursing program.

2.6.1.1.2 Provide for the completion of the nursing program for all students currently enrolled.

2.6.1.1.3 Safeguard the quality of the educational program for these students.

2.6.1.1.4 Provide for the permanent retention of records of students and graduates.

2.6.1.1.5 Notify the Board in writing as to the location of records and where requests for records may be sent.

2.7.1 Procedure for Annual Review of Nursing Education Programs

2.7.1.1 The Board shall review the annual reports and self-evaluation reports of the programs to be submitted each October 1.

See 3 DE Reg 1373 (4/1/00)

2.7.1.2 Following review of the reports from the programs, written notification of the action taken at the regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the school. This could include notification of the Board's intention to conduct a site visit.

2.7.3 Site Visits

2.7.3.1 For any site visit, the President shall designate the Board members who are to make the survey visits and the chair person of the survey team. At least one member of each team shall be a nurse educator who has curriculum expertise at the level of the program being reviewed.

2.7.3.2 The site visit may be made by a Board member(s) and a nursing education consultant, the latter with special expertise at the same level of nursing education as the program. The consultant shall be selected from a list of qualified persons submitted by the nursing program and approved by the Board. Costs associated with the hiring of the consultant shall be borne by the program.

2.7.3.3 The Board will indicate in advance any clinical areas they wish to visit.

2.7.3.4 The school shall schedule separate interviews for the visitors with:

2.7.3.4.1 The nurse administrator of the program

2.7.3.4.2 The faculty

2.7.3.4.3 Representative students from each level

2.7.3.4.4 Others as deemed appropriate by the agency or the Board.

2.7.3.5 The school shall have records available for visitor review, including:

- 2.7.3.5.1 Committee minutes
- 2.7.3.5.2 Course materials
- 2.7.3.5.3 Evaluation data regarding the entire program
- 2.7.3.5.4 Other materials as specified by the survey team.

(Approved 11/8/95)
(Revised 7/8/98)

3.0 Nursing Refresher Courses

3.1 Statement of Purpose

A nursing refresher course is required for Registered and Licensed Practical Nurses who are presently ineligible for endorsement or reinstatement of licensure because they have been inactive in nursing practice for five or more years.

3.1.1 Nurses successfully completing a refresher course may apply for licensure by reinstatement and may resume active practice.

3.1.2 An orientation program does not take the place of a refresher course.

3.2 Course Content

3.2.1 The design of the course shall emphasize adult teaching/learning methods wherein the learner is responsible for considerable self-study under the guidance of the faculty.

3.2.2 Course content for both Registered/Licensed Practical Nurses shall include but not be limited to concepts from the following areas: nursing care of mothers and newborns, children, adults, the aged, and individuals with mental health problems, and shall include:

- 3.2.2.1 current professional/practical nursing trends,
- 3.2.2.2 legal aspects of professional/practical nursing,
- 3.2.2.3 the nursing process,
- 3.2.2.4 communication skills,
- 3.2.2.5 pharmacology,
- 3.2.2.6 fluid and electrolytes
- 3.2.2.7 commonly used lab tests and values,
- 3.2.2.8 nutrition,
- 3.2.2.9 Basic Life Support, and
- 3.2.2.10 basic nursing procedures

3.2.3 The Registered Nurse course content shall also include:

- 3.2.3.1 physical and mental assessment, and
- 3.2.3.2 crisis intervention,

3.2.4 The refresher course for the Registered Nurse shall have a minimum of 20 hours of theory and a minimum of 40 hours of clinical practice.

3.2.5 The Licensed Practical Nurse course content shall also include:

3.2.5.1 The Licensed Practical Nurse's relationship to the health care team.

3.2.6 The refresher course for the Licensed Practical Nurse shall have a minimum of 15 hours of theory and a minimum of 30 hours of clinical practice.

3.2.7 Each course shall include sufficient theory and supervised clinical practice to meet the course objectives.

3.3 Clinical Facilities

3.3.1 The clinical facilities shall be:

- 3.3.1.1 Able to support the necessary clinical practice.
- 3.3.1.2 Accredited.
- 3.3.1.3 Approved by the Board of Nursing.
- 3.3.1.4 Acute and/or long-term care.

3.4 Faculty Qualifications

3.4.1 The director and/or faculty of the course shall be a Registered Nurse licensed in Delaware with a minimum of a baccalaureate degree in nursing.

3.5 Evaluation

3.5.1 There shall be an evaluation that will measure acquisition of the knowledge, skills and abilities needed to return to active nursing practice.

3.5.2 Evaluation tools that may be used include:

- 3.5.2.1 Written examination
- 3.5.2.2 Evaluation of clinical competence
- 3.5.2.3 Written required graded assignments

3.5.3 The course coordinator shall verify to the Board of Nursing in writing that each nurse participant has successfully completed the refresher course.

3.6 Procedure for Approval and Continuing Approval

3.6.1 Refresher courses offered to meet requirements for professional or practical nurse licensure, renewal, endorsement, reinstatement or reactivation shall be approved by the Board prior to student enrollment.

3.6.2 Applications for course approval shall be submitted to the Board at least ninety days prior to the starting date.

3.6.3 Applications for approval shall include:

- 3.6.3.1 Name of institution offering the program
- 3.6.3.2 Type of program:
 - 3.6.3.2.1 Registered Nurse refresher program
 - 3.6.3.2.2 Licensed Practical Nurse refresher program
- 3.6.3.3 Faculty and their qualifications
- 3.6.3.4 Course outline, including:
 - 3.6.3.4.1 Theoretical and clinical objectives
 - 3.6.3.4.2 Course content
 - 3.6.3.4.3 Hours of theory and practice
 - 3.6.3.4.4 Facilities used for clinical practice

3.6.3.4.5 Evaluation procedures

3.6.4 Approval shall be considered after the program has been reviewed and has met the standards of the Board. Written notification of the action taken at a regularly scheduled board meeting, including any recommendations, shall be sent to the appropriate administrative officers of the program. A site visit may be made at the discretion of the Board.

3.6.5 When any program change(s) is projected, plan shall be submitted to the Board including:

3.6.5.1 Proposed change(s)

3.6.5.2 Rationale for the change(s)

3.6.5.3 Relationship of the proposed change(s) to the present program(s)

Five copies of these materials shall be submitted to the Board at least one month prior to the Board meeting at which the request will be considered.

3.6.6 The institution shall submit five copies of an Annual Report every September 1.

3.6.7 Every three years on September 1 of the due year the institution shall submit five copies of a comprehensive self-evaluation report, based on the requirements for approval as stated by the Board.

3.6.7.1 A survey visit may be made at the Board's discretion.

4.0 Alternate Supervised Practice Plan for Nurses Inactive in Practice Five or More Years If No Refresher Course Is Available.

4.1 Introduction

4.1.1 Nursing and the health care field have undergone many changes in the past two decades. Most nurses who are reentering practice after a period of inactivity of five or more years need to be oriented to changes that may have an impact on their role and the competency of their practice.

4.2 Statement of Purpose

4.2.1 To provide opportunities for a nurse who is presently ineligible for endorsement of licensure, reinstatement of licensure, or renewal of licensure because the nurse fails to satisfy the 1000 practice hours in the past five years or a minimum of 400 nursing practice hours in the past two years, to review and update nursing knowledge and skills in order to become licensed and resume active practice.

4.2.2 This alternate supervised practice plan applies only if a Delaware Board of Nursing approved refresher course in nursing is not available within a reasonable distance or time.

4.3 Procedural Guidelines

4.3.1 The participating facility must be no less than a skilled nursing facility as defined by the Office of Health Facilities Licensing and Certification.

4.3.2 Upon agreeing with an applicant to

provide a period of supervised practice for the assurance of minimal competency, the Director of Nursing of the employing agency shall verify this agreement in a letter on agency stationary to the Board.

4.3.3 Upon receipt of verification of this supervised practice, a temporary permit to practice will be issued by the Board to the nurse for presentation to the health care institution. The clinical experience evaluation form will be sent to the health care institution providing this supervised practice opportunity.

4.3.4 The Director of Nursing shall designate a single Registered Nurse to provide the supervised clinical nursing practice of no less than 240 hours. The assigned nurse who provides the supervision is accountable for the quality of the supervised experience and for accurate assessment of the competence of the applicant.

4.3.5 The Board shall issue a letter of authorization to each applicant upon approval.

4.3.6 Upon completion of the required hours, the supervising nurse shall submit a completed agency evaluation form.

4.3.7 The Director of Nursing shall submit a statement confirming satisfactory completion of the supervised plan, and a recommendation related to the licensure reinstatement of the applicant.

4.3.8 Based on the submitted documentation, the Board will issue a license or a letter of intent to deny licensure.

5.0 Guidelines for Courses Related to Assistance with Medications 24 Del.C. 1902

5.1 Definition

"Assistance with medications" means a situation where a designated care provider functioning in a setting authorized by 24 Del.C. §1921 of this Chapter, who has taken a Board approved medication training program, or a designated care provider who is otherwise exempt from the requirement of having to take the Board approved self administration of medication training program, assists the patient in self-administration of medication other than by injection, provided that the medication is in the original container with a proper label and directions. The designated care provider may hold the container for the patient, assist with the opening of the container, and assist the patient in taking the medication.

5.2 Procedure for Administering Training Course

5.2.1 Three copies of each proposed medication training course shall be submitted to the Board for approval or advance notice made to the Board that the approved core training program will be used.

5.2.2 Credentials of all instructors shall be submitted to the Board for approval.

5.2.3 Upon completion of the course, the instructor shall submit a list of the successful students to the

Board.

5.3 Provider Qualifications

5.3.1 Upon completion of this assistance with self-administration of medications training course, the designated care provider will be able to meet the objectives as indicated in the Board approved course guidelines.

5.3.2 Designated care providers will be recertified as specified by the Board of Nursing.

5.4 Annual Reporting

5.4.1 The administrator of the program shall submit an annual report to the Board of Nursing by August 1 on a form provided by the Board.

See 3 DE Reg 1373 (4/1/00)

5.4.2 The report shall indicate compliance with the guidelines as set forth in the Board approved assistance with administration of medication training program.

6.0 Requirements and Procedures for Licensure

6.1 Examinations

6.1.1 The Board declares that the National Council Licensure Examination-RN (NCLEX-RN) and the National Council Licensure Examination-PN (NCLEX-PN) are the required examinations for licensure in Delaware. The Division of Professional Regulation has the authority to review and approve the content and validity of examinations.

6.1.2 Up to July 1982, the passing score for professional nurse candidates was a standard score of 350 on each test of the State Board Test Pool Examination.

6.1.3 Effective July 1, 1982, the passing score for Registered Nurse candidates was 1600 on the NCLEX-RN and 350 on NCLEX-PN.

6.1.4 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.1.5 The candidate shall take the licensing examination within 90 calendar days following graduation from a Board approved program of professional or practical nursing and not there after without petitioning the Board for specific authorization to test after the 90 day period. Such petitions may be granted by the Board upon a showing of good cause.

See 3 DE Reg 1373 (4/1/00)

6.1.6 To be eligible to take the examination for licensure for practical nursing, the applicant must be a graduate of a Board approved program for practical nursing. A graduate of a program for professional nursing will be denied permission to take the examination for licensure as a practical nurse.

6.1.7 The candidate shall file two applications for each examination.

6.1.7.1 The NCLEX application shall be filed with a non-refundable fee.

6.1.7.2 The candidate shall file a completed and notarized Delaware application for licensure by examination, along with the required fee.

6.1.7.3 In addition, the candidate shall file a signed official school transcript indicating the date of graduation or date degree was conferred. If this is not possible, a certifying letter from the director indicating the candidate had completed the program will be accepted until an official transcript is available.

6.1.7.4 The candidate shall present the admission card issued by the Board in order to be admitted to any portion of the examination.

6.1.8 A candidate who has been accepted but is unable to attend the scheduled examination must notify the Board prior to the starting time or during the first day of examination with a specific reason for not attending. If the reason is acceptable to the Board, (e.g. candidate is ill, death in immediate family, accident, etc.) the Delaware application for licensure by examination will be extended to the next examination date.

6.2 Temporary Permits Prior to Examination

6.2.1 Prior to the employment starting date the candidate shall submit a notarized application for a temporary permit on a form provided by the Board.

6.2.2 The temporary permit is a limited license authorizing professional or practical nursing practice only at the institution employing the graduate, and only under supervision and pending the results of the examination.

6.2.3 Any graduate who has completed the requirements of a state board of nursing approved program of professional or practical nursing and who has filed for licensure by examination in Delaware may be employed in professional or practical nursing, working under the direct supervision of a Registered Nurse pending results of the licensing examination.

6.2.4 Direct supervision means supervision by a Registered Nurse on the same assigned unit during the same time period. The term "unit" is defined as one staffed unit of a maximum of forty patients.

6.2.5 In order to practice nursing in Delaware with a temporary permit, a recent graduate of a state board of nursing approved program of nursing in another state must file an application for licensure before beginning to practice. If the graduate has taken, or is scheduled to take, the NCLEX Examination in the state in which the program is located, the applicant shall file an application for licensure by endorsement in Delaware.

6.2.5.1 Candidates must submit written documentation that they are candidates for the NCLEX in the state in which the examination is being written.

6.2.6 The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.2.7 Only a candidate approved to take an examination scheduled after graduation from an approved State Board of Nursing program in the United States or its territories may be issued a temporary permit to practice

nursing, good until the release of the examination results.

6.2.8 The temporary permit shall terminate forthwith if a candidate fails to take the examination in the time prescribed. The Board will notify the candidate's employer of the termination of the permit. The candidate shall return the permit to the Board.

6.2.9 If extenuating circumstances exist, the candidate may apply to the Board for reissuance of a temporary permit. If the reason is acceptable, the permit may be reissued. (Refer to Section 6.7, Temporary Permits)

6.3 Test Results

6.3.1 In the case of a successful candidate, the results are released in the following order: the candidate, the director of the school of nursing and the news media. In the case of the unsuccessful candidate the results are released in the following order: the candidate, the employer, and the director of the school program.

6.3.2 A successful candidate will receive the test results and a copy of the Law regulating the practice of nursing in Delaware, (24 **Del.C.** Ch. 19), and a certificate of registration with a permanent license number.

6.3.3 A letter to unsuccessful candidates will accompany the test results to advise them of their status and the procedure to be followed for re-examination.

6.3.4 Candidates for licensure who fail the National Council Licensure Examination may not be employed in nursing, are not permitted to practice nursing as defined in the Law, and must return the temporary permit upon receipt of the failure notification.

See 3 DE Reg 1373 (4/1/00)

6.3.5 The candidate's employer shall be notified that the temporary permit is not valid, and the candidate may not be employed in nursing until the NCLEX has been passed.

See 3 DE Reg 1373 (4/1/00)

6.3.6 The applicant shall retake the examination within a one-year period following notification of failure in order to be eligible for re-examination and not there after without petitioning the Board for specific authorization to retest after the one-year period. Such petitions may be granted by the Board upon a showing of good cause to allow for further examination. There is a fee for each re-examination. Any candidate who graduated following the date of February 1982 may retake NCLEX for an unlimited number of times within a five year period from the date of graduation from an approved nursing education program. Notwithstanding the foregoing, any candidate who graduates from an approved nursing education program after April 30, 2000 may retake NCLEX an unlimited number of times within a two year period from graduation and not there after without petitioning the Board for specific authorization to retest after the two year period. Such petitions may be granted by the Board upon a showing of good cause to allow further examination.

See 3 DE Reg 1373 (4/1/00)

6.4 Requirements for Applicants Graduating from Foreign Programs

6.4.1 Applicants graduating from programs outside of the United States and not licensed by the State Board Test Pool Examination or NCLEX in another state:

6.4.1.1 Must have been issued a certificate of licensure by the licensing agency in the state, territory, or country where the nursing program is located;

6.4.1.2 Must submit a certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the educational requirements of a curriculum for the preparation of professional nurses which is equivalent to the approved professional schools in Delaware;

6.4.1.3 Must submit official English translations of all required credentials;

6.4.1.4 Must, in instances when completion of a four-year high school course study or its equivalent cannot be verified, take the high school equivalence examination given by a State Department of Education;

6.4.1.5 Must submit evidence that the program from which applicant is a graduate meets the approved standards adopted by the Board (24 **Del.C.** §§1910, 1914) and Rules and Regulations: 2.5. (If the program does not include the areas specified in the above curricula, the deficiencies must be made up before the applicant is eligible to take NCLEX);

6.4.1.6 Are allowed one year from the date of Board review of the completed application to make up all deficiencies, including the taking of the initial examination;

6.4.1.7 Effective July 1, 1982, professional nurse applicants must have passed the NCLEX examination (with a minimum standard score of 1600) and practical nurse applicants must have passed the NCLEX examination (with a minimum standard score of 350) within four examination opportunities, within a period of two years or original notification of failure.

6.4.1.8 Effective July 1, 1988, results are reported and recorded as pass or fail.

6.4.1.9 May be issued a temporary permit and may be employed in professional or practical nursing if the applicant has met all of the Board's prerequisites for taking the NCLEX in Delaware and is scheduled to do so;

6.4.1.10 May work only at the institution employing the applicant, under the direct supervision of a registered nurse pending results of the first licensing examination.

6.4.1.11 Must meet all other requirements for licensure.

6.4.2 All applications will be reviewed by the

Board to determine if the applicant is eligible to take the NCLEX Examination or to determine if applicant's educational qualifications are as Board prescribed and may be eligible for licensure by examination.

6.4.3 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination from 1970 - 1979 are eligible for licensure by endorsement.

6.4.4 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination, first administered August 1980, are eligible for licensure by endorsement with a passing score of 400. (September 15, 1981)

6.4.5 Canadian applicants writing the Canadian Nurses' Association Testing Service (CNATS) Examination after that examination became graded on a pass or fail basis are not eligible for licensure by endorsement and must pass the NCLEX. (June 8, 1996)

6.5 Licensure by Endorsement

6.5.1 All endorsement applicants shall:

6.5.1.1 Submit a completed, signed, and notarized application on a form provided by the Board.

6.5.1.2 Remit the required non-refundable fee.

6.5.1.3 Attach to the application a photocopy of a current license indicating date of expiration.

6.5.1.4 Provide official verification of original licensure in another jurisdiction on a form acceptable to the Board.

6.5.1.5 An applicant for endorsement must have completed high school or must have passed a nationally standardized test, and be otherwise qualified for licensure.

6.5.1.1.2 The Board shall request a reference on a form supplied by the Board from:

6.5.1.1.2.1 the applicant's immediate past employer(s) in the past six months. Such reference(s) should be given by the nursing employer, or if the immediate past employer is not a nursing professional, by the applicant's immediate supervisor (e.g. physician, director, manager). In the case of someone engaged in solo practice or who is self-employed, the reference shall be provided by at least one professional colleague with whom the individual has most recently worked for at least six months in the past five years.

6.5.1.1.2.2 in the event of no previous nursing employer, the Director of the applicant's approved nursing education program. Any unsatisfactory reference shall be brought to the attention of the Board for review.

6.5.1.1.3 If the applicant has not been employed in nursing a minimum of 1000 hours in the past five years or a minimum of 400 hours of nursing practice within the previous two years, the applicant must give evidence of satisfactory completion of an approved refresher

program within a two-year period before licensure by endorsement will be granted. In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional/practical nursing.

6.5.1.1.4 All completed applications for endorsement will be submitted to the Board for consideration of approval.

6.5.1.1.5 Issuance of a license shall be considered as notice of approval of the application.

6.5.1.1.6 All applications will be purged in accordance with Division policy.

6.5.2 Registered Nurses

6.5.2.1 The Board may issue a license to practice professional nursing as a Registered Nurse by endorsement, without a written examination, to an applicant who has been duly licensed as a Registered Nurse under the laws of another state, territory, or foreign country if, in the opinion of the Board, the applicant meets the qualifications for licensure in this state.

6.5.2.2 As of 1950 and thereafter, the State Board Test Pool Examination for professional nursing is the licensing examination authorized for use by all boards of nursing in jurisdictions in the United States. (In July 1982, the examination was re-titled National Council Licensure Examination-RN (NCLEX-RN). Prior to this date, examinations constructed by state boards of nursing are acceptable, providing such examinations include all of the required clinical areas: medicine, surgery, obstetrics-gynecology, pediatrics, psychiatry). Until 1953, the passing score required for each of the tests was 70%.

6.5.2.3 Those applicants graduating as of 1953 and thereafter are required to show evidence of clinical experience in medical nursing, surgical nursing, psychiatric nursing, nursing of children, and obstetrical nursing.

6.5.2.4 An applicant for licensure by endorsement must be a graduate of a State Board of Nursing approved school of nursing, and be otherwise qualified for licensure.

6.5.3 Licensed Practical Nurses

6.5.3.1 Effective October 1, 1963, waiver or equivalency licensure is not acceptable in Delaware. The Board may issue a license to practice nursing as a Licensed Practical Nurse, without a written examination, to an applicant who has been licensed as a Practical Nurse or a person entitled to perform similar services under a different title under the laws of any state, territory or foreign country if, in the opinion of the Board, the applicant has the qualifications required for the licensing of practical nurses.

6.5.3.2 Candidates for licensure are required to have theory and clinical experience in medical nursing, surgical nursing, psychiatric nursing, obstetrical nursing, and nursing of children.

6.5.3.3 The applicant must be a graduate

of a Board approved program for practical nursing.

6.5.3.4 A licensed practical nurse applicant for licensure by endorsement must have passed the NCLEX-PN.

6.5.3.5 An applicant for endorsement must be otherwise qualified for endorsement.

6.6 Licensure: Biennial Renewal and Reinstatement

6.6.1 Biennial Renewal of Licensure

6.6.1.1 In order to practice nursing in Delaware with or without financial compensation, Registered Nurses or Licensed Practical Nurses who are duly licensed under any provision of 24Del.C. Ch. 19 shall renew their licenses biennially, prior to December 31 of the biennium. In the event that applicant for renewal or reinstatement of licensure has not been actively employed in professional or practical nursing in the past five years, the applicant will be required to give evidence of satisfactory completion of a professional or practical nursing refresher program within an approved agency within a two-year period to renewal before licensure will be granted, In the event no refresher course is available the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.1.1.1 Registered Nurses - the license shall be valid for two calendar years expiring each odd-numbered year on dates established by the Department of Administrative Services.

6.6.1.1.2 Licensed Practical Nurses - the license shall be valid for two calendar years expiring each even-numbered year on the dates established by the Department of Administrative Services.

6.6.1.2 The applicant shall indicate nursing employment within the past five years before the renewal application will be processed. A minimum of 1000 hours of nursing practice within the past five years or a minimum of four hundred hours of nursing practice within the past two years is required for licensure by renewal or reinstatement. Verification of completion of the practice hours will occur for a minimum of 1% of the total number of licensees with notice of the audit two months prior to the renewal in a biennium. An additional 2% will be audited within six months of renewal of licensure. See 9.0, for Mandatory Continuing Education requirements.

6.6.1.2.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period being audited/verified. Verification will be done on a form supplied by the Board office that includes employer's name, title, address, telephone number, job title, and dates of employment.

6.6.1.2.2 The employer will submit the completed form directly to the Board office.

6.6.1.2.3 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

6.6.1.2.4 An unsatisfactory verification or audit shall result in Board action.

6.6.1.2.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

6.6.1.3 An application for renewal of license will be mailed at least 12 weeks prior to the expiration date of current licensure.

6.6.1.4 Failure to receive the application for renewal shall not relieve the licensee of the responsibility for renewing their license by the expiration date.

6.6.1.5 Renewal application, along with the required fee, shall be returned to the Board office and postmarked no later than the last day of the month before the month of expiration.

6.6.1.6 Licenses that have lapsed may be reinstated by the Board upon satisfactory explanation by the licensee of failure to renew and after payment of a penalty fee.

6.6.1.7 During the month of expiration, the Board may issue a renewal certificate upon receipt of a renewal application, the documentation of nursing employment, the renewal fee and late fee.

6.6.2 Reinstatement of Licensure

6.6.2.1 Registered Nurses or Licensed Practical Nurses who fail to renew their licenses by February 28, May 31, and September 30, of the renewal period shall be considered to have lapsed licenses and shall not practice nursing in the state of Delaware. After February 28, May 31, and September 30 of the current licensing period, any requests for reinstatement of a lapsed licensed shall be presented to the Board for action. All applicants shall have a minimum of 1000 hours of nursing practice within the previous five years or a minimum of four hundred hours of nursing practice within the past two years before licensure by reinstatement will be granted. The practice of nursing can be with or without financial compensation. In the event the applicant has not been actively employed in nursing as described above, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reinstatement. In the event no refresher course is available, the Board may consider alternate methods of evaluating current knowledge in professional or practical nursing.

6.6.2.2 The applicant shall file a notarized application for reinstatement of licensure. The application shall be accompanied by a satisfactory reference from a current or previous employer, renewal fee and penalty fee.

6.6.3 It is unprofessional conduct and a violation of Delaware Law to practice without a license. The Board may refuse a license or refuse to renew a license of a professional nurse or a practical nurse who practices without a current license.

6.6.4 Reinstatement Hearings

6.6.4.1 Hearings for consideration of reinstatement licensure may be held for those applicants who file for reinstatements more than 90 days after the renewal period and who have been practicing nursing without a current license, or who have submitted an unsatisfactory explanation for failure to renew.

6.6.4.2 A notice of hearing shall be sent to the Registered Nurse or Licensed Practical Nurse. The hearing shall be conducted in accordance with the Administrative Procedures Act and the Nurse Practice Act.

6.6.4.3 The Board shall make determination for reinstatement of licensure or shall determine that the Registered Nurse or Licensed Practical Nurse shall be subject to the penalties provided for violations of the Nurse Practice Act.

6.6.4.4 Upon determination that licensure shall be reinstated, the Board shall issue a license to practice nursing.

6.7 Temporary Permits

6.7.1 The temporary permit is a limited license authorizing professional, practical or graduate nursing practice only at the employing institution for no longer than an initial 90 day period.

6.7.2 Nurses who produce current evidence of licensure to practice nursing in another state and who have applied for endorsement may be issued a temporary permit to practice nursing for a maximum of 90 days, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice within the past two years.

6.7.3 A temporary permit to practice nursing for a maximum of 90 days may be issued to persons who have requested reinstatement of their licensure, if they have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours of nursing practice in the past two years.

6.7.4 All applicants seeking temporary permits to practice professional, practical or graduate nursing in Delaware must:

6.7.4.1 Prior to employment starting date, submit a notarized application for endorsement or examination, completing the portion for a temporary permit, and indicating employer.

6.7.4.2 Have been employed in nursing a minimum of 1000 hours in the past five years or a minimum of four hundred hours in the past two years, if applying for reinstatement or endorsement, with current evidence of licensure from another state.

6.7.4.3 Have been accepted as a nurse employee in Delaware. The Board of Nursing will verify employment with the employer and verified documentation will be noted on the application.

6.7.4.4 Have graduated from a State

Board of Nursing approved program.

6.7.4.5 Pay a licensure fee which is not refundable.

6.7.5 Upon completion of all requirements, a temporary permit will be issued for no longer than 90 days with subsequent renewal periods of 60 and 30 days sequentially.

6.7.6 The Executive Director shall:

6.7.6.1 Keep a register of permits.

6.7.6.2 Refrain from issuing a temporary permit in any doubtful situation until further evidence is obtained or until the Board has given approval.

6.7.7 In the absence of the Executive Director, the President may issue a temporary permit with the same restrictions.

6.8 Inactive Status

6.8.1 A person previously licensed by the Board and not engaged in the practice of nursing in the state of Delaware, but desiring to maintain the right to use the title Registered Nurse or Licensed Practical Nurse, may apply and be granted inactive status by the Board in accordance with these regulations.

6.8.2 A nurse desiring inactive status shall send a written notice to the Board with fee. Upon receipt of notice and fee the Board shall place the name of the person on an inactive status list and shall issue a certificate. The person shall not practice nursing in this state.

6.8.3 A licensee on inactive status shall use the appropriate title, Registered or Licensed Practical Nurse, followed by (INACTIVE).

6.8.4 A licensee will receive a certificate of inactive status with the term Inactive Registered Nurse or Inactive Licensed Practical Nurse printed across the top.

6.8.5 A notice of inactive status shall be sent to all persons on the inactive list at renewal time. To receive a certificate of inactive status, the licensee shall return the renewal notice with the fee.

6.8.6 All applications from persons on inactive status who decide to resume active status will be presented to the Board for review for reinstatement.

6.8.7 In the event the applicant has not been actively practicing nursing within the previous five years, the applicant will be required to give evidence of satisfactory completion of a refresher program with an approved agency within two years prior to reactivation, or participate in an alternate Board approved method of evaluating current knowledge in professional or practical nursing. All applicants shall have a minimum of 1000 hours of nursing within the previous five years or a minimum of four hundred hours of nursing practice within the previous two years. See 9.0 for Mandatory Continuing Education requirements.

6.9 Loss of License, Change of Name/address

6.9.1 If a license is lost, stolen or destroyed, the licensee shall submit a letter to the Board explaining the loss.

A letter indicating the original number and expiration dates shall be issued by the Executive Director in lieu of a duplicate license.

6.9.2 Licensees who legally change their names and wish to change the name on the license, shall provide notarized copies of evidence, such as marriage licenses or court actions. The maiden name will be retained on the license.

6.9.3 Notice of change of address shall be submitted in writing within 30 days of the change. All notices from the Board will be sent to the last address provided by the licensee or applicant to the Board.

6.9.4 A list of license numbers of lost, stolen or otherwise destroyed licenses shall be kept on file in the Board office.

6.10 Register of Nurses Licensed in Delaware

6.10.1 Licensure Verification

6.10.1.1 Following the official renewal period, the Executive Director shall request each employer or employing agency to submit to the Board by April 15 a list of all nurses employed. The list shall include the following information:

See 3 DE Reg 1373 (4/1/00)

6.10.1.1.1 Name of employee, alphabetized by last name;

6.10.1.1.2 Classification (Registered Nurse, Licensed Practical Nurse, Advanced Practice Nurse or nurse holding temporary permit);

6.10.1.1.3 License number; and

6.10.1.1.4 Expiration date of current license or temporary permit.

6.10.1.2 Individuals submitting the list attest by their signatures that they viewed each current registration of licensure and advanced practice recognition.

6.10.1.3 The list will be checked by the Executive Director. If it is not possible to verify current licensure, the Executive Director will immediately notify the employer by letter.

6.10.1.4 The Executive Director shall prepare a summary of the survey to be presented to the Board.

6.10.2 Release of Information

6.10.2.1 The Executive Director may release to a citizen of Delaware the following information:

6.10.2.1.1 Whether or not the individual was or is currently licensed,

6.10.2.1.2 Date of original licensure,

6.10.2.1.3 Under what condition license was issued (examination, endorsement, or waiver),

6.10.2.1.4 Whether license was ever suspended or revoked following a hearing.

6.10.2.2 Additional information may be released pursuant to the Freedom of Information Act.

7.0 Standards of Nursing Practice

7.1 Authority

“Standards of nursing practice” means those standards of practice adopted by the Board that interpret the legal definitions of nursing, as well as provide criteria against which violations of the law can be determined. Such standards of nursing practice shall not be used to directly or indirectly affect the employment practices and deployment of personnel by duly licensed or accredited hospitals and other duly licensed or accredited health care facilities and organizations. In addition, such standards shall not be assumed the only evidence in civil malpractice litigation, nor shall they be given a different weight than any other evidence.

7.2 Purpose

The purpose of standards is to establish minimal acceptable levels of safe practice for the Registered and Licensed Practical Nurse, and to serve as a guide for the Board to evaluate safe and effective nursing care.

7.3 Standards of Practice for the Registered and Licensed Practical Nurse

7.3.1 Standards related to the Registered Nurse.

7.3.1.1 The Registered Nurse shall conduct and document nursing assessments of the health status of individuals and groups by:

7.3.1.1.1 Collecting objective and subjective data from observations, examinations, interviews and written records in an accurate and timely manner. The data include but are not limited to:

7.3.1.1.1.1 Biophysical and emotional status and observed changes;

7.3.1.1.1.2 Growth and development;

7.3.1.1.1.3 Ethno-cultural, spiritual, socio-economic and ecological background;

7.3.1.1.1.4 Family health history;

7.3.1.1.1.5 Information collected by other health team members;

7.3.1.1.1.6 Ability to perform activities of daily living;

7.3.1.1.1.7 Consideration of client’s health goals;

7.3.1.1.1.8 Client knowledge and perception about health status and potential, or maintaining health status;

7.3.1.1.1.9 Available and accessible human and material resources;

7.3.1.1.1.10 Patterns of coping and interaction.

7.3.1.1.2 Sorting, selecting, reporting, and recording the data.

7.3.1.1.3 Analyzing data.

7.3.1.1.4 Validating, refining and modifying the data by using available resources including interactions with the client, family, significant others, and health team members.

7.3.1.1.5 Evaluating data.
 7.3.1.2 Registered Nurses shall establish and document nursing diagnoses that serve as the basis for the strategy of care.

7.3.1.3 Registered Nurses shall develop strategies of care based on assessment and nursing diagnoses. This includes, but is not limited to:

7.3.1.3.1 Prescribing nursing intervention(s) based on the nursing diagnosis.

7.3.1.3.2 Initiating nursing interventions through

7.3.1.3.2.1 Giving care.

7.3.1.3.2.2 Assisting with care.

7.3.1.3.2.3 Delegating care.

7.3.1.3.3 Identifying to the identification of priorities in the strategies of care.

7.3.1.3.4 Setting realistic and measurable goals for implementation.

7.3.1.3.5 Identifying measures to maintain comfort, to support human functions and responses, to maintain an environment conducive to well being, and to provide health teaching and counseling.

7.3.1.3.6 Supervising the caregiver to whom care is delegated.

7.3.1.4 Registered Nurses shall participate in the implementation of the strategy of care by:

7.3.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.3.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the direction and supervision of a recognized authority.

7.3.1.4.3 Providing an environment conducive to safety and health.

7.3.1.4.4 Documenting nursing interventions and client outcomes.

7.3.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.3.1.5 Registered Nurses shall evaluate outcomes, which shall include the client, family, significant others and health team members.

7.3.1.5.1 Evaluation data shall be appropriately documented; and

7.3.1.5.1.1 Be communicated to the client, family, significant others and appropriate members of the health care team; and

7.3.1.5.1.2 Used as a basis for modifying outcomes by reassessing client health status, modifying nursing diagnoses, revising strategies of care or prescribing changes in nursing interventions.

7.4 Standards of Practice for the Licensed Practical Nurse

7.4.1 Standards related to the Licensed Practical Nurse's contributions to the nursing process.

7.4.1.1 The Licensed Practical Nurse

shall contribute to and document nursing assessments of the health status of individuals and groups by:

7.4.1.1.1 Sorting, selecting, reporting, and recording the data.

7.4.1.1.2 Collecting objective and subjective data from observations, examinations, interview and written records in an accurate and timely manner. The data include but are not limited to:

7.4.1.1.2.1 Biophysical and emotional status and observed changes;

7.4.1.1.2.2 Growth and development;

7.4.1.1.2.3 Ethno-cultural, spiritual, socio-economic, and ecological background;

7.4.1.1.2.4 Family health history;

7.4.1.1.2.5 Information collected by other health team members;

7.4.1.1.2.6 Ability to perform activities of daily living;

7.4.1.1.2.7 Consideration of client's health goals;

7.4.1.2 Licensed Practical Nurses shall participate in establishing and documenting nursing diagnoses that serve as the basis for the strategy of care.

7.4.1.3 Licensed Practical Nurses shall participate in developing strategies of care based on assessment and nursing diagnoses.

7.4.1.3.1 Contributing to setting realistic and measurable goals for implementation.

7.4.1.3.2 Participating in identifying measures to maintain comfort, to support human functions and responses to maintain an environment conducive to well-being, and to provide health teaching and counseling.

7.4.1.3.3 Contributing to setting client priorities.

7.4.1.4 Licensed Practical Nurses shall participate in the implementation of the strategy of care by:

7.4.1.4.1 Providing care for clients whose conditions are stabilized or predictable.

7.4.1.4.2 Providing care for clients whose conditions are critical and/or fluctuating, under the directions and supervision of a recognized licensed authority.

7.4.1.4.3 Providing an environment conducive to safety and health.

7.4.1.4.4 Documenting nursing interventions and client outcomes.

7.4.1.4.5 Communicating nursing interventions and client outcomes to health team members.

7.4.1.5 Licensed Practical Nurses shall contribute to evaluating outcomes by appropriately documenting and communicating to the client, family, significant others and the health care team members.

7.5 Standards Related to the Registered and Licensed Practical Nurse's Competencies and Responsibilities.

7.5.1 Registered and Licensed Practical Nurses shall:

7.5.1.1 Have knowledge of the statutes and regulations governing nursing and function within the legal boundaries of professional and practical nursing practice.

7.5.1.2 Accept responsibility for competent nursing practice.

7.5.1.3 Function as a member of the health team:

7.5.1.3.1 By collaborating with other members of the health team to provide optimum care, or

7.5.1.3.2 As an LPN under the direction and supervision of a recognized licensed authority.

7.5.1.4 Consult with nurses, other health team members and community agencies for continuity of care and seek guidance as necessary.

7.5.1.5 Obtain instruction and supervision as necessary when implementing nursing techniques.

7.5.1.6 Contribute to the formulation, interpreting, implementing and evaluating of the objectives and policies related to professional and practical nursing practice within the employment setting.

7.5.1.7 Participate in evaluating nurses through peer review.

7.5.1.8 Report unsafe nursing practice to the Board and unsafe practice conditions to recognized legal authorities.

7.5.1.9 Practice without discrimination as to age, race, religion, sex, sexual orientation, national origin, or disability.

7.5.1.10 Respect the dignity and rights of clients regardless of social or economic status, personal attributes or nature of health problems.

7.5.1.11 Respect the client's right to privacy by protecting confidentiality unless obligated by law to disclose the information.

7.5.1.12 Respect the property of clients, their families and significant others. In addition to the proceeding, the Registered Nurse shall:

7.5.1.13 Delegate to others only those nursing interventions that those persons are prepared or qualified to perform.

7.5.1.14 Supervise others to whom nursing interventions are delegated.

7.5.1.15 Retain professional accountability for care when delegating.

7.5.1.16 Teach safe practice to other health care workers as appropriate.

7.6 Dispensing

7.6.1 Definitions

7.6.1.1 "Dispense" - To deliver a medication pursuant to a standing order.

7.6.1.2 "Prescription label" - a label affixed to every prescription or drug order which contains the following information at a minimum.

7.6.1.2.1 A unique number for that specific drug order.

7.6.1.2.2 The date the drug was dispensed.

7.6.1.2.3 The patient's full name.

7.6.1.2.4 The brand or established name and manufacturer and the strength of the drug to the extent it can be measured.

7.6.1.2.5 The practitioner's directions as found on the prescription order.

7.6.1.2.6 The practitioner's name.

7.6.1.2.7 The initials of the dispensing nurse.

7.6.1.2.8 The name and address of the facility or practitioner from which the drug is dispensed.

7.6.1.2.9 Expiration date.

7.6.1.3 "Standing order" - An order written by the practitioner which authorizes a designated registered nurse or nurses to dispense prescription drugs to his/her patients(s) according to the standards listed below.

7.6.2 Standards:

7.6.2.1 Only registered nurses may assume the responsibility of dispensing as defined in the Nurse Practice Act and delineated below.

7.6.2.2 The medication must be prepackaged by a pharmaceutical company or prepared by a registered pharmacist.

7.6.2.3 The nurse shall be responsible for proper drug storage of the medication prior to dispensing.

7.6.2.4 The practitioner who originated the prescription or drug order must be on the premises or he/she or their designated coverage shall be available by telephone during the act of dispensing.

7.6.2.5 Once a drug has been dispensed it shall not be returned for reuse by another or the same patient in an institutional setting.

7.6.2.6 The nurse may not designate any part of the dispensing function to any other individual who is not licensed to dispense.

7.6.2.7 The dispensing nurse must assure compliance to the state generic substitution laws when selecting the product to be dispensed.

7.6.2.8 The nurse-dispensed prescription may not be refillable; it requires the authority of the prescriber with each dispensing.

7.6.2.9 A usage review process must be established for the medicines dispensed to assure proper patient usage.

7.6.2.10 All dispensed drugs must be labeled as defined above and dispensed in proper safety closure containers that meet the standards established by the United

States Pharmacopoeia for stability.

7.6.2.11 Record keeping must include the maintenance of the original written prescription of drug order for at least three years, allow retrospective review of accountability, and provide an audit trail. All dispensing records must be maintained on site, and available for inspection by authorized agents of the Board of Health, Pharmacy, and Nursing.

7.6.2.12 The dispensing nurse shall assume the responsibility of patient counseling of drug effects, side-effects, desired outcome, precautions, proper storage, unique dosing criteria, drug interactions, and other pertinent data, and record evidence of patient education.

7.6.2.13 Conformance to paragraphs G through L are not necessary if the original prescription was dispensed by a pharmacist for that specific patient.

7.6.3 Medication modifications

7.6.3.1 A nurse may accept a change in the dosage of a medication from a pharmacist who is acting as an agent of the physician.

7.7 Delegation

7.7.1 Definitions

7.7.1.1 "Unlicensed Assistive Personnel"

Individuals not licensed to perform nursing tasks that are employed to assist in the delivery of client care. The term "unlicensed assistive personnel" does not include members of the client's immediate family, guardians, or friends; these individuals may perform incidental care of the sick in private homes without specific authority from a licensed nurse (as established in 24 **Del.C.** §1921(a)(4) of the Nurse Practice Act).

7.7.1.2 "Delegation" - Entrusting the performance of selected nursing duties to individuals qualified, competent and legally able to perform such duties while retaining the accountability for such act.

7.7.1.3 "Supervision" - The guidance by a registered nurse (RN) for the accomplishment of a function or activity. The guidance consists of the activities included in monitoring as well as establishing the initial direction, delegating, setting expectations, directing activities and courses of action, critical watching, overseeing, evaluating, and changing a course of action.

7.7.1.4 "Accountability" - The state of being accountable, answerable, or legally liable for actions and decisions, including supervision.

7.7.2 Conditions

7.7.2.1 The following conditions are relevant to delegation:

7.7.2.1.1 Only RNs may delegate.

7.7.2.1.2 The RN must be knowledgeable regarding the unlicensed assistive personnel's education and training and have opportunity to periodically verify the individual's ability to perform the specific tasks.

7.7.2.1.3 The RN maintains accountability for determining the appropriateness of all delegated nursing duties and responsibility for the delivery of safe and competent care. Unlicensed assistive personnel may not reassign a delegated act.

See 1 DE Reg 1888 (6/1/98)

7.7.3 Criteria

7.7.3.1 The RN may delegate only tasks that are within the scope of sound professional nursing judgment to delegate.

7.7.3.2 Determination of appropriate factors include, but are not limited to:

7.7.3.2.1 stability of the client's condition

7.7.3.2.2 educational background, skill level, or preparation of the individual

7.7.3.2.3 nature of the nursing act that meets the following:

7.7.3.2.3.1 task is performed frequently in the daily care of a client

7.7.3.2.3.2 task is performed according to an established sequence of steps

7.7.3.2.3.3 task may be performed with a predictable outcome

7.7.3.2.3.4 task does not involve ongoing assessment, interpretation or decision making that cannot be logically separated from the task itself.

7.7.3.3 The RN must be readily available in person or by telecommunication.

7.7.4 Exclusions

7.7.4.1 The following activities require nursing knowledge, judgment, and skill and may not be delegated by the RN to an unlicensed assistive person. These exclusions do not apply to Advanced Practice Nurses.

See 1 DE Reg 1888 (6/1/98)

7.7.4.2 Physical, psychological, and social assessment which requires professional nursing judgment, intervention, referral, or follow-up;

7.7.4.3 Development of nursing diagnosis and care goals;

7.7.4.4 Formulation of the plan of nursing care and evaluation of the effectiveness of the nursing care provided;

7.7.4.5 Specific tasks involved in the implementation of the plan of care which require nursing judgment, skill, or intervention, that include, but are not limited to: performance of sterile invasive procedures involving a wound or anatomical site; nasogastric, newly established gastrostomy and jejunostomy tube feeding; nasogastric, jejunostomy and gastrostomy tube insertion or removal; suprapubic catheter insertion and removal; (phlebotomy is not considered a sterile, invasive procedure);

7.7.4.6 Administration of medications, including prescription topical medications; and

7.7.4.7 Receiving or transmitting verbal orders.

8.0 Rules and Regulations Governing the Practice of Nursing as an Advanced Practice Nurse in the State of Delaware

8.1 Authority

These rules and regulations are adopted by the Delaware Board of Nursing under the authority of the Delaware Nurse Practice Act, 24 **Del.C.** §§1902(d), 1906(1), 1906(7).

8.2 Purpose

8.2.1 The general purpose of these rules and regulations is to assist in protecting and safeguarding the public by regulating the practice of the Advanced Practice Nurse.

8.3 Scope

8.3.1 These rules and regulations govern the educational and experience requirements and standards of practice for the Advanced Practice Nurse. Prescribing medications and treatments independently is pursuant to the Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20). The Advanced Practice Nurse is responsible and accountable for her or his practice. Nothing herein is deemed to limit the scope of practice or prohibit a Registered Nurse from engaging in those activities that constitute the practice of professional nursing and/or professional nursing in a specialty area.

8.4 Definitions

“Advanced Practice Nurse” as defined in 24 **Del.C.** §1902(d)(1). Such a nurse will be given the title Advanced Practice Nurse by state licensure, and may use the title Advanced Practice Nurse within his/her specific specialty area.

“Certified Nurse Midwife (C.N.M.)” A Registered Nurse who is a provider for normal maternity, newborn and well-woman gynecological care. The CNM designation is received after completing an accredited post-basic nursing program in midwifery at schools of medicine, nursing or public health, and passing a certification examination administered by the ACNM Certification Council, Inc. or other nationally recognized, Board of Nursing approved certifying organization.

“Certified Registered Nurse Anesthetist (C.R.N.A.)” A Registered Nurse who has graduated from a nurse anesthesia educational program accredited by the American Association of Nurse Anesthetists’ Council on Accreditation of Nurse Anesthesia Educational programs, and who is certified by the American Association of Nurse Anesthetists’ Council on Certification of Nurse Anesthetists or other nationally recognized, Board of Nursing approved certifying organization.

“Clinical Nurse Specialist (C.N.S.)” A Registered Nurse with advanced nursing educational preparation who

functions in primary, secondary, and tertiary settings with individuals, families, groups, or communities. The CNS designation is received after graduation from a Master’s degree program in a clinical nurse specialty or post Master’s certificate, such as gerontology, maternal-child, pediatrics, psych/mental health, etc. The CNS must have national certification in the area of specialization at the advanced level if such a certification exists or as specified in 8.9.4.1 of these Rules and Regulations. The certifying agency must meet the established criteria approved by the Delaware Board of Nursing.

“Nurse Practitioner (N.P.)” A Registered Nurse with advanced nursing educational preparation who is a provider of primary healthcare in a variety of settings with a focus on a specific area of practice. The NP designation is received after graduation from a Master’s program or from an accredited post-basic NP certificate program of at least one academic year in length in a nurse practitioner specialty such as acute care, adult, family, geriatric, pediatric, or women’s health, etc. The NP must have national certification in the area of specialization at the advanced level by a certifying agency which meets the established criteria approved by the Delaware Board of Nursing.

“Audit” The verification of existence of a collaborative agreement for a minimum of 10% of the total number of licenses issued during a specified time period.

“Board” The Delaware Board of Nursing

“Clinical Nursing Specialty” a delimited focus of advanced nursing practice. Specialty areas can be identified in terms of population, setting, disease/pathology, type of care or type of problem. Nursing administration does not qualify as a clinical nursing specialty.

See 3 DE Reg 1373 (4/1/00)

“Collaborative Agreement” Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system.

“Guidelines/ Protocols” Suggested pathways to be followed by an Advanced Practice Nurse for managing a particular medical problem. These guidelines/protocols may be developed collaboratively by an Advanced Practice Nurse and a licensed physician, dentist or a podiatrist, or licensed Delaware health care delivery system.

“National Certification” That credential earned by a nurse who has met requirements of a Board approved certifying agency.

The agencies so approved include but are not limited to:

American Academy of Nurse Practitioners
American Nurses Credentialing Center
American Association of Nurse

Anesthetists Council on Certification of Nurse Anesthetists
American Association of Nurse Anesthetists
Anesthetists Council on Recertification of Nurse Anesthetists

National Certification Corporation for the
Obstetric, Gynecologic and Neonatal Nursing Specialties
National Certification Board of Pediatric
Nurse Practitioners and Nurses.

ACNM Certification Council, Inc.
“Post Basic Program”

A combined didactic and clinical/preceptored program of at least one academic year of full time study in the area of advanced nursing practice with a minimum of 400 clinical/preceptored hours.

The program must be one offered and administered by an approved health agency and/or institution of higher learning,

Post basic means a program taken after licensure is achieved.

“Scope of Specialized Practice” That area of practice in which an Advanced Practice Nurse has a Master’s degree or a post-basic program certificate in a clinical nursing specialty with national certification.

“Supervision” Direction given by a licensed physician or Advanced Practice Nurse to an Advanced Practice Nurse practicing pursuant to a temporary permit. The supervising physician or Advanced Practice Nurse must be periodically available at the site where care is provided, or available for immediate guidance.

8.5 Grandfathering Period

8.5.1 Any person holding a certificate of state licensure as an Advanced Practice Nurse that is valid on July 8, 1994 shall be eligible for renewal of such licensure under the conditions and standards prescribed herein for renewal of licensure.

8.6 Standards for the Advanced Practice Nurse

8.6.1 Advanced Practice Nurses view clients and their health concerns from an integrated multi-system perspective.

8.6.2 Standards provide the practitioner with a framework within which to operate and with the means to evaluate his/her practice. In meeting the standards of practice of nursing in the advanced role, each practitioner, including but not limited to those listed in 8.6.2 of these Rules and Regulations:

8.6.2.1 Performs comprehensive assessments using appropriate physical and psychosocial parameters;

8.6.2.2 Develops comprehensive nursing care plans based on current theories and advanced clinical knowledge and expertise;

8.6.2.3 Initiates and applies clinical treatments based on expert knowledge and technical competency to client populations with problems ranging

from health promotion to complex illness and for whom the Advanced Practice Nurse assumes primary care responsibilities. These treatments include, but are not limited to psychotherapy, administration of anesthesia, and vaginal deliveries;

8.6.2.4 Functions under established guidelines/protocols and/or accepted standards of care;

8.6.2.5 Uses the results of scientifically sound empirical research as a basis for nursing practice decisions;

8.6.2.6 Uses appropriate teaching/learning strategies to diagnose learning impediments;

8.6.2.7 Evaluates the quality of individual client care in accordance with quality assurance and other standards;

8.6.2.8 Reviews and revises guidelines/protocols, as necessary;

8.6.2.9 Maintains an accurate written account of the progress of clients for whom primary care responsibilities are assumed;

8.6.2.10 Collaborates with members of a multi-disciplinary team toward the accomplishment of mutually established goals;

8.6.2.11 Pursues strategies to enhance access to and use of adequate health care services;

8.6.2.12 Maintains optimal advanced practice based on a continual process of review and evaluation of scientific theory, research findings and current practice;

8.6.2.13 Performs consultative services for clients referred by other members of the multi-disciplinary team; and

8.6.2.14 Establishes a collaborative agreement with a licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system to facilitate consultation and/or referral as appropriate in the delivery of health care to clients.

8.6.3 In addition to these standards, each nurse certified in an area of specialization and recognized by the Board to practice as an Advanced Practice Nurse is responsible for practice at the level and scope defined for that specialty certification by the agency which certified the nurse.

8.7 Generic Functions of the Advanced Practice Nurse Within the Specialized Scope of Practice include but are not limited to:

8.7.1 Eliciting detailed health history(s)

8.7.2 Defining nursing problem(s)

8.7.3 Performing physical examination(s)

8.7.4 Collecting and performing laboratory tests

8.7.5 Interpreting laboratory data

8.7.6 Initiating requests for essential laboratory procedures

8.7.7 Initiating requests for essential x-rays

8.7.8 Screening patients to identify abnormal

problems

8.7.9 Initiating referrals to appropriate resources and services as necessary

8.7.10 Initiating or modifying treatment and medications within established guidelines

8.7.11 Assessing and reporting changes in the health of individuals, families and communities

8.7.12 Providing health education through teaching and counseling

8.7.13 Planning and/or instituting health care programs in the community with other health care professionals and the public

8.7.14 Delegating tasks appropriately

8.7.15 Prescribing medications and treatments independently pursuant to Rules and Regulations promulgated by the Joint Practice Committee as defined in 24 **Del.C.** §1906(20).

8.8 Criteria for Approval of Certification Agencies

8.8.1 A national certifying body which meets the following criteria shall be recognized by the Board to satisfy 24 **Del.C.** §1902(d)(1).

8.8.2 The national certifying body:

8.8.2.1 Is national in the scope of its credentialing.

8.8.2.2 Has no requirement for an applicant to be a member of any organization.

8.8.2.3 Has educational requirements which are consistent with the requirements of these rules.

8.8.2.4 Has an application process and credential review which includes documentation that the applicant's education is in the advanced nursing practice category being certified, and that the applicant's clinical practice is in the certification category.

8.8.2.5 Uses an examination as a basis for certification in the advanced nursing practice category which meets the following criteria:

8.8.2.5.1 The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community;

8.8.2.5.2 The examination represents the knowledge, skills and abilities essential for the delivery of safe and effective advanced nursing care to the clients;

8.8.2.5.3 The examination content and its distribution are specified in a test plan (blueprint), based on the job analysis study, that is available to examinees;

8.8.2.5.4 Examination items are reviewed for content validity, cultural sensitivity and correct scoring using an established mechanism, both before use and periodically;

8.8.2.5.5 Examinations are evaluated for psychometric performance;

8.8.2.5.6 The passing standard is established using acceptable psychometric methods, and is reevaluated periodically; and

8.8.2.5.7 Examination security is maintained through established procedures

8.8.2.6 Issues certification based upon passing the examination and meeting all other certification requirements.

8.8.2.7 Provides for periodic recertification which includes review of qualifications and continued competency.

8.8.2.8 Has mechanisms in place for communication to Boards of Nursing for timely verification of an individual's certification status, changes in certification status, and changes in the certification program, including qualifications, test plan and scope of practice.

8.8.2.9 Has an evaluation process to provide quality assurance in its certification program.

8.9 Application for Licensure to Practice as an Advanced Practice Nurse

8.9.1 Application for licensure as a Registered Nurse shall be made on forms supplied by the Board.

8.9.2 In addition, an application for licensure to practice as an Advanced Practice Nurse shall be made on forms supplied by the Board.

8.9.2.1 The APN applicant shall be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.9.2.2 Notification of changes in the name of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system shall be forwarded to the Board office.

8.9.3 Each application shall be returned to the Board office together with appropriate documentation and non-refundable fees.

8.9.4 A Registered Nurse meeting the practice requirement as listed in 8.11 and all other requirements set forth in these Rules and Regulations may be issued a license as an Advanced Practice Nurse in the specific area of specialization in which the nurse has been nationally certified at the advanced level and/or has earned a Master's degree in a clinical nursing specialty.

8.9.4.1 Clinical nurse specialists, whose subspecialty area can be categorized under a broad scope of nursing practice for which a Board-approved national certification examination exists, are required to pass this certification examination to qualify for permanent licensure as an Advanced Practice Nurse. This would include, but not be limited to medical-surgical and psychiatric-mental health nursing. If a more specific post-graduate level certification examination that has Board of Nursing approval is available within the clinical nursing specialist's subspecialty area at the time of licensure application, the applicant may substitute this examination for the broad-based clinical nursing specialist certification examination.

8.9.4.2 Faculty members teaching in

nursing education programs are not required to be licensed as Advanced Practice Nurses. Those faculty members teaching in graduate level clinical courses may apply for licensure as Advanced Practice Nurses and utilize graduate level clinical teaching hours to fulfill the practice requirement as stated in 8.11.2.1.

8.9.5 Renewal of licensure shall be on a date consistent with the current Registered Nurse renewal period. A renewal fee shall be paid.

8.9.6 The Board may refuse to issue, revoke, suspend or refuse to renew the license as an Advanced Practice Nurse or otherwise discipline an applicant or a practitioner who fails to meet the requirements for licensure as an Advanced Practice Nurse or as a registered nurse, or who commits any disciplinary offense under the Nurse Practice Act, 24 **Del.C.** Ch. 19, or the Rules and Regulations promulgated pursuant thereto. All decisions regarding independent practice and/or independent prescriptive authority are made by the Joint Practice Committee as provided in 24 **Del.C.** §1906(20) - (22).

8.10 Temporary Permit for Advanced Practice Nurse Licensure

8.10.1 A temporary permit to practice, pending Board approval for permanent licensure, may be issued provided that:

8.10.1.1 The individual applying has also applied for licensure to practice as a Registered Nurse in Delaware, or

8.10.1.2 The individual applying holds a current license in Delaware, and

8.10.1.3 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nursing program, and has passed the certification examination, or

8.10.1.4 The individual is a graduate of a Master's program in a clinical nursing specialty for which there is no certifying examination, and can show evidence of at least 1000 hours of clinical nursing practice within the past 24 months.

8.10.1.5 Application(s) and fee(s) are on file in the Board office.

8.10.2 A temporary permit to practice, under supervision only, may be issued at the discretion of the Executive Director provided that:

8.10.2.1 The individual meets the requirements in 8.10.1.1 or 8.10.1.2, and 8.10.1.5 and;

8.10.2.2 The individual submits proof of graduation from a nationally accredited or Board approved Master's or certificate advanced practice nurse program, and;

8.10.2.3 The individual submits proof of admission into the approved certifying agency's examination or is seeking a temporary permit to practice under supervision to accrue the practice hours required to sit for the

certifying examination or has accrued the required practice hours and is scheduled to take the first advanced certifying examination upon eligibility or is accruing the practice hours referred to in 8.10.2.4; or,

8.10.2.4 The individual meets 8.10.2.1 and 8.10.2.2 hereinabove and is awaiting review by the certifying agency for eligibility to sit for the certifying examination.

8.10.3 If the certifying examination has been passed, the appropriate form must accompany the application.

8.10.4 A temporary permit may be issued:

8.10.4.1 For up to two years in three month periods.

8.10.4.2 At the discretion of the Executive Director.

8.10.5 A temporary permit will be withdrawn:

8.10.5.1 Upon failure to pass the first certifying examination

8.10.5.1.1 The applicant may petition the Board of Nursing to extend a temporary permit under supervision until results of the next available certification exam are available by furnishing the following information:

8.10.5.1.1.1 current employer reference,

8.10.5.1.1.2 supervision available,

8.10.5.1.1.3 job description,

8.10.5.1.1.4 letter outlining any extenuating circumstances,

8.10.5.1.1.5 any other information the Board of Nursing deems necessary.

8.10.5.2 For other reasons stipulated under temporary permits elsewhere in these Rules and Regulations.

3 DE Reg 1373 (4/1/00)

8.10.6 A lapsed temporary permit for designation is equivalent to a lapsed license and the same rules apply.

8.10.7 Failure of the certifying examination does not impact on the retention of the basic professional Registered Nurse licensure.

8.10.8 Any person practicing or holding oneself out as an Advanced Practice Nurse in any category without a Board authorized license in such category shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the Law regulating the Practice of Nursing in Delaware, (24 **Del.C.** Ch. 19).

8.10.9 Endorsement of Advanced Practice Nurse designation from another state is processed the same as for licensure by endorsement, provided that the applicant meets the criteria for an Advanced Practice Nurse license in Delaware.

8.11 Maintenance of Licensure Status: Reinstatement

8.11.1 To maintain licensure, the Advanced Practice Nurse must meet the requirements for

recertification as established by the certifying agency.

8.11.2 The Advanced Practice Nurse must have practiced a minimum of 1500 hours in the past five years or no less than 600 hours in the past two years in the area of specialization in which licensure has been granted.

8.11.2.1 Faculty members teaching in graduate level clinical courses may count a maximum of 500 didactic course contact hours in the past five years or 200 in the past two years and all hours of direct on-site clinical supervision of students to meet the practice requirement.

8.11.2.2 An Advanced Practice Nurse who does not meet the practice requirement may be issued a temporary permit to practice under the supervision of a person licensed to practice medicine, surgery, dentistry, or advanced practice nursing, as determined on an individual basis by the Board.

8.11.3 The Advanced Practice Nurse will be required to furnish the name(s) of the licensed physician, dentist, podiatrist, or licensed Delaware health care delivery system with whom a current collaborative agreement exists.

8.11.4 Advanced Practice Nurses who fail to renew their licenses by February 28, May 31, or September 30 of the renewal period shall be considered to have lapsed licenses. After February 28, May 31, or September 30 of the current licensing period, any requests for reinstatement of a lapsed license shall be presented to the Board for action.

8.11.5 To reinstate licensure status as an Advanced Practice Nurse, the requirements for recertification and 1500 hours of practice in the past five years or no less than 600 hours in the past two years in the specialty area must be met or the process described in 8.11.4 followed.

8.11.6 An application for reinstatement of licensure must be filed and the appropriate fee paid.

8.12 Audit of Licensees

8.12.1 The Board may select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that they are to be audited for compliance of having a collaborative agreement.

8.12.1.1 Upon receipt of such notice, the licensee must submit a copy of a current collaborative agreement(s) within three weeks of receipt of the notice.

8.12.1.2 The Board shall notify the licensee of the results of the audit immediately following the Board meeting at which the audits are reviewed.

8.12.1.3 An unsatisfactory audit shall result in Board action.

8.12.1.4 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

8.12.2 The Board may select licensees for audit throughout the biennium.

8.13 Exceptions to the Requirements to Practice

8.13.1 The requirements set forth in 8.9 shall not

apply to a Registered Nurse who is duly enrolled as a bona fide student in an approved educational program for Advanced Practice Nurses as long as the practice is confined to the educational requirements of the program and is under the direct supervision of a qualified instructor.

8.14 Definitions

8.14.1 Collaborative Agreement - Includes

8.14.1.1 A true collegial agreement between two parties where mutual goal setting, access, authority, and responsibility for actions belong to individual parties and there is a conviction to the belief that this collaborative agreement will continue to enhance patient outcomes and

8.14.1.2 a written document that outlines the process for consultation and referral between an Advanced Practice Nurse and a [duly] licensed Delaware physician, dentist, podiatrist or licensed Delaware health care delivery system. This document can include, but not be limited to, written verification of health care facility approved clinical privileges or a health care facility approved job description of the A.P.N. If the agreement is with a licensed Delaware health care delivery system, the individual will have to show that the system will supply appropriate medical back-up for purposes of consultation and referral.

8.14.2 National Certification - That credential earned by an Advanced Practice Nurse who has met requirements of a Board of Nursing approved certifying agency.

~~The agencies so approved include:~~

~~A. American Academy of Nurse Practitioners~~

~~B. American Nurses' Credentialing Center~~

~~C. American Association of Nurse Anesthetists
Council on Certification of Nurse Anesthetists~~

~~D. American Association of Nurse Anesthetists
Council on Recertification of Nurse Anesthetists~~

~~E. National Certification Corporation for
Obstetric, Gynecologic and Neonatal Nursing Specialties~~

~~F. National Certification Board of Pediatric
Nurse Practitioners and Nurses~~

~~G. ACNM Certification Council, Inc.~~

8.14.3 Pharmacology/Pharmacotherapeutics - refers to any course, program, or offering that would include, but not be limited to, the identification of individual and classes of drugs, their indications and contraindications, their likelihood of success, their dosages, their side-effects and their interactions. It also encompasses clinical judgement skills and decision making. These skills may be based on thorough interviewing, history taking, physical assessment, test selection and interpretation, patho-physiology, epidemiology, diagnostic reasoning, differentiation of conditions, treatment decisions, case evaluation and non-pharmacologic interventions.

8.14.4 Prescription Order - includes the prescription date, the name of the patient, the name, address, area of specialization and business telephone number of the

advanced practice nurse prescriber, the name, strength, quantity, directions for use, and number of refills of the drug product or device prescribed, and must bear the signature name and prescriber ID number of the advanced practice nurse prescriber, and when applicable, practitioner's prescriber's D.E.A. number and signature. There must be lines provided to show whether the prescription must be dispensed as written or substitution is permitted.

8.15 REQUIREMENTS FOR INITIAL INDEPENDENT PRACTICE/PRESCRIPTIVE AUTHORITY

An APN who has not had independent prescriptive authority within the past two years in Delaware or any other jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.15.1 Be an Advanced Practice Nurse (APN) holding a current permanent license issued by the Board of Nursing (BON). If the individual does not hold national certification, eligibility will be determined on a case by case basis.

8.15.2 Have completed a post basic advanced practice nursing program that meets the criteria as established in Section 4.7 of Article VIII of the Rules and Regulations of the Delaware Board of Nursing with documentation of academic courses in advanced health assessment, diagnosis and management of problems within the clinical specialty, advanced patho-physiology and advanced pharmacology/pharmacotherapeutics. In the absence of transcript verification of the aforementioned courses, applicants shall show evidence of content integration through course descriptions, course syllabi, or correspondence from school officials. If the applicant cannot produce the required documentation, such applicant may petition the Joint Practice Committee for consideration of documented equivalent independent prescriptive authority experience.

8.15.3 Submit a copy of the current collaborative agreement to the Joint Practice Committee (JPC). The collaborative agreement(s) shall include arrangements for consultation, referral and/or hospitalization complementary to the area of the nurse's independent practice.

8.15.4 Show evidence of the equivalent of at least a thirty hours of advanced pharmacology and pharmacotherapeutics related continuing education program within the five two years prior to application for independent practice and/or independent prescriptive authority. This may be a comprehensive continuing education programs or a three credit, semester long graduate level course. CRNAs may meet this requirement by submitting evidence of thirty hours of pharmacology/therapeutics related continuing education offerings within the five years prior to application for independent practice and/or independent prescriptive authority. The thirty hours may also occur during the

generic APN program as integrated content as long as this can be documented to the JPC. All offerings will be reviewed and approved by the JPC.

8.15.5 Demonstrate how submitted continuing education offerings relate to pharmacology and therapeutics within their area of specialty. This can be done by submitting the program titles to show content and dates attended. If the JPC questions the relevance of the offerings, the applicant must have available program descriptions, and/or learner objectives, and/or program outlines for submission to the JPC for their review and approval.

8.16 REQUIREMENTS FOR INDEPENDENT PRACTICE/PRESCRIPTIVE AUTHORITY BY ENDORSEMENT

An APN who has had prescriptive authority in another jurisdiction who is applying for independent practice and/or independent prescriptive authority shall:

8.16.1 Show evidence of meeting 8.15.1 and 8.15.3.

8.16.2 Show evidence of having current prescriptive authority in another jurisdiction.

8.16.3 Have no encumbered APN designation(s) in any jurisdiction.

8.16.4 Show evidence of completion of a minimum of ten hours of JPC approved pharmacology/pharmacotherapeutics related continuing education within the area of specialization and licensure within the past two years.

8.17 APPLICATION

8.17.1 Names and credentials of qualified applicants will be forwarded to the Joint Practice Committee for approval and then forwarded to the Board of Medical Practice for review and final approval.

8.18 PRESCRIPTIVE AUTHORITY

8.18.1 APNs may prescribe, administer, and dispense legend medications including Schedule II - V controlled substances, (as defined in the Controlled Substance Act and labeled in compliance with 24 Del.C. Section 2536(C)), parenteral medications, medical therapeutics, devices and diagnostics.

8.18.2 APNs will be assigned a provider identifier number as outlined by the Division of Professional Regulation.

8.18.3 Controlled Substances registration will be as follows:

8.18.3.1 APNs must register with the Drug Enforcement Agency and use such DEA number for controlled substance prescriptions.

8.18.3.2 APNs must register biennially with the Office of Narcotics and Dangerous Drugs in accordance with 16 Del.C., Section 4732(a).

8.18.4 APNs may request and issue professional samples of legend, including schedule II-V controlled substances, and over-the-counter medications that

must be labeled in compliance with 24 Del.C., Section 2536(C).

8.18.5 APNs may give verbal prescription orders.

8.19 PRESCRIPTIVE WRITING

8.19.1 All prescription orders will be written as defined by the Delaware Board of Pharmacy as defined in 8.14.4.

8.20 RENEWAL

8.20.1 Maintain current APN licensure.

8.20.2 Maintain competency through a minimum of ~~fifteen~~ ten hours of JPC approved pharmacology ~~and~~ therapeutics pharmacotherapeutics related continuing education within the area of specialization and licensure per biennium. The pharmacology/ pharmacotherapeutics content may be a separate course or integrated within other offerings.

8.21 DISCIPLINARY PROCEEDINGS

8.21.1 Complaints against an APN will be forwarded to the Division of Professional Regulation. A complaint related to independent practice/prescriptive authority will be referred to the Joint Practice Committee for review and disposition and then forwarded to the Board of Medical Practice for review and final approval in an expeditious manner.

8.21.2 All other complaints regarding APNs will continue to be under the sole jurisdiction of the Board of Nursing.

9.0 Rules and Regulations Pertaining to Mandatory Continuing Education

9.1 Definitions

9.1.1 The following words and terms, when used in this regulation, should have the following meaning unless the context clearly indicates otherwise.

"Approved Method" means a planned educational experience, as described in 9.3.

"Approved Provider" means an entity that is one of the following:

A nationally accredited provider of nursing related continuing education; or

An organization or agency that is approved as a provider or has programs that are approved by a nationally accredited approver of nursing related continuing education; or

A Board of Nursing approved school of nursing; or

A staff development department within a licensed health care agency; or an accredited educational institution; or

An entity approved by the Delaware Board of Nursing, pursuant to 9.4 and 9.5, if not meeting any other criteria.

"Audit" means

The verification of completion of continuing education requirements for a minimum of 1% of the total number of licenses issued during a specified time period. (Refer to 9.6) or

The verification of adherence to continuing education approved provider requirements during a specified time period. Providers may be audited as the Board determines. (Refer to 9.7)

"Biennium" means the two year period of licensure beginning in an odd numbered year and ending in the next odd numbered year for the Registered Nurse and the two year period of licensure beginning in an even-numbered year and ending in the next even numbered year for the Licensed Practical Nurse.

"Contact Hour" means one contact hour equals a minimum of 50 minutes. One half contact hour equals a minimum of 25 minutes.

"Continuing Education" means those professional experiences designed to enrich the nurse's contribution to health care and for the purpose of protecting the public health, safety, and welfare.

"Orientation" means the means by which nurses are introduced to the philosophy, goals, policies, procedures, role expectations, physical facilities and special services in a specific work setting. Orientation programs do not meet the continuing education requirements of these rules.

See 1 DE Reg 1893 (6/1/98)

9.2 Continuing Education Licensure Renewal Requirements

9.2.1 Board Authority

9.2.1.1 The Board derives its authority under 24 Del.C. §1906(19), to create continuing education requirements as a prerequisite to obtaining a current license and to establish an audit system to assure compliance. This requirement is in addition to the practice requirement as stated in 6.5.

9.2.1.1.1 During each biennium, each Registered Nurse must earn 30 contact hours and each Licensed Practical Nurse must earn 24 hours, to be credited to that biennium.

9.2.1.1.1.1 Units of measurement for continuing education shall be: no less than .5 contact hours and be as follows:

9.2.1.1.1.1 50 Minutes = 1 Contact Hour

9.2.1.1.1.2 25 Minutes = .5 Contact Hour

9.2.1.1.1.3 1 Academic Semester Hour (Credit) = 5 Contact Hours

9.2.1.1.1.4 1 C.M.E. = 1.2 Contact Hours

9.2.1.1.1.1. 5Certification/recertification (excluding preacquired skills and knowledge)

= 20 Contact Hours (Only During the Biennium Awarded)

9.2.2 Requirements

9.2.2.1 Renewal

9.2.2.1.1 To obtain a Registered Nurse or Licensed Practical Nurse license for the next biennium period, the licensee shall submit, along with the renewal application and fee, a completed report on a form furnished by the Board office, documenting the completion of all continuing education requirements for that biennium.

9.2.2.2 Reinstatement

9.2.2.2.2 To obtain a Registered Nurse or Licensed Practical Nurse license through reinstatement, the applicant shall submit, along with the reinstatement application and fee, a completed report on a form provided by the Board office, documenting the completion of all continuing education requirements for the past two years.

9.2.2.3 Reinstatement/Endorsement

9.2.2.3.1 A Registered Nurse who has endorsed into Delaware during a biennium or whose license was reactivated or reinstated during a biennium must earn 15 contact hours if more than a full calendar year remains in the biennium to obtain a Registered Nurse license for the next biennium period. A Licensed Practical Nurse must earn 12 contact hours if more than a full calendar year remains in the biennium to obtain a Licensed Practical Nurse license for the next biennium period.

9.2.3 The required hours shall be completed in the period for which the license was issued. Contact hours from a previous licensure period will not count nor may credits be accumulated for use in a future licensing period.

9.2.4 To be approved for continuing education credit, offerings shall meet the qualifications of appropriate subject matter as specified in these Rules and Regulations.

9.2.5 The licensee shall retain all original certificates or transcripts to verify completion of each continuing education offering and award of contact hours.

9.2.6 Exceptions

9.2.6.1 Those persons licensed by examination within a biennial renewal period are exempt from continuing education requirements for that biennium.

9.2.6.2 A licensee who has had a physical or mental illness during the license period can apply to the Board of Nursing for a waiver. A waiver would provide for an extension of time or exemption from some or all of the continuing education requirements for one renewal period. Should the illness extend beyond one renewal period, a new request must be submitted.

9.2.6.3 A request for a waiver will be reviewed and acted upon within 90 days of receipt.

See 1 DE Reg 1894 (6/1/98)

9.3 Approved Methods to Earn Contact Hours

9.3.1 Academic Studies

9.3.1.1 A course offered by an accredited

school, university or college for which college credit has been awarded and/or for which class attendance is necessary. May include successful completion of challenge examinations.

9.3.2 Authoring an Article, Book Chapter, or Independent Study

9.3.2.1 The article, book chapter, or independent study (See 9.3.6) must be related to nursing. Proof of acceptance from the editor or the published work will document achievement of this type of continuing education. A maximum of five contact hours of continuing education may be earned per biennium by this method. Letters to the editor or opinion statements will not be recognized.

9.3.3 Certification/Recertification

9.3.3.1 A process by which a nongovernmental agency or association certifies that an individual licensed to practice as an Advanced Practice Nurse, a Registered Nurse, or a Licensed Practical Nurse has met certain predetermined standards specified for specialty practice. National certification or recertification equals 20 contact hours awarded during the biennium. A certification/recertification document indicating the date of recognition must be available. When recertification requirements include more than 20 contact hours, the additional contact hours can be applied toward the total of 30 contact hours for R.N. or 24 contact hours for L.P.N. licensure.

9.3.4 Conference

9.3.4.1 A meeting that brings together participants for one or more days to discuss the latest developments and activities from individuals with special expertise in the subject matter of the conference.

9.3.5 Extension Studies

9.3.5.1 A course given through an accredited school, college or university for which academic credit may or may not be awarded and for which class attendance is not necessary.

9.3.6 Independent Study

9.3.6.1 An educational activity designed for completion by learners, independently, at the learner's own pace and at a time of the learner's choice.

9.3.6.1.1 Examples: Articles in journals, videocassette programs, computer programs for which there is a test of knowledge and a certificate awarded upon completion.

9.3.7 Inservice Education

9.3.7.1 Activities intended to help nurses acquire, maintain, and/or increase the level of competence in fulfilling his or her assigned responsibilities, specific to the expectations of the employer. Planned inservices must be a minimum of 25 minutes. Mandatory education, such as CPR, infection control, fire, safety, and facility specific policies and practices, is not recognized as continuing education.

9.3.8 Presentation

9.3.8.1 Educational presentations, excluding preparation time, made to other health professionals that are not required by an individual's job description. The presenter must submit program brochures, course syllabi or letter from the provider identifying the participation of the presenter. Contact hours shall be equal to the actual presentation time. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.9 Research Project

9.3.9.1 The research project must have been done during the biennium. The licensee must submit an abstract as evidence of being one of the recognized researchers. A maximum of five contact hours of continuing education may be earned per biennium by this method.

9.3.10 Symposium or Seminar

9.3.10.1 A meeting of groups of participants to explore, in depth, a pre-selected, thoroughly researched topic. The emphasis is on discussion and a free exchange of ideas and experiences.

9.3.11 Workshop

9.3.11.1 A meeting that offers opportunities for persons with common interest or problems to meet with specialists to consider new knowledge and practices and to experience working on specific relevant tasks.

9.3.12 Any method not on this approved list will require that a written petition justifying the request be submitted to the Board of Nursing.

9.3.12.1 The Board may consider the request at its next regularly scheduled Board meeting if received at least two weeks before the meeting. If less than two weeks, the request will be processed at the following meeting.

See 1 DE Reg 1894 (6/1/98)

9.4 Continuing Education - Provider

9.4.1 Board Authority

9.4.1.1 The Board derives its authority under 24 **Del.C.** Ch. 19, to create requirements for becoming an approved provider and maintaining that status. The Board also has the authority to develop an auditing mechanism to verify compliance with criteria for approved providers.

9.4.2 Criteria for approved providers

9.4.2.1 The approved providers shall produce evidence of their capability to adhere to criteria indicative of quality continuing education for nurses. Each provider approved under 9.1, will be assigned a provider number by the Board and shall provide an annual statement of compliance with these criteria.

9.4.3 Subject matter criteria. The provider will ensure that:

9.4.3.1 The subject matter is specifically designed to meet the objectives, the stated level and learning

needs of the participants.

9.4.3.2 The content is planned, logically sequenced and reflects input from experts in the subject matter.

9.4.3.3 The subject matter reflects the professional educational needs of the learner in order to meet the health care needs of the consumer.

9.4.4 Criteria related to the operation of an approved continuing education providership. The provider shall:

9.4.4.1 Have a consistent, identifiable authority who has overall responsibility for the operation of the providership and execution of its offerings.

9.4.4.2 Have an organizational structure and training objectives.

9.4.4.3 Develop course descriptions, objectives, and learning outcomes.

9.4.4.4 Assign contact hours according to a uniform measure of credit and not award contact hours for less than 25 minutes.

9.4.4.5 Establish dates and times for programs.

9.4.4.6 Plan and structure programs with teaching and learning methodologies that include a statement of purpose and measurable educational objectives.

9.4.4.7 Use faculty who have academic preparation and/or experience in the subject matter.

9.4.4.8 Use evaluation processes or tools that provide participants an opportunity to evaluate in writing the learning experience, the instructional methods, facilities, and resources.

9.4.4.9 Award the contact hours and be responsible for assurance that all criteria in this chapter are met, when co-providing.

9.4.4.10 Notify the Board within 30 days of changes in the administrative authority, the address of the provider, and its ability to meet the criteria.

9.4.5 Criteria related to record maintenance and continuing education programs. The provider shall:

9.4.5.1 Maintain records on persons awarded contact hours for a minimum of six years from their date of program completion. The records shall include the name of licensee, contact hours awarded, social security number, title, and dates of offerings.

9.4.5.2 Provide for secure storage and retrieval of individual attendance and information regarding each offering.

9.4.5.3 Furnish each participant with an individual record of completion that displays the following on the front of the certificate: participant's name, provider name and number, contact hours awarded, starting and ending dates of the offering, subject matter and a reminder to the participant to retain the certificate for the period of

licensure.

See 1 DE Reg 1896 (6/1/98)

9.5 Board Approval Process for Providers from 9.1.

9.5.1 An application will be sent to a potential provider upon request. Upon submission of a non-refundable fee, the required materials and a determination of the Delaware Board of Nursing that the materials fulfill the criteria for providers as specified in these Rules and Regulations, initial approval will be granted for up to three years.

See 1 DE Reg 1896 (6/1/98)

9.5.2 The following materials and information must accompany an application:

9.5.2.1 A description of the administrative authority of the potential provider;

9.5.2.2 The job description of the person who is administratively responsible for provider activities;

9.5.2.3 The continuing education philosophy purpose and goals;

9.5.2.4 Organizational charts defining lines of authority and communication in relation to continuing education;

9.5.2.5 Plan for faculty selection;

9.5.2.6 Evidence of nursing participation in program planning and/or administration;

9.5.2.7 A record system and a procedure to ensure confidentiality and safe storage;

9.5.2.8 The criteria used to plan and implement continuing education activities;

9.5.2.9 The criteria used to verify attendance;

9.5.2.10 A procedure that ensures the participant who successfully completes an educational activity will receive a document displaying an attendance record, number of contact hours awarded, provider name and number, title of presentation, and the date and location for each offering;

9.5.2.11 Registration procedure(s);

9.5.2.12 A plan for evaluation, including:

9.5.2.12.1 A procedure for participant evaluation that includes assessment of the instruction, resources and facilities, and

9.5.2.12.2 A system for the follow up of suggestions for improvement;

9.5.2.13 Documents from two typical sample course offerings including:

9.5.2.13.1 A narrative of the planning of the offerings including evidence of nursing participation;

9.5.2.13.2 A sample brochure or other form of advertising;

9.5.2.13.3 Course content, i.e., topical course outline, objectives;

9.5.2.13.4 Teaching-learning methodologies and supportive materials;

9.5.2.13.5 Bibliography; and

9.5.2.13.6 A sample participant evaluation form.

9.5.3 The Executive Director will review the completed application upon receipt.

9.5.3.1 The review is based on the criteria as specified in these Rules and Regulations.

9.5.3.2 If the Executive Director finds the application incomplete, the applicant will be notified and have two opportunities to submit revised applications.

9.5.3.3 If the application does not meet established criteria within three reviews, the Executive Director may recommend that the Board deny it.

9.5.3.4 When the application meets all requirements as set forth for providers in these Rules and Regulations, the Executive Director shall recommend approval to the Board.

9.5.3.5 The Board may approve for up to three years, or elect not to approve.

9.5.3.6 The provider will be notified of the Board of Nursing's decision in writing within two weeks.

9.5.3.7 A provider number will be assigned at the time of approval and issued within three weeks. This number must be used in all correspondence with the Board. This number will be published on a list of approved providers.

9.5.3.8 An application that has been denied provider status by the Board may be re-submitted one year after the denial date.

9.5.4 Complaints against providers.

9.5.4.1 Provider approval may be rescinded at any time during the approved period for noncompliance with approved provider requirements or for complaints that the Board determines indicate the program does not meet criteria.

9.5.4.2 Providers may appeal a decision by requesting a hearing before the Board.

9.6 Audit of Licensees

9.6.1 The Board will randomly and on an individual basis select licensees for audit two months prior to renewal in any biennium. The Board shall notify the licensees that their records are to be audited for compliance with the continuing education requirements.

See 1 DE Reg 1897 (6/1/98)

9.6.1.1 Upon receipt of such notice, the licensee must submit verification of compliance for the period of licensure being audited. Verification materials which may be requested include proof of attendance, academic transcripts, certificates showing number of contact hours awarded, and documentation of compliance with exceptions.

9.6.1.2 The licensee must submit documentation within three weeks of receipt of notice.

9.6.1.3 The Board shall notify the licensee of the results of the audit immediately following the Board

meeting at which the audits are reviewed.

9.6.1.4 An unsatisfactory audit shall result in Board action.

9.6.1.5 Failure to notify the Board of a change in mailing address will not absolve the licensee from audit requirements.

9.6.1.6 Fulfillment of the audit requirements must be completed prior to license renewal.

9.7 Audit of Providers

9.7.1 The Board may select approved providers for audit. Upon selection, the Board shall:

9.7.1.1 Notify the approved providers that their records are to be audited for compliance with continuing education requirements;

9.7.1.2 Be provided with records that document compliance with the Rules and Regulations for providers; and

9.7.1.3 Conduct a site visit as necessary.

9.8 Disciplinary Proceedings; Appeal

9.8.1 Failure to comply with continuing education requirements will result in action under Section 1922 of the Nurse Practice Act and the license will be considered lapsed.

9.8.2 Application for reinstatement of a lapsed license must be filed with a completed continuing education document form and the fee paid before practice can continue.

10.0 Disciplinary Proceedings

10.1 Disciplinary Sanctions

10.1.1 The Board may:

10.1.1.1 refuse to issue a temporary permit or a license to practice nursing;

10.1.1.2 revoke, suspend or censure a license to practice nursing;

10.1.1.3 issue a letter of reprimand;

10.1.1.4 place a license on probationary status;

10.1.1.5 refuse to renew a license; or

10.1.1.6 otherwise discipline a licensee as provided by 24 **Del.C.** §1922.

10.2 Procedures

10.2.1 Any individual shall submit written complaints of violations of 24 **Del.C.** Ch. 19 to the Division of Professional Regulation and the Executive Director shall retain a copy.

10.2.2 Any Board member receiving a complaint alleging a practitioner's or licensee's violation of the Nurse Practice Act should promptly forward the complaint to the Division of Professional Regulation with a copy to the Executive Director.

10.2.3 Hearings on licensing matters and complaints filed with the Board that allege a practitioner or licensee has violated the Nurse Practice Act, 24 **Del.C.** Ch. 19, shall be heard and determined by the Board in

accordance with the applicable provisions of the Nurse Practice Act and the Administrative Procedures Act, 29 **Del.C.** Ch. 101. When the licensee/practitioner, prosecuting Deputy Attorney General, and appointed Board member, if any, consent, the complaint may be resolved through the Consent Agreement process described herein in lieu of a formal disciplinary hearing before the Board.

10.3 Reissuance of License Following Disciplinary Action

10.3.1 Upon application made by the licensee, a suspended or probated license may be reissued or reinstated, on such conditions as the Board may determine, after the imposed period of discipline has concluded and after evidence is presented to satisfy the Board that the condition that lead to the disciplinary action has been corrected.

10.4 Unprofessional Conduct Defined

10.4.1 Nurses whose behavior fails to conform to legal standards and accepted standards of the nursing profession and who thus may adversely affect the health and welfare of the public may be found guilty of unprofessional conduct.

10.4.2 Unprofessional conduct shall include but is not limited to the following:

10.4.2.1 Performing acts beyond the authorized scope of the level of nursing practice for which the individual is licensed.

10.4.2.2 Assuming duties and responsibilities within the practice of nursing without adequate preparation, or without maintaining competency.

10.4.2.3 Performing new nursing techniques and/or procedures without education and practice.

10.4.2.4 Inaccurately recording, falsifying or altering a patient or agency record.

10.4.2.5 Committing verbal or physical abuse of patients or co-employees.

10.4.2.6 Assigning unlicensed persons to perform the practice of licensed nurses.

10.4.2.7 Delegating nursing practice or advanced nursing practice to unqualified persons.

10.4.2.8 Failing to supervise persons to whom nursing practice or advanced nursing practice has been delegated.

10.4.2.9 Leaving a patient assignment except in documented emergency situations.

10.4.2.10 Failing to safeguard a patient's dignity and right to privacy in providing services.

10.4.2.11 Violating the confidentiality of information concerning a patient.

10.4.2.12 Failing to take appropriate action to safeguard a patient from incompetent, unethical or illegal health care practice.

10.4.2.13 Practicing nursing when unfit to perform procedures and make decisions in accordance with the license held because of physical, psychological, or

mental impairment.

10.4.2.14 Diverting drugs, supplies or property of a patient or agency.

10.4.2.15 Diverting, possessing, obtaining, supplying or administering prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs.

10.4.2.16 Practicing professional or practical nursing when license or temporary permit has expired.

10.4.2.17 Practicing as an Advanced Practice Nurse when designation and/or certification and/or temporary permit has expired.

10.4.2.18 Practicing professional or practical nursing in this state without a current Delaware license or permit.

10.4.2.19 Practicing as an Advanced Practice Nurse in this state without current designation and a registered nurse license and/or temporary permits.

10.4.2.20 Allowing another person to use her/his nursing license, temporary permit, or certification of Advanced Practice Nurse for any purpose.

10.4.2.21 Aiding, abetting and/or assisting an individual to violate or circumvent any law or duly promulgated rule and regulation intended to guide the conduct of a nurse or other health care provider.

10.4.2.22 Resorting to fraud, misrepresentation or deceit in taking NCLEX-RN or PN, or in obtaining a license, temporary permit or advanced practice designation.

10.4.2.23 Disclosing the contents of the licensing examination or soliciting, accepting or compiling information regarding the examination before, during or after its administration.

10.4.2.24 Failing to report unprofessional conduct by another licensee.

10.4.2.25 Practicing or holding oneself out as an Advanced Practice Nurse in any category without holding a Board authorized certificate of state designation in such category.

10.4.2.26 Failing to comply with the requirements for mandatory continuing education.

10.4.2.27 Failing to take appropriate action or to follow policies and procedures in the practice situation designed to safeguard the patient.

10.4.2.28 Failing to comply with the terms and conditions set out in a disciplinary action of the Board.

See 1 DE Reg 1898 (6/1/98)

10.5 Consent Agreement Process

10.5.1 Disciplinary proceedings subject to resolution by Consent Agreement process shall proceed as follows:

10.5.1.1 The President shall appoint a Board member, subject to ratification by the Board at the next meeting, to review each formal complaint against a licensee and determine whether the Consent Agreement process can

be used in lieu of a formal disciplinary hearing. Similarity to previous cases that have established Board remedies and severity and number of counts may be considered. The assigned Deputy Attorney General may also request that the complaint proceed by the Consent Agreement process.

10.5.1.2 If the appointed Board member and the state prosecutor concur that a consent agreement is appropriate, the Board office shall send the licensee a copy of the formal complaint and a request to proceed either to a formal hearing or to a Consent Agreement process within 14 days. If the Consent Agreement process is not appropriate, the complaint will be set for hearing.

10.5.1.3 The licensee shall be required to respond within 14 days when the Consent Agreement alternative is offered. When the response deadline is not met or the licensee declines the Consent Agreement process, a hearing date shall be scheduled.

10.5.1.4 Upon receipt of agreement to use the Consent Agreement process, the appointed Board member and Board counsel shall receive a copy of the complaint, investigative report, and any other appropriate material within seven days.

10.5.1.5 The Board counsel shall consult with the appointed Board member in drafting the Consent Agreement. Negotiations among the licensee and his/her counsel, if any, the Board member, Board counsel, and the prosecutor may take place by informal conferences, telephone, or correspondence. The Consent Agreement will include a brief recitation of the facts; the licensee's acknowledgment of charge(s) in the complaint and violation of the Nurse Practice Act; the licensee's waiver of rights to the formal disciplinary hearing before the Board; and sanction to be imposed.

10.5.1.6 The consultation and drafting and acceptance of the consent agreement are to be done in a timely fashion, with a report to the Board at 60 day intervals until presentation for approval by the Board.

10.5.1.7 If agreement among all parties has not occurred after 120 days from presentation of the first consent agreement, the Board shall be notified of the reasons why no agreement has been reached. If appropriate, the Board may schedule a complaint for a hearing.

10.5.1.8 After the licensee and his or her attorney, if any, the prosecutor, and the appointed Board member have signed the consent agreement, it shall be presented to the Board at the Board's next meeting for signature by a quorum of the Board and entry as an order of the Board.

10.5.1.9 The Consent Agreement is not effective until it is entered as an order of the Board. At any time before the Consent Agreement is entered as an order of the Board, either the licensee or the State may terminate the consent agreement process and elect to proceed by formal disciplinary hearing before the Board.

11.0 Public Records

11.1 Public records and access thereto are governed by regulation established by the Division of Professional Regulation.

12.0 Advisory Committees**12.1 Appointment of Committees**

12.1.1 The Board may appoint advisory committees to assist in the performance of its duties.

12.1.2 Advisory committees will be chaired by a Board member.

12.1.3 Each advisory committee shall consist of members who have expertise in the subject assigned.

12.1.4 Any such advisory committee shall function in the public interest, and no member shall be designated as representative of any agency or organization.

12.2 Membership of Committees

12.2.1 Potential members shall submit resumes and receive Board approval prior to appointment.

12.2.2 Members may include Registered Nurses, Licensed Practical Nurses, Advanced Practice Nurses and lay persons.

13.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

13.1 If the report is received by the chairperson of the regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

13.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

13.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

13.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in

consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

13.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

13.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

13.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

13.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

13.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

13.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated

professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

13.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

13.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

13.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated professional's chemical dependency or impairment is an issue.

13.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

13.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

13.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

13.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

13.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option

shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF COSMETOLOGY & BARBERING**

Statutory Authority: 24 Delaware Code,
Section 5106(14) (24 Del.C. 5106(14))

Order Adopting Rules and Regulations

AND NOW, this 26th day of June, 2000, in accordance with 29 Del.C. §10118 and for the reasons stated hereinafter, the Board of Cosmetology and Barbering of the State of Delaware (hereinafter "the Board") enters this Order adopting Rules and Regulations.

Nature of the Proceedings

The Board proposes to add a provision to one of its existing rules, Rule 5.1, pursuant to its authority under 24 Del.C. §5106(1). Notice of the public hearing on the Board's proposal was published in the Delaware *Register of Regulations* on March 1, 2000 and in two Delaware newspapers of general circulation, all in accordance with 29 Del.C. §10115. The public hearing was held as noticed on April 24, 2000. The Board deliberated on the proposed revision following the public hearing and unanimously voted to adopt the rule addition. This is the Board's Decision and Order ADOPTING the amendment to Rule 5.1 as proposed.

Evidence and Information Submitted at Public Hearing

The Board received no written comments in response to the notice of its intention to adopt the proposed amendment to Rule 5.1 regarding work experience for reciprocity. No verbal comment was received at the April 24, 2000 public hearing.

Findings of Fact and Conclusions

Board Rule 5.1 currently provides, pursuant to 24 Del.C. §5109, that an applicant for licensure by reciprocity from a state with less stringent requirements for licensure than Delaware must document at least one year of work experience in the field. The Board has proposed an amendment to Rule 5.1 which provides: "The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience."

As outlined in the preceding section, the public was given the required notice of the Board's intention to adopt a regulation and was offered an adequate opportunity to provide the Board with comments on the proposed regulation. The Board concludes that its consideration of the proposed Rule and Regulation is within the Board's general authority to promulgate regulations under 24 **Del.C.** §5106(1).

The Board finds that the proposed regulation is necessary for the implementation of 24 **Del.C.** §5109. Applicants have in the past submitted unlicensed work "experience" in Delaware in fulfillment of the experience requirement of §5109. The Board's reciprocity statute applies to applicants already licensed in another state, and the one year experience requirement must occur prior to application in Delaware. Delaware law prohibits unlicensed practice in the state. 24 **Del.C.** §5103. Therefore, the reciprocity statute must be construed as requiring the one year experience to be gained outside of Delaware, to be harmonious with the law regarding unlicensed practice.

In summary, the Board concludes that the proposed addition to Rule 5.1 is necessary for the enforcement of 24 **Del.C.** Chapter 51, and for the full and effective performance of the Board's duties under that Chapter. The Board also finds that adopting the regulation as proposed is in the best interest of the citizens of the State of Delaware and is necessary to protect the health of the general public, particularly the recipients of services of cosmetology, barbering and affiliated professions. The Board, therefore, adopts the proposed amendment to Rule and Regulation 5.1, as set forth in Exhibit "A" attached hereto.

Order

NOW, THEREFORE, by unanimous vote of a quorum of the Board of Cosmetology and Barbering, IT IS HEREBY ORDERED THAT:

1. The proposed amendment to Rule and Regulation 5.1 is *approved and adopted* in the exact text attached hereto as Exhibit "A".

2. The effective date of this Order is ten (10) days from the date of its publication in the Delaware *Register of Regulations*, pursuant to 29 **Del.C.** §10118(e).

3. The Board reserves the jurisdiction and authority to issue such other and further orders in this matter as may be necessary or proper.

By Order of the Board of Cosmetology and Barbering
(as authenticated by a quorum of the Board):

Miriam Harris, President, Professional Member
Orin F. Burdette, Vice-President, Professional Member
Bonnie Paynter, Secretary, Professional Member
John Bonarigo, Professional Member

Rene Brickman, Professional Member
Preston Dyer, Professional Member
Abby Lynn Betts, Public Member
Vera Murrell, Public Member
Myrtle Shockley, Public Member

Board of Cosmetology and Barbering

- 1.0 Demonstrations
- 2.0 Temporary Work Permits
- 3.0 Instructor Curriculum for Barbering and Cosmetology
- 4.0 Instructor Requirements
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- 10.0 Equipment for Aesthetics Schools
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- 14.0 Licensure Requirements
- 15.0 Foreign Diplomas
- 16.0 Health and Sanitation: Electric Nail Files and Laser Technology
- 17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

1.0 Demonstrations

1.1 Licensed professionals from other states may consult with an individual from this state on new techniques, new trends, new products and equipment knowledge provided they contact the Board of Cosmetology and Barbering and apply for a work permit. This would also apply to consulting in a trade show. The work permit will be good only for thirty (30) days within a calendar year. (24 **Del.C.** §5103 (1))

2.0 Temporary Work Permits

2.1 Temporary work permits will be issued to an applicant who is eligible for admission to the cosmetology, nail technician, barbering or electrology examination with the appropriate fees paid. The purpose of a temporary work permit is to allow an otherwise qualified applicant to practice pending the applicant's scoring of a passing grade on the examination.

2.2 A temporary work permit is valid for thirty (30) days past the next available examination date.

2.3 The holder of a temporary work permit for cosmetology shall practice under the supervision of a licensed cosmetologist, barber, cosmetology or barber

instructor.

2.4 The holder of a temporary work permit for nail technology shall practice under the supervision of a licensed nail technical, cosmetologist, or cosmetology instructor.

2.5 The holder of a temporary work permit for barbering shall practice under the supervision of a licensed barber, cosmetologist, cosmetology or barber instructor.

2.6 The holder of a temporary work permit for electrology shall practice under the supervision of a licensed electrologist or electrology instructor.

2.7 A temporary work permit for reciprocity will be issued to an applicant who meets or exceeds all the requirements for the State of Delaware. 24 Del.C. §5106 (7)

3.0 Instructor Curriculum for Barbering and Cosmetology

3.1 Course Outline - Instructor 500 Hours	
Subject Matter	Minimum Clock Hours
Orientation	50
Practical Laboratory Management	200
Classroom Teaching and Management	200
Theory and Testing	50
3.2 Course Outline - Instructor 250 Hours	
Subject Matter	Minimum Clock Hours
Orientation	25
Practical Laboratory Management	100
Classroom Teaching and Management	100
Theory and Testing	25

(24 Del.C. §5106(13))

4.0 Instructor Requirements

4.1 Any licensed cosmetologist or barber who has successfully completed a course of 500 hours in teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III); or has at least two (2) years experience as an active licensed, practicing cosmetologist or barber, supplemented by at least 250 hours of teacher training in a registered school of cosmetology or barbering (as specified in Paragraph III).

4.2 Proof of educational documentation from registered school of cosmetology or barbering for specified hours of teacher training.

4.3 Experience shall be documented by a notarized statement from the current or previous employers for at least two (2) years experience as an active licensed practicing cosmetologist or barber. (24 Del.C. §5106 (13)).

5.0 Reciprocity Requirements

5.1 Any applicant from a state with less stringent requirements than Delaware ~~would be~~ is required to provide a notarized statement from a present or prior employer(s) testifying to work experience in the field for which the applicant is seeking a license in Delaware for a period of one

year before making application. The work experience must have been obtained in a state or jurisdiction outside of Delaware. Unlicensed practice within the State of Delaware shall not qualify as valid work experience.

Reference Section 2 for temporary work permit. (24 Del.C. §5109(a))

6.0 Equipment for Cosmetology and Barbering Schools

6.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 6.1.1 (4) Shampoo basins.
- 6.1.2 (8) Hair dryers.
- 6.1.3 (4) Manicure tables and chairs.
- 6.1.4 (4) Dry sterilizers (sanitizers).
- 6.1.5 (4) Wet sterilizers (sanitizers).
- 6.1.6 (6) Dozen permanent wave rods.
- 6.1.7 (2) Reclining chair with headrest.
- 6.1.8 (1) Mannequin per student.
- 6.1.9 (12) Work Stations.
- 6.1.10 Mirrors and chairs.
- 6.1.11 (1) Locker for each student.
- 6.1.12 (4) Closed containers for soiled linen.
- 6.1.13 (3) Closed waste containers.
- 6.1.14 (1) Container for sterile solution for each manicure table.
- 6.1.15 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 6.1.16 (1) Chalkboard with dimensions of at least 4 feet by 4 feet.
- 6.1.17 (1) Cabinet for towels.
- 6.1.18 An arm chair or usable table and chair for each student in the theory room.
- 6.1.19 (3) Timer clocks.
- 6.1.20 Attendance records.
- 6.1.21 (1) Soap machine.
- 6.1.22 (1) Textbook for each student.

(24 Del.C. §5117 (a))

7.0 Equipment for Nail Technology Schools

7.1 A school enrolling up to 25 students shall have, at a minimum, the following equipment:

- 7.1.1 (4) Manicure tables and chairs.
- 7.1.2 (4) Manicure lights.
- 7.1.3 (1) First Aid Kit.
- 7.1.4 (1) Pedicure basin and stand.
- 7.1.5 (1) Covered Waste Container.
- 7.1.6 (1) Closed storage cabinet for soiled linen.
- 7.1.7 (1) Closed towel cabinet for clean linen.
- 7.1.8 Clean linen.
- 7.1.9 (1) Container for sterile solution for each manicure table.
- 7.1.10 (1) Bulletin board with dimensions of at least 2 feet by 2 feet.
- 7.1.11 (1) Chalkboard with dimensions of at least 4

feet by 4 feet.

- 7.1.12 Attendance Records.
- 7.1.13 Reception Desk.
- 7.1.14 Proper Ventilation.
- 7.1.15 (4) Dry Sterilizers.
- 7.1.16 (4) Wet Sterilizers.
- 7.1.17 Dispensary.

7.2 For each additional nail technician, equipment and supplies shall be increased so that each nail technician can render services safely and efficiently. (24 Del.C. §5117 (a))

8.0 Equipment for Electrology Schools

8.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 8.1.1 (1) Epilator (Short Wave or Blend) Needle type only.
- 8.1.2 (1) All purpose chair or lounge.
- 8.1.3 (1) Magnifying lamp (wall mounted or on a stand).
- 8.1.4 (1) Tweezers for each student.
- 8.1.5 (1) Movable table for the epilator.
- 8.1.6 (1) Adjustable stool on wheels.
- 8.1.7 All needles used for treatment must be disposable type only.
- 8.1.8 Sterilizing materials and rubber gloves.
- 8.1.9 (1) Textbook for each student.

9.0 Course Outline for Aesthetician

9.1 Subject Matter	Clock Hours
Personal Development	10
Health and Science	65
Hygienic Provisions	15
Consultation and Record Keeping	30
Machines, Apparatus, Including Procedures	25
Related Skin Care Procedures	15
Makeup and Color	30
Business Management and Sales Practice	10
Clinic and Practice	100
Total Minimum Hours	300

(24 Del.C. §5132(a))

10.0 Equipment for Aesthetics Schools

10.1 A school enrolling up to 2 students shall have, at a minimum, the following equipment:

- 10.1.1 (1) Complete set of skin care equipment as follows: Steamer - Brush Unit - Vacuum Spray - Galvanic - High Frequency Unit.
- 10.1.2 (1) All purpose chair or lounge.
- 10.1.3 (1) Magnifying lamp (wall mounted or on a stand).
- 10.1.4 (1) Adjustable stool on wheels.
- 10.1.5 Sterilizing materials and rubber gloves.
- 10.1.6 (1) Textbook for each student.

(24 Del.C. §5130(a))

11.0 Registration of Salons and Schools

11.1 A person licensed by the Board as a cosmetologist, barber, electrologist, nail technician or instructor shall not work in a beauty salon, barbershop, nail salon, electrology establishment, school of cosmetology, barbering, nail technology, or electrology unless this establishment has the certificate of registration. (24 Del.C. §5117)

12.0 Apprenticeship and Supervision

12.1 Any person applying for licensure as a cosmetologist or barber through apprenticeship must complete the necessary apprentice hours in not less than eighteen (18) months and not more than 48 months.

12.2 Any person applying for licensure as a nail technician through apprenticeship must complete the necessary apprentice hours in not less than six (6) weeks and not more than 24 months.

12.3 Any person applying for licensure as an electrologist through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.4 Any person applying for certification as an aesthetician through apprenticeship must complete the necessary apprentice hours in not less than fifteen (15) weeks and not more than 36 months.

12.5 On written application to the Board prior to completion of the apprenticeship, the Board may grant extensions to these time frames for good cause shown.

12.6 Applicants for licensure as nail technician may apprentice under the supervision of either licensed nail technician or a licensed cosmetologist.

(24 Del.C. §5107)

13.0 Transfer of Nail Technician Hours to Cosmetology Programs

13.1 Apprentice nail technician hours earned totaling 250 may be transferred and applied to an apprentice cosmetology program totaling 3,000 hours. Public/private student nail technician hours earned totaling 125 may be transferred and applied to a public/private cosmetology school curriculum totaling 1,500 hours. (24 Del.C. §5107)

14.0 Licensure Requirements

14.1 Each licensee licensed by the Board and each registered person, firm, corporation or association operating a beauty salon, barbershop, nail salon, or electrology establishment shall be responsible for ensuring that all of its employee requiring a license are licensed in Delaware prior to the commencement of employment. The licensee and/or registrant shall have available for inspection on premises at all time a copy of the Delaware license of its employees.

14.2 A Licensee and /or registrant who employs

unlicensed individuals may be subject to discipline pursuant to 24 **Del.C.** §5113(a)(b). (24 **Del.C.** §5103)

15.0 Application for Licensure

15.1 All applications for licensure or certification must be submitted on forms approved by the Board and the Division of Professional Regulation and be accompanied by the appropriate fee.

15.2 Each applicant must provide proof of any required general or professional education in the form of : (1) a certified transcript or diploma; or (2) affidavits of the registrar or other appropriate official; or (3) any other document evidencing completion of the necessary education to the Board's satisfaction.

15.3 Any applicant submitting credentials, transcripts or other documents from a program or educational facility outside the United States or its territories must provide the Board with a certificate of translation from a person or agency acceptable to the Board, if appropriate, and an educational credential evaluation from an agency approved by the Board demonstrating that his or her training and education are equivalent to domestic training and education.

16.0 Health and Sanitation; Electric Nail Files and Laser Technology

16.1 Each licensee, instructor, certified aesthetician, and registered salon or school shall follow all regulations or standards issued by the Division of Public Health or its successor agency relating to health, safety or sanitation in the practice of cosmetology, barbering, electrology or nail technology.

16.2 In addition to any regulation or standard adopted by the Division of Public Health, each licensee, instructor, certified aesthetician, and registered salon school shall follow the standards for infection control and blood spill procedures promulgated by the National Interstate Council or its successor organization.

16.3 Electric nail files and electric drills shall not be used on natural nails. The use of methyl methacrylate (MMA) is prohibited. No licensee, instructor, certified aesthetician, school, beauty salon or shop shall use or permit the use of MMA.

16.4 The use of laser technology for hair removal is not work generally or usually performed by cosmetologists and is prohibited.

16.5 Violation of any of the regulations, standards or prohibitions established under this Rule shall constitute a grounds for discipline under section 24 **Del.C.** §5113 (24 **Del C.** §§5100, 5101(4), 5112 and 5113)

17.0 Voluntary Treatment Option for Chemically Dependent or Impaired Professionals

17.1 If the report is received by the chairperson of the

regulatory Board, that chairperson shall immediately notify the Director of Professional Regulation or his/her designate of the report. If the Director of Professional Regulation receives the report, he/she shall immediately notify the chairperson of the regulatory Board, or that chairperson's designate or designates.

17.2 The chairperson of the regulatory Board or that chairperson's designate or designates shall, within 7 days of receipt of the report, contact the individual in question and inform him/her in writing of the report, provide the individual written information describing the Voluntary Treatment Option, and give him/her the opportunity to enter the Voluntary Treatment Option.

17.3 In order for the individual to participate in the Voluntary Treatment Option, he/she shall agree to submit to a voluntary drug and alcohol screening and evaluation at a specified laboratory or health care facility. This initial evaluation and screen shall take place within 30 days following notification to the professional by the participating Board chairperson or that chairperson's designate(s).

17.4 A regulated professional with chemical dependency or impairment due to addiction to drugs or alcohol may enter into the Voluntary Treatment Option and continue to practice, subject to any limitations on practice the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional, deem necessary, only if such action will not endanger the public health, welfare or safety, and the regulated professional enters into an agreement with the Director of Professional Regulation or his/her designate and the chairperson of the participating Board or that chairperson's designate for a treatment plan and progresses satisfactorily in such treatment program and complies with all terms of that agreement. Treatment programs may be operated by professional Committees and Associations or other similar professional groups with the approval of the Director of Professional Regulation and the chairperson of the participating Board.

17.5 Failure to cooperate fully with the participating Board chairperson or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate in regard to the Voluntary Treatment Option or to comply with their requests for evaluations and screens may disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board chairperson or that chairperson's designate or designates shall cause to be activated an immediate investigation and institution of disciplinary proceedings, if appropriate, as outlined in subsection (h) of this section.

17.6 The Voluntary Treatment Option may require a regulated professional to enter into an agreement which includes, but is not limited to, the following provisions:

17.6.1 Entry of the regulated professional into a treatment program approved by the participating Board. Board approval shall not require that the regulated professional be identified to the Board. Treatment and evaluation functions must be performed by separate agencies to assure an unbiased assessment of the regulated professional's progress.

17.6.2 Consent to the treating professional of the approved treatment program to report on the progress of the regulated professional to the chairperson of the participating Board or to that chairperson's designate or designates or to the Director of the Division of Professional Regulation or his/her designate at such intervals as required by the chairperson of the participating Board or that chairperson's designate or designates or the Director of the Division of Professional Regulation or his/her designate, and such person making such report will not be liable when such reports are made in good faith and without malice.

17.6.3 Consent of the regulated professional, in accordance with applicable law, to the release of any treatment information from anyone within the approved treatment program.

17.6.4 Agreement by the regulated professional to be personally responsible for all costs and charges associated with the Voluntary Treatment Option and treatment program(s). In addition, the Division of Professional Regulation may assess a fee to be paid by the regulated professional to cover administrative costs associated with the Voluntary Treatment Option. The amount of the fee imposed under this subparagraph shall approximate and reasonably reflect the costs necessary to defray the expenses of the participating Board, as well as the proportional expenses incurred by the Division of Professional Regulation in its services on behalf of the Board in addition to the administrative costs associated with the Voluntary Treatment Option.

17.6.5 Agreement by the regulated professional that failure to satisfactorily progress in such treatment program shall be reported to the participating Board's chairperson or his/her designate or designates or to the Director of the Division of Professional Regulation or his/her designate by the treating professional who shall be immune from any liability for such reporting made in good faith and without malice.

17.6.6 Compliance by the regulated professional with any terms or restrictions placed on professional practice as outlined in the agreement under the Voluntary Treatment Option.

17.7 The regulated professional's records of participation in the Voluntary Treatment Option will not reflect disciplinary action and shall not be considered public records open to public inspection. However, the participating Board may consider such records in setting a disciplinary sanction in any future matter in which the regulated

professional's chemical dependency or impairment is an issue.

17.8 The participating Board's chairperson, his/her designate or designates or the Director of the Division of Professional Regulation or his/her designate may, in consultation with the treating professional at any time during the Voluntary Treatment Option, restrict the practice of a chemically dependent or impaired professional if such action is deemed necessary to protect the public health, welfare or safety.

17.9 If practice is restricted, the regulated professional may apply for unrestricted licensure upon completion of the program.

17.10 Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment program shall disqualify the regulated professional from the provisions of the Voluntary Treatment Option, and the participating Board shall be notified and cause to be activated an immediate investigation and disciplinary proceedings as appropriate.

17.11 Any person who reports pursuant to this section in good faith and without malice shall be immune from any civil, criminal or disciplinary liability arising from such reports, and shall have his/her confidentiality protected if the matter is handled in a nondisciplinary matter.

17.12 Any regulated professional who complies with all of the terms and completes the Voluntary Treatment Option shall have his/her confidentiality protected unless otherwise specified in a participating Board's rules and regulations. In such an instance, the written agreement with the regulated professional shall include the potential for disclosure and specify those to whom such information may be disclosed.

DIVISION OF PROFESSIONAL REGULATION GAMING CONTROL BOARD

Statutory Authority: 28 Delaware Code,
Section 1503 (28 Del.C. 1503)

Order

Pursuant to 29 Del.C. §10118 and 28 Del.C. §1503, the Delaware Gaming Control Board ("Board") hereby issues this Order adopting a proposed amendment to the Board's Bingo Rules. Following notice and a public hearing held on July 6, 2000 on the proposed Rule, the Board makes the following findings and conclusions:

Summary of Evidence and Information Submitted

1. The Board posted public notice of the proposed rule revision in the June 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The

proposal contained a proposed amendment to the Bingo Regulation promulgating a new Regulation 1.03(10). The proposed Regulation 1.03(10) would require a bingo license applicant to provide a full and fair description of the prize to be awarded and the appraised value of the prize. The proposed Regulation 1.03(10) would also permit the Board to require an independent appraisal of the prize but would also permit the applicant to submit the full retail value of the prize.

2. The Board received no comments from the public either in writing or at the public hearing.

Findings of Fact

3. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. The Board received no written comments from the public.

4. The Board finds the proposed amendment to Regulation 1.03(10) should be adopted in its proposed form. The proposed regulation is similar to the Board's existing Raffle Regulation 2.02. The proposed regulation is necessary in order for the Board to determine if a license applicant will be in compliance with the maximum prize limits permitted by 28 **Del.C.** §1139(h).

Conclusions

5. The proposed rules were promulgated by the Board in accord with its statutory duties and authority as set forth in 28 **Del.C.** §1503.

6. The Board deems these rules as proposed to be necessary for the effective enforcement of 28 **Del.C.** chapter 11 and for the full and complete regulation of bingo games.

7. The Board concludes that the promulgated amendment to Regulation 1.03(10) will be adopted. Regulation 1.03(10) will now provide as follows:

(10) The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

8. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of

Regulations on August 1, 2000.

IT IS SO ORDERED this 6th day of July, 2000.

Frank Long, Chairman
Roland Neeman
Ronald Mosher
Leroy Rench

1.03 Bingo Licenses

(1) Upon receiving an application, the Board shall make an investigation of the merits of the application. The Board shall consider the impact of the approval of any license application on existing licensees within the applicant's geographical location prior to granting any new license. The Board may deny an application if it concludes that approval of the application would be detrimental to existing licensees.

(2) The Board may issue a license only after it determines that:

(i) The applicant is duly qualified to conduct games under the State Constitution, statutes, and regulations.

(ii) The members of the applicant who intend to conduct the bingo games are bona fide active members of the applicant and are persons of good moral character and have never been convicted of a crime involving moral turpitude.

(iii) The bingo games are to be conducted in accordance with the provisions of the State Constitution, statutes, and regulations.

(iv) The proceeds are to be disposed of as provided in the State Constitution and statutes.

(v) No salary, compensation or reward whatever will be paid or given to any member under whom the game is conducted. If the findings and determinations of the Board are to the effect that the application is approved, the Secretary shall execute a license for the applicant.

(3) The license shall be issued in triplicate. The original thereof shall be transmitted to the applicant. Two copies shall be retained by the Commission for its files.

(4) If the findings and determinations of the Commission are to the effect that the application is denied, the Secretary shall so notify the applicant by certified mail of the reasons for denial, and shall refund any application fees submitted.

(5) In the event of a request for an amendment of a license, the request shall be promptly submitted to the Commission in writing, and shall contain the name of the licensee, license number, and a concise statement of the reasons for requested amendment. The Commission may grant or deny the request, in its discretion, and may require supporting proof from the licensee before making any determination. The Commission may require the payment of an additional license fee before granting the request. The licensee shall be notified of the Commission's action by appropriate communication, so that the licensee will not be

unduly inconvenienced.

(6) No license shall be effective for a period of more than one year from the date it was issued.

(7) No license shall be effective after the organization to which it was granted has become ineligible to conduct bingo under any provision of Article II, §17A of the Delaware Constitution.

(8) No license shall be effective after the voters in any District designated in Article II, §17A of the Constitution have decided against bingo in a referendum held pursuant to that section and subchapter II of the Bingo Statute.

(9) No bingo licensee licensed prior to July 14, 1998, shall conduct more than ten (10) bingo events in any calendar month and no bingo licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998) shall conduct more than one (1) bingo event per week. A bingo licensee who was licensed prior to July 14, 1998 whose license lapses for six (6) months or more due to nonrenewal or suspension or any other reason shall, upon licensing thereafter, be considered a licensee licensed after the enactment of 71 Del. Laws 444 (July 14, 1998).

(10) The license application shall contain a full and fair description of the prize and the appraised value of the prize. In lieu of submitting an appraisal, the applicant or licensee may submit the full retail value of the prize. In cases where the applicant or licensee purchases the prize from a third party, the Board may require that the applicant or licensee arrange for an independent appraisal of the value of the prize from a person licensed to render such appraisals, or if there is no person licensed to render such appraisals, from a person qualified to render such appraisals.

DEPARTMENT OF AGRICULTURE

HARNESS RACING COMMISSION

Statutory Authority: 3 Delaware Code,
Section 10027 (3 Del.C. 10027)

ORDER

Pursuant to 29 Del.C. §10118 and 3 Del.C. §10027, the Delaware Harness Racing Commission ("Commission") hereby issues this Order promulgating proposed amendments to the Commission's Rules. Following notice and a public hearing held on May 22, 2000 on the proposed Rules, the Commission makes the following findings and conclusions:

SUMMARY OF EVIDENCE AND INFORMATION SUBMITTED

1. The Commission posted public notice of the

proposed rule revision in the May 1, 2000 Register of Regulations and in the News-Journal and the Delaware State News. The proposal contained eight proposed changes to the Commission's existing rules. The proposed rule amendments were as follows: 1) amend Rule 8.3.5.4 to clarify the time period for administration of lasix to horses and to delete the provision for removal of a horse from the Steward's List for multiple violations of the Rule; 2) amend Rule 7.6.14 to revise the Hubrail Rule to conform to the current use of pylons on the racetrack and to require that a driver who leaves the course must reenter as soon as possible; 3) amend Rule 7.6.15 to clarify the rule requirements for the use of the extended homestretch and the penalties for the violations of the Rule; 4) amend Rule 7.6.13 to provide that any driver involved in an objection or inquiry must immediately respond to an inquiry from the judges; 5) amend Rule 3.2.8.3 to require that horses scratched for lameness or sickness must be on the Steward's List for seven days, instead of five days; 6) amend Rule 7.6.6 to delete Rule 7.6.6.6 regarding use of a recall pole; 7) amend Rule 6.3.2 to add a new subsection Rule 6.3.2.8 prohibiting a person from claiming more than one horse in the same race, and amend Rule 6.3.2.9 to prohibit the transfer of a claimed horse for a period of thirty days after the claim, except for entry in a claiming race; 8) amend Rule 8.4.3.5.10 to revise the procedure for the use of split samples for carbon dioxide testing to provide that both samples would be sent to the Commission laboratory on an anonymous basis for testing.

2. The Commission held a public hearing on May 22, 2000 and received no comments from the public on the proposed rules. The Commission received one written comment in favor of the amendment to Rule 7.6.6.6 deleting the recall pole rule.

FINDINGS OF FACT

3. The public was given notice and an opportunity to provide the Commission with comments in writing and by testimony at the public hearing regarding the proposed rule amendments. A summary of the evidence is contained in paragraph #2.

4. The public comments were limited to a single comment in favor of the amendment to Rule 7.6.6 to delete the recall pole. The Commission received no other public comments regarding the proposed amendments. The Commission finds these proposed rules are necessary for the regulation of harness racing in the public interest and for the effective enforcement of 3 Del.C. chapter 100. The Commission adopts these rules in their proposed form.

5. As to proposed amendment #8, the Commission proposed an amendment to Rule 8.4.3.5.10 to modify the split sample procedure for carbon dioxide testing. The Commission will adopt the proposed rule with one modification. By a previous amendment to Rule 8.4.3.5.10

published in the May, 2000 Register of Regulations, the first sentence of the Rule was amended to delete the term "prohibited drug" and insert the term "prohibited substance". The Commission will retain this terminology in the final adopted rule. The Commission finds this is a nonsubstantive change in the original proposal and does not require republication.

CONCLUSIONS

6. The proposed rules were promulgated by the Commission in accord with its statutory duties and authority as set forth in 3 **Del.C.** §10027. The Commission deems these rules as proposed to be necessary for the effective enforcement of 3 **Del.C.** chapter 100 and for the full and efficient performance of the duties thereunder.

7. The Commission concludes that the adoption of the proposed rules, with the exceptions noted above, would be in the best interests of the citizens of the State of Delaware and necessary to ensure the integrity and security of harness racing in the State of Delaware.

8. The Commission therefor adopts the following rule amendments pursuant to 3 **Del.C.** §10027 and 29 **Del.C.** §10113:

- Amendment to Rule 8.3.5.4 (proposed amendment #1).
- Amendment to Rules 7.6.14 (proposed amendment #2).
- Amendment to Rule 7.6.15 (proposed amendment #3).
- Amendment to Rule 7.6.13 (proposed amendment #4).
- Amendment to Rules 3.2.8.3 (proposed amendment #5).
- Amendment to Rule 7.6.6.6 (proposed amendment #6).
- Amendment to Rule 6.3.2 (proposed amendment #7).
- Amendment to Rule 8.4.3.5.10 (proposed amendment #8).

These rules replace in their entirety the former version of the Rules of the Delaware State Harness Racing Commission.

9. The effective date of this Order shall be ten (10) days from the publication of this order in the Registrar of Regulations on August 1, 2000. Attached hereto and incorporated herein is the amended Rules marked as Exhibit #1 and executed simultaneously this 3rd day of July, 2000.

IT IS SO ORDERED this 3rd day of July, 2000.

Beth Steele, Commissioner
Mary Ann Lambertson, Commissioner
Robert Kerr, Commissioner

1. **AMEND Rule 8.3.5.4 to provide as follows:**

8.3.5.4 Timing of Administration

Horses must be presented at the Lasix stall in the paddock, and the Lasix administered, not more than three hours and 30 minutes (3-1/2 hours) nor less than three hours (three hours) prior to post time of their respective races. Failure to meet this time frame will result in scratching the horse, and the trainer may be fined. ~~If a horse is late at the Lasix stall a second consecutive time, the horse will be scratched and removed from the Bleeder List, and placed on the Steward's List for ten (10) days.~~

2. **AMEND Rule 7.6.14 to provide as follows:**

7.6.14 Harness Race Track Without a Hubrail

7.6.14.1 If at a racetrack which does not have a continuous solid inside hub rail, a horse or part of the horse's sulky leaves the course by running over or going inside the pylons hub rail or other demarcation which constitutes the inside limits of the course, the offending horse may shall be placed one or more positions where, in the opinion of the judges, the action gave the horse an unfair advantage over other horses in the race, or the action helped the horse improve its position in the race. Drivers may be fined or suspended for permitting a horse's s or any portion of a sulky to run over or go inside the pylons or other demarcation, which constitutes the inside limits of the course. In addition, when an act of interference causes a horse or part of the horse's sulky to cross the inside limits of the course, and the horse is placed by the judges, the offending horse shall be placed behind the horse with which it interfered.

7.6.14.2 In the event a horse or part of a horse's sulky leaves the course for any reason, it shall be the driver's responsibility to take all reasonable steps to safely reenter the race course as soon as possible.

3. **AMEND Rule 7.6.15 to provide as follows:**

7.6.15 Extended Homestretch

7.6.15.1 With approval of the Commission, a track may extend the width of its homestretch up to 10 feet inward in relation to the width of the rest of the racetrack.

7.6.15.2 In the event the home stretch is expanded pursuant to 7.6.15.1 above, the following shall apply:

7.6.15.2.1 ~~no horse shall pass on the extended inside lane except when entering the stretch for the final time;~~ When entering or while going through the homestretch for the first time in a race, no horse shall use the expanded inside lane in an attempt to pass other horses or improve its position. Any horse, which does so shall be disqualified and placed last in the order of finish.

7.6.15.2.2 The lead horse in the homestretch shall maintain as straight a course as possible while allowing trailing horses full access to the extended inside lane. ~~and~~ If, in the opinion of the judges, the lead horse changes course in

the homestretch in an attempt to prevent a trailing horse from passing, said horse shall be placed accordingly.

7.6.15.2.3 Horses using the expanded inside lane during the homestretch drive for the finish of the race, open stretch must first have complete clearance of the pylons marking the inside boundary of the racecourse. Any horse or sulky running over one or more of the pylons and/or going to the inside of the pylons while attempting to use the expanded inside lane, may be to clear shall be disqualified or placed back one or more positions.

7.6.15.2.4 A horse may only be driven into the expanded homestretch lane for the purpose of passing another horse and may not be driven into the expanded homestretch lane for the purpose of blocking a trailing horse. If, in the opinion of the judges, a horse is driven into the expanded homestretch lane for the purpose of blocking a trailing horse, the driver of the blocking horse may be fined and/or suspended and the horse may be placed accordingly.

4. AMEND Rule 7.6.13 to provide as follows:

7.6.13 Conduct of the Race

7.6.13.1 A driver shall not commit any of the following acts which are considered violations of driving rules:

7.6.13.1.1 Change course or position, or swerve in or out, or bear in or out during any part of the race in such a manner as to compel a horse to shorten its stride or cause another driver to change course, take his or her horse back, or pull his/her horse out of its stride.

7.6.13.1.2 Impede the progress of another horse or cause it to break from its gait.

7.6.13.1.3 Cross over too sharply in front of another horse or in front of the field.

7.6.13.1.4 Crowd another horse by 'putting a wheel under it.'

7.6.13.1.5 Allow another horse to pass needlessly on the inside, or commit any other act that helps another horse to improve its position.

7.6.13.1.6 Carry another horse out.

7.6.13.1.7 Take up or slow up in front of other horses so as to cause confusion or interference among the trailing horses.

7.6.13.1.8 Maintain an outside position without making the necessary effort to improve his/her overall position.

7.6.13.1.9 Strike or hook wheels with another sulky.

7.6.13.1.10 Lay off a normal pace and leave a hole when it is well within the horse's capacity to keep the hole closed.

7.6.13.1.11 Drive in a careless or reckless manner.

7.6.13.1.12 Fail to set, maintain or properly contest a pace comparable to the class in which he/she is

racing considering the horse's ability, track conditions, weather and circumstances confronted in the race.

7.6.13.1.13 Riding 'half-in' or 'half-out'.

7.6.13.1.14 Kicking a horse.

7.6.13.2 A complaint by a driver of any foul, violation of the rules or other misconduct during a race shall be made immediately after the race to which it relates, unless the driver is prevented from doing so by an accident or injury or other reasonable excuse. A driver desiring to enter a claim of foul, or other complaint of violation of the rules, shall make this known to the starter before dismounting and shall proceed immediately to the paddock telephone to communicate immediately with the judges. Any driver who is involved in an objection or inquiry shall proceed immediately to the paddock telephone to communicate with the judges. The judges shall not cause the official sign to be posted until the matter has been dealt with.

7.6.13.3 If a violation is committed by a person driving a horse coupled as an entry the judges may set both horses back if, in their opinion, the violation may have affected the finish of the race, otherwise penalties may be applied individually.

7.6.13.4 In the case of interference, collision, or violation of any rules, the offending horse may be placed back one or more positions in that heat or dash, and in the event of such collisions, interference or violation preventing any horse from finishing the heat or dash, the offending horse may be disqualified from receiving any winnings and the driver may be fined or suspended. If a horse is set back, it must be placed behind the horse with which it interfered. If an offending horse has interfered with a horse involved in a dead heat and the offending horse is set back, it must be placed behind the horses in the dead heat.

7.6.13.5 If the judges believe that a horse is, or has been driven with design to prevent it winning a race or races, they shall consider it a violation by the driver.

7.6.13.6 If the judges believe that a horse has been driven in an inconsistent manner, they shall consider it a violation.

7.6.13.7 If the judges believe that a horse has been driven in an unsatisfactory manner due to lack of effort or a horse has been driven in an unsatisfactory manner for any reason, they shall consider it a violation punishable by a fine and/or suspension.

7.6.13.8 If a horse is suspected to have choked or bled during a race, the driver and/or trainer of that horse is required to report this to the judges immediately after the race.

7.6.13.9 If, in the opinion of the judges, a driver is for any reason unfit or incompetent to drive, or is reckless in his/her conduct and endangers the safety of horses or other drivers in a race, he/she shall be removed and another driver substituted at any time and the offending driver may be fined, suspended or expelled.

7.6.13.10 If for any cause other than being interfered with, or broken equipment, a horse fails to finish after starting a race, that horse shall be ruled out of any subsequent heat of the same event. If it is alleged that a horse failed to finish a race because of broken equipment, this fact must be reported to the paddock judge who shall make an examination to verify the allegation and report the findings to the judges.

7.6.13.11 A driver must be mounted in the sulky at all times during the race or the horse shall be placed as a non-finisher.

7.6.13.12 Shouting or other improper conduct in a race is forbidden.

7.6.13.13 Drivers shall keep both feet in the stirrups during the post parade and from the time the horses are brought to the starting gate until the race has been completed. Drivers shall be permitted to remove a foot from the stirrups during the course of the race solely for the purpose of pulling ear plugs and once same have been pulled the foot must be placed back into the stirrup. Drivers who violate this rule may be subject to a fine and/or suspension.

7.6.13.14 Drivers will be allowed to use whips not to exceed three feet, nine inches in length plus a snapper not to exceed six inches in length.

Drivers shall keep a line in each hand from the start of the race until the quarter pole. From the quarter pole to the 7/8th pole, a driver may only use the whip once for a maximum of three strokes. Once the lead horse is at the 7/8th pole, these restrictions do not apply.

1 DE Reg. 923 (01/01/98)

2 DE Reg. 684 (10/01/98)

7.6.13.15 The use of any goading device, or chain, or spur, or mechanical or electrical device other than a whip as allowed in the rules, upon any horse, shall constitute a violation.

7.6.13.16 The possession of any mechanical or electrical goading device on the grounds of an association shall constitute a violation.

7.6.13.17 The judges shall have the authority to disallow the use of any equipment or harness that they feel is unsafe or not in the best interests of racing.

7.6.13.18 Brutal or excessive or indiscriminate use of a whip, or striking a horse with the butt end of a whip, or striking a wheel disc of a sulky with a whip, shall be a violation. At extended pari-mutuel meetings, under the supervision of the judges, there may be a mandatory visual inspection of each horse following each race for evidence of excessive or brutal use of the whip. At all other meetings, the judges shall have the authority to order and/or conduct such visual inspections at their discretion.

1 DE Reg. 923 (01/01/98)

7.6.13.19 Whipping a horse by using the whip below the level of the shafts or the seat of the sulky or between the legs of the horse shall be a violation.

7.6.13.20 When a horse breaks from its gait, it shall be considered a violation on the part of the driver for:

7.6.13.20.1 Failure to take the horse to the outside of other horses where clearance exists.

7.6.13.20.2 Failure to properly attempt to pull the horse to its gait.

7.6.13.20.3 Failure to lose ground while on a break.

7.6.13.20.4 If no violation has been committed, the horse shall not be set back unless a contending horse on his/her gait is lapped on the hind quarter of the breaking horse at the finish. The judges may set any horse back one or more places if in their judgment, any of the above violations have been committed, and the driver may be penalized.

7.6.13.20.5 Any horse making a break which causes interference to other horses may be placed behind all offended horses. If there has been no failure on the part of the driver of the breaking horse in complying with Rule 7.6.13.20, no fine or suspension shall be imposed on the driver as a consequence of the interference.

7.6.13.21 If, in the opinion of the judges, a driver allows a horse to break for the purpose of losing a race, he or she shall be in violation of the rules.

7.6.13.22 It shall be the duty of one of the judges to call out every break made and have them duly recorded in judges official race reports.

7.6.13.23 The horse whose nose reaches the wire first is the winner. If there is a dead heat for first, both horses shall be considered winners. In races having more than one heat or dash, where two horses are tied in the summary, the winner of the longer dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same distance and the horses are tied in the summary, the winner of the faster dash or heat shall be entitled to the trophy. Where the dashes or heats are of the same time, both horses shall be considered winners and the entitlement of the trophy will be decided by lot.

7.6.13.24 The wire or finish line is a real line established with the aid of a surveyor's transit, or an imaginary line running from the center of the judges' stand to a point immediately across and at right angles to the track.

7.6.13.25 If, during the preliminary scores or during a race a driver is unseated in such a manner that he or she falls to the ground, the State Steward or judges may direct the driver to report to the infirmary or to the emergency department of the nearest hospital for examination and receive clearance to continue with driving assignments on that day of racing.

7.6.13.26 If a horse is to warm up it must go its last warm-up on the same racing strip as it will compete on unless excused by the judges.

5. AMEND Rule 3.2.8.3 to provide as follows:

3.2.8 Steward's List

3.2.8.1 The judges shall maintain a Steward's List of the horses which are ineligible to be entered in a race.

3.2.8.2 A horse that is unfit to race because it is dangerous, unmanageable or unable to show a performance to qualify for races at the meeting, scratched as a result of a high blood gas test, or otherwise unfit to race at the meeting may be placed on the Steward's List by the Presiding Judge and declarations and/or entries on the horse shall be refused. The owner or trainer shall be notified of such action and the reason shall be clearly stated. When any horse is placed on the Steward's List, the clerk of the course shall make a note on the eligibility certificate of such horse, showing the date the horse was put on the Steward's List the reason and the date of removal if the horse has been removed.

1 DE Reg. 501 (11/01/97)

2 DE Reg. 1243 (01/01/99)

3.2.8.3 All horses scratched by a veterinarian for either lameness or sickness will be put on the Steward's List and can not race for ~~five (5)~~ seven (7) days from the date of the scratched race. Entries will be accepted during this ~~five (5)~~ seven (7) day period for a race to be contested after the ~~fifth~~ seventh day.

Veterinarians may put a horse on the Steward's List for sickness or lameness for more than ~~five (5)~~ seven (7) if necessary. In that instance, the horse may not race until proscribed number of days has expired. Entries will be accepted during this period for a race to be contested after the proscribed number of days has expired.

2 DE.Reg. 1244 (01/01/99)

3.2.8.4 No Presiding Judge or other official at a fair meeting shall have the power to remove from the Steward's List and accept as an entry any horse which has been placed on a Steward's List and not subsequently removed therefrom for the reason that he/she is dangerous or an unmanageable horse. Such meetings may refuse declarations and/or entries on any horse that has been placed on the Steward's List and has not been removed therefrom.

3.2.8.5 No horse shall be admitted to any racetrack facilities in this jurisdiction without having had a negative official test for equine infectious anemia within twelve (12) months.

3.2.8.6 The judges may put any horse on the Steward's List for performance when such horse shows a reversal of form or does not race near its own capabilities. Such horse shall qualify in a time comparable to its known capabilities from one to three times, at the discretion of the judges, before being allowed to start.

3.2.8.7 Any horse put on the Steward's List as unmanageable or dangerous must qualify in a satisfactory manner for the judges at least two times.

3.2.8.8 The judges may put any horse on the Steward's

List for being noncompetitive or unfit to race at the meeting.

3.2.8.9 The judges may place a horse on the Steward's List when there exists a question as to the exact identification, ownership or management of said horse.

3.2.8.10 A horse which has been placed on the Steward's List because of questions as to the exact identification or ownership of said horse, may be removed from the Steward's List when, in the opinion of the judges, proof of exact identification and/or ownership has been established.

3.2.8.11 A horse may not be released from the Steward's List without the permission of the judges.

6. AMEND Rule 7.6.6 to delete subsection 7.6.6.6 as follows:

7.6.6 Recall Rules

7.6.6.1 In case of a recall, a light plainly visible to the drivers shall be flashed and a recall sounded, but the starting gate shall proceed out of the path of the horses. In the case of a recall, whenever possible, the starter shall leave the wings of the gate extended and gradually slow the speed of the gate to assist in stopping the field of horses. In an emergency, however, the starter shall use his/her discretion to close the wings of the gate.

7.6.6.2 There shall be no recall after the word "go" has been give unless there is a mechanical failure of the starting gate.

7.6.6.3 The starter shall attempt to dispatch all horses away in position and on gait but there shall be no recall for a breaking horse after the recall point is passed.

7.6.6.4 In the event a horse causes two recalls, it may be an automatic ruling of the judges that the offending horse be scratched.

7.6.6.5 The starter may sound a recall for the following reasons:

7.6.6.5.1 A horse scores ahead of the gate;

7.6.6.5.2 There is interference;

7.6.6.6.3 A horse has broken equipment;

7.6.6.6.4 A horse falls before the word "go" is given; or

7.6.6.6.5 A mechanical failure of the starting gate.

~~7.6.6.6 There shall be a recall pole placed one eighth of a mile before the starting point, before or at which point, at the discretion of the starter, there may be a recall for a breaking horse or horses not up to the gate. When the recall pole is passed, there shall be no recall for a breaking horse or a horse not up to the gate except as provided in 7.6.6.5.1--7.6.6.6.5 above. Horses not up to the gate in position due to the fault of the driver may result in the driver being penalized by the starter.~~

7.6.6.7 A fine and/or suspension may be applied to any driver for:

- 7.6.6.7.1 Delaying the start;
- 7.6.6.7.2 Failure to obey the starter's instructions;
- 7.6.6.7.3 Rushing ahead of the inside or outside wing of the gate;
- 7.6.6.7.4 Coming to the starting gate out of position;
- 7.6.6.7.5 Crossing over before reaching the starting point;
- 7.6.6.7.6 Interference with another driver during the start; or
- 7.6.6.7.7 Failure to come up into position.

7. AMEND Rule 6.3.2 to add new subsections 6.3.2.8 and 6.3.2.9 to provide as follows:

6.3.2 Prohibition on Claims

6.3.2.1 A person shall not claim directly or indirectly his/her own horse or a horse trained or driven by him/her or cause such horse to be claimed directly or indirectly for his/her own account.

6.3.2.2 A person shall not directly or indirectly offer, or directly or indirectly enter into an agreement, to claim or not to claim or directly or indirectly attempt to prevent another person from claiming any horse in a claiming race.

6.3.2.3 A person shall not have more than one claim on any one horse in any claiming race.

6.3.2.4 A person shall not directly or indirectly conspire to protect a horse from being claimed by arranging another person to lodge claims, a procedure known as protection claims.

6.3.2.5 No qualified owner or his agent shall claim a horse for another person.

6.3.2.6 No person shall enter in a claiming race a horse against which there is a mortgage, bill or sale, or lien of any kind, unless the written consent of the holder thereof shall be filed with the Clerk of the Course of the association conducting such claiming race.

6.3.2.7 Any mare which has been bred shall not be declared into a claiming race for at least 30 days following the last breeding of the mare, and thereafter such a mare may only be declared into a claiming race after a veterinarian has pronounced the mare not to be in foal. Any mare pronounced in foal shall not be declared into a claiming race. Where a mare is claimed out of a claiming race and subsequently proves to be in foal from a breeding which occurred prior to the race from which she was claimed, the claim may be voided by the judges at the option of the successful claimant provided the mare is subjected to a pregnancy examination within 18 days of the date of the claim, and is found pregnant as a result of that pregnancy examination. A successful claimant seeking to void the claim must file a petition to void said claim with the judges within 10 days after this pregnancy examination and shall thereafter be heard by the judges after due notice of the

hearing to the parties concerned.

1 DE Reg. 503 (01/11/97)

6.3.2.8 No person shall claim more than one horse in a race either alone, in a partnership, corporation or other legal entity.

6.3.2.9 If a horse is claimed, no right, title or interest therein shall be sold or transferred except in a claiming race for a period of thirty (30) days following the date of the claiming.

8. AMEND Rule 8.4.3.5.10 to provide as follows:

8.4.3 Procedure for Taking Specimens

8.4.3.1 Horses from which specimens are to be drawn shall be taken to the detention area at the prescribed time and remain there until released by the Commission veterinarian. Only the owner, trainer, groom, or hot walker of horses to be tested shall be admitted to the detention area without permission of the Commission veterinarian.

8.4.3.2 Stable equipment other than equipment necessary for washing and cooling out a horse shall be prohibited in the detention area.

8.4.3.2.1 Buckets and water shall be furnished by the Commission veterinarian.

8.4.3.2.2 If a body brace is to be used, it shall be supplied by the responsible trainer and administered only with the permission and in the presence of the Commission veterinarian.

8.4.3.2.3 A licensed veterinarian shall attend a horse in the detention area only in the presence of the Commission veterinarian.

8.4.3.3 One of the following persons shall be present and witness the taking of the specimen from a horse and so signify in writing:

8.4.3.3.1 The owner;

8.4.3.3.2 The responsible trainer who, in the case of a claimed horse, shall be the person in whose name the horse raced; or

8.4.3.3.3 A stable representative designated by such owner or trainer.

8.4.3.4

8.4.3.4.1 All urine containers shall be supplied by the Commission laboratory and shall be sealed with the laboratory security seal which shall not be broken, except in the presence of the witness as provided by (subsection (3)) subsection 8.4.3.3 of this section.

8.4.3.4.2 Blood vacutainers will also be supplied by the Commission laboratory in sealed packages as received from the manufacturer.

8.4.3.5 Samples taken from a horse, by the Commission veterinarian or his assistant at the detention barn, shall be collected and in double containers and designated as the "primary" and "secondary" samples.

8.4.3.5.1 These samples shall be sealed with

tamper-proof tape and bear a portion of the multiple part "identification tag" that has identical printed numbers only. The other portion of the tag bearing the same printed identification number shall be detached in the presence of the witness.

8.4.3.5.2 The Commission veterinarian shall:

8.4.3.5.2.1 Identify the horse from which the specimen was taken.

8.4.3.5.2.2 Document the race and day, verified by the witness; and

8.4.3.5.2.3 Place the detached portions of the identification tags in a sealed envelope for delivery only to the stewards.

8.4.3.5.3 After both portions of samples have been identified in accordance with this section, the "primary" sample shall be delivered to the official chemist designated by the Commission.

8.4.3.5.4 The "secondary" sample shall remain in the custody of the Commission veterinarian at the detention area and urine samples shall be frozen and blood samples refrigerated in a locked refrigerator/freezer.

8.4.3.5.5 The Commission veterinarian shall take every precaution to ensure that neither the Commission chemist nor any member of the laboratory staff shall know the identity of the horse from which a specimen was taken prior to the completion of all testing.

8.4.3.5.6 When the Commission chemist has reported that the "primary" sample delivered contains no prohibited drug, the "secondary" sample shall be properly disposed.

8.4.3.5.7 If after a horse remains a reasonable time in the detention area and a specimen can not be taken from the horse, the Commission veterinarian may permit the horse to be returned to its barn and usual surroundings for the taking of a specimen under the supervision of the Commission veterinarian.

8.4.3.5.8 If one hundred (100) milliliters (ml.) or less of urine is obtained, it will not be split, but will be considered the "primary" sample and will be tested as other "primary" samples.

8.4.3.5.9 Two (2) blood samples shall be collected in twenty (20) milliliters vacutainers, one for the "primary" and one for the "secondary" sample.

8.4.3.5.10 In the event of an initial finding of a prohibited substance or in violation of these Rules & Regulations, the Commission chemist shall notify the Commission, both orally and in writing, and an oral or written notice shall be issued by the Commission to the owner and trainer or other responsible person no more than twenty-four (24) hours after the receipt of the initial finding, unless extenuating circumstances require a longer period, in which case the Commission shall provide notice as soon as possible in order to allow for testing of the "secondary" sample provided however, that the procedure for testing the

~~"secondary sample" shall not apply to, and there shall be no right to such testing of a "secondary sample" with respect to a finding of a prohibited level of total carbon dioxide in a submitted sample with respect to a finding of a prohibited level of total carbon dioxide in a blood sample, there shall be no right to testing of the "secondary sample" unless such finding initially is made at the racetrack on the same day that the tested horse raced, and in every such circumstance a "secondary sample" shall be transported to the Commission laboratory on an anonymous basis for confirmatory testing.~~

8.4.3.5.10.1 If testing of the "secondary" sample is desired, the owner, trainer, or other responsible person shall so notify the Commission in writing within 48 hours after notification of the initial positive test or within a reasonable period of time established by the Commission after consultation with the Commission chemist. The reasonable period is to be calculated to insure the integrity of the sample and the preservation of the alleged illegal substance.

8.4.3.5.10.2 Testing of the "secondary" samples shall be performed at a referee laboratory selected by representatives of the owner, trainer, or other responsible person from a list of not less than two (2) laboratories approved by the Commission.

8.4.3.5.11 The Commission shall bear the responsibility of preparing and shipping the sample, and the cost of preparation, shipping, and testing at the referee laboratory shall be assumed by the person requesting the testing, whether it be the owner, trainer, or other person charged.

8.4.3.5.11.1 A Commission representative and the owner, trainer, or other responsible person or a representative of the persons notified under these Rules and Regulations may be present at the time of the opening, repackaging, and testing of the "secondary" sample to ensure its identity and that the testing is satisfactorily performed.

8.4.3.5.11.2 The referee laboratory shall be informed of the initial findings of the Commission chemist prior to making the test.

8.4.3.5.11.3 If the finding of the referee laboratory is proven to be of sufficient reliability and does not confirm the finding of the initial test performed by the Commission chemist and in the absence of other independent proof of the administration of a prohibited drug of the horse in question, it shall be concluded that there is insubstantial evidence upon which to charge anyone with a violation.

8.4.3.5.12 The Commission veterinarian shall be responsible for safeguarding all specimens while in his possession and shall cause the specimens to be delivered only to the Commission chemist as soon as possible after sealing, in a manner so as not to reveal the identity of a horse from which the sample was taken.

8.4.3.5.13 If an Act of God, power failure,

accident, strike or other action beyond the control of the Commission occurs, the results of the primary official test shall be accepted as prima facie evidence.

1 DE Reg. 505 (11/01/97)

DEPARTMENT OF EDUCATION

Statutory Authority: 14 Delaware Code,
Section 122(d) (14 Del.C. 122(d))

REGULATORY IMPLEMENTING ORDER CONTENT STANDARDS

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation Content Standards, and repeal as separate regulations Agriscience, Business Finance and Marketing, Foreign Languages and Visual and Performing Arts. The purpose of these changes is to consolidate the specific content standards with the generic content standards regulation and to add to this generic regulation the four sets of content standards approved in September, 1995, English language arts, mathematics, science and social studies and technology education approved in March 2000. The amended regulation Content Standards would include the statements made in the current regulation and include all of the approved sets of content standards in one regulation. The five content areas that require development and implementation only if offered by the local district are addressed separately.

In addition, the amendments add the requirement that local school districts develop and implement the content standards for the functional life skills curriculum for students for whom that curriculum is appropriate. The *Standards for Functional Life Skills Curriculum* document is scheduled for State Board discussion in June with final approval in July, 2000.

In the future the Secretary and the State Board of Education would add additional content standards to this regulation when they are approved and would approve all changes to the existing content standards. Notice of the amended regulation was published in the News Journal and the Delaware State News on May 19, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend the

regulation on the Content Standards and repeal the separate content standards regulations in order to place all of the content standards under a single regulatory statement and allow for future adjustments to the content of the standards documents with the approval of the Secretary of Education and the State Board of Education.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 **Del.C.** Section. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 **Del.C.** Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education*.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** Section. 122, in open session at the said Board's regularly scheduled meeting on July 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED 20th day of July, 2000.

DEPARTMENT OF EDUCATION

Valerie A Woodruff
Secretary of Education

Approved this 20th day of July, 2000.

STATE BOARD OF EDUCATION

Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

Content Standards

1.0 Each school district shall develop and implement instructional programs for grades K-12 in alignment with the State Content Standards. Districts shall also provide for the integration of content areas within and across curricula. Districts shall keep instructional materials and curricula current and consistent with the Guidelines and Standards adopted by the State Department of Education and any subsequent amendments thereof.

Standards for Agriscience
(See document for full text)

Standards for Business, Finance and Marketing
(See document for full text)

Standards for Foreign Languages
(See document for full text)

Standards for Visual and Performing Arts
(See document for full text)

500.1 State Content Standards

1.0 State Content Standards

1.1 Each local school district shall ~~[develop and implement provide]~~ instructional programs ~~[for grades K-12]~~ in alignment with the state content standards in mathematics, English language arts, science and social studies ~~[for all students in grades K-12, except for those students for whom a functional lifestyle curriculum is appropriate. The instructional programs shall be in alignment with the documents *Mathematics Curriculum Framework, English Language Arts Curriculum Framework, Science Curriculum Framework and Social Studies Curriculum Framework* as]~~ ~~[T]~~ ~~[t]~~he same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

~~[1.2 Each local school district shall develop and implement instructional programs in visual and performing arts in grades K-8 and in technology education in Grades 5-8 in alignment with the state content standards in those areas. The same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.]~~

1.2 Each local school district shall provide instructional programs in the visual and performing arts for all students in grades K-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Visual and Performing Arts Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.]

[1.3 Each local school district shall provide instructional programs in technology education for all students in grades 5-8 except for those students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Technology Education Curriculum Framework Content Standards* as the same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.]

~~[1.3 1.4]~~ Each local school district shall ~~[develop and implement provide]~~ instructional programs for students for whom a functional life skills curriculum is appropriate. The instructional program shall be in alignment with the document *Standards for Functional Life Skills Curriculum* ~~[as]~~ ~~[T]~~ ~~[t]~~he same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

~~[1.4 1.5]~~ ~~[Each]~~ ~~[L]~~ ~~[l]~~ocal school district~~[s]~~ that ~~[develop and implement provides additional]~~ instructional programs for ~~[students in any area of]~~ agriscience, business finance and marketing ~~[education]~~, foreign language, ~~[and for]~~ visual and performing arts and technology education ~~[in those grades not referred to in 1.2]~~ shall align ~~[such programs with the state content standards in]~~ these areas ~~[with the applicable state content standards. These program areas shall be in alignment with the documents *Agriscience Curriculum Framework Content Standards, Business Finance and Marketing Education Curriculum Framework Content Standards, Foreign Language Curriculum Framework Content Standards, Visual and Performing Arts Content Standards, and the Technology Education Curriculum Framework Content Standards* as]~~ ~~[T]~~ ~~[t]~~he same may from time to time hereafter be amended with the approval of the Secretary and the State Board of Education.

~~[1.5 1.6]~~ ~~[Each]~~ local school district~~[s]~~ shall provide for the integration of content areas within and across the curricula.

~~[1.6 1.7]~~ ~~[Each]~~ local school district~~[s]~~ shall keep instructional materials and curricula content current and consistent with the ~~[guidelines and standards adopted by the State Department of Education and any subsequent amendments thereof *Guidelines for the Selection of Instructional Materials.*]~~

**REGULATORY IMPLEMENTING ORDER
SUPPORTIVE INSTRUCTION (HOMEBOUND)**

**I. SUMMARY OF THE EVIDENCE AND
INFORMATION SUBMITTED**

The Secretary of Education seeks the approval of the State Board of Education to amend the regulation Supportive Instruction (Homebound), pages A-11 to A-13 in the

Handbook for K-12 Education. The regulation has been amended to specify when services can begin for pregnant students who qualify, to address the issue of students with 504 plans and to update and clarify the language. The amended regulation also removes the cap on the number of hours of supportive instruction that can be provided at each grade level leaving only a minimum requirement. Local school districts may provide additional hours of supportive instruction from their academic excellence allotment or from other available funding sources.

Notice of the proposed regulation was published in the News Journal and the Delaware State News on May 19, 2000, in the form hereto attached as Exhibit A. The notice invited written comments and none were received from the newspaper advertisements.

II. FINDINGS OF FACTS

The Secretary finds that it is necessary to amend this regulation because the regulation needs to reflect current Federal requirements and current State implementation procedures. The regulation was also amended to eliminate the technical assistance statements.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is necessary to amend the regulation. Therefore, pursuant to 14 **Del.C.** Section. 122, the regulation attached hereto as Exhibit B is hereby amended. Pursuant to the provisions of 14 **Del.C.** Section. 122(e), the regulation hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation amended hereby shall be in the form attached hereto as Exhibit B, and said regulation shall be cited in the *Regulations of the Department of Education.*

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 *Del. C.* Section. 122, in open session at the said Board's regularly scheduled meeting on July 20, 2000. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations.*

IT IS SO ORDERED this 20th day of July, 2000.

DEPARTMENT OF EDUCATION
Valerie A Woodruff, Secretary of Education

Approved this 20th day of July, 2000.
STATE BOARD OF EDUCATION
Dr. James L. Spartz, President
Jean W. Allen, Vice President
Mary B. Graham, Esquire
John W. Jardine, Jr.
Dr. Joseph A. Pika
Dennis J. Savage
Dr. Claibourne D. Smith

AS AMENDED Supportive Instruction (Homebound)

1.0 Definition: Supportive instruction is an alternative educational program provided at home, in a hospital or at a related site for students temporarily at home or hospitalized for a sudden illness, injury, episodic flare up of a chronic condition or accident considered to be of a temporary nature.

1.1 Procedures for eligibility shall be limited to appropriate certification that the student cannot attend school.

1.2 Services for children with disabilities as defined in the Individuals with Disabilities Act (IDEA) and the State Department of Education's regulations on Children with Disabilities shall be provided according to the Administrative Manual: Special Education Services, and shall be processed under the district's special education authority. Nothing in this regulation shall prevent a district from providing supportive instruction to children with disabilities in a manner consistent with the Individuals with Disabilities Education Act (IDEA) and the Administrative Manual.

1.3 Nothing in this regulation shall alter a district's duties under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act to students who are qualified individuals with disabilities. Nothing in this regulation shall prevent a district from providing supportive instruction to such students.

2.0 Eligibility: A student enrolled in a school district is eligible for supportive instruction when the school receives the required certification that an accident, injury, sudden illness or episodic flareup of a chronic condition will prevent the student from attending school for at least ten (10) school days.

2.1 A physician must certify absences due to a medical condition.

2.2 Absences due to severe adjustment problems must be certified by a psychologist or psychiatrist and confirmed through a staff conference.

2.3 A physician must certify absences due to pregnancy complicated by illness or other abnormal conditions.

2.3.1 Students do not qualify for supportive instruction for normal pregnancies unless there are

complications.

2.3.2 Students who remain enrolled in school are eligible for supportive instruction during a postpartum period not to exceed six weeks. Postpartum absences must be certified by a physician.

2.4 When the request for supportive instruction is for transitional in-school programs immediately following supportive instruction provided outside school, the request must be certified through a staff conference.

3.0 Implementation: Supportive instruction for students shall begin as soon as the certification required by 2.0 is received and may continue upon return to school only in those exceptional cases where it is determined that the student needs a transitional program to guarantee a successful return to the school program as in 2.4.

3.1 Supportive instruction shall adhere to the extent possible to the student's school curriculum and shall make full use of the available technology in order to facilitate the instruction.

3.1.1 The school shall provide a minimum of 3 hours of supportive instruction each week of eligibility for students K-5th grade, and a minimum of five hours each week of eligibility for students 6-12th grade. There is no minimum for in-school transition.

3.1.2 Nothing in this regulation shall prevent a school district from providing additional hours of supportive instruction to eligible students from either its Academic Excellence allotment or other available funding sources.

3.2 Summer instruction is permitted for a student who is otherwise eligible for supportive instruction and as determined by the student's teachers and principal, needs the instruction to complete course work or to maintain a level of instruction in order to continue in a school program the following school year.

DEPARTMENT OF FINANCE DIVISION OF REVENUE

Statutory Authority: 29 Delaware Code,
Section 6081(j) (29 Del.C. 6081(j))

TECHNICAL INFORMATION MEMORANDUM 2000-2

DATE: July 1, 2000
**SUBJECT: DUTY TO REPORT SALES OF
CIGARETTE PRODUCTS MADE BY
NON PARTICIPATING
MANUFACTURERS**

AUTHORITY: These regulations are issued pursuant to the authority given the Department of Finance in 29 Del.C. §

6081(j).

FINAL REGULATION:

Each affixing agent licensed under Chapter 53 of Title 30 of the Delaware Code shall report to the Division of Revenue monthly the total number of cigarettes stamped which are manufactured by tobacco product manufacturers defined in 29 Del.C. §6081(i) that are not participating manufacturers within the meaning of 29 Del.C. §6082(1). If an affixing agent has not stamped any cigarettes manufactured by a non-participating manufacturer in a reporting period, a negative report of no stamping shall be filed. The reports shall be made on schedule NPM-CIG and attached to forms 1074 or 1075. Schedule NPM-CIG as proposed is attached to this regulation.

Each resident and non-resident distributor of Other Tobacco Products who is required by Division of Revenue regulations to assess and report the tax on such other tobacco products shall report to the Division of Revenue monthly the amount of "roll your own" tobacco manufactured by tobacco product manufacturers defined in 29 Del.C. § 6081(i) that are not participating manufacturers within the meaning of 29 Del.C. § 6082 (1) that is sold, brought into, or caused to be brought into this State.

If a distributor has not assessed and reported any tax on "roll your own" tobacco manufactured by a non-participating manufacturer in a reporting period, a negative report of no tax assessed shall be filed. For purposes of this section "roll your own" tobacco is any tobacco which because of its appearance, type, packaging or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco used for making cigarettes. For purposes of this section "roll your own" tobacco may be reported as numbers of cigarettes, with 0.09 ounces of "roll your own" tobacco equaling 1 cigarette. The reports shall be made on schedule NPM-RYO and attached to form TP-1. Schedule NPM-RYO as proposed is attached to this regulation.

The reports required by this regulation shall be filed with the Division of Revenue on or before the 20th day of the month following the month in which the cigarettes are stamped, or the "roll your own" tobacco is sold, brought into, or caused to be brought into the State. Each report shall contain a verification that it is true and correct as to every material matter and made under the penalties of perjury. The first monthly report under this regulation shall be due on August 20, 2000, for the month of July, 2000.

Additionally, affixing agents and distributors subject to this regulation are required to file one report covering all cigarettes stamped; or all "roll your own" tobacco sold, brought into, or caused to be brought into this State, manufactured by non-participating manufacturers for the period July 20, 1999, through June 30, 2000. This report

shall be made on schedule NPM-1999 and attached to forms 1074, 1075 or TP-1, as the case may be, for the month of July, 2000. Schedule NPM-1999 as proposed is attached to this regulation.

Participating tobacco manufacturers within the meaning of 29 Del.C. §6082 and for purposes of determining the reporting requirements of this regulation are those manufacturers identified in Exhibit A attached hereto and incorporated herein by reference. This list may be amended and republished from time to time if, as and when nonparticipating manufacturers become participating manufacturers. A current list of participating manufacturers may also be found on the Internet at <http://www.naag.org/tobac/spmcont.htm>.

William M. Remington
Director of Revenue

Approved as to form and legal sufficiency,
Drue Chichi, Esquire
Deputy Attorney General

**Schedule NPM-CIG (Proposed).
Sales of Cigarettes from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue
Forms 1074 and 1075)

Monthly Report of Cigarettes and Cigarette Tax Stamps

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200____
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Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold cigarettes from other non-participating manufacturers into Delaware, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

**NO. NON-PARTICIPATING MANUFACTURER
PRODUCTS SOLD INTO DELAWARE:**

A NAME OF MANUFACTURER	B Quantity Packs of 20	C Quan- tity Packs of 25
1. Star Scientific, Inc.		

2. National Tobacco/North Atlantic Operating (Zig Zag)		
3. S & M Brands (Bailey's)		
4. Smokin' Joe / Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)		
5. Gudang Garam TBK (Import)		
6. P T Bentoel Prima (Import)		
7. M/S Mangalore Ganesh Beedi Works (Import)		
8. Gunwantrai Harivallabh (Import)		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21. Total all packs of 20 cigarettes (Column B) and 25 Cigarettes (column C).		

**Schedule NPM-RYO (Proposed).
Sales of Roll Your Own Tobacco from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue Form TP-1)
Monthly Report of Tobacco Products Tax
(Other than Cigarettes)

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200____
--------------------	-------------------------------------	---------------------------------------

Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold roll your own tobacco from other non-participating manufacturers into Delaware, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

FINAL REGULATIONS

NO. NON-PARTICIPATING MANUFACTURER PRODUCTS SOLD INTO DELAWARE:

A Name of Manufacturer	B Cigarette equivalent units (0.09 oz.)	C Ounces not reported in Column B
1. Star Scientific, Inc.		
2. National Tobacco/North Atlantic Operating (Zig Zag)		
3. S & M Brands (Bailey's)		
4. Smokin' Joe/Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)		
5. Gudang Garam TBK (Import)		
6. P T Bentoel Prima (Import)		
7. M/S Mangalore Ganesh Beedi Works (Import)		
8. Gunwantrai Harivallabh (Import)		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		

17.		
18.		
19.		
20.		
21. Total cigarette equivalents (Column B) and ounces (Column C).		

**Schedule NPM-1999 (Proposed).
Sales of Cigarettes from Non-participating
Manufacturers or Importers**
(Attach to Delaware Division of Revenue
Forms 1074 and 1075)

Monthly Report of Cigarettes and Cigarette Tax Stamps

Taxpayer's Name	Taxpayer's Federal EIN or SSN	Report for Month of _____, 200__
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Include sales for the applicable manufacturers listed below. The report, however, is not to be limited to those manufacturers. If you have sold into Delaware cigarettes from other non-participating manufacturers, please identify those manufacturers or importers on this form. If you need additional space, please attach a separate sheet. If you sold no such items into Delaware, please check below:

NO. NON-PARTICIPATING MANUFACTURER PRODUCTS SOLD INTO DELAWARE:

A Name of Manufacturer	B Cigarettes Quantity Packs of 20	C Cigarettes Quantity Packs of 25	D Roll Your Own Cigarette Equivalent Units (.09 oz.)	E Roll Your Own (Ounces not reported in Column D)
1. Star Scientific, Inc.				
2. National Tobacco/North Atlantic Operating (Zig Zag)				
3. S & M Brands (Bailey's)				
4. Smokin' Joe / Alternative (Smokin' Joe's, Lewiston, Glory, Exact, Market, Pure)				
5. Gudang Garam TBK (Import)				
6. P T Bentoel Prima (Import)				
7. M/S Mangalore Ganesh Beedi Works (Import)				

8. Gunwantrai Harivallabh (Import)				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
Total all packs of 20 cigarettes (Column B), 25 cigarettes (column C), roll your own cigarette equivalent units (column D), and roll your own ounces (Column E).				

Exhibit A

Participating Manufacturers as of April 27, 2000

Alliance Tobacco Corp.
 Brown & Williamson
 Commonwealth Brands, Inc.
 Dhanraj International, Inc.
 House of Prince A/S
 Imperial Tobacco Limited/ITL (USA) Limited
 Japan Tobacco International U. S. A., Inc.
 King Maker Marketing
 Landmark
 Lane Limited
 Liggett Group Inc.
 Lignum-2, Inc.
 Lorillard Tobacco Company
 LTD Corporation
 Mac Baren Tobacco Company A/S
 P. T. Djarum
 Peter Stokkebye International A/S
 Philip Morris Incorporated
 Planta Tabak-manufaktur Gmbh & Co.
 Premier Marketing Incorporated
 R. J. Reynolds Tobacco Company
 Santa Fe Natural Tobacco Company, Inc.
 Sherman 1400 Broadway N.Y. C., Inc.
 Societe Nationale d'Exploitation Industrielle
 des Tabacs et Allumettes (Seita)
 The Medallion Company, Inc.
 Tobacco Exporters International (USA) Ltd (TEI)
 Top Tobacco, L.P.

**DEPARTMENT OF HEALTH AND
 SOCIAL SERVICES**

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code,
 Section 122 (16 Del.C. 122)

**SUMMARY OF AMENDMENTS TO EXISTING
 REGULATIONS**

**STATE OF DELAWARE RULES AND
 REGULATIONS PERTAINING TO THE:**

**DELAWARE CONRAD STATE 20 / J-1 VISA
 WAIVER PROGRAM**

These are nonsubstantive changes, which are to be informally adopted in accordance with Delaware Code, Title 29, Chapter 101, Section 10113 to ensure that the Delaware Regulations for the Conrad State 20/J-1 Visa Waiver Program remain consistent with changes made at the Federal level. The changes reflect the new Federal requirements to include two self-addressed stamped envelopes and the addresses (one post office box and one physical) to which the application fee and physician data sheet should be sent.

Questions regarding the nonsubstantive changes should be directed to Katherine Collison at the following:
 Health Systems Development Branch
 Jesse Cooper Building, P.O. Box 637
 Dover, DE 19903
 Telephone: (302) 739-4735

**CONRAD STATE 20/J-1 VISA WAIVER
APPLICATION REGULATIONS
JULY 1999
Conrad State 20/J-1 Visa Waiver Program
Policy and Procedures**

I. PURPOSE

This document will specify the procedures to be used by the Delaware Health and Social Services (DHSS) in administering the Conrad State 20/J-1 Visa Waiver Program (Program).

II. AUTHORITY

Delaware Code, Title 16, Chapter 1, Section 122, Public Law 103-416 United States Code

III. BACKGROUND

International medical graduates (IMG) completing their graduate medical education in the United States under a J-1 Visa are required to return to their country of nationality for at least two years before reentering the United States. Acting as an interested state agency, DHSS may make a recommendation to the U.S. Department of State, Bureau of Consular Affairs Waiver Review Division (DOS) to, in turn, recommend that the Immigration and Naturalization Service (INS) waive the home residence requirement for up to twenty (20) J-1 physicians annually. Additionally, a J-1 physician may apply directly to the United States Department of Agriculture (USDA) for a J-1 visa waiver. In order to receive a letter of support for the J-1 physician applicant from DHSS, however, applications must first meet Program requirements, described herein.

IV. POLICY STATEMENTS

DHSS is committed to ensuring that quality health care is available to all residents of the State of Delaware. In an effort to ensure adequate medical services are provided in underserved areas, DHSS has elected to take advantage of the Conrad State 20/J-1 Visa Waiver Program.

Under this program, DHSS has established state-specific procedures that require sponsoring sites to submit a Site Application. This application consists of 1) a needs assessment, 2) proof that the sponsoring site has unsuccessfully attempted over a six month period to hire a physician with United States citizenship, 3) three letters of support from community leaders and local public health officials, 4) strategy for long-term and short-term retention, 5) sponsoring site waiver agreement, and 6) a site application form.

The needs assessment must establish and document that a particular need exists within the sponsoring site's service area before the site will be approved to hire a J-1 physician under the Conrad State 20/J-1 Visa Waiver Program. The onus to establish the need rests solely with the sponsoring

site.

The Site Application will be reviewed and approved or disapproved by a Board. DHSS will provide written notice to the site of the application's approval/disapproval. A J-1 visa waiver application on behalf of a particular J-1 physician may not be submitted until the sponsoring site has been approved. J-1 visa waiver applications will only be accepted from J-1 physicians who have signed a contract with a *pre-approved* site.

DHSS will submit recommendations to the DOS on behalf of qualified J-1 physician applicants who agree to practice medicine full-time at a pre-approved sponsoring site for a minimum of three years in a federally designated Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA) of Delaware with a *pre-approved* site.

DHSS participation in the Conrad State 20/J-1 Visa Waiver Program is completely discretionary and voluntary. DHSS may elect not to participate in the Program at any time. The submission of a complete waiver package does not ensure DHSS will recommend a waiver in all instances. No more than 20 applications will be approved each Federal fiscal year. DHSS reserves the right to recommend or decline any request for a waiver.

This policy applies in full to any waiver submitted on behalf of a J-1 physician to be employed in Delaware.

V. DHSS DUTIES AND RESPONSIBILITIES

The Health Systems Development Branch of the Delaware Division of Public Health (DPH) has primary responsibility within DHSS for processing J-1 visa waivers. DHSS serves as the "interested state agency" with the Director of Public Health having the authority to sign the recommendations. Applications must be processed in the best interest of the health care needs of Delawareans.

VI. APPLICABILITY

These procedures apply to the following:

- All J-1 physicians seeking a J-1 visa waiver under PL 103-416 for employment in Delaware.
- All sponsoring sites seeking approval to hire a J-1 physician under the J-1 Visa Waiver program.
- All DHSS employees processing J-1 visa waivers under PL 103-416.

VII. APPLICATION PROCESS**Sponsoring Site Pre-Approval Application Requirements**

The Site Application (see Appendix A for Application forms) must, at a minimum, include the following:

A. Site Application Form:

1. Sponsoring Site: Provide the name, address, county, telephone number, fax number and the e-mail

address of site requesting approval to hire a J-1 physician. Also, please specify if the site is for profit or not for profit.

2. Practice Site: Provide the name, address and county of actual practice site where the requested J-1 physician would practice, if different from the primary location of the sponsoring site.

3. Recruitment Contact: Provide the name, address, county, telephone number, fax number and e-mail address of the individual responsible for physician recruitment.

4. Site Data Regarding Active Clients: Provide the total number of active patients at the practice site in the previous calendar year. Indicate total patients, as applicable, for primary care, specialty care and mental health services. Provide pro-rated or estimated annual totals if the site was not operational for the entire previous calendar year. For new sites, estimate the number of patients anticipated for the next year. Of the total number of patients, provide the percentage of all current patients, broken out by given age groups, making payment by conventional insurance plans, Medicare, Medicaid or on a sliding fee scale. A copy of the sliding fee scale must be submitted.

5. Staffing Levels: Provide the total number of budgeted full-time equivalent providers currently on staff. Also include the number of J-1 physicians requested, by specialty, and the projected hire date of each.

6. Practice Site Hours of Operation: Indicate the normal operating hours of the practice site by the days of the week. If hours of operation vary by practitioner, please specify.

7. Proposed J-1 Physician Weekly Work Schedule: Indicate the proposed weekly work schedule of the proposed J-1 physician(s). Include the number of hours (with start and end times) and the location (hospital/practice site(s)). The schedule must indicate the amount of time the J-1 physician is actually providing services; do not include travel or on-call time.

B. Needs Assessment:

Sponsoring sites are encouraged to work with their local hospital to complete the needs assessment. A comprehensive, data driven needs assessment must be completed, which, at a minimum, includes the following:

1. Description of the service area in which the sponsoring site's patients are located.

2. Geographic Service Area Health Resource Inventory. Description of the other health care resources located within the same service area including physicians (by specialty), hospitals, clinics, urgent care centers and any other available outpatient care facilities. Also include the location of the nearest available source of outpatient based services, which offers a sliding fee scale to patients with limited financial resources and that provides services similar to those that are being provided by the requested J-1 physician. Using public transportation as the mode of travel,

indicate the distance and travel time to that site.

3. Documentation that the sponsoring site's service area is located within a Health Professional Shortage Area (HPSA) or a Medically Underserved Area (MUA). Please indicate the following: HPSA Type(s), HPSA Service Area Number, HPSA FIPS State/County Code and the sponsoring site's primary service area (by City/County).

4. Documentation of a shortage in the defined service area for the particular physician specialty being requested under the J-1 Visa Waiver Program.

- Provide statistics demonstrating the need for a specialty and/or sub-specialty in the sponsoring site's service area.
- Document that the specialty and/or sub-specialty is not available to the underserved population in the service area.
- Describe how a J-1 physician would be used to meet the needs of the underserved population in the service area. Indicate if unique qualifications, such as cultural match or experience with the service area's underserved population, are sought to meet a particular need.

C. Retention:

The sponsoring site must provide written documentation of plans to retain the J-1 physician in the service area upon completion of the three-year practice obligation. Specifically, this plan must include short and long-term strategies that will not only keep the physician in the service area, but also will encourage the physician to continue to practice the specialty for which he/she was hired.

D. Proof of Failed Recruitment Attempts:

The sponsoring site must provide proof that attempts have been made to hire a physician with United States citizenship in the past six months to no avail. This section must include a written description of the failed attempts to recruit as well as back up documentation including, but not limited to, medical journal and newspaper advertisements, letters to medical residency programs and/or medical schools, etc. Please state any attempts to gain recruitment support from the hospital within the practice site's geographic service area.

E. Letters of Support:

The sponsoring site must submit three letters of support. Two must be obtained from community members and/or leaders in the practice site's service area. One must be obtained from a local public health official (see Appendix B for an approved contact list). Each letter must indicate the benefits of, or need for, the placement of a J-1 physician with the sponsoring site.

F. Sponsoring Site Waiver Agreement:

The director or applicant official of the sponsoring site must initial each of the statements indicating agreement to comply with requirements of the Delaware Conrad State

20/J-1 Visa Waiver Program. The form must also be signed and dated to include the title of the applicant official.

G. Signature:

The director or applicant official of the sponsoring site must provide an original, dated application with a live signature (using blue ink). This signature binds the site to the information provided and verifies that the form has been completed with accurate and current information.

J-1 Physician Application Requirements

Applications will *only* be accepted from J-1 physician applicants who already have an employment contract with a *pre-approved* sponsoring site (see section IV above). The completed application must include the original application package and one complete copy. No more than 20 applications will be approved each Federal fiscal year. DHSS reserves the right to recommend or decline any request for a waiver.

The J-1 Physician Application (see Appendix C for application forms) must, at a minimum, include the following:

A. Letter from the Director of the Sponsoring Site:

The director of a *pre-approved* sponsoring site must submit a letter requesting a DHSS recommendation to the DOS (or other Federal approving agency) that a J-1 physician be given a waiver of the requirement to return to their country of nationality. The letter must include, or attach, each of the following:

- Description of the J-1 physician's qualifications, proposed responsibilities and how his/her employment will meet currently unmet health care needs of a medically underserved community.
- If the J-1 physician will be practicing in a HPSA or MUA that is based on a population group, the employer must provide adequate documentation of the medical care that will be provided to this group.
- Certification that the J-1 physician will provide medical care services to Medicare, Medicaid and medically underserved patients, without discrimination based upon ability to pay for such services (i.e. self-pay, sliding fee scale, charity care).
- Completed Physician Data Sheet (copy enclosed).
- Copy of the J-1 physician's curriculum vitae (CV).
- Evidence of eligibility for a Delaware medical license.
- At least three letters of recommendation from persons familiar with the J-1 physician's work.
- A signed statement from the J-1 physician agreeing to the contractual requirements set forth in Section 214 (k)(1) (B) and (C) of the Immigration and Nationality Act.
- Copies of all IAP-66 forms issued to the J-1

physician seeking the waiver.

B. Employment Contract:

The employment contract must, at a minimum, include the following:

- Name and address of the sponsoring site.
- Name and address of the location of the sponsoring site's practice. If the J-1 physician will work at more than one site, include the days and hours of practice at each site and a breakdown in the amount of time the physician will practice at each site.
- A statement that the J-1 physician will work not less than four days per week or more than 12 hours in a 24 hour period. The hours must be performed during normal office hours, or hours which best meet the needs of the community (e.g. evenings and/or weekends). Travel and on-call time can not be included.
- A statement that the site will employ the physician on a full-time basis (minimum of 40 hours per week, not including time spent in travel and/or on-call).
- Statement that the J-1 physician will commence practice within 90 days of receiving a waiver and will practice on a full-time basis for at least three years.

C. Letter of No Objection from Home Country:

A statement that the physician's home country has no objection to the physician receiving a waiver of the foreign residence requirement must be included if the J-1 physician received funding from his or her home country for medical education or training in the United States. The Certification Regarding Contractual Obligation to Home Country (HD1061F) letter must be submitted directly to the following address by the J-1 physician applicant:

Waiver Review Division
Department of State
Bureau of Consular Affairs, Visa Office
CA/VO/L/W Room, L603
2401 E Street, NW
Washington, DC 20522-0106

~~D. Evidence of Payment of the Department of State "User Fee Required for Waiver Processing":~~

~~The J-1 physician applicant must provide proof that the \$136.00 processing fee has been sent to the DOS. A copy of the payment (i.e. check or money order) is considered sufficient proof. DHSS will not handle the submission of this fee. The fee must be mailed directly to the following address at the time the J-1 Visa Waiver Application packet is submitted to DHSS:~~

~~Waiver Review Division~~

Department of State
Bureau of Consular Affairs, Visa Office
CA/VO/L/W Room, L603
2401 E Street, NW
Washington, DC 20522-0106

Submission of Payment of the Department of State 'User Fee Required for Waiver Processing':

The J-1 physician applicant must provide proof that the \$136.00 processing fee has been sent to the DOS. A copy of the payment (i.e. check or money order) is considered sufficient proof. DHSS will not handle the submission of this fee. The fee must be mailed directly to the DOS at the time the J-1 Visa Waiver Application packet is submitted to DHSS. The submission of the fee must adhere to the following requirements:

- A copy of the Physician Data Sheet and two self-addressed, stamped, legal-size envelopes must accompany the \$136.00 DOS user fee. The applicant's full name, date of birth and social security number must be included on the check or money order, which must be drawn on a bank or other institution located in the United States and made payable to the United States DOS in U.S. currency. If the applicant resides outside the U.S. at the time of application, remittance may be made by bank international money order of foreign draft drawn on an institution in the U.S. and made payable to the United States DOS in U.S. currency. The envelopes will be used to inform the applicant of 1) the case number, which must be included on all future correspondence with DOS, and 2) the approval determination.
- The address to which you must submit these items follows, depending on whether the United States Postal Service or a Courier Service is selected:

If Sending Via United States Postal Service:

US Department of State
Waiver Review Division
Post Office Box 952137
St. Louis, MO 63195-2137

If Sending Via Courier Service:

US Department of State
Waiver Review Division (Box 952137)
1005 Convention Plaza
St. Louis, MO 63101-1200

E. J-1 Visa Waiver Statements:

The J-1 physician applicant must sign and include the enclosed 'J-1 Physician Waiver Statements.'

F. J-1 Visa Waiver Affidavit and Agreement:

The J-1 physician applicant must include a notarized 'J-1 Visa Waiver Affidavit and Agreement.' The document must contain the J-1 physician applicant's live, notarized signature (in blue ink).

G. J-1 Visa Waiver Application Checklist:

The enclosed checklist must accompany the application. The J-1 physician applicant must initial each item on the checklist as proof and assurance that each item is included in the waiver application packet.

VIII. SITE APPLICATION EVALUATION PROCESS

The Delaware Conrad State 20/J-1 Visa Waiver Program Sponsoring Site Application Review Board (Board) will review and approve or disapprove each Site Application based on its individual merits. Board members must not serve on the review panel for applications submitted by sponsoring sites with which they have either a personal or employment-related conflict of interest. The Board will be comprised of, at least, one member from each hospital in the state, the Medical Society of Delaware, the Health Care Commission and DHSS representatives.

A. Sponsoring Site Application Preliminary Review:

A preliminary review of each application will be conducted by the Conrad State 20 Program manager to determine if 1) the sponsoring site is located within a HPSA/MUA and 2) that the following required documentation is completed:

- Sponsoring Site Application
- Detailed Needs Assessment
- Strategy for Long-term and Short-term Retention
- Proof of Failed Recruitment Attempts
- Letters of Support
- Sponsoring Site Waiver Agreement

The preliminary review will be conducted solely for the purpose of determining the completeness of the application; the specific content provided in each of the components will not be considered. Incomplete applications, as well as applications from a site not located in a HPSA/MUA, will be returned to the sponsoring site immediately. A checklist identifying the missing information will be included. Completed applications may be resubmitted at any time prior to the first Monday in December.

B. Sponsoring Site Application Review:

The Board will convene during the month of January to review the applications submitted by the first Monday of December.

Using the Site Application Evaluation (see Appendix D for the form) as a guide, Board members must assign a score to each of the elements on the Site Application Evaluation form.

The following point scale has been assigned to each unique element:

Review Point Scale

Site Application Data	25
Needs Assessment	35
Retention	15
Proof of Failed Recruitment Attempts	15
Letters of Support	10
Total	100

The scores from the review element will be averaged to reach an overall total score for each Board member. The total scores received from each Board member will then be averaged to determine the final score for each site.

Sites will be approved only if:

- 1) all criteria is met,
- 2) a final score not lower than a 70 is achieved,

and

- 3) an overall score of at least a twenty-five (25) is achieved on the Needs Assessment component.

Approved sponsoring sites (whose applications were received by the first Monday in December) will be eligible to make a contractual offer to a J-1 physician for the following fiscal year (beginning October 1st of each year). However, if not all twenty Conrad State 20/J-1 Visa Waiver slots have been used for the current Federal fiscal year, approved sponsoring sites may make a contractual offer to a J-1 physician for the current fiscal year and the physician may submit a J-1 visa waiver application packet (see Appendix C for forms) immediately.

C. Review of Applications Submitted After the First Monday in December:

Applications received after the December deadline will be reviewed to determine if an emergent need (see Glossary for examples) for the placement of a J-1 physician is demonstrated. The application must include a detailed explanation as to the reason(s) the application was not submitted by the first Monday in December. If not all twenty Conrad State 20/J-1 Visa Waiver slots have been used for the current fiscal year, sponsoring sites demonstrating an emergent need may make a contractual offer to a J-1 physician immediately upon approval and the physician may submit a J-1 visa waiver application packet (see Appendix C for forms) for the current fiscal year. If all twenty Conrad State 20/J-1 Visa Waiver slots have been used, then approved sponsoring sites must wait until the following Federal fiscal year (beginning October 1st of each year) to submit a J-1 physician waiver application or may submit via the USDA.

D. Notice of Approval/Disapproval:

For those applications received by the first Monday

in December, DHSS will provide written notification of the Site Application's approval or disapproval by February 15th of each year.

Applications submitted after the first Monday in December will receive written notification of the Site Application's approval or disapproval within 45 days from the date of receipt of the application by DHSS.

IX. TIME FRAMES

Site Application Submission DHSS will accept Site Applications Forms each year through the end of the business day on the first Monday in December. Site Applications submitted after the first Monday in December will be eligible to receive approval only if 1) DHSS has not used the allotted twenty recommendations for the year, and 2) an emergent need for the placement of a J-1 physician is clearly demonstrated.

Site Notification DHSS will notify sponsoring sites in writing of the decision to approve or disapprove their site no later than February 15th of each year. *Inquiries regarding the status of pending applications will not be accepted at any time prior to February 15th.*

J-1 Visa Waiver Request Submission J-1 Visa Waiver Requests may be submitted with the start of each Federal fiscal year, October 1st.

X. COMPLETED SITE APPLICATIONS AND ASSOCIATED J-1 APPLICATIONS MUST BE SENT TO:

Conrad State 20 Program Manager
Division of Public Health
Health Systems Development Branch
P.O. Box 637
Dover, Delaware 19903

XI. SUBMITTING J-1 PHYSICIAN WAIVER RECOMMENDATION TO DOS

If the J-1 visa waiver request is approved, a cover letter to DOS is prepared by DHSS identifying the J-1 physician applicant and recommending a waiver of the two-year home residence requirement be granted. Upon receipt of the DHSS approval request, DOS will review the application.

XII. J-1 PHYSICIAN APPLICANTS RECEIVING A J-1 WAIVER

J-1 physician applicants receiving approval of a J-1 Waiver request must begin work at the sponsoring site within ninety (90) days of notice of approval from DOS.

XIII. REPORTING REQUIREMENTS

An *annual reporting process* is utilized for each J-1 physician practicing under a waiver to ensure the J-1 physician continues to practice in an underserved area of

Delaware for the required three years. DHSS will forward an Annual Practice Form (see Appendix E for a sample form) to the sponsoring site within thirty (30) days of the anniversary of the J-1 physician's start date. The sponsoring site must forward the signed, completed Annual Reporting Form to DHSS. An annual reporting form must be submitted for each year of practice obligation.

Notification of waiver status and commencement of employment contract must be submitted to DHSS upon receipt of written notification of approval from INS. This notification must include the date the three-year obligation commences.

Contract changes which result in termination of contract, change in practice scope, and/or relocation from a site approved in the application request to a new site must be presented in writing to DHSS at least thirty (30) days prior to the change. All reporting requirements, changes in practice location and/or scope must be submitted to the following:

Conrad State 20 Program Manager
 Division of Public Health
 Health Systems Development Branch
 P.O. Box 637
 Dover, Delaware 19903

XIV. EXIT INTERVIEW

Each J-1 physician practicing in Delaware must complete an exit interview within ninety (90) days of completion of his/her three-year obligation, or at such point that the employment contract is terminated by either the sponsoring site or the J-1 physician. DHSS will conduct the exit interview, which will concentrate on the J-1 physician's experiences in Delaware and their future plans for practicing medicine at the current, or another location.

XV. J1 VISA WAIVER APPLICATION GLOSSARY

Department of State, Bureau of Consular Affairs Waiver Review Division (DOS) The Federal agency that reviews the recommendations submitted by interested state agencies on behalf of J-1 physician applicants. In turn, they submit their own recommendation to the Immigration and Naturalization Service for final determination of approval/disapproval.

Emergent Need An emergent need is one that demonstrates a critical need for the placement of a J-1 physician. An emergent need includes, but is not limited to, the following: departure, death or retirement of a clinical physician providing a majority of medical care needs.

Health Professional Shortage Area (HPSA) An area defined by the Department of Health and Human Services as having a shortage of health care providers.

J-1 Physician An international medical graduate physician completing graduate medical education in the

United States under a J-1 Visa. These physicians are required to return to their country of nationality for at least two years before reentering the United States *unless a J-1 Visa waiver is granted.*

Medically Underserved Area An area, as defined by the Department of Health and Human Services, as not having an adequate supply of health care providers.

Practice Site Actual physical location at which the J-1 physician will provide medical services. This location can be different from the sponsoring site location if, for example, a satellite office is used.

Primary Care Fields The following four fields are identified as primary care: family practice, general internal medicine, general pediatrics and obstetrics/gynecology

Recruitment Contact Primary point of contact to be used by Delaware Health and Social Services Conrad State 20 Program Manager.

Service Area Geographic area in closest proximity to the practice site, from which the majority of patients are derived.

Sponsoring Site Medical practice through which the J-1 physician will provide medical services (i.e. the hiring organization).

APPENDIX A
 CONRAD STATE 20/J-1 VISA WAIVER SITE
 APPLICATION FORMS

I. SITE APPLICATION FORM

1. Sponsoring Site: _____
 Street Address: _____
 City: _____ State: ____ Zip: _____ County: ____
 Telephone Number: _____ Fax Number: _____
 E-Mail Address: _____
 Non-Profit: _____ For Profit: _____
2. Practice Site: _____
 Street Address: _____
 City: _____ State: ____ Zip: _____ County: ____
3. Recruitment Contact: _____
 Street Address: _____
 City: _____ State: ____ Zip: _____ County: ____
 Telephone Number: _____ Fax Number: _____
 E-Mail Address: _____
4. Site Data Regarding Active Clients:
 Total Number of Patients Receiving the Following Medical Services:
 Primary Health Care: ____ Specialty Care: ____
 Mental Health Care: ____ Total: _____
 Total Users in Previous Calendar Year Below 200% of Federal Poverty Level: _____
5. Staffing Levels

FINAL REGULATIONS

AGE GROUP	MEDICAID	MEDICARE	SLIDING FEE SCALE	COMMERCIAL
Birth-11 Years	%	%	%	%
12-18 Years	%	%	%	%
19-62 Years	%	%	%	%
63+ Years	%	%	%	%
HPSA %	%	%	%	%
NOT HPSA %	%	%	%	%

AREA OF PRACTICE	STAFFING LEVEL		NUMBER OF J-1 PHYSICIANS REQUESTED	PROJECTED HIRE DATE			
	FULL	CURRENT		JUNE - AUG 2000	SEPT - NOV 2000	DEC - FEB 2000	MARCH - MAY 2000
PRIMARY CARE PHYSICIANS							
Family Practice							
General Internal Medicine							
General Pediatrics							
Obstetrics/Gynecology							
SPECIALIST PHYSICIANS (Please Specify Specialty Area)							
NURSE PRACTITIONERS							
Family Nurse Practitioners							
Adult Nurse Practitioners							
Geriatric Nurse Practitioners							
Pediatric Nurse Practitioners							
Women's Health Nurse Practitioners							
Psychiatric Nurse Practitioners							
OTHER DISCIPLINES							
Physician Assistants							
Nurse Midwives							
Clinical Psychologists							
Clinical Social Workers							
Psychiatric Nurse Specialist							
Marriage and Family Therapists							

7. Proposed J-1 Physician Weekly Work Schedule:

6. Practice Site Hours of Operation.

If hours of operation vary by practitioner, please specify.

DAY	TIME (Start and End)		TOTAL HOURS
	AM:	PM:	
Monday	AM:	PM:	
Tuesday	AM:	PM:	
Wednesday	AM:	PM:	
Thursday	AM:	PM:	
Friday	AM:	PM:	
Saturday	AM:	PM:	
Sunday	AM:	PM:	

DAY	TIME (Start and End)		WHERE (Hospital/Practice Site)	TOTAL HOURS
	AM:	PM:		
Monday	AM:	PM:		
Tuesday	AM:	PM:		
Wednesday	AM:	PM:		
Thursday	AM:	PM:		
Friday	AM:	PM:		
Saturday	AM:	PM:		
Sunday	AM:	PM:		

Provide a separate work schedule for each J-1 physician requested and specify the specialty of each.

II. NEEDS ASSESSMENT

Please use additional paper to complete this section.

1. Description of the service area in which the sponsoring site's patients are located:
2. Geographic Service Area Health Care Resource Inventory

Practice Site	Specialty	Hospital Hours? Y/N	Total Office Hours Per Week	Accept Medicaid ? Y/N	% Medicaid	Accept New Patients ? Y/N	Sliding Scale? Y/N	% Charity Care

Include all medical services available in the service area for which the J-1 physician will be practicing.

NEAREST AVAILABLE SITE PROVIDING SERVICES SIMILAR TO PROPOSED J-1 PRACTICE SITE (INCLUDE COMPLETE NAME AND ADDRESS)	MILES TO NEAREST SITE	TRAVEL TIME TO NEAREST SITE (using public transportation)

3. Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA) Documentation.

HPSA Y/N Location: _____
 MUA Y/N: Location: _____
 Sponsoring Site's Primary Service Area (City, County, Zip Code & Census Tract) _____

4. Documentation of a shortage in the defined service area for the particular physician specialty being requested under the J-1 Visa Waiver Program.

- a) Provide statistics demonstrating the specialty/sub-specialty is greatly needed in the sponsoring site's service area.
- b) Document that the specialty/sub-specialty is not currently available to sufficiently meet the need in the service area for the underserved population.
- c) Describe how a J-1 physician will be used to meet the underserved population needs in the service area; indicate if unique qualifications, such as language/cultural match or experience with a population similar to those in the service area, are sought to meet a particular need.

III. RETENTION

Describe the short and long-range plan for the retention of a J-1 physician beyond the required three-year obligation. Please use additional paper.

IV. PROOF OF FAILED RECRUITMENT ATTEMPTS

DATE	METHOD OF RECRUITMENT	RESPONSE	REASON FOR DISCONTINUING METHOD

V. LETTERS OF SUPPORT

Attach original, signed letters from two separate community members and/or leaders in the practicing site's service area. Attach one original, signed letter from an approved local Public Health official (see Appendix B for an approved contact list).

VI. SPONSORING SITE WAIVER AGREEMENT

Delaware Health and Social Services (DHSS) is committed to ensuring that all residents have access to quality, affordable health care. Accordingly, DHSS is prepared to consider recommending a waiver of the foreign residence requirement on behalf of physicians holding J-1 Visas under certain conditions. Therefore, the additional requirements are deemed necessary to support our Conrad State 20/J-1 Visa Waiver Program.

The director or applicant official for the facility or practice **must initial all** of the following requirements:

_____ Sponsoring site agrees to comply with all of the Program requirements set forth in this Agreement and guidelines.

_____ The sponsoring site is located in a Health Professional Shortage Area (HPSA) or Medically Underserved Area (MUA), as designated by the Secretary of Delaware Health and Human Services.

_____ The J-1 physician will provide medical care for at least forty (40) hours a week at the HPSA or MUA site named in the application for a minimum of three (3) years. Travel or on-call time is not included in the required forty (40) hours.

_____ The sponsoring site agrees to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services, or (b) payment for those health services will be made under Medicaid and Medicare. The sponsoring site will charge persons receiving services at the usual and customary rate prevailing in the HPSA/MUA in which services are provided, except charges will be on a sliding scale for persons at or below 200 percent of poverty or at no charge for persons unable to pay for these services.

_____ The sponsoring site has made a reasonable, good faith effort to recruit a physician with United States citizenship for the job opportunity in the same salary range without success during the last 6 months immediately preceding this request for a waiver. Recruitment efforts were through a number of appropriate sources most likely to bring responses from able, willing, qualified and available physicians with United States citizenship.

_____ I understand and acknowledge that the review of this site application is discretionary and that in the event a decision is made not to approve the site application, I hold harmless the State of Delaware, DHSS and any and all State employees and/or any and all individuals or organizations involved in the review process from any action or lack of action made in connection with this request.

VII. SIGNATURE

Signature of Applicant Official: _____

Title: _____ Date: _____

APPENDIX B

**CONRAD STATE 20/J-1 VISA WAIVER
J-1 PHYSICIAN APPLICATION LETTER OF SUPPORT
CONTACT LIST**

The following are approved public health officials to contact to obtain a letter of support to include with the J-1 Visa Waiver Site Application. If the practice site is located in New Castle County, please contact Shirlee Kittleman. If the practice site is located in Kent or Sussex Counties, please contact Barbara DeBastiani.

Northern Health Services

**Shirlee Kittleman,
Administrator**

2055 Limestone Road,
Suite 300
Wilmington, DE 19808
Phone: (302)995-8632
Fax: (302)995-8616

Southern Health Services

**Barbara DeBastiani,
Administrator**

Sussex County Health Unit
544 South Bedford Street
Georgetown, DE 19947
Phone: (302)856-5355
Fax: (302)856-5065

APPENDIX C

**CONRAD STATE 20/J-1 VISA WAIVER
J-1 PHYSICIAN APPLICATION FORMS**

**J-1 VISA WAIVER REQUEST
DOS PHYSICIANDATA SHEET**

1. FULL NAME: _____
2. DATE OF BIRTH: _____ PLACE OF BIRTH: _____
3. COUNTRY OF NATIONALITY OR LAST LEGAL PERMANENT RESIDENCE: _____
4. DATE AND PLACE OF ISSUANCE OF ORIGINAL EXCHANGE-VISITOR (J-1) VISA: _____
5. PRESENT HOME ADDRESS: _____

- IMMIGRATION DISTRICT: _____
6. HOME TELEPHONE: _____
BUSINESS TELEPHONE: _____
7. LIST OF EXCHANGE-VISITOR PROGRAMS IN WHICH YOU PARTICIPATED. IF KNOWN, GIVE THE PROGRAM NUMBER AND THE FIELD OF SPECIALIZATION: _____

8. ALIEN REGISTRATION NUMBER, IF KNOWN: _____
9. IF YOUR EXCHANGE-VISITOR PROGRAM INCLUDES US GOVERNMENT FUNDS, FUNDS FROM YOUR OWN GOVERNMENT, OR FROM AN INTERNATIONAL ORGANIZATION. PLEASE GIVE FULL PARTICULARS CONCERNING THE FUNDING ON A SEPARATE SHEET.
10. IS YOUR SPOUSE IN J-1 STATUS? YES ___ NO ___
IF SO, IS HE/SHE ALSO APPLYING FOR A WAIVER? (PLEASE GIVE A FULL EXPLANATION ON A SEPARATE SHEET)
11. GIVE THE REASONS FOR NOT WISHING TO FULFILL THE TWO YEAR HOME COUNTRY RESIDENCE REQUIREMENT TO WHICH YOU AGREED AT THE TIME YOU ACCEPTED EXCHANGE VISITOR STATUS. PLEASE GIVE A FULL EXPLANATION ON A SEPARATE SHEET.
12. PLEASE INCLUDE COPIES OF ALL IAP-66 FORMS ISSUED DURING YOUR STAY IN THIS COUNTRY.

SIGNATURE OF J-1 PHYSICIAN APPLICANT DATE

**J-1 PHYSICIAN WAIVER STATEMENTS
DECLARATION OF PENDING INTERESTED
GOVERNMENT AGENCY**

I, _____, hereby declare and certify, under penalty of the provisions of 18 U.S.C. 1101, that I do not now have pending nor am I submitting during the pendency of this request, another request to any United States Government agency or any State Department of Public Health, or equivalent, other than the Delaware Health and Social Services to act on my behalf in any matter relating to a waiver of my two-year-home-country physical presence requirement.

Physician Signature

Date

Physician Name (Printed or Typed)

MEDICAL LICENSE AFFIDAVIT

I, _____, hereby affirm that, to the best of my knowledge, my medical license has never been suspended or revoked and that I am not subject to any criminal investigation or proceedings by any medical authority.

Physician Signature

Date

Physician Name (Printed or Typed)

**J-1 PHYSICIAN WAIVER AFFIDAVIT AND
AGREEMENT**

I, _____, being duly sworn, hereby request the Delaware Health and Social Services (DHSS) to review my application for the purpose of recommending waiver of the foreign residency requirement set forth in my J-1 Visa, pursuant to the terms and conditions as follows:

1. I understand and acknowledge that the review of this request is discretionary and that in the event a decision is made not to grant my request, I hold harmless the State of Delaware, DHSS, any and all State employees and/or any and all individuals or organizations involved in the review process from any action or lack of action made in connection with this request.

2. I further understand and acknowledge that the entire basis for the consideration of my request is DHSS's mission to improve the availability of medical care in areas

designated as Health Professional Shortage Areas (HPSA) and Medically Underserved Areas (MUA) by the Secretary of the Department of Health and Human Services.

3. In understand and agree that in consideration for a waiver, which may or may not be granted, I shall render medical care services to patients, including the underserved, for a minimum of forty (40) hours per week with a designated HPSA or MUA in Delaware. Such service shall commence not later than three months (90 days) after I receive notification of approval by the United State Immigration and Naturalization Services (INS) and shall commence for a minimum of three (3) years as required by State policy guidelines.

4. I have incorporated all terms of this Physician J-1 Visa Waiver Affidavit and Agreement into the executed employment contract attached to this request.

5. I further agree that my executed employment contract with the sponsoring site does not contain any provision which modifies or amends any terms of the Program guidelines for Delaware and this Physician J-1 Visa Waiver Affidavit and Agreement.

6. I agree to provide health care services to Medicare, Medicaid and medically underserved patients, without discrimination based upon ability to pay for such services (i.e. self-pay, sliding fee scale, charity care).

7. I agree to provide health services to individuals without discriminating against them because (a) they are unable to pay for those services or (b) payment for those health services will be made under Medicaid and Medicare. I will charge persons receiving services at the usual and customary rate prevailing in the HPSA or MUA in which services are provided, except charges will be on a sliding scale for persons at or below 200 percent of poverty or at no charge for persons unable to pay for these services.

8. I understand I must submit a "No Objection" letter if my home country's government funded my graduate medical education.

9. I have not been "out of status" (as defined by the Immigration and Naturalization Service of the United States Department of Justice) for more than six (6) months since receiving a visa under 8 U.S.C. 1182 (j) of the Immigration and Nationality Act, as amended.

10. I understand the Declaration of Pending Interested Government and Medical Licensure Affidavit and signed both statements.

APPENDIX E
CONRAD STATE 20/J-1 VISA WAIVER
ANNUAL PRACTICE REPORT

1. Name of J-1 Physician: _____
Start Date: _____
2. Sponsoring Site: _____
Street Address: _____
City: _____ State: _____ Zip: _____ County: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____
Non-Profit: _____ For Profit: _____
3. Practice Site: _____
Street Address: _____
City: _____ State: _____ Zip: _____ County: _____
4. Contact Person: _____
Street Address: _____
City: _____ State: _____ Zip: _____ County: _____
Telephone Number: _____ Fax Number: _____
E-Mail Address: _____

Type of Service(s) Provided:

Please provide the medical specialties practiced by the J-1 physician, the total hours he/she worked in each specialty and the number of annual visits performed by this physician for each specialty practiced (include all primary care and other medical specialties).

Practice Type	Total Hours/Week	Annual Visits

J-1 Physician's Hours of Operation:

Indicate the weekly work schedule of the J-1 physician. Include the number of hours (with start and end times) and the primary location (hospital/practice site). The schedule must indicate the time the J-1 physician is actually providing services; do not include travel or on-call time. If the J-1 physician is practicing at more than one location, please complete a schedule for each location.

DAY	TIME (Start and End)		TOTAL HOURS
	AM:	PM:	
Monday			
Tuesday			
Wednesday			
Thursday			
Friday			

Saturday	AM:	PM:	
Sunday	AM:	PM:	

Site Data Regarding Active Clients:

Provide the total number of active patients at the practice site in the previous calendar year with totals, as applicable, for primary care, specialty care and mental health services.

Total Number of Patients Receiving the Following Medical Services:

Primary Health Care _____ Specialty Care _____ Mental Health Care _____ TOTAL _____

Total Users in Previous Calendar Year Below 200% of Federal Poverty Level _____

Please provide a breakdown of each of the following payor types by age of patient.

AGE GROUP	MEDICAID	MEDICARE	SLIDING FEE SCALE	FEE	COMMERCIAL
Birth - 11 Years	%	%	%	%	%
12- 18 Years	%	%	%	%	%
19-62 Years	%	%	%	%	%
63+ Years	%	%	%	%	%

This will certify that _____ (name of J-1 physician) provided medical services to patients at the approved health facility site on a full-time basis (minimum forty hour per week) for the time period of _____ through _____.

Signature of Applicant Official: _____
Title: _____ Date: _____

DEPARTMENT OF PUBLIC SAFETY

BOARD OF EXAMINERS OF PRIVATE INVESTIGATORS & PRIVATE SECURITY AGENCIES

Statutory Authority: 24 Delaware Code,
Section 1304(b)(3) (24 Del.C. 1304(b)(3))

Pursuant to the Guidelines in 29 Del.C. Section 10118 (a) (1) - (7), the Board of Examiners of Private Investigators and Private Security Agencies ("Board") hereby issues this Order. Following notice and a public hearing held on April 13, 2000 on the proposed amendment of promulgated rules and regulations 11/04/1994-7 - Employment Notification, the Board makes the following Findings and Conclusions:

Summary of Evidence and Information Submitted

1. The Board did not receive written evidence or information pertaining to the proposed amendment.
2. The Board expressed its desire to amend the rule to clarify the employer's responsibility of the action of their employees to the Detective Licensing Office.

Findings of Fact

3. The public was given notice and the opportunity to provide the Board with comments, in writing and by oral testimony, on the amendment of the rule. The written comments and oral testimony received are described in paragraph 1.
4. The Board finds that the amendment of this rule will clarify the employer's responsibility of the action of their employees to the Detective Licensing Office.
5. The Board finds that the amendment will have no adverse impact on the public.
6. The Board finds that the amendment is well written and describes its intent to amend the rules to clarify the employer's responsibility of the action of their employees to the Detective Licensing Office.

Conclusion

7. The proposed rule amendment was promulgated by the Board in accord with the statutory duties and authority as set forth in 24 **Del.C.** Section 1304 et. seq. and, in particular, 24 **Del.C.** Section 1304 (b) (3).
8. The Board deems this amendment necessary and expedient to the full and official performance of its duties under 24 **Del.C.** Section 1304 et. seq.
9. The Board concludes that the amendment of this rule will be in the best interests of the citizens of the State of Delaware.
10. The Board therefore adopts the amendment of this rule pursuant to 24 **Del.C.** Section 1304 (b) (3) and guidelines of 29 **Del.C.** Section 10118 of the Administrative Procedures Act. See, Strauss v. Silverman, Del. Supr., 399 A.2d 192 (1979).
11. This amended rule replaces 11/04/1994-7 (A) in its entirety, any former rule or regulation heretofore promulgated by the Board.
12. The effective date of this Order shall be April 13, 2000.
13. Attached hereto and incorporated herein this order is the amended rule marked as exhibit A and executed simultaneously by the Board on the 13th day of April, 2000.
Colonel Gerald R. Pepper, Jr., Chairman
APPROVED AS TO FORM:
Rosemary Killian, Deputy Attorney General, 5/16/00

11/04/1994 -1 Firearm's Policy

No person licensed under 24 **Del.C.** 1315 & 1317 shall carry a firearm unless that person has first passed an approved firearms course given by a Board approved certified firearms instructor, which shall include a minimum 40 hour course of instruction. Individuals licensed to carry a firearm must shoot a minimum of three (3) qualifying shoots per year, scheduled on at least two (2) separate days, with a recommended 90 days between scheduled shoots. Of these three, there will be one (1) mandatory "low light" shoot. Simulation is permitted and it may be combined with a daylight shoot.

See 3 DE Reg 960 (1/1/00)

- A. Firearms - approved type of weapons
- | | |
|---|------|
| 1 | 9mm |
| 1 | .357 |
| 1 | .38 |
| 1 | .40 |

See 3 DE Reg 960 (1/1/00)

- B. All weapons must be either a revolver or semi-automatic and must be double-action or double-action only and must be maintained to factory specifications.
- C. Under no circumstances will anyone be allowed to carry any type of shotgun or rifle or any type of weapon that is not described herein.
- D. All individuals must qualify with the same type of weapon that he/she will carry.
- E. All ammunition will be factory fresh (no re-loads).
- F. The minimum passing score is 75%. All licenses are valid for a period of one (1) year.

See 3 DE Reg 960 (1/1/00)**11/04/1994 - 2 Nightstick, Pr24, Mace, Peppergas and Handcuffs**

To carry the above weapons/items a security guard must have completed a training program on each and every weapon/item carried, taught by a certified instructor representing the manufacturer of the weapon/item. Proof of these certifications must be provided to the Director of the Board of Examiners. Under no circumstances would a person be permitted to carry any other type weapon/item, unless first approved by the Director of the Board of Examiners.

11/04/1994 - 3 Personnel Rosters and Job Assignments

Anyone licensed under 24 **Del.C.** Ch. 13 shall submit an alphabetical personnel roster and a job site list to the director of the Detective Licensing Section by the tenth of every month. Alphabetical personnel rosters shall include the full name, DOB, race, sex, expiration date, and position code of each individual in your employ. For example:

Mark A. Smith	01/25/60W	M	01/25/99	SG
Helen E. White	03/17/71B	F	03/17/00	FA
John F. Henry	05/23/43B	M	05/23/00	PI

James D. Williams 12/03/40W M 06/30/99 MG
Frank G. Montgomery 07/24/55B M 06/30/99 LH
Anne L. Murray 10/20/40W F 06/30/99 CO
SG Security Guard
FA Firearm's
PI Private Investigator
MG Delaware Manager
LH License Holder
CO Corporate Officer

See 3 DE Reg 960 (1/1/00)

Job site lists shall include the name, address, location, and hours of coverage. For example:

The DuPont Industry
Barley Mill Road
2200 - 0600 Hours, Monday, Wednesday, and Friday
See 3 DE Reg 960 (1/1/00)

11/04/1994 - 4 Record Book; Right of Inspection

All persons licensed under 24 Del.C. Ch.13 shall keep and maintain at their place of business, at all times, a book that shall contain the names and positions of all employees along with the location that each employee is assigned to work. This book shall contain all current personnel information and at all times shall be current and up-to-date to include the list of weapons/items each employee is qualified to carry, the certification dates, scores and the serial number of the weapon/item, if applicable.

See 3 DE Reg 960 (1/1/00)**11/04/1994 - 5 Uniforms, Patches, Badges, Seals, Vehicular Markings****Amended 04/17/97****Amended 04/23/98**

No person licensed under 24 Del.C. Ch. 13 shall wear or display any uniform, patch, or badge unless first approved by the Board of Examiners. The use of "patrol" and/or "officer" on any type of uniform, patch, badge, seal, vehicular marking or any type of advertisement shall first be proceeded by the word "security". Under no circumstances shall a uniform, patch, badge, seal, vehicular marking, letterhead, business card or any type of advertisement contain the seal or crest of the State of Delaware, any state of the United States, the seal or crest of any county or local sub division, or any facsimile of the aforementioned seals or crests.

A. Advertisement and other forms of publications:

No letterhead, business card, advertisement, or other form of publication including but not limited to uniforms, patches, badges, seals, vehicular markings and similar items may be used or displayed unless first approved by the Board of Examiners. No such items will be approved by the Board if the item will mislead the public by confusing the licensee and/or his/her employees with official law enforcement agencies and/or personnel.

All uniforms displaying a patch must contain an approved patch that is not generic in nature. The patch must have the name of the agency printed on it.

Auxiliary lights on vehicles, used for patrol, shall be amber and/or clear only. Use of sirens is prohibited.

See 3 DE Reg 960 (1/1/00)**11/04/1994 - 6 Qualified Manager**

A qualified manager cannot be employed by more than one company at the same time. For example; a person cannot serve as a qualified manager for two separate private security agencies and/or private investigative agencies.

11/04/1994 - 7 Employment Notification

It shall be the responsibility of each person licensed as a security guard under 24 Del.C. Ch. 13 to notify the Director of the Board of Examiners, in writing within 24 hours, if such person is terminated or leaves one agency for employment with another or works for more than one security guard agency. Under no circumstances will a security guard be permitted to be employed by more than two agencies at a time. It is also the responsibility for each licensed security guard to advise his/her employer(s) of whom he/she is employed with (i.e. If a security guard is employed with two security guard agencies, both employers must be made aware of this fact as well as the Director of the Board of Examiners.)

A. Employers Responsibility

~~A license holder of a private security agency shall notify the Director within 24 hours, if an employee is terminated and/or ceases employment.~~

1. A licensed private security agency, after investigation, shall notify the Detective Licensing Office, in writing, of any terminated employees. This information is to be included in the next monthly roster report following the termination.

2. A licensed private security agency shall report to the Detective Licensing Office, in writing, the following:

a. The name of any employee arrested;

b. The name of any employee admitted to any mental hospital ward, mental institution or sanitarium; or

c. The name of any employee disabled from carrying, owning, or possessing a gun by action of federal or state statute and/or court order, including bond orders and protection from abuse orders.

11/04/1994 - 8 Criminal Offenses

In addition to those qualifications set forth in 24 Del.C. §1314, no person required to be licensed under this chapter shall be issued a license, if that person has been convicted of Assault III or Offensive Touching misdemeanor within the last three (3) years.

11/04/1994 - 9 Private Investigators

A. A Private Investigator must not be a member or employee of any Law Enforcement Organization, as defined by the Council on Police Training.

B. At the time of processing, a Private Investigator must provide proof of employment by a licensed Private Investigative Agency with the Private Investigator application signed by the employer. The identification card will bear the employer's name. Upon termination of employment, the identification card is no longer valid. If seeking employment with another licensed agency, the Private Investigator must be re-licensed with the new employer and a new identification card will be issued as in the previous procedure.

C. A licensed Private Investigator may only be employed by one licensed private investigative agency at a time.

11/04/1994 - 10 Licensing Fees

A. Class A License - Private Investigative Agency In-State License Holder

Individual - No Employees - Not Corporation
\$230 for 2 years to expire June 30th of odd

years
\$5,000 Bond
\$1,000,000 Liability Insurance per

occurrence
Corporation - Has Employees
\$345 for 2 years to expire June 30th of odd

years
\$10,000 Bond
\$1,000,000 Liability Insurance per

occurrence
License Holder
\$345 for 2 years to expire June 30th of odd

years
Out-of-State
Individual and Corporation
\$10,000 Bond

occurrence
\$1,000,000 Liability Insurance per

Office Manager
\$230 for 2 years to expire June 30th of odd

years
\$5,000 Bond

B. Class B License - Private Security Agency In-State License Holder

Individual - No Employees - Not Corporation
\$230 for 2 years to expire June 30th of odd

years
\$5,000 Bond
\$1,000,000 Liability Insurance per

occurrence
Corporation - Has Employees

\$345 for 2 years to expire June 30th of odd

years
\$10,000 Bond
\$1,000,000 Liability Insurance per

occurrence
\$10,000 Bond
\$1,000,000 Liability Insurance per

occurrence
Office Manager
\$230 for 2 years to expire June 30th of odd

years
Individual and Corporation
Out-of-State License Holder

\$345 for 2 years to expire June 30th of odd
years
\$5,000 Bond

C. Class C License - Private Investigative & Private Security Agency In-State License Holder

Individual - No Employees - Not Corporation
\$345 for 2 years to expire June 30th of odd

years
\$10,000 Bond
\$1,000,000 Liability Insurance per

occurrence
Corporation - Has Employees
\$520 for 2 years to expire June 30th of odd

years
\$15,000 Bond
\$1,000,000 Liability Insurance per

occurrence
Out-of-State
Individual and Corporation License Holder

\$520 for 2 years to expire June 30th of odd
years
\$15,000 Bond

occurrence
\$1,000,000 Liability Insurance per

Office Manager
\$345 for 2 years to expire June 30th of odd

years
\$10,000 Bond

D. Class D License - Armored Car Agency License License Holder
Corporation - Has Employees
\$345 for 2 years to expire June 30th of odd

years
Banking Commissioner License
5 Del.C. 3203

04/23/98 - 11 Use Of Animals

The use of animals is prohibited in the performance of private security activities.
See 3 DE Reg 960 (1/1/00)

**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DOVER**

**EXECUTIVE ORDER
NUMBER EIGHTY**

TO: Heads of All State Departments, Agencies,
Authorities and Governmental Units of the
State of Delaware

RE: Establishing the Council on Deaf and Hard of
Hearing Equality and other Related Matters

WHEREAS, the Council on Deaf Equality, known as CODE, was informally established in 1978 to increase the knowledge, awareness, and appreciation of the rights of hearing impaired citizens of the State of Delaware; and

WHEREAS, on June 18, 1980, Governor Pierre S. duPont, IV, signed Executive Order Number Eighty-Eight which officially recognized and formally constituted the Council on Deaf Equality (CODE); and

WHEREAS, the Executive Order establishing the Council on Deaf Equality was amended by Executive Order Number One Hundred Eighteen on October 22, 1982, whereby the number of members of CODE was changed from seventeen (17) to nineteen (19); and

WHEREAS, the Executive Order establishing the Council on Deaf Equality was again amended by Executive Order Number Forty-One signed by Governor Michael N. Castle on April 6, 1987, whereby the number of members of CODE was changed from nineteen (19) to twenty-five (25), and whereby the Council on Deaf Equality was officially recognized and formally continued; and

WHEREAS, the Executive Order establishing the Council on Deaf Equality was again amended by Executive Order Number Seventy-Seven by Governor Michael Castle on November 22, 1989, whereby the Council on Deaf Equality increased its membership to include other representatives from agencies which have an interest in persons with hearing impairments; and

WHEREAS, the Council on Deaf Equality desires to formally change its name to the Council on Deaf and Hard of Hearing Equality; change its purpose consistent with current operations; and change its formal membership to better facilitate the activities of the Council; and

WHEREAS, it is appropriate that the newly titled Council on Deaf and Hard of Hearing Equality (CODHHE)

be officially recognized and formally established:

NOW, THEREFORE, I, Thomas R. Carper, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby order and declare as follows:

1. Executive Orders Eight-Eight, One Hundred Eighteen, Forty-One, and Seventy-Seven relating to CODE are rescinded.

ESTABLISHMENT:

2. The Council on Deaf and Hard of Hearing Equality is hereby established.

PURPOSE:

3. The purpose of CODHHE is as follows:
- To increase the knowledge, awareness, and appreciation of the rights of individuals who are deaf and hard of hearing in the State of Delaware;
 - To work for a better quality of life for individuals who are deaf and hard of hearing in the State of Delaware;
 - To promote coordination among state agencies, programs, and services for individuals who are deaf and hard of hearing;
 - To monitor and advise the Delaware Office for the Deaf and Hard of Hearing with respect to the services it provides;
 - To inform and advocate with service providers for improved services for individuals who are deaf and hard of hearing;
 - To provide policy makers and the general public with an analysis and recommendations on federal, state and local legislation, regulations and policies affecting state programs for individuals who are deaf and hard of hearing.

MEMBERSHIP:

4. CODHHE shall consist of the following members: individuals who are deaf and hard of hearing; legal representatives or guardians of individuals who are deaf or hard of hearing; state and local agency representatives; representatives from statewide deaf and hard of hard of hearing consumer organizations; family members of individuals who are deaf or hard of hearing; and other individuals and entities as approved by both CODHHE and the affected person or entity.

MEETINGS:

5. CODHHE shall meet no less than five (5) times per year. A simple majority of all CODHHE members or their duly authorized alternates shall constitute a quorum. A

simple majority vote of members present shall be required for any action. Duly authorized alternates may vote as members. All meetings of CODHHE shall be open to all interested parties who wish to attend; however, such persons shall not be entitled to vote.

POWERS:

6. CODHHE shall have the power necessary to adopt by-laws and rules for its organization and the conduct of business; to establish committees; and to specify officers, terms of members and officers, procedures to fill member vacancies, and duties of its officers.

Approved this 7th day of July 2000.

Thomas R. Carper, Governor

Attest:

Edward Freel, Secretary of State

GOVERNOR'S APPOINTMENTS

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BOARD/COMMISSION OFFICE	APPOINTEE	TERM OF OFFICE
Board of Audiologists, Speech Pathologists & Hearing Aid Dispensers	Dr. Eric L. Smith	06/13/03
Board of Cosmetology and Barbering	Ms. Bonnie J. Paynter	06/13/03
Board of Medical Practice	Dr. V. Raman Sukumar	05/23/03
Children's Trust Fund Board of Directors	Ms. Quincy A. Lucas	06/13/03
Council on Aging and Adults with Physical Disabilities	Ms. Karen W. Wood	09/18/01
Council on Mental Retardation	Ms. Sheila M. Donnelly	06/21/03
Delaware Arts Council	Ms. Patricia J. Preston	06/07/03
Delaware Commission on Veterans Affairs	Mr. Cornelius C. Carroll	06/23/04
Delaware Nursing Home Residents Quality Assurance Commission	Ms. Carolee Burton-Kunz, Chairperson	06/07/03
Diamond State Port Corporation Advisory Board	Mr Paul R. Houck Mr. Charles Miller	06/08/02 06/08/02
Human Relations Commission	Mr. Calvin H. Christopher, Chairman	12/08/02
Pharmacy Board Review Committee	Ms. Alicia S. Kluger	Pleasure of the Governor
Professional Standards Board	Ms. Patricia M. Clements Ms. Barbara Grogg Ms. Sherie L. Hudson Ms. Mary Kotz Mr. Tony J. Marchio Ms. Mary N. Mirabeau Mr. John J. Pallace Ms. Michelle Hazeur Porter Ms. Joanne C. Reihm Dr. Harold E. Roberts Ms. Karen M. Schilling-Ross Ms. Teresa Schooley Dr. Carol Vukelich Dr. Jacquelyn Wilson	06/21/03 06/21/03 06/21/02 06/21/04 06/21/02 06/21/04 06/21/04 06/21/02 06/21/03 06/21/04 06/21/02 06/21/02 06/21/02 06/21/03 06/21/04 06/21/02 06/21/02 06/21/03 06/21/02
State Board of Pharmacy	Mr. Charles D. Davis	07/01/02

PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE
IMPLEMENTATION
OF THE UNIVERSAL SERVICE
PROVISIONS
OF THE TELECOMMUNICATIONS
ACT OF 1996
(OPENED AUGUST 12, 1997)

PSC
REGULATION
DOCKET NO. 48

ORDER NO. 5473

This 20th day of June, 2000, the Commission determines, directs, and Orders the following:

1. In 1997, the Federal Communications Commission ("FCC") substantially revised the federal "Lifeline" and "Link-Up" programs. Both programs seek to ensure that basic telephone services are affordable for low-income citizens. Lifeline provides federal universal service support to reduce the monthly service charges paid by qualifying low-income customers. Link-Up provides support to reduce the cost of initial installation and connection. Under the 1997 Lifeline regime, every eligible carrier providing the basic supported services to a qualifying customer receives federal support in the "baseline" amount of \$3.50. 47 C.F.R. § 54.403(a)(1997). In turn, such carrier waives payment of the federal end user common line charge (commonly called the "subscriber line charge" or "SLC") by the Lifeline subscriber. In 1997, the SLC for a primary residential line was capped at \$3.50. In addition, under the 1997 program, additional federal interstate support in the amount of \$1.75 per subscriber is available to an eligible carrier if the state commission has reduced its intrastate rates for the supported services by an equivalent amount. 47 C.F.R. § 54.403(a)(1997). A state did not have to raise any State support amounts to receive this additional federal support.¹

2. Prior to 1997, this Commission had not implemented a Lifeline program for Delaware. However, the 1997 Lifeline revisions offered federally funded support which was hard to ignore. Thus, in PSC Order No. 4684 (Dec. 16, 1997), the Commission authorized eligible telecommunications carriers within this State to receive the federal \$3.50 baseline amount and the additional \$1.75 of federal support. At the same time, the Commission directed a \$1.75 reduction in the intrastate charges for the supported services provided to eligible Lifeline customers.

3. In its recent Coalition for Affordable Local and Long Distance Service ("CALLS") Order,² the FCC adopted a proposal that will increase the primary residential SLC cap to \$4.35, effective July 1, 2000, and thereafter move that SLC cap in steps to \$6.50 on July 1, 2003. In doing so, the FCC recognized that the Lifeline program had to be revised

to offset these increases to the residential SLC cap. Thus, the FCC revised the federal universal service rules to change the \$3.50 federal "baseline" amount to "Tier 1" Lifeline support. That Tier 1 support amount is now to be defined as the "tariffed rate in effect for the primary End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying lower-income consumer receives service." 47 C.F.R. § 54.403(a)(1)(2000). As such, the support amount would track the increasing SLC. Carriers will still waive the increased (and increasing SLC) for eligible low-income consumers. The FCC did not alter the additional \$1.75 amount - now called Tier 2 support - available to a state that has authorized a like reduction in the intrastate rates for supported services. 47 C.F.R. § 54.403(a)(2)(2000).

4. In light of these changes in the federal Lifeline program, and given that the revisions will not alter the structure or scope of the Lifeline program previously embraced in PSC Order No. 4684, the Commission will now simply revise the directives in that earlier Order to mirror the Lifeline revisions recently adopted by the FCC. By doing so, eligible telecommunications carriers can make the necessary changes to their Lifeline tariffs as the SLC amounts, and the corresponding federal Lifeline amounts, change over the ensuing months and years.

Now, therefore, **IT IS ORDERED:**

1. That, on and after the effective date of the provisions of 47 C.F.R. § 54.403, as amended by FCC 00-193 (rel. May 31, 2000), eligible telecommunications carriers are authorized to receive Tier 1 federal Lifeline support in the amount of the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. On such effective date, this authorization to receive the Tier 1 amount shall supersede the authorization to receive the federal baseline amount described in Ordering paragraphs 1 and 2 of PSC Order No. 4684 (Dec. 16, 1997).

2. That the Commission continues to authorize a reduction in the charges paid by eligible Lifeline consumers for the designated services described in 47 C.F.R. § 54.501(a)(1)-(a)(9) in the amount of \$1.75. Such continued reduction will allow eligible telecommunications carriers to receive Tier 2 federal universal service support under 47 C.F.R. § 54.403(a)(2), as amended by FCC 00-193 (rel. May 31, 2000). As before, such reduction shall continue only so long as such amount is supported by federal universal service funds.

3. That eligible telecommunications carriers shall comply with all federal rules governing the federal Lifeline and Link Up programs. Except as modified here, the directives in PSC Order No. 4684 (Dec. 16, 1997) shall remain in effect.

4. That the Secretary of the Commission shall forward a copy of this Order to the Registrar of Regulations for publication in the Delaware Register of Regulations.

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman,
Joshua M. Twilley, Vice Chairman
Arnetta McRae, Commissioner
Donald J. Puglisi, Commissioner
John R. McClelland, Commissioner

ATTEST:
Karen J. Nickerson, Secretary

¹ A State could go further and provide additional state support. If it did, federal universal service support would match one-half of the state support amount, subject to a cap that total federal support could not exceed \$7.00.

² In the Matters of Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; & Federal - State Joint Board on Universal Service, CC Dckts. 96-262, 94-1, 99-249, & No. 96-45, Sixth, First, and Eleventh Reports, FCC 00-193 (re. May 31, 2000).

**DEPARTMENT OF
ADMINISTRATIVE SERVICES
DIVISION OF PROFESSIONAL REGULATION
BOARD OF PROFESSIONAL COUNSELORS OF
MENTAL HEALTH**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3006(a)(1), the Delaware Board of Professional Counselors of Mental Health proposes to revise its rules and regulations. Please note that the following rules and regulations are a substantial revision to existing regulations in order to comply with and implement and clarify the Board's authorizing law, 24 **Del.C.** Chapter 30, as revised effective February 4, 2000, and these rules will supersede and replace any previously adopted rules and regulations of the Board. Substantive changes to the regulations include changes in and clarification of the Professional Counseling experience requirement for licensure, including direct supervision requirements; deletion of provisions regarding reactivation of expired license and temporary suspension pending hearing; adoption of a code of ethics; deletion of provisions pertaining to matters governed by other Acts and Statutes (e.g. disciplinary hearings); and procedural rules have been established pertaining to disciplinary matters and hearings before the Board. In addition, certain terms have been changed to provide consistency with the terminology used in the statute.

A public hearing will be held on the proposed Rules and Regulations on Friday, September 8, 2000 at 3:30 p.m. in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF NURSING**

The Delaware Board of Nursing in accordance with 24 **Del.C.** Subsection 1906(1) and 24 **Del.C.**, Chapter 19A (Article VI(d)) has proposed to promulgate Rules and

Regulations related to the Nurse Licensure Compact.

These proposed rules and regulations which have been developed by the license compact administrators define primary state of residence, outline the process of licensure issuance, list limitations on the multi-state licensure privilege, and provide levels of access, reporting requirements and review opportunities of the information system.

A public hearing will be held on Wednesday, September 13, 2000 at 9:00 a.m. in the second floor Conference Room A, Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware.

Anyone desiring a copy of the proposed new section of the Rules and Regulations may obtain a copy from the Delaware Board of Nursing, 861 Silver Lake Boulevard, Cannon Building, Suite 203, Dover, DE 19904, (302) 739-4522, ext. 215 or 216. Persons desiring to submit written comments on the revised rules and regulations may forward these comments to the above address. The final date to receive written comments will be September 13, 2000.

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF EXAMINERS OF PSYCHOLOGISTS**

PLEASE TAKE NOTICE, pursuant to 29 **Del.C.** Chapter 101 and 24 **Del.C.** Section 3506(a)(1), the Delaware Board of Examiners of Psychologists proposes to revise its rules and regulations. Substantive changes to the regulations include clarification of the acceptable passing score on the EPPP examination; a requirement that candidates with non U.S. degrees have their credentials evaluated for equivalency to a U.S. degree acceptable under 24 **Del.C.** §3508(a), creation of a hardship allowance for additional time to complete continuing education for good cause shown, and clarification of procedural requirements for license renewal.

A public hearing will be held on the proposed Rules and Regulations on **Monday, September 11, 2000 at 9:00 a.m.** in the Second Floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, 19904. The Board will receive and consider input in writing from any person on the proposed Rules and Regulations. Any written comments should be submitted to the Board in care of Gayle Franzolino at the above address. The final date to submit written comments shall be at the above scheduled public hearing. Anyone wishing to obtain a copy of the proposed Rules and Regulations or to make comments at the public hearing should notify Gayle Franzolino at the above address or by calling (302) 739-4522, extension 220.

This notice will be published in two newspapers of general circulation not less than twenty (20) days prior to the date of the hearing.

STATE BOARD OF EDUCATION

The State Board of Education will hold its monthly meeting on Thursday, August 17, 2000 at 1 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES**DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES****Caregivers to Consent to Medical Treatment of Minors**

Public Hearings will be held as follows:

Date: Tuesday, August 22, 2000
Time: 11:30 AM to 1:30 PM
Place: Facilities Management Building
Location: 149 Transportation Circle, Dover.

Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Paradee Center and the Motor Vehicle facility.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway
New Castle, DE

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Milford State Service Center
18 North Walnut Street
First Floor
Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
Delaware Health & Social Services
Division of Services for Aging and Adults with Physical

Disabilities
Administration Bldg., Annex
1901 N DuPont Highway
New Castle, DE 19720

Such comments must be received by close of business on Thursday, August 31, 2000.

DIVISION OF SERVICES FOR AGING AND ADULTS WITH PHYSICAL DISABILITIES**Caregivers to Consent to Registering Minors for School**

Public Hearings will be held as follows:

Date: Tuesday, August 22, 2000
Time: 11:30 AM to 1:30 PM
Place: Facilities Management Building
Location: 149 Transportation Circle, Dover.

Transportation Circle is across from the Blue Hen Mall, between the University of Delaware Paradee Center and the Motor Vehicle facility.

Copies of the proposed regulations are available for review by appointment at the following locations:

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Herman M. Holloway Sr. Campus
Administration Building, Annex
1901 N DuPont Highway
New Castle, DE

Delaware Health and Social Services
Division of Services for Aging and Adults with Physical Disabilities
Milford State Service Center
18 North Walnut Street
First Floor
Milford, DE 19963

Contact Carol Boyer at 577-4791 or 1-800-223-9074 to make arrangements.

Written comments are also invited on these proposed new regulations and should be sent to the following address:

Carol Boyer
Delaware Health & Social Services
Division of Services for Aging and Adults with Physical Disabilities
Administration Bldg., Annex
1901 N DuPont Highway
New Castle, DE 19720

Such comments must be received by close of business on Thursday, August 31, 2000.

Any comments or questions regarding the attached proposed Toll Exemption Policy should be directed to:

**DEPARTMENT OF NATURAL
RESOURCES AND
ENVIRONMENTAL CONTROL**
DIVISION OF AIR AND WASTE MANAGEMENT
AIR QUALITY MANAGEMENT SECTION

P.J. Wilkins, Toll Operations Manager
Delaware Department of Transportation
1200 Whitaker Road
Newark, DE 19702
(302) 631-4000
(302) 631-4004 (fax)
SMTP:PJWilkins@mail.dot.state.de.us

Title of the Regulations:

Regulation No. 38 - "Emission Standards for Hazardous Air Pollutants for Source Categories"

Brief Synopsis of the Subject, Substance and Issues:

Regulation No. 38 establishes emission limitations and work practice standards, as well as, the compliance, notification, monitoring, recordkeeping and reporting requirements, including the title V operating permit requirements for affected area sources. In December 1999, the underlying federal requirement was changed to defer title V operating permit requirements for these area sources from 12/9/99 to 12/9/04. This action is being taken to make Regulation No. 38 consistent with the recent federal change.

Notice of Public Comment:

The public comment period for this proposed amendment will extend through August 31, 2000. Interested parties may submit comments in writing during this time frame to: Jim Snead, Air Quality Management Section, 715 Grantham Lane, New Castle, DE 19720, and/or statements and testimony may be presented either orally or in writing at the public hearing to be held on Wednesday, August 23, 2000 beginning at 6:00 PM in the DNREC auditorium at the Richardson and Robbins Building, 89 Kings Highway, Dover DE.

Prepared by:

James R. Snead (302) 323-4542 June 30, 2000

**DEPARTMENT OF
TRANSPORTATION**
DIVISION OF PLANNING AND POLICY

The Department of Transportation is proposing to adopt a Toll Exemption Policy approved by the Department of Transportation Policy Committee and signed by the Secretary, to be effective July 1, 2000, if applicable upon compliance with the regulatory process required by the Administrative Procedure Act (29 Del.C. Ch. 101).

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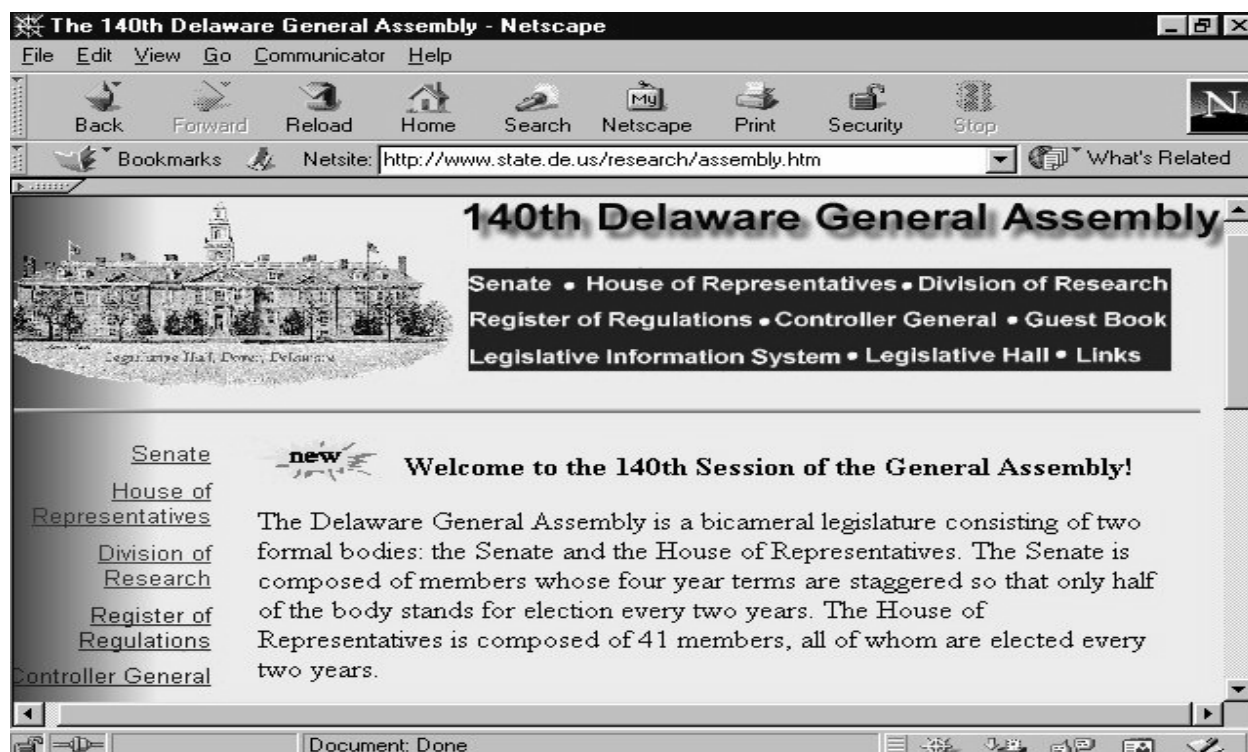
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