

# **JOINT STATE GOVERNMENT COMMISSION**

**General Assembly of the Commonwealth of Pennsylvania**

**Regulatory Waivers and Suspensions  
Issued by the Pennsylvania Department of State,  
Bureau of Professional and Occupational Affairs  
During the COVID-19 Pandemic**

**Staff Study**

**October 2021**



*Serving the General Assembly of the  
Commonwealth of Pennsylvania Since 1937*

**REPORT**

(HR88 of 2021)

Staff Study on the  
Regulatory Waivers and Suspensions  
Issued by the Pennsylvania Department of State,  
Bureau of Professional and Occupational Affairs  
During the COVID-19 Pandemic

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The report is also available at <a href="http://jsg.legis.state.pa.us">http://jsg.legis.state.pa.us</a>	

## JOINT STATE GOVERNMENT COMMISSION

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The Joint State Government Commission was created in 1937 as the primary and central non-partisan, bicameral research and policy development agency for the General Assembly of Pennsylvania.<sup>1</sup>

A fourteen-member Executive Committee comprised of the leadership of both the House of Representatives and the Senate oversees the Commission. The seven Executive Committee members from the House of Representatives are the Speaker, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. The seven Executive Committee members from the Senate are the President Pro Tempore, the Majority and Minority Leaders, the Majority and Minority Whips, and the Majority and Minority Caucus Chairs. By statute, the Executive Committee selects a chairman of the Commission from among the members of the General Assembly. Historically, the Executive Committee has also selected a Vice-Chair or Treasurer, or both, for the Commission.

The studies conducted by the Commission are authorized by statute or by a simple or joint resolution. In general, the Commission has the power to conduct investigations, study issues, and gather information as directed by the General Assembly. The Commission provides in-depth research on a variety of topics, crafts recommendations to improve public policy and statutory law, and works closely with legislators and their staff.

A Commission study may involve the appointment of a legislative task force, composed of a specified number of legislators from the House of Representatives or the Senate, or both, as set forth in the enabling statute or resolution. In addition to following the progress of a particular study, the principal role of a task force is to determine whether to authorize the publication of any report resulting from the study and the introduction of any proposed legislation contained in the report. However, task force authorization does not necessarily reflect endorsement of all the findings and recommendations contained in a report.

Some studies involve an appointed advisory committee of professionals or interested parties from across the Commonwealth with expertise in a particular topic; others are managed exclusively by Commission staff with the informal involvement of representatives of those entities that can provide insight and information regarding the particular topic. When a study involves an advisory committee, the Commission seeks consensus among the members.<sup>2</sup> Although an advisory committee member may represent a particular department, agency, association, or group, such representation does not necessarily reflect the endorsement of the department, agency, association, or group of all the findings and recommendations contained in a study report.

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<sup>1</sup> Act of July 1, 1937 (P.L.2460, No.459); 46 P.S. §§ 65–69.

<sup>2</sup> Consensus does not necessarily reflect unanimity among the advisory committee members on each individual policy or legislative recommendation. At a minimum, it reflects the views of a substantial majority of the advisory committee, gained after lengthy review and discussion.

Over the years, nearly one thousand individuals from across the Commonwealth have served as members of the Commission's numerous advisory committees or have assisted the Commission with its studies. Members of advisory committees bring a wide range of knowledge and experience to deliberations involving a particular study. Individuals from countless backgrounds have contributed to the work of the Commission, such as attorneys, judges, professors and other educators, state and local officials, physicians and other health care professionals, business and community leaders, service providers, administrators and other professionals, law enforcement personnel, and concerned citizens. In addition, members of advisory committees donate their time to serve the public good; they are not compensated for their service as members. Consequently, the Commonwealth receives the financial benefit of such volunteerism, along with their shared expertise in developing statutory language and public policy recommendations to improve the law in Pennsylvania.

The Commission periodically reports its findings and recommendations, along with any proposed legislation, to the General Assembly. Certain studies have specific timelines for the publication of a report, as in the case of a discrete or timely topic; other studies, given their complex or considerable nature, are ongoing and involve the publication of periodic reports. Completion of a study, or a particular aspect of an ongoing study, generally results in the publication of a report setting forth background material, policy recommendations, and proposed legislation. However, the release of a report by the Commission does not necessarily reflect the endorsement by the members of the Executive Committee, or the Chair or Vice-Chair of the Commission, of all the findings, recommendations, or conclusions contained in the report. A report containing proposed legislation may also contain official comments, which may be used to construe or apply its provisions.<sup>3</sup>

Since its inception, the Commission has published over 400 reports on a sweeping range of topics, including administrative law and procedure; agriculture; athletics and sports; banks and banking; commerce and trade; the commercial code; crimes and offenses; decedents, estates, and fiduciaries; detectives and private police; domestic relations; education; elections; eminent domain; environmental resources; escheats; fish; forests, waters, and state parks; game; health and safety; historical sites and museums; insolvency and assignments; insurance; the judiciary and judicial procedure; labor; law and justice; the legislature; liquor; mechanics' liens; mental health; military affairs; mines and mining; municipalities; prisons and parole; procurement; state-licensed professions and occupations; public utilities; public welfare; real and personal property; state government; taxation and fiscal affairs; transportation; vehicles; and workers' compensation.

Following the completion of a report, subsequent action on the part of the Commission may be required, and, as necessary, the Commission will draft legislation and statutory amendments, update research, track legislation through the legislative process, attend hearings, and answer questions from legislators, legislative staff, interest groups, and constituents.

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<sup>3</sup> 1 Pa.C.S. § 1939.



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October 2021

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To the Members of the General Assembly of Pennsylvania:

House Resolution 88 of 2021 directed the Joint State Government Commission to report to the General Assembly a description of regulatory waivers and suspensions issued by the Bureau of Professional and Occupational Affairs during the COVID-19 pandemic. Staff gathered information and input from multiple agencies and organizations to present a discussion of the effects of the waivers and suspensions on practice and employment. The report includes recommendations, based on the information provided, for the legislature's consideration regarding which waivers and suspensions could become permanent and what other statutory or regulatory changes might reduce barriers to practice and employment.

The full report is also available at <http://jsg.legis.state.pa.us>.

Sincerely,

Glenn J. Pasewicz  
Executive Director



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## INTRODUCTION

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In the Spring of 2020, Governor Wolf signed an Emergency Declaration in response to the spread of COVID-19. This executive action had a wide-ranging effect on all corners of the Commonwealth, including professions regulated by the Department of State's Bureau of Professional and Occupational Affairs (BPOA).

On April 21, 2021, House Resolution 88, Printer's Number 1204, was adopted, directing the Joint State Government Commission to provide the General Assembly a report containing:

- 1) A description and list of the regulatory waivers and suspensions issued by the Bureau of Professional and Occupation Affairs during the COVID-19 Pandemic;
- 2) A discussion of the impact of each regulatory waiver and suspension on practice and employment in the Commonwealth;
- 3) Recommendations on which, if any, regulatory waivers and suspensions should permanently remain in place, or what other permanent statutory or regulatory changes should be pursued in an effort to reduce barriers to practice and employment in the Commonwealth.

As part of its research, Commission staff was directed to solicit input from organizations representing the licensed professionals regulated by the Bureau of Professional and Occupational Affairs. Pursuant to that instruction, the staff reached out to the following organizations:

- Pennsylvania Health Care Association;
- Hospital and Healthsystem Association of Pennsylvania;
- Pennsylvania Pharmacists Association;
- Pennsylvania State Nurses' Association;
- American Physical Therapy Association, Pennsylvania Chapter;
- Pennsylvania Medical Society;
- Pennsylvania Speech-Language-Hearing Association;
- National Association of Social Workers, Pennsylvania Chapter;
- Pennsylvania Association for Marriage and Family Therapists;
- PA-DE Chapter of the American Society for Landscape Architects;
- Pennsylvania Osteopathic Medical Association;
- Pennsylvania Occupational Therapy Association;
- The Coalition of Pennsylvania Real Estate Appraisers;
- Pennsylvania Dental Association;

- American Massage Therapy Association, Pennsylvania Chapter
- Pennsylvania Association of Realtors

Of the organizations which responded to the request for input on the issue of the BPOA's regulatory waivers and suspensions, the consensus was that the waivers eliminated the need to comply with certain regulations which would have been difficult to follow during the pandemic and allowed licensed professionals — many of whom are in the health care sector — to continue working.

Respondents indicated that the waivers and suspensions of certain rules was tremendously helpful for ensuring that regulated professionals were able to maintain their licensure, obtain their licensure if they were preparing to graduate from an educational program, assist with the medical response to the pandemic, and remain compliant with both the requirements of their profession and the protocols implemented to ensure safety during the COVID-19 pandemic.

To determine the impact of the regulatory waivers on employment, Commission staff investigated employment trends as well as trends in license issuance over the years preceding the COVID-19 pandemic. Some professions showed a decline in the issuance of licenses that could be linked to the pandemic, but there was little or no evidence that the decline in the issuance of licenses or in overall employment was affected by the waivers and suspensions offered by the BPOA.

There is also some evidence that economic trends beyond the pandemic may have played a role in the changes in employment and licensure in the licensed professions. For instance, the issuance of architecture licenses declined by 20 percent in 2020 from 2019. Given the education and experiential requirements for attaining an architect's license, the lower number of architect licenses issued more likely reflects the lower enrollment in architecture programs in the years preceding the pandemic.

To better understand their impact on practice, Commission staff listed all statutes and regulations affected by the BPOA's waivers and suspensions into tables by topic. These topics are regulations governing professional practice, scope of practice, continuing education requirements, delegation of duties, registering, renewing, and reinstating licenses, educational, experiential, and examination requirements for licensure, practice by out-of-state licensed professionals, and miscellaneous regulations.

Within each of these tables are rows organized by professional board with a description of the specific regulation or statute being waived or suspended and a citation thereto. In some cases, a waiver or suspension of a rule involved multiple statutes and regulations. For instance, the suspension of the requirement for massage therapists to possess a current CPR certification applied to license renewals, temporary practice permits, initial licensure, and licensure by reciprocity. Each one of these types of licensures is delineated by a separate regulation. Therefore, to waive the CPR rule, four separate regulations had to be suspended.

Further, Commission staff attempted to describe the regulation being waived as concisely as possible. Staff also discussed how a regulation or statute operates in more detail where it was necessary to more fully understand the impact of a waiver.

Overall, the BPOA's waivers and suspensions of statutory and regulatory provisions affecting the licensed professions were well-received by members of those professions. Recognizing the positive impact these waivers and suspensions have had, members of the General Assembly have introduced several bills which would permanently amend some of these regulations and statutes. These bills are catalogued at the end of the report as a reference.



## RECOMMENDATIONS

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The Commission was directed to make recommendations regarding which, if any, of the regulatory waivers should remain in place permanently. After careful study of the statutes and regulations at issue, Commission staff has proposed the following recommendations. Feedback from the professional organizations as well as the BPOA was also considered. These recommendations reflect the reforms which would be accommodating to the regulated profession affected without upsetting a necessary regulatory scheme for the health or welfare of the Commonwealth residents they serve or the good order and discipline of the profession.

### ➤ **Increase Prescription Amounts — The Pharmacy Act — 63 P.S. § 390-8**

The Pharmacy Act limits the authority of a pharmacist to provide emergency prescriptions. It is unlawful for any pharmacist to dispense an emergency prescription unless certain conditions are met. Even if those conditions are met, the pharmacist is limited to dispensing a 72-hour supply of the prescription. If the medication is not one that can be dispensed or sold in a 72-hour supply, the pharmacist may dispense an amount not to exceed a 30-day supply.

During the COVID-19 pandemic, the BPOA waived this limitation and permitted pharmacists to issue a 30-day emergency supply as opposed to 72-hour supply for nonscheduled legend drugs and Schedule V controlled substances.

Additionally, the BPOA permitted pharmacists to dispense up to a 90-day supply of a nonscheduled legend drug at one time by using the available prescribed refills. This way, instead of coming in every 30 days to renew a prescription, the patient could receive a 90 days' supply by exhausting the refill amounts as directed by the prescribing physician.

The regulation governing prescription refills does not actually give a maximum number of days for which a prescription may be fulfilled. The applicable regulation simply states that pharmacists “may only refill a prescription at a reasonable time prior to the time when the contents ... shall be consumed according to prescriber’s directions.”

Commission staff recommends reforming this regulation to permit the dispensing of medication refills up to a 90-day supply at one time for nonscheduled legend drugs and a 30-day emergency supply for medications used by a patient to treat a chronic or long-term condition. These reforms would reduce the number of trips to the pharmacy to refill prescriptions or to physicians’ offices to obtain a new prescription on short notice.

The 90-day refill rule could be amended to implement this recommendation by adding a provision to the regulation that it is presumptively reasonable to dispense the entire prescribed amount for nonscheduled legend drugs or Schedule V controlled substances up to a 90-day supply if the patient requests it.

➤ **Expand Pharmacist authority to immunize to make Pennsylvania Law consistent with the Federal PREP Act — The Pharmacy Act — 63 P.S. § 390-9.2 and 49 Pa. Code § 27.401 *et seq.***

The Pharmacy Act specifies that pharmacists may administer injectable medications, biologicals, and immunizations to those aged 18 and older, and may administer specifically only an influenza vaccine to children aged 9 and older. The statute further delegates to the Board to decide the circumstances under which pharmacists may administer injectable medications, biologicals, and immunizations.

During the COVID-19 pandemic, the BPOA waived several aspects of the Pharmacy Act and its attendant regulations governing the administration of vaccines. The prohibition on delegating the administration of the injectable medication, biological, and immunization was partially waived, permitting pharmacy interns to administer the flu vaccine to children aged 3 and older and the COVID-19 vaccine to those aged 18 and older. Pharmacists were also permitted to administer the flu vaccine to children aged 3 and older, waiving the statutory provision that would ordinarily require the child to be 9 years of age.

However, a regulatory rule created pursuant to the federal PREP Act expanded the role of pharmacists as vaccine administrators. This federal statute, which supersedes Pennsylvania law on the scope of pharmacists' and pharmacy interns' authority to administer vaccines, allows pharmacists to order and administer any vaccine that the Advisory Committee on Immunization Practices (ACIP) recommends to those between the ages of 3 and 18. Further, the PREP Act allows pharmacy interns to administer, but not order, such vaccines.

Because the PREP Act supersedes state law regarding vaccinations, Commission staff recommends that the BPOA, through the regulatory process, bring the Commonwealth's regulations governing pharmacists and pharmacy interns into line with the federal PREP Act's declarations. The Commonwealth's rules should specifically address which vaccines pharmacists may give, the age groups to whom they may be given, and the authority of a pharmacy intern working under the supervision of a licensed pharmacist to administer (but not order) any ACIP-recommended vaccine.

➤ **Clarify the Scope of Dental Practice — The Dental Law — 63 P.S. § 121 and 49 Pa. Code § 33.208**

A person engages in the practice of dentistry if they are one who “diagnoses, treats, operates on, or prescribes for any disease, pain or injury, or regulates any deformity or physical condition, of the human teeth, jaws, or associated structures, or conducts a physical evaluation, or

administers anesthetic agents, or uses ionizing radiation in the course of dental practice, or who fits, constructs, and inserts any artificial appliance, plate, or denture for the human teeth or jaws, or who holds himself or herself out as being able or legally authorized to do so.”

To assist with the medical response to the COVID-19 pandemic in Pennsylvania, the BPOA suspended scope of practice limitations for several professions. Dentists are now permitted to administer and dispense “medications without regard to the requirement that such prescribing occur in the course of a dentist’s professional practice, or the requirement that such prescribing be within the scope of a dentist-patient relationship.” Dentists may provide triage, care in hospital and health systems, accept emergency referrals from hospitals and health systems, collect throat cultures, and perform nasal swab testing. Dentists may further “conduct examinations and take medical histories in conjunction with prescribing, without regard to the requirement that such examination focus on the patient’s dental problems.”

The current regulation, which had been waived, simply states that a dentist may only prescribe, administer, or dispense medication “in the course of the dentist’s professional practice,” “within the scope of the dentist-patient relationship,” and “in accordance with treatment principles accepted by a responsible segment of the profession.”

The scope of practice limitation on dentists in the Commonwealth could be more clearly stated. While the Dental Practice Act describes what constitutes the practice of dentistry, it does not explicitly exclude any tasks from the scope of a dentist’s practice. Commission staff recommends that the BPOA examine its regulation governing the scope of practice to more clearly articulate what responsibilities fall within the scope of practice for dentists. This should include consideration of whether certain tasks undertaken by dentists during the COVID-19 pandemic should be included in any new scope of practice regulation.

Alternatively, the General Assembly could amend the Dental Practice Act to explicitly include or exclude certain tasks (such as triage, care in hospital and health systems, accepting emergency referrals from hospitals and health systems, collecting throat cultures, and performing nasal swab testing), or explicitly permit such tasks to be undertaken by dentists only in emergency situations.

### ➤ **Expand the Acceptance of Online or Distance Continuing Education Credits**

During the COVID-19 pandemic, the Boards of Accountancy, Dentistry, Landscape Architects, Massage Therapy, Medicine (for respiratory therapists), Nursing, Optometry, Osteopathic Medicine (for respiratory therapists), Podiatry, Psychology, Social Workers, Marriage and Family Therapists, and Professional Counselors, and Veterinary Medicine all suspended their limitations on continuing education hours taken online or via distance learning methods.

The rationale behind reimposing limits on distance or online continuing education credits is unclear. At the time such limits were imposed, there may have been concerns surrounding the quality of continuing education delivered via the Internet and limited course offerings. However, Internet-based video conferencing technologies are ubiquitous and were widely used during the

pandemic-inspired lockdowns to conduct meetings of all types. Practitioners in many BPOA-regulated professions are now familiar with how they operate and younger practitioners especially, having grown up with the Internet, are comfortable navigating such communication platforms.

It is therefore recommended that the various Boards within the BPOA devise rules either expanding the number of continuing education credits available to practitioners via the Internet or eliminating the prohibition on distance or online-based continuing education credits in instances where they are currently prohibited.

➤ **Clearly Delineate the Appropriate Use of Telemedicine**

Pennsylvania does not have any statute either expressly permitting or prohibiting telemedicine services, nor do any of the Boards governed by the BPOA have regulations either permitting or prohibiting telemedicine. During the COVID-19 pandemic, the BPOA issued guidance specifically allowing any licensed health care provider to provide services to patients via telemedicine.

To provide more clarity to practitioners, it is recommended that the General Assembly pass legislation requiring the medical licensing Boards within the jurisdiction of the BPOA promulgate regulations allowing for the use of telemedicine by the professions which they regulate. Such regulations should also provide guidance on when, where, and how telemedicine services may be offered or utilized as well as providing for patients who prefer in-person services. The Commission has in past reports supported the use of telemedicine.

➤ **Reduce Barriers to Practice for Out-of-State Licensed Physicians, Nurses, and other Health Care Practitioners**

To better facilitate practice in the Commonwealth by health care professionals licensed in other jurisdictions, the BPOA waived regulations requiring compliance with continuing education rules. Additionally, the requirements for letters of good standing, criminal history record checks, National Practitioner Data Bank reports, and any other requirement deemed by BPOA as “administrative” in nature were waived. The professions affected included physicians, physician assistants, athletic trainers, behavior specialists, genetic counselors, nurse-midwives, orthotic fitters, orthotists, pedorthists, perfusionists, prosthetists, and respiratory therapists regulated by either the Board of Medicine or the Board of Osteopathic Medicine.

Additionally, the BPOA waived the requirements of the regulation governing the issuance of temporary practice permits to physicians licensed in other states. Ordinarily, temporary licensee physicians are limited to either treating a specific patient or to teaching and practicing in no more than two related facilities in a health system. For the duration of the pandemic, these provisions were suspended.

While it may be prudent to leave the requirements for temporary licensure in place, a less bureaucratic and more streamlined method of recognizing out-of-state licenses of health care practitioners is needed. Pennsylvania has a statute providing authorization for the Governor to “execute a compact...with any one or more of the states of the United States” to create a new class of expedited medical licenses for licensing out-of-state physicians. The law was intended to permit Pennsylvania to join the Interstate Medical Licensure Compact (IMLC). However, to date, no action has been taken by the Governor, the Department of State, the Board of Medicine, or the Board of Osteopathic Medicine in moving toward reciprocal recognition of out-of-state medical licenses of physicians or joining the IMLC.

Commission staff has in the past recommended interstate licensure compacts as an ideal method to reduce barriers to providing medical care to Pennsylvanians. This recommendation is repeated here. The Department of State should be more proactive in implementing the statute providing for entry into the IMLC and finally bring Pennsylvania into the IMLC as the General Assembly intended. This way, physicians, their employers, and patients will not have to rely on a temporary licensing scheme designed for a limited medical practice.

Similarly, Commission staff recommends that the Department of State quickly proceed with implementing the recently enacted nurse licensure compact statute. Signed into law on July 1, 2021, Act 68 of 2021 will begin the process of adding Pennsylvania to the Nurse License Compact. This will allow registered nurses and licensed practical nurses to have one multistate license and the ability to practice in person or via telehealth in both the primary state and other Nurse License Compact jurisdictions.

Finally, the General Assembly should consider adopting legislation to enter into other licensure compacts for the allied health professions regulated by the BPOA, such as nurse-midwives or genetic counselors, or otherwise providing a clearer, easier pathway for allied health care professionals licensed in other states to obtain licensure in the Commonwealth.

### ➤ **Allow Board Meetings to be Conducted Virtually**

Of the 29 Boards overseen by the BPOA, 17 have statutory provisions prohibiting board members from being counted as part of a quorum or vote at a board meeting if they are not physically present. This means that board meetings must occur in person. During the COVID-19 pandemic, in-person board meetings ceased. To facilitate the work of these 17 boards the BPOA suspended the physical presence requirement, thereby permitting them to conduct meetings by conference call or the Internet.

The pandemic has shown that an in-person board meeting requirement might be neither necessary nor always prudent. The General Assembly should enact legislation which would allow the Boards to meet and conduct business via conference call or the Internet to some degree. Such legislation could permit the full board to meet in this manner or could require the meeting to have some in-person attendance but allow Board members who call in or participate via an Internet conferencing platform to count towards a quorum.

➤ **Clarify Scope of Practice of Athletic Trainers — The Medical Practice Act and the Osteopathic Practice Act — 63 P.S. §§ 271.2 and 422.2 *et seq.* and 49 Pa. Code §§ 18.502 and 25.702**

By definition, athletic trainers are limited to the treatment of “physically active persons.” The term “physically active persons” is further defined as “[a]n individual who participates in organized, individual or team sports, athletic games or recreational sports activities.” They may be regulated by either the Board of Medicine or the Board of Osteopathic Medicine. This limitation on the scope of practice is imposed by statute and defines the profession. The same language is found in the two boards’ attendant regulations.

The way in which athletic trainers are limited to treating “physically active persons” has the effect of restricting which patients and injuries can be treated based on the activities the patient was participating in when they were injured. It is an anomaly among regulations, as most physicians, nurses, and allied health professionals are limited to treating patients based on the nature of the injury, their education and training, or their specific role in a larger health system — not what the patient was doing at the time of the injury.

To prevent inconsistencies in who may be treated by an athletic trainer and under what circumstances, the General Assembly should consider broadening the definition of “physically active person” to one who engages in any athletic activity so the Commonwealth’s more casual athletes — such as its cyclists, runners, and weightlifters, who train for enjoyment or health rather than for organized competition — can be treated by athletic trainers. The General Assembly may also wish to consider including persons who work jobs requiring physical effort within the definition of “physically active persons,” or define the scope of athletic trainers’ practice to encompass musculoskeletal injuries acquired at work or during recreation.

## LICENSING AND EMPLOYMENT TRENDS

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In March 2020, the Pennsylvania Department of State announced a series of temporary licensing waivers for health care professionals which streamlined the process for reactivating licenses for retired doctors, nurses, physician assistants, pharmacists, and other healthcare workers. The waivers also allowed out-of-state practitioners to practice in Pennsylvania, expanded telemedicine, and launched a portal to purchase supplies. The waivers reduced administrative barriers and helped the health care system to carry out its work during the pandemic without regulatory burdens which, while navigable during ordinary times, became untenable in a time of shutdowns, lockdowns, and social distancing.

During the COVID-19 pandemic, many states waived requirements that physicians and other health care professionals be licensed in the state in which they provide services and permitted greater use of telehealth services. Pennsylvania was one of those states, permitting health care practitioners not licensed in the Commonwealth to be issued temporary licenses on an expedited basis during the COVID-19 pandemic emergency declaration.

The policy of waiving restrictions on health care workers' licensing and practice may have helped ease the crush of patients appearing at hospitals and doctor's offices across the Commonwealth by increasing the availability of health care providers available to assist. However, given the effects of the COVID-19 pandemic, it is difficult to discern what impact these waivers had on employment in the affected professions. The pandemic itself caused an upheaval in the nation's labor market. An August 2021 Congressional Research Service report found that the COVID-19 pandemic had a significant effect on labor market metrics for every state, economic sector, and major demographic group in the United States. The Congressional Research Service noted that:

- The unemployment rate peaked at 14.8 percent in April 2020, a level not seen since data collection started in 1948, before declining to a level in July 2021 that still remained 1.9 percentage points above the pre-recession rate observed in January 2020;
- The labor force participation rate declined to 60.2 percent, a level not seen since the early 1970s. Labor force participation has improved since then to 61.7 percent, but remained 1.7 percentage points below its pre-recession level; and
- Nonfarm payrolls shed 22.1 million jobs between January 2020 and April 2020. In July 2021, aggregate employment remained 5.4 million jobs below its pre-recession level.

The report also found that the leisure and hospitality sector lost the largest number of jobs since January 2020, and persons last employed in this sector have consistently exhibited some of the highest unemployment rates throughout the pandemic.

House Resolution 88 directed the Joint State Government Commission to report on the impact of each regulatory waiver and suspension on practice and employment in the Commonwealth. The resolution also noted that 25 percent of employees in the United States need professional licenses to work in their occupations. In response, Commission staff focused its data review on licenses and occupations regulated by the Department of State’s Bureau of Professional and Occupational Affairs that had a temporary licensing waiver or suspension issued at some point during the pandemic. A total of 62 licensed occupations were identified and three years of data were analyzed, 2018 through 2020. Licenses issued for the selected occupations increased from 43,992 in 2018 to 47,570 in 2019, an 8.1 percent increase (Table 1). However, licenses issued in 2020 decreased 10.9 percent to 42,372.

In 2020, 48 of the 62 different types of licenses (77 percent) had a decrease in the number of licenses issued. In comparison, only 18 types of licenses (or 29 percent) in 2019 showed a decrease in the number of licenses issued from the year before. The number of total licenses issued was clearly impacted during the first year of the pandemic with 10.9 percent fewer licenses issued than the year prior. Real estate time-share salesperson, orthotist, and crane operator had the highest decreases in the number of licenses issued in 2020 with 95.9 percent, 53.3 percent and 52.7 percent declines, respectively. However, the total number of licenses issued for these professions was comparatively small in prior years, magnifying the percent change in persons newly licensed.

**Table 1**  
**Licensed and Certified Occupations**  
**For Licenses Regulated by the Bureau of Professional and Occupational Affairs**  
**By Number of Licenses Issued and Percentage Change**  
**2018 – 2020**

Type of License	2018		2019		2020	
	# of Licenses Issued	% Change	# of Licenses Issued	% Change	# of Licenses Issued	% Change
Architect	415	--	387	-6.7%	309	-20.2%
Athletic Trainer	329	--	311	-5.5	446	43.4
Audiologist	54	--	56	3.7	55	-1.8
Barber	323	--	417	29.1	234	-43.9
Barber Manager	96	--	101	5.2	70	-30.7
Barber Teacher	26	--	15	-42.3	10	-33.3
Certified General Appraiser	54	--	71	31.5	48	-32.4
Certified Public Accountant	1,052	--	958	-8.9	963	0.5
Certified Registered Nurse Practitioner	1,425	--	1,435	0.7	1,699	18.4
Certified Residential Appraisal	39	--	41	5.1	37	-9.8
Chiropractor	108	--	78	-27.8	77	-1.3

**Table 1**  
**Licensed and Certified Occupations**  
**For Licenses Regulated by the Bureau of Professional and Occupational Affairs**  
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**2018 – 2020**

Type of License	2018		2019		2020	
	# of Licenses Issued	% Change	# of Licenses Issued	% Change	# of Licenses Issued	% Change
Cosmetologist	2,868	--	2,893	0.9%	1,726	-40.3%
Cosmetology Teacher	159	--	153	-3.8	104	-32.0
Crane Operator	440	--	427	-3.0	202	-52.7
Dental Anesthesia Permit	122	--	187	53.3	163	-12.8
Dental Hygienist	345	--	349	1.2	365	4.6
Dentist	445	--	481	8.1	466	-3.1
Esthetician	835	--	1,027	23.0	667	-35.1
Expanded Function Dental Assistant	214	--	241	12.6	140	-41.9
Funeral Director	77	--	84	9.1	66	-21.4
Genetic Counselor	76	--	82	7.9	70	-14.6
Landscape Architect License	61	--	36	-41.0	32	-11.1
Licensed Dietitian-Nutritionist	307	--	320	4.2	280	-12.5
Licensed Practical Nurse	2,437	--	2,510	3.0	2,026	-19.3
Licensed Social Worker	791	--	1,074	35.8	905	-15.7
Marriage and Family Therapist	69	--	95	37.7	91	-4.2
Massage Therapist	667	--	642	-3.7	492	-23.4
Medical Doctor Graduate Training License	2,334	--	2,421	3.7	2,441	0.8
Medical Doctor Institutional License	30	--	30	0.0	25	-16.7
Medical Doctor Interim Limited License	1	--	0	-100.0	3	--
Medical Doctor License without Restriction	2,967	--	3,189	7.5	3,042	-4.6
Medical Doctor Temporary License	118	--	104	-11.9	1,022	882.7
Nail Technician	572	--	876	53.1	572	-34.7
Nurse-Midwife License	31	--	52	67.7	41	-21.2
Nursing Home Administrator	103	--	101	-1.9	97	-4.0
Occupational Therapist	594	--	650	9.4	626	-3.7
Occupational Therapist Assistant	280	--	259	-7.5	149	-42.5
Optometrist	121	--	125	3.3	120	-4.0
Orthotist	20	--	15	-25.0	7	-53.3
Osteopathic Graduate Lic./Temp. License	739	--	758	2.6	720	-5.0
Osteopathic Physician and Surgeon	601	--	628	4.5	600	-4.5
Osteopathic Physician Assistant	347	--	405	16.7	352	-13.1
Pharmacist License	955	--	1,018	6.6	1,117	9.7
Physical Therapist	804	--	838	4.2	915	9.2
Physical Therapist Assistant	395	--	342	-13.4	273	-20.2
Physician Assistant Certification	817	--	869	6.4	881	1.4
Podiatrist	81	--	87	7.4	89	2.3
Professional Counselor	847	--	1,089	28.6	861	-20.9
Professional Land Surveyor	29	--	33	13.8	26	-21.2
Psychologist	300	--	243	-19.0	234	-3.7

**Table 1**  
**Licensed and Certified Occupations**  
**For Licenses Regulated by the Bureau of Professional and Occupational Affairs**  
**By Number of Licenses Issued and Percentage Change**  
**2018 – 2020**

Type of License	2018		2019		2020	
	# of Licenses Issued	% Change	# of Licenses Issued	% Change	# of Licenses Issued	% Change
Real Estate Associate Broker	142	--	156	9.9%	122	-21.8%
Real Estate Broker - Rec, Part. & Corp.	164	--	200	22.0	112	-44.0
Real Estate Broker - Sole Proprietor	13	--	15	15.4	12	-20.0
Real Estate Campground Salesperson	7	--	4	-42.9	8	100.0
Real Estate Rental Listing Referral Agent	0	--	0	--	0	--
Real Estate Salesperson	4,673	--	4,934	5.6	3,863	-21.7
Real Estate Time-Share Salesperson	27	--	49	81.5	2	-95.9
Registered Professional Nurse	11,221	--	12,684	13.0	11,434	-9.9
Respiratory Care Practitioner Certificate	272	--	311	14.3	281	-9.6
Respiratory Therapist Care Practitioner	23	--	12	-47.8	9	-25.0
Speech-Language Pathologist	530	--	602	13.6	573	-4.8
Teacher of the hearing impaired	0	--	0	--	0	--
Total	43,992	--	47,570	8.1	42,372	-10.9

Source: PA Department of Labor and Industry, "Licensed and Certified Occupations," Data downloaded from the Labor Market Information System. (August 2, 2021) (on file with PA Joint State Government Commission).

While many of the licenses issued in 2020 declined, 11 different types of licenses experienced an increase in issuance compared to the year before. A medical doctor temporary license had the highest increase at 882.7 percent with 1,022 licenses issued. That increase was up from 118 and 104 licenses issued in 2018 and 2019, respectively. A temporary license may be issued in the Commonwealth to:

- An applicant who holds the equivalent of a license without restriction granted by the licensing authority of another state, territory or possession of the United States, or another country;
- Permit the teaching and demonstration of medical and surgical techniques and to facilitate the presentation of medical and surgical seminars and demonstrations in this Commonwealth;
- Permit participation in the administration of a medical or surgical procedure to a specified patient to enable persons uniquely qualified to perform a new and difficult medical or surgical procedure and to administer that procedure in this Commonwealth if it is necessary for the well-being of a specified patient;

- Permit the practice of medicine and surgery at a camp or resort and to permit the practice for no more than a 3-month period;
- Permit the administration of medical and surgical procedures to a person visiting this Commonwealth for a brief period of time, by a person who is a regular treating doctor of that person and who accompanies that person during the visit;
- The short-term replacement of a doctor of medicine employed by the Federal government in a National Health Service Corps Clinic, under Project U.S.A. arrangements. Project U.S.A. is a program developed by the American Medical Association and the Federal government through which the former provides doctor replacements to the latter as short-term replacements of doctors of medicine who are employed by the Federal government to provide medical services in areas where there is a critical medical manpower shortage; and
- Someone for any purpose deemed appropriate by the board, on a case by case basis.<sup>4</sup>

A majority of the licenses that increased during the first year of the pandemic were health care related licenses (Table 2). For instance, athletic trainer, certified registered nurse practitioner, pharmacist, and physical therapist were all professions that experienced increases in the number of licenses issued. These professions also benefitted from waivers designed to facilitate their health care work without regulatory burdens which may have been difficult or impossible to comply with during the pandemic due to restrictions on testing, training, and practice.

**Table 2**  
Licensed and Certified Occupations  
For Licenses with a Positive Percentage Change in 2020  
By Number of Licenses Issued and Percentage Change  
2020

County	2020	
	# of Licenses Issued	% Change
Medical Doctor Temporary License	1,022	882.7%
Real Estate Campground Salesperson	8	100
Athletic Trainer	446	43.4
Certified Registered Nurse Practitioner	1,699	18.4
Pharmacist License	1,117	9.7
Physical Therapist	915	9.2
Dental Hygienist	365	4.6
Podiatrist	89	2.3
Physician Assistant Certification	881	1.4
Medical Doctor Graduate Training License	2,441	0.8
Certified Public Accountant	963	0.5

Source: PA Department of Labor and Industry, "Licensed and Certified Occupations," Data downloaded from the Labor Market Information System, Aug. 2, 2021 (on file with PA Joint State Government Commission).

<sup>4</sup> 49 Pa. Code § 17.6.

It should be noted that licensure data is not a perfect proxy for employment. It cannot be confirmed that everyone who received a new license from one of the Boards overseen by the Department of State's Bureau of Professional and Occupational Affairs is employed in one of the occupations discussed below. However, Commission staff selected occupations where licensed employment was very likely for these newly licensed professionals.

Aside from licensure data, which can provide a picture of new professionals entering an occupation, current employment data is another metric to measure how the waivers granted during the pandemic affected employment in the licensed professions. The Occupational Employment and Wage Statistics (OEWS) survey, which is a semiannual survey measuring occupational employment and wage rates for wage and salary workers in nonfarm establishments in the United States, is the source of data for employment by occupation within the Commonwealth.

From 2018 to 2019, the estimated total number of people employed in Pennsylvania increased slightly from 5,847,690 to 5,901,590 (Table 3). In 2020, the estimated number of employed Pennsylvanians decreased 6.6 percent to 5,512,120 for all occupations. However, the estimated number of employed Pennsylvanians for the selected licensed occupations only decreased by 3.5 percent — roughly half the rate of the decrease in employment for all occupations.

Of the selected occupations reviewed, barbers, massage therapists, and hairdressers had the highest decreases of employment in 2020 with declines of 47.1 percent, 37.8 percent, and 36.2 percent, respectively. Not surprisingly, several of the occupations in which employment fell most precipitously during the first year of the pandemic were “non-life-sustaining businesses” and which were ordered to temporarily close their physical locations in March of 2020. Conversely, hearing aid specialists, occupational therapy aides, and funeral home managers had the highest increases of employment in 2020 with 47.1 percent, 40.6 percent and 21.9 percent, respectively.

However, untangling the effect of the BPOA's waivers from the effect of the pandemic or the federal, state, and local response to COVID-19 is, as stated above, difficult. Some professions that received regulatory waivers saw a decrease in new licensures and employment. For instance, crane operators saw a 15.9 percent decline in employment in 2020 as compared to 2019, and a 52.7 percent decline in new licenses in 2020 from 2019. Meanwhile, the requirement to maintain certification as a condition to maintain or renew licensure was waived. The decline in employment of crane operators is more likely due to factors beyond the regulatory waiver granted by the BPOA. Crane operators experienced a 14 percent decline in 2019 from 2018. The continued decline in 2020 may simply reflect the economic conditions that led to a decline in employment in that field in the previous year.

## **Board of Medicine**

The one profession where regulatory waivers appeared to have a direct impact on employment is physicians regulated by the Board of Medicine. Here, the BPOA's waivers on the rules governing temporary licensure for physicians — such as allowing temporary licensure without meeting the ordinary continuing education requirements and letters of good standing, as well as eliminating the “specific patient” rule — undoubtedly sped up the issuance of temporary licenses to practice medicine in the Commonwealth to physicians licensed in other states.

**Table 3**  
For Selected Occupations Related to Licensing  
By Estimated Employment and Percentage Change  
2018 - 2020

Occupation	2018		2019		2020	
	Estimated Employment	% Change	Estimated Employment	% Change	Estimated Employment	% Change
Accountants and Auditors	51,720	--	50,880	-1.6%	50,240	-1.3%
Architects, Except Landscape and Naval	4,180	--	4,060	-2.9	3,550	-12.6
Architectural and Civil Drafters	4,560	--	4,540	-0.4	4,810	5.9
Architectural and Engineering Managers	7,220	--	7,070	-2.1	6,660	-5.8
Architecture and Engineering Occupations	104,660	--	102,990	-1.6	97,880	-5.0
Athletic Trainers	1,690	--	1,660	-1.8	1,520	-8.4
Audiologists	nd.	--	460	--	520	13.0
Barbers	1,230	--	1,210	-1.6	640	-47.1
Chiropractors	1,350	--	1,470	8.9	1,390	-5.4
Clinical, Counseling, and School Psychologists	4,440	--	4,220	-5.0	4,370	3.6
Counselors, All Other	770	--	940	22.1	930	-1.1
Crane and Tower Operators	3,140	--	2,700	-14.0	2,290	-15.2
Dental Assistants	11,130	--	11,400	2.4	9,580	-16.0
Dental Hygienists	9,640	--	9,220	-4.4	7,170	-22.2
Dental Laboratory Technicians	1,420	--	1,440	1.4	1,290	-10.4
Dentists, All Other Specialists	130	--	140	7.7	90	-35.7
Dentists, General	3,540	--	3,190	-9.9	3,030	-5.0
Dietetic Technicians	1,220	--	1,080	-11.5	790	-26.9
Dietitians and Nutritionists	3,310	--	3,520	6.3	3,600	2.3
Family Medicine Physicians	3,710	--	3,210	-13.5	3,440	7.2
Funeral Attendants	2,420	--	2,350	-2.9	2,230	-5.1
Funeral Home Managers	690	--	640	-7.2	780	21.9
General Internal Medicine Physicians	nd.	--	nd.	--	1,190	--
Genetic Counselors	130	--	140	7.7	nd.	--
Hairdressers, Hairstylists, and Cosmetologists	24,460	--	24,270	-0.8	15,490	-36.2
Health Diagnosing and Treating Practitioners, All Other	560	--	nd.	--	nd.	--
Healthcare Practitioners and Technical Occupations	408,340	--	406,110	-0.5	397,990	-2.0

**Table 3**  
**For Selected Occupations Related to Licensing**  
**By Estimated Employment and Percentage Change**  
**2018 - 2020**

Occupation	2018		2019		2020	
	Estimated Employment	% Change	Estimated Employment	% Change	Estimated Employment	% Change
Healthcare Practitioners and Technical Workers, All Other	1,170	--	nd.	--	nd.	--
Healthcare Social Workers	7,560	--	7,950	5.2	7,310	-8
Hearing Aid Specialists	250	--	170	-32.0	250	47.1
Industrial-Organizational Psychologists	nd.	--	nd.	--	30	--
Insurance Appraisers, Auto Damage	350	--	250	-28.6	160	-36.0
Landscape Architects	660	--	920	39.4	1,110	20.7
Licensed Practical and Licensed Vocational Nurses	38,370	--	36,970	-3.6	35,240	-4.7
Manicurists and Pedicurists	5,060	--	5,350	5.7	3,630	-32.1
Marriage and Family Therapists	2,090	--	1,820	-12.9	2,110	15.9
Massage Therapists	3,620	--	4,000	10.5	2,490	-37.8
Mental Health and Substance Abuse Social Workers	7,860	--	7,610	-3.2	7,920	4.1
Morticians, Undertakers, and Funeral Directors	1,260	--	1,270	0.8	1,280	0.8
Nurse Anesthetists	1,700	--	2,010	18.2	2,160	7.5
Nurse Midwives	320	--	400	25.0	340	-15.0
Nurse Practitioners	7,280	--	7,820	7.4	8,150	4.2
Nursing Assistants	76,260	--	75,090	-1.5	71,880	-4.3
Nursing Instructors and Teachers, Postsecondary	4,010	--	3,420	-14.7	2,890	-15.5
Occupational Therapists	7,440	--	7,680	3.2%	7,070	-7.9
Occupational Therapy Aides	370	--	320	-13.5	450	40.6
Occupational Therapy Assistants	2,600	--	2,670	2.7	2,190	-18.0
Optometrists	1,450	--	nd.	--	2,010	--
Orthotists and Prosthetists	360	--	530	47.2	500	-5.7
Pharmacists	14,610	--	14,750	1.0	14,900	1.0
Pharmacy Aides	2,000	--	2,520	26.0	2,840	12.7
Pharmacy Technicians	18,220	--	18,250	0.2	18,900	3.6
Physical Therapist Aides	2,240	--	1,990	-11.2	1,870	-6.0
Physical Therapist Assistants	5,300	--	5,330	0.6	4,600	-13.7

**Table 3**  
For Selected Occupations Related to Licensing  
By Estimated Employment and Percentage Change  
2018 - 2020

Occupation	2018		2019		2020	
	Estimated Employment	% Change	Estimated Employment	% Change	Estimated Employment	% Change
Physical Therapists	11,720	--	11,800	0.7%	10,670	-9.6%
Physician Assistants	6,650	--	7,200	8.3	7,300	1.4
Physicians, All Other; and Ophthalmologists, Except Pediatric	21,200	--	22,160	4.5	22,000	-0.7
Podiatrists	600	--	650	8.3	550	-15.4
Property Appraisers and Assessors	1,180	--	1,270	7.6	1,410	11.0
Property, Real Estate, and Community Associates Managers	5,510	--	6,070	10.2	5,850	-3.6
Psychologists, All Other	460	--	460	0.0	430	-6.5
Psychology Teachers, Postsecondary	2,130	--	2,290	7.5	2,290	0.0
Real Estate Brokers	840	--	780	-7.1	800	2.6
Real Estate Sales Agents	5,950	--	6,210	4.4	6,300	1.4
Registered Nurses	148,520	--	148,040	-0.3	146,640	-0.9
Respiratory Therapists	5,810	--	5,930	2.1	5,930	0.0
Respiratory Therapy Technicians	250	--	nd.	--	nd.	--
Social Work Teachers, Postsecondary	720	--	820	13.9	660	-19.5
Social Workers, All Other	1,210	--	1,660	37.2	1,590	-4.2
Speech-Language Pathologists	5,450	--	5,700	4.6	5,830	2.3
Substance Abuse, Behavioral Disorder, and Mental Health Counselors	20,860	--	20,350	-2.4	19,220	-5.6
Surveyors	1,590	--	1,620	2	1,740	7
Total: Occupations Above	1,108,720	--	1,101,010	-0.7	1,062,960	-3.5
Total: Other Occupations	4,738,540	--	4,800,580	1.3	4,449,160	-7.3
<b>Grand Total: All Occupations</b>	<b>5,847,690</b>	<b>--</b>	<b>5,901,590</b>	<b>0.9</b>	<b>5,512,120</b>	<b>-6.6</b>

nd. - No Data indicates that an employment estimate is not available.

Source: United States Department of Labor, Bureau of Labor Statistics, 2018-2020 Occupational Employment and Wage Statistics, accessed August 16, 20, <https://www.bls.gov/oes/home.htm>.



**STATUTORY AND REGULATORY WAIVERS  
AFFECTING OCCUPATIONS REGULATED BY THE  
DEPARTMENT OF STATE’S BUREAU OF  
PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

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Pennsylvania’s Emergency Management Services Code permits the Governor to waive or suspend the operation of any statute or regulation during a declared state of emergency “if strict compliance with the provisions of any statute, order, rule or regulation would in any way prevent, hinder or delay necessary action in coping with the emergency.”<sup>5</sup> The Governor ordered numerous such suspensions pertaining to the professions licensed and regulated by the Department of State’s Bureau of Professional and Occupational Affairs (BPOA).

It should be noted that throughout this report, Commission staff states that “the BPOA has waived” a certain rule, regulation, or statutory provision. Although the BPOA may be responsible for providing administrative and legal support to the professional and occupational licensing boards, the authority to waive or suspend statutes and regulations during a declared emergency rests with the Governor. However, because it appears that the guidance documents and specific language effecting the waivers were drafted by the BPOA or the individual Boards, the BPOA is referred to as the acting entity.

The waiver or suspension of Pennsylvania’s statutes and regulations cannot be undertaken in the absence of an emergency declaration. However, the waivers and suspensions issued by the Governor were extended legislatively on two occasions. On June 11, 2021, Act 21 of 2021 was enacted providing for an extension of “the suspension of a regulatory statute prescribing the procedures for conduct of Commonwealth business, or an order, rule or regulation of a Commonwealth agency which was suspended under 35 Pa. C.S. §7301(f)(1)” until September 30, 2021.<sup>6</sup> On September 30, 2021, Act 73 of 2021 was enacted providing for the additional temporary extension of the waivers and suspensions of the “[r]egulatory statutes, rules or regulations enforced by the Bureau of Professional and Occupational Affairs” until March 31, 2022.<sup>7</sup>

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<sup>5</sup> 35 Pa. C.S. § 7301(f).

<sup>6</sup> Act 21 of 2021 (P.L. 56, No. 21, § 1) (adding Article XXI-F, § 2102-F(a) to the Administrative Code of 1929).

<sup>7</sup> Act 73 of 2021 (P.L. 404, No. 73, § 1) (amending Article XXI-F of the Administrative Code of 1929).

<i>Regulations Governing Professional Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Barber Examiners	63 P.S. § 563, 49 Pa. Code § 3.14	Suspends provisions prohibiting the practice of barbering without a license in order to permit students to practice their trade outside of the classroom prior to graduation
Cosmetology	63 P.S. §§ 508, 509, and 513	Suspends provisions prohibiting practicing cosmetology without a license in order to permit students to practice their trade outside of the classroom prior to graduation
Chiropractic; Dentistry; Optometry; Pharmacy; Podiatry	28 Pa. Code § 5.41(a)	Guidance clarifies that <b>Chiropractors, Dentists, Pharmacists, Optometrists, and Podiatrists</b> are authorized to order and administer COVID-19 tests
Crane Operators	63 P.S. § 2400.501(f), 49 Pa. Code §§ 6.12 and 6.32(a)	Suspends requirement that <b>Crane Operators</b> who are certified in a specialty must maintain that certification in order to maintain their license
Dentistry	63 P.S. §§ 122(j.1) and 130c(b)(3), 49 Pa. Code §§ 33.105(b), 33.106(a), 33.115(c)(2)	Suspends requirement to maintain active CPR certification and waives requirement to possess Basic Life Support certification to administer anesthesia
Funeral Directors	49 Pa. Code § 13.184	Waives the length of time a funeral home may retain a deceased person's body before burial
Massage Therapy	63 P.S. § 627.6(b)(1), 49 Pa. Code §§ 20.21(b)(3), 20.31(c)(3), 20.32(d), 20.42(a)(12)	Suspends requirement to possess current CPR certification as condition of license renewal, temporary practice permit, initial licensure, and licensure by reciprocity
Medicine	49 Pa. Code § 16.92(b)(5)	Suspends requirement that emergency oral prescription for Schedule II substance be followed by written prescription within 72 hours
Medicine	49 Pa. Code § 16.92(b)(1)	Suspends requirement for <b>Physicians</b> to take initial medical history and conduct physical examination prior to prescribing, administering, or dispensing drugs; waiver enables access to buprenorphine provided via telemedicine.

<i>Regulations Governing Professional Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine	63 P.S. §§ 422.13(d.1), 422.13(e.1), 49 Pa. Code §§ 18.142(a)(1), 18.142(a)(5), 18.142(b)	Waives requirement of physician countersignature on records of patients seen by <b>Physician Assistants</b> ; waives requirement that physician be named in agreement; waives requirement that agreement be filed with Board
Medicine	49 Pa. Code § 18.155	Waives regulations governing approval for <b>Physician Assistants</b> to be utilized at a satellite location
Occupational Therapy	49 Pa. Code §§ 42.22(d), 42.23(a)(2), 42.23(b)	Suspends direct supervision requirements for <b>Occupational Therapy Assistants</b> and the requirement for them to have face-to-face contact with supervisors
Occupational Therapy	49 Pa. Code § 42.15	Waives the one-year term for temporary licensure of <b>OT/OTAs</b> who meet the requirements for licensure but have not yet passed the exam
Osteopathic Medicine	63 P.S. § 271.10(g), 49 Pa. Code § 25.162(b)	Waives provision limiting osteopathic physicians to supervising four <b>Physician Assistants</b> ; waives requirement to file application to utilize a Physician Assistant and the agreement between the physician and the physician assistant
Osteopathic Medicine	63 P.S. § 271.10(j.1), 49 Pa. Code § 25.178	Waives requirement of physician countersignature on records of patients seen by <b>Physician Assistant</b> as well as weekly review of such records by the physician
Osteopathic Medicine	49 Pa. Code §§ 25.162(a)(4)(i), 25.162(a)(4)(vi), and 25.162(a)(4)(viii)	Suspends some aspects of regulation requiring physician submission of written agreement for <b>Physician Assistants</b>
Pharmacy	49 Pa. Code § 27.601	Waives requirement that the compounding of preparations be done in accordance with the Federal Food, Drug, and Cosmetic Act
Pharmacy	49 Pa. Code § 27.401(3)	Suspends rule requiring <b>Pharmacists</b> possess a CPR certification
Pharmacy	49 Pa. Code § 27.18(t)	Suspends rule requiring <b>Pharmacists</b> only refill prescription at a “reasonable time prior to the time when the contents” shall be consumed

<i>Regulations Governing Professional Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Pharmacy	63 P.S. § 390-3(e), 49 Pa. Code § 27.26(c)	Waives the 6-year limit on registration as a pharmacy intern for graduates who have not yet passed their exam
Pharmacy	63 P.S. § 390-5(a)(8)	Suspends power of Board to revoke license for compounding drug differently than prescribed
Pharmacy	63 P.S. § 390-8(2.1)(vi)	Suspends limit of only one refill of emergency prescription for nonscheduled and Schedule V drugs
Physical Therapy	49 Pa. Code §§ 40.22(a)(3), 40.32(a), 40.161(c), 40.165(a), 40.166(f), 40.173(a), 40.173(b)(3), 40.173(c)(1)-(6)	Suspends direct supervision requirements for assistants, support personnel, and temporary license holders; may now be indirectly supervised by licensed physical therapist

### **Supervision of Physician Assistants**

There are separate governing boards for osteopathic physicians (Board of Osteopathic Medicine) and physicians who obtained an M.D. (Board of Medicine). Physician assistants are regulated by the Board of Medicine when they are supervised by a physician regulated by the Board of Medicine. These physician assistants are subject to a separate set of regulations than physician assistants who are supervised by osteopathic physicians. In many instances these regulations are identical to those governing physician assistants supervised by osteopathic physicians.

Osteopathic physicians supervising physician assistants must submit to the Board of Osteopathic Medicine a written agreement between the physician and the physician assistant. The agreement must identify and be signed by the physician assistant and each osteopathic physician being assisted; describe in detail the manner in which the physician assistant will be assisting each named physician; describe the time, place and manner, method, and frequency of supervision and direction each named physician will provide the physician assistant; designate an osteopathic physician as the primary supervising physician; and require the supervising physician to countersign the patient record, among other things.<sup>8</sup>

However, the BPOA has waived the requirements that the written agreement identify each osteopathic physician the physician assistant will be working under. Further, the BPOA has waived the regulatory requirement that the supervising physician countersign all patient records completed by the physician assistant within 10 days as well as the requirement that the agreement

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<sup>8</sup> 49 Pa. Code § 25.162(a)(4).

provide the name, address, and telephone number of at least two physicians who can substitute for the supervising physician when he is absent or unavailable.<sup>9</sup>

Unlike physician assistants supervised by osteopathic physicians, physician assistants regulated by the Board of Medicine benefit from an emergency medical services regulation which permits them to “render care consistent with relevant standards of care” during “a declared state of emergency or a state or local disaster.”<sup>10</sup> The Bureau of Professional and Occupational Affairs has interpreted this regulation to moot the need for any waivers or suspensions of any specific regulation, as they are already waived or suspended by operation of this provision.<sup>11</sup> However, for the sake of clarity, the BPOA has also issued specific waivers of certain aspects of regulations governing physician assistants regulated by the Board of Medicine.<sup>12</sup>

There is functionally no distinction in the role of a physician assistant supervised by a physician licensed by the Board of Osteopathic Medicine and that of a physician assistant supervised by a physician licensed by the Board of Medicine. Yet physician assistants overseen by the Board of Medicine receive the benefit of a regulation governing emergency use of physician assistants which is not available to physician assistants supervised by osteopathic physicians. There would seem to be little reason to not amend Chapter 25 of Title 49 of the Pennsylvania Code to include a similar regulatory provision applicable to physician assistants supervised by osteopathic physicians which permits the abeyance of the ordinary regulations governing their practice in the event of a declared emergency.

### **Increased Prescription Amounts**

The Pharmacy Act limits the authority of a pharmacist to provide emergency prescriptions. It is unlawful for any pharmacist to dispense an emergency prescription unless certain conditions are met. Even if those conditions are met, the pharmacist is limited to dispensing a 72-hour supply of the prescription. If the medication is not one that can be dispensed or sold in a 72-hour supply, the pharmacist may dispense an amount not to exceed a 30-day supply.<sup>13</sup>

The BPOA stated that it had “waived the statutory emergency prescription section to allow pharmacists to issue a 30-day supply for an emergency script as opposed to a 72-hour supply” for nonscheduled legend drugs and Schedule V controlled substances.<sup>14</sup> However, the statute already permitted pharmacists to provide a 30-day emergency supply if the prescribed medication is not ordinarily dispensed or sold in a 72-hour supply. Juxtaposing the wording of the waiver and the

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<sup>9</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Some License Requirements for Qualified Physician Assistants Are Suspended During Coronavirus Emergency,” Mar. 22, 2020 (Revised Mar. 5, 2021) (Waiving 49 Pa. Code §§ 25.162(a)(4)(i), (vi), and (viii)).

<sup>10</sup> 49 Pa. 18.162(b).

<sup>11</sup> Some License Requirements for Qualified Physician Assistants Are Suspended, *supra* n. 9.

<sup>12</sup> *Id.*

<sup>13</sup> 63 P.S. § 390-8(2.1)(vi).

<sup>14</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Issues Additional Pharmacy-Related Waivers During COVID-19 Emergency,” Apr. 13, 2020. A “legend drug” is any drug that is only available by prescription. “Nonscheduled” means that the prescription drug not on the federal Drug Enforcement Agency’s schedule of controlled substances.

applicable statutory provision, it appears that the BPOA intended to waive the 72-hour rule and permit a pharmacist to dispense a 30-day supply of an emergency prescription even if the medication could have been dispensed in a 72-hour supply.

Further, the BPOA permitted pharmacists to dispense a 90-day supply of a nonscheduled legend drug at one time by using the prescribed refills available. Regulations implemented pursuant to the Pharmacy Act state that pharmacists “may only refill a prescription at a reasonable time prior to the time when the contents...shall be consumed according to prescriber’s directions.”<sup>15</sup> Ordinarily, most medications are prescribed in 30-day amounts, but the guidance from the BPOA explicitly permitting all refills up to a 90-day’s supply to be dispensed at once either waives this regulation or forecloses an interpretation of the regulation that it is unreasonable to fulfill all refills in a prescription at one time.<sup>16</sup>

The Pennsylvania Pharmacists’ Association (PPA) has advocated continuing these waivers in some form as permanent rule change. The PPA notes that some third-party payors impose requirements or create incentives for patients to obtain a 90-day supply of medication. Allowing pharmacists to dispense a 90-day supply of medication to patients when possible would lead to fewer trips to the pharmacy and greater healthcare savings for patients.<sup>17</sup>

Additionally, with respect to the emergency 30-day supply, the PPA favors eliminating the 72-hour rule and permitting pharmacists to dispense an emergency 30-day supply. This would benefit patients unable to secure a timely appointment with their clinician who would otherwise authorize continuation of a medication that is used by a patient to treat a chronic or long-term condition.<sup>18</sup>

Commission staff also recommends consideration of the PPA’s recommendations in these matters.

### **Accepting and Collecting Specimens for Laboratory Analysis**

One piece of guidance from the Bureau of Professional and Occupational Affairs clarified language from a regulation governing who can accept and collect specimens for laboratory analysis. The regulation restricts the ability of clinical laboratories to accept or collect specimens from a patient only when a test is requested on the specimens “by a member of the health arts licensed to practice in this Commonwealth.”<sup>19</sup>

The guidance aimed to clarify that members of the affected professions — chiropractic, dentistry, optometry, pharmacy, and podiatry — may perform the test for COVID-19 on a patient if they have been issued a clinical lab permit from the Pennsylvania Department of Health to

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<sup>15</sup> 49 Pa. Code § 27.18(t).

<sup>16</sup> Pennsylvania Issues Additional Pharmacy-Related Waivers During COVID-19 Emergency, *supra* n. 14.

<sup>17</sup> Communication between the Pennsylvania Pharmacists Association and Commission staff, Aug. 25, 2021.

<sup>18</sup> *Id.*

<sup>19</sup> 28 Pa. Code § 5.41(a).

conduct diagnostic lab testing.<sup>20</sup> This waiver was prompted by concerns that practitioners who have such a permit but whose scope of practice would ordinarily limit their ability to conduct diagnostic testing would be prohibited from conducting COVID-19 tests on patients in a time of extraordinary need.

It should also be noted that during the pandemic the General Assembly passed into law an amendment to the Pharmacy Act permitting pharmacists and pharmacies to “order and perform laboratory examinations and procedures for COVID-19, influenza, and streptococcal infections” and exempting them from the requirements of the Clinical Laboratory Act.<sup>21</sup> This new legislation functionally makes the BPOA’s waiver permanent regarding clinical testing for COVID-19, at least for pharmacists and pharmacies. It also goes farther than the BPOA’s waiver, as two other diseases may now be tested for and the new law exempts pharmacists from needing to have a clinical lab permit from the Department of Health to conduct such tests.

## **CPR Requirements**

There are several boards within the BPOA that require an applicant or licensee within their jurisdiction to be certified in cardiopulmonary resuscitation (CPR) or basic life support (BLS). These include the Board of Dentistry, the Board of Massage Therapy, and the Board of Pharmacy. Regulations governing massage therapists required that these professionals earn CPR certification through “contact hours,” which could not be obtained during the pandemic.<sup>22</sup>

To help massage therapists obtain their licenses, the Board waived the requirement that the certification be obtained through any hands-on or in-person instruction for massage therapists needing a new CPR certification for initial licensure or reactivation of an expired license.<sup>23</sup> Online CPR certification will be accepted under this waiver. However, for subsequent renewals, licensees will be required to comply with existing regulations mandating hands-on CPR training.

Similarly, the Board of Dentistry permitted any existing CPR and BLS certification to remain in effect until December 31, 2020. For any dentist in need of new CPR certification, the Board waived any requirement that the certification be completed through hands-on or in-person methods.<sup>24</sup> Additionally, pharmacists who also have an authorization to administer injectables are required by regulation to hold an active CPR certificate. If a pharmacist’s certificate was valid as of March 17, 2020, it was accepted by the Board of Pharmacy as valid through December 31, 2020.<sup>25</sup>

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<sup>20</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Authorizes Chiropractors, Dentists, Optometrists, Pharmacists, and Podiatrists Who Hold Clinical Lab Permits to Order and Administer COVID-19 Tests,” Dec. 21, 2020.

<sup>21</sup> Act of November 30, 2020, (P.L. 1306, No. 140, § 9.5).

<sup>22</sup> 49 Pa. Code § 20.32(d).

<sup>23</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Department of State Temporarily Waives CPR Rules for Two Additional Professional Licensing Boards,” Apr. 7, 2020.

<sup>24</sup> *Id.*

<sup>25</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Suspends Certain Licensing and Regulatory Requirements for Pharmacies and Pharmacists During Coronavirus Emergency,” Mar. 22, 2020.

<i>Scope of Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Barber Examiners	63 P.S. § 563.1, 49 Pa. Code § 3.21	Waives 9 month cap on temporary licenses for <b>Barbers</b>
Cosmetology	63 P.S. § 518.1, 49 Pa. Code §§ 7.32g(b) and 7.119(b)	Waives 9 month cap on temporary licenses for <b>Cosmetologists</b> ; Waives quarterly report of student hours
Dentistry	49 Pa. Code §§ 33.208(a)(1)(i) and (ii), 33.208(a)(2) – (4)	Waives scope of practice limitations on <b>Dentists</b>
Dentistry	63 P.S. § 129(a), 49 Pa. Code §§ 33.101(a), (b)	Waives prohibition on <b>Dentists, Dental Assistants, and Dental Hygienists</b> practicing without a license; objective is to permit practice by federal medical personnel
Massage Therapy	63 P.S. § 627.5, 49 Pa. Code § 20.26(c)	Waives 6-month limitation on temporary practice permits for <b>Massage Therapists</b>
Medicine	63 P.S. § 422.36a(b), 49 Pa. Code § 18.306(a)(2)	Waives timeframe for <b>Respiratory Therapists</b> to apply for temporary practice permit prior to graduation; students may apply for temporary practice 90 days prior to graduation
Medicine	63 P.S. §§ 271.13c(h)(3) and 271.13c(j)(1), 49 Pa. Code §§ 18.604(d) and 18.606(c) and (d)	Waives 2-year time limitation on temporary practice permits for <b>Perfusionists</b> and waives requirements relating to emergency services rendered by <b>Perfusionists</b> licensed in another state
Medicine	49 Pa. Code §§ 18.502, 18.509(a)(1) and (4)	Waives limitation on patient population of “physically active persons” for <b>Athletic Trainers</b> and permits treatment of persons without referral or prescription
Medicine	49 Pa. Code § 18.507	Waives 1-year limitation on temporary licenses for <b>Athletic Trainers</b>
Medicine	49 Pa. Code §§ 17.7(c)(5) and (c)(9)	Waives requirements for Board evaluation of and detailed written statement from a medical school graduate seeking an interim limited license as a <b>Physician</b>
Medicine	63 P.S. § 422.13b(a)	Waives limitation on <b>Physician Assistants</b> practicing without a license to the period between graduation and result of exam

<i>Scope of Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine	63 P.S. § 422.36a(c), 49 Pa. Code § 18.306(b)	Waives 12-month limitation on temporary practice permits for <b>Respiratory Therapists</b>
Medicine	49 Pa. Code § 18.705(d)	Waives the time limit on temporary provisional licenses (which was close of the second examination period for which the holder is eligible to test) for <b>Genetic Counselors</b>
Medicine	49 Pa. Code §§ 18.811(d), 18.813(d), 18.821(d), and 18.823(d)	Waives 90-day limit after conclusion of clinical residency on graduate permits and 2-year limit for provisional licenses for <b>Prosthetists</b> and <b>Orthotists</b>
Medicine	49 Pa. Code §§ 18.831(d) and 18.841(d)	Waives 1-year limitation on temporary practice permits for <b>Orthotic Fitters</b> and <b>Pedorthists</b>
Medicine	49 Pa. Code §§ 17.3(a)(2), 17.3(b), and 17.3(d)	Suspends requirement that physician holding institutional license be restricted to practicing at two institutions; suspends requirement restricting practice areas of institutional license holders; waives requirement of documentation of formal affiliation between institutions
Nursing	63 P.S. § 214.1 49 Pa. Code §§ 21.7 and 21.149	Suspends 1 year limit on temporary practice permits for <b>Registered Nurses</b> and <b>Licensed Practical Nurses</b>
Nursing	63 P.S. § 218.2(a) 63 P.S. § 218.3(b) 49 Pa. Code §§ 21.282a(b), 21.283, and 21.284(a) and (b)	Waives limitation on practice to certified clinical specialty area for <b>Certified Registered Nurse Practitioners</b> ; Suspends limitation on prescriptive authority to that which is related to the <b>Certified Registered Nurse Practitioners</b> specialty
Nursing	63 P.S. § 653.1	Waives requirements to apply for an extension of a <b>Practical Nursing</b> graduate permit or temporary permit for out-of-state licensees and any such permits expiring 90 days from date of order are automatically extended an additional 90 days
Nursing	49 Pa. Code §§ 21.7(a)(3) and (4)	Suspends requirements relating to extending temporary practice permit for graduate <b>Registered Nurses</b>
Nursing	49 Pa. Code §§ 21.149(a)(3)-(4)	Suspends requirements relating to extending temporary practice permit for graduate <b>Practical Nurse</b>

<i>Scope of Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Nursing	63 P.S. § 218.2(c.1), 49 Pa. Code §§ 282a(a), (b)	Waives requirement that <b>Certified Registered Nurse Practitioners</b> obtain written and signed collaborative agreements with each physician with whom they work; may now collaborate with any physician in their hospital or health system without additional written collaborative agreements
Nursing	49 Pa. Code § 21.17(3)	Waives limitation on <b>Nurse Anesthetists</b> to only practicing under direction of surgeon or dentist
Nursing	63 P.S. § 664(a)(4)	Waives prohibition on <b>Licensed Practical Nurses</b> practicing without a license; objective is to permit practice by federal medical personnel
Occupational Therapy	63 P.S. § 1514	Suspends limitation on <b>Occupational Therapists</b> providing services only to those who have been referred by a physician, optometrist, or podiatrist
Osteopathic Medicine	63 P.S. § 271.10b(b)(2), 49 Pa. Code § 25.506(a)(2)	Waives timeframe for <b>Respiratory Therapists</b> to apply for temporary practice permit prior to graduation; students may apply for temporary practice 90 days prior to graduation
Osteopathic Medicine	63 P.S. §§ 422.13c(h)(1)(iii) and 422.13c(j)(1), 49 Pa. Code §§ 25.804(d), 25.806(c) and (d)	Waives 2-year time limitation on temporary practice permits for <b>Perfusionists</b> and waives requirements relating to emergency services rendered by <b>Perfusionists</b> licensed in another state
Osteopathic Medicine	49 Pa. Code §§ 25.702, 25.709(a)(1), (4)	Waives limitation on patient population of “physically active persons” for <b>Athletic Trainers</b> and permits treatment of persons without referral or prescription
Osteopathic Medicine	63 P.S. § 271.10b(c), 49 Pa. Code § 25.506(b)	Waives 12-month limitation on temporary practice permits for <b>Respiratory Therapists</b>
Osteopathic Medicine	49 Pa. Code § 25.707	Waives 1-year limitation on temporary licenses for <b>Athletic Trainers</b>
Osteopathic Medicine	49 Pa. Code § 25.905(d)	Waives the time limit on temporary provisional licenses (which was close of the second examination period for which the holder is eligible to test) for <b>Genetic Counselors</b>
Pharmacy	63 P.S. § 390-9.2	Suspends statute limiting ability of <b>Pharmacists</b> and <b>Pharmacy Interns</b> to administer flu vaccine to persons 9 years old or older; may now administer flu vaccine to persons 3 years of age or older

<i>Scope of Practice</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Pharmacy	63 P.S. § 390-9.2(a), 49 Pa. Code § 27.403(a)	Suspends limitation on <b>Pharmacists</b> and <b>Pharmacy Interns</b> to administer injectables only to individuals who are more than 18 years of age; may now inject younger people
Pharmacy	49 Pa. Code § 27.404	Suspends the requirement that <b>Pharmacists</b> administer injectable medications, biologicals, and immunizations only under an order from a licensed provider or pursuant to a written protocol either approved by a physician or authorized by the medical staff of an institution.
Pharmacy	63 P.S. §390-8(2) 49 Pa. Code § 27.12(a)	Waives prohibition on <b>Pharmacists</b> practicing without a license; objective is to permit practice by federal medical personnel
Physical Therapy	63 P.S. § 1309, 49 Pa. Code §§40.51 – 40.55	Suspends limitation on <b>Physical Therapists</b> providing services only to those who have been referred by a physician, physician assistant, CRNP, dentist, or podiatrist
Physical Therapy	63 P.S. §§ 1306(g) and 1309(a.1), 49 Pa. Code §§ 40.22(b) and 40.166(d) and (e)	Waives 6-month limitation on temporary practice permits for <b>Physical Therapists</b> and <b>Physical Therapy Assistants</b>
Podiatry	63 P.S. § 42.2	Waives limitation on practice to issues relating to the foot; <b>Podiatrists</b> may now be delegated duties by physicians

**Certified Registered Nurse Practitioner Written Agreements and Prescription Privileges**

The practice of medicine has changed in the years since the Professional Nursing Law was enacted. A formal collaboration agreement between a Certified Registered Nurse Practitioner (CRNP) and a supervising physician sets forth the responsibilities of the CRNP and defines the working relationship with the physician. A CRNP ordinarily acts “within the scope of the certified registered nurse practitioner’s collaborative or written agreement with a physician.”<sup>26</sup>

It is without a doubt an important part of the regulation of CRNPs. Many CRNPs work in hospitals and similar settings where they may perform their duties under a number of different physicians in any given workweek. However, if a CRNP works in collaboration with many physicians in a large health care setting, such as a hospital, the requirement to have a written and

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<sup>26</sup> 63 P.S. § 218.2(c.1).

signed collaboration agreement with each physician with whom the CRNP may work becomes a cumbersome piece of red tape. CRNPs have worked with physicians in their health care organizations and hospitals without needing a collaborative agreement for the duration of the pandemic without any noticeable negative effect on patient care or the relationship between the patient, the physician, and the CRNP.

The BPOA waived this requirement in order to provide more flexibility to CRNPs and the health systems in which they operate. The waiver permits any CRNP who has an agreement with a physician within a particular hospital or health network to also collaborate with any other physician within that hospital or health network without needing to obtain a separate agreement with each physician with whom they work. Additionally, the requirement that CRNPs may collaborate only with Pennsylvania-licensed physicians was waived, permitting collaboration with out-of-state licensed physicians for the duration of the pandemic.<sup>27</sup>

So long as there is one physician responsible for collaborating with a CRNP within a health system or hospital, it may be prudent to permanently eliminate the requirement for collaborative agreements between every physician with whom a CRNP works and maintain the waiver that has worked well enough during the difficult days of the COVID-19 pandemic. The Pennsylvania Coalition of Nurse Practitioners (PCNP), a professional organization representing the interests of CRNPs, supports amending this regulation to retain the guidance provided with the BPOA's waiver during the pandemic.<sup>28</sup>

Regarding prescription privileges, it should be noted that the supervision regulations for prescriptive authority for CRNPs differ slightly from the supervision regulations generally. To have authority to prescribe medication to patients, a CRNP must have a separate prescriptive authority collaboration agreement.<sup>29</sup> In addition to specifying the physician the CRNP is to collaborate with, the regulatory provision governing such agreements also requires that "at least one substitute physician" be named who can provide collaboration if the collaborating physician is unavailable. The BPOA made it clear that its expanded collaboration agreement guidance did not apply to prescriptive authority collaboration agreements.<sup>30</sup>

Pennsylvania regulations require that a CRNP may only prescribe medication "when acting in collaboration with a physician...and within the CRNP's specialty." An Executive Order from the Governor dated March 20, 2020, suspended "the restrictions requiring a CRNP practice within a specific clinical specialty."<sup>31</sup> Consequently, the regulation permitting a CRNP to prescribe medication only when practicing within their specialty was waived.

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<sup>27</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, "State Board of Nursing: Additional Temporary Waivers," Mar. 27, 2020.

<sup>28</sup> Letter from the Pennsylvania Coalition of Nurse Practitioners to Governor Tom Wolf, "Re: Executive Order 2021-03 Sustaining Regulatory Relief Outside the Covid-19 Emergency," May 4, 2021.

<sup>29</sup> 49 Pa. Code § 21.285.

<sup>30</sup> State Board of Nursing: Additional Temporary Waivers, *supra* n. 27.

<sup>31</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, "Pennsylvania Waives Some Licensing Requirements During Coronavirus Emergency," Mar. 20, 2020.

The PCNP supports eliminating the substitute collaborating physician requirement for prescriptive authority collaboration agreements, although this requirement had not been affected by a waiver or suspension from the BPOA. Further, the PCNP advocates that a CRNP with one active prescriptive authority collaboration agreement be permitted to collaborate with a newly licensed Pennsylvania physician for up to six months from the date the prescriptive authority application is submitted to the Board of Nursing. The PCNP argues that it can be difficult for a CRNP to find an alternative physician to sign a prescriptive authority collaborative agreement, particularly in rural and underserved areas.<sup>32</sup>

## **Expansion of the Scope of Practice of Dentists**

To assist with the medical response to the COVID-19 pandemic in Pennsylvania, the BPOA suspended scope of practice limitations for several professions. Dentists are now permitted to administer and dispense “medications without regard to the requirement that such prescribing occur in the course of a dentist’s professional practice, or the requirement that such prescribing be within the scope of a dentist-patient relationship.” Dentists may provide triage, care in hospital and health systems, accept emergency referrals from hospitals and health systems, collect throat cultures, and perform nasal swab testing. Dentists may further “conduct examinations and take medical histories in conjunction with prescribing, without regard to the requirement that such examination focus on the patient’s dental problems.”<sup>33</sup>

In communication with Commission staff, the Pennsylvania Dental Association (PDA) recommended that this expansion in the scope of practice of dentists be maintained beyond the expiration of the declared COVID-19 emergency in the Commonwealth. The PDA noted that it would be prudent to allow dentists to maintain an expanded scope of practice permitting them to assist in hospitals, nursing homes, long-term care facilities, and emergency rooms while the pandemic is ongoing.<sup>34</sup>

While it may be prudent to keep in place some or all of the aspects of dentists’ expanded scope of practice during the COVID-19 pandemic, the waiver of the principal regulation setting the scope of practice for dentists cannot simply be extended by the BPOA at this time. The waiver of the regulation was based on the Governor’s authority to suspend the provisions of statutes or regulations during the time of a declared emergency.<sup>35</sup>

Instead, if the BPOA wishes to expand the scope of practice of dentists, it should do so through a revision of the regulations governing dental practice to clarify the scope of practice. Such a revision could only occur through a regulatory change or new legislation. The existing regulation, which had been waived, simply states that a dentist may only prescribe, administer, or dispense medication “in the course of the dentist’s professional practice,” “within the scope of the

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<sup>32</sup> Letter from the Pennsylvania Coalition of Nurse Practitioners to Governor Tom Wolf, *supra* n. 28.

<sup>33</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Expansion of Scope of Practice to Provide Assistance in Responding to COVID-19 — Dentists and Oral Surgeons,” May 6, 2020.

<sup>34</sup> Pennsylvania Dental Association Communication with Joint State Government Commission staff, Aug. 18, 2021.

<sup>35</sup> See 35 P.S. § 7310(f).

dentist-patient relationship,” and “in accordance with treatment principles accepted by a responsible segment of the profession.”<sup>36</sup>

However, the BPOA would be constrained by the Dental Practice Act. This statute stipulates that a person engages in the practice of dentistry if they are one who “diagnoses, treats, operates on, or prescribes for any disease, pain or injury, or regulates any deformity or physical condition, of the human teeth, jaws, or associated structures, or conducts a physical evaluation, or administers anesthetic agents, or uses ionizing radiation in the course of dental practice, or who fits, constructs, and inserts any artificial appliance, plate, or denture for the human teeth or jaws, or who holds himself or herself out as being able or legally authorized to do so.”<sup>37</sup>

The scope of practice limitation on dentists in the Commonwealth could be more clearly stated. While the Dental Practice Act describes what constitutes the practice of dentistry, it does not explicitly exclude any tasks from the scope of a dentist’s practice. Commission staff recommends that the BPOA examine its regulation governing the scope of practice to more clearly articulate what responsibilities fall within the scope of practice for dentists. This should include consideration of whether certain tasks undertaken by dentists during the COVID-19 pandemic should be included in any new scope of practice regulation.

Alternatively, the General Assembly could amend the Dental Practice Act to explicitly include or exclude certain tasks (such as triage, care in hospital and health systems, accepting emergency referrals from hospitals and health systems, collecting throat cultures, and performing nasal swab testing), or explicitly permit such tasks to be undertaken by dentists only in emergency situations.

### **Waiving Limitations on the Scope of Practice of Athletic Trainers**

Athletic trainers are the health care professionals who provide for the “management and provision of care of injuries to a physically active person, with the direction of a licensed physician.”<sup>38</sup> By definition, athletic trainers are limited to the treatment of “physically active persons.” The term “physically active persons” is further defined as “[a]n individual who participates in organized, individual or team sports, athletic games or recreational sports activities.”<sup>39</sup> They may be regulated by either the Board of Medicine or the Board of Osteopathic Medicine. Uniquely, both the Medical Practice Act and the Osteopathic Practice Act permit physicians regulated by each other’s Boards to supervise athletic trainers.<sup>40</sup>

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<sup>36</sup> 49 Pa. Code § 33.208. Although not stated by the Board’s regulation, the “treatment principles” defining the practice of dentistry, according to the American Dental Association, are “the evaluation, diagnosis, prevention, and/or treatment (non-surgical, surgical, or related procedures) of diseases, disorders, and/or conditions of the oral cavity, maxillofacial area, and/or the adjacent and associated structures and their impact on the human body; provided by a dentist, within the scope of his/her education, training, and experience, in accordance with the ethics of the profession and applicable law.” American Dental Association, “Future of Dentistry, Today’s Vision: Tomorrow’s Reality” 2001, p. 79.

<sup>37</sup> 63 P.S. § 121.

<sup>38</sup> 63 P.S. §§ 271.7a and 422.51a; 49 Pa. Code §§ 18.502 and 25.702.

<sup>39</sup> *Id.*; 63 P.S. §§ 271.2 and 422.2 (definitions).

<sup>40</sup> 63 P.S. §§ 422.51a(e) and 271.7a(e).

Typically, the scope of practice of athletic trainers consists of injury prevention, assessment, and treatment and rehabilitation of sports-related injuries, as well as emergency care and the development of injury prevention programs. However, for the duration of the COVID-19 pandemic emergency declaration, the BPOA waived these restrictions on the scope of practice of athletic trainers. Athletic trainers were permitted to provide basic care in hospitals and long-term care facilities and perform tasks lawfully delegated to them by a physician with or without a written referral, prescription, or written protocol approved by a supervising physician. Further, athletic trainers were permitted to provide care to all persons — not just physically active persons participating in sports.<sup>41</sup>

The limitation on the scope of practice for athletic trainers is not one simply imposed by regulation by either the Board of Medicine or the Board of Osteopathic Medicine. Both the Medical Practice Act and the Osteopathic Practice Act limit the scope of athletic trainers to “physically active persons.”<sup>42</sup> Further, their definitions also limit “physically active persons” to those individuals who participate in organized individual or team sports, athletic games, or recreational sports activity.<sup>43</sup>

The way the scope of practice for athletic trainers is limited via the definition of “physical active person” as one who participates in “organized” athletic events can lead to anomalous results. For instance, a recreational runner who injures his knee while jogging through his neighborhood cannot be treated by an athletic trainer. However, the same man could be treated for the same injury by an athletic trainer if his injury occurred during an organized 5k race.

The limitation on the scope of practice for athletic trainers in Pennsylvania is not found in every state. For instance, Maryland allows athletic trainers to treat any individual who “participates in an athletic activity, a job function, or a job-related activity that requires physical strength, range of motion, flexibility, speed, stamina, or agility.”<sup>44</sup> An amateur weightlifter with a muscle tear, a dock worker with a sprain, and an office worker with carpal tunnel may all be treated by an athletic trainer appropriately supervised by a physician in Maryland.

New York, which does not license athletic trainers but instead has a registration requirement, has an even broader scope of practice for these professionals. New York defines the practice of athletic trainers as “the application of principles, methods and procedures for managing athletic injuries, which shall include the preconditioning, conditioning and reconditioning of an individual who has suffered an athletic injury through the use of appropriate preventative and supportive devices, under the supervision of a physician...”<sup>45</sup> As long as the injury is “athletic” in nature, an individual may be seen by an athletic trainer in the state of New York.

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<sup>41</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Expansion of Scope of Practice to Provide Assistance in Responding to COVID-19, Athletic Trainers,” May 6, 2020.

<sup>42</sup> 63 P.S. §§ 271.7a(a) and 422.51a(a).

<sup>43</sup> 63 P.S. §§ 271.2 and 422.2

<sup>44</sup> Md. Code Ann., Health Occ. §14-5D-01(c).

<sup>45</sup> N.Y. Educ. Law § 8352.

To prevent inconsistencies in who may be treated by an athletic trainer and under what circumstances, the General Assembly should consider broadening the definition of “physically active person” to one who engages in any athletic activity so the Commonwealth’s more casual athletes — such as its cyclists, runners, and weightlifters, who train for enjoyment or health rather than for organized competition — can be treated by athletic trainers. The General Assembly may also wish to consider including persons who work jobs requiring physical effort within the definition of “physically active persons,” or define the scope of athletic trainers’ practice to encompass musculoskeletal injuries acquired at work or during recreation. While this issue could be discussed in more depth, it is beyond the scope of this report. However, the BPOA’s waiver on the limitations placed on athletic trainers shed light on this aspect of the allied health care field that deserves closer inspection by the General Assembly.

### **Expansion of Vaccine Administrators**

Unlike the other regulatory waivers issued by the BPOA, the decision regarding who may administer the COVID-19 vaccine is effectively decided at the federal level. The Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19 (PREP Act) was an amendment to the earlier Public Readiness and Emergency Preparedness Act of 2005. Enacted as Public Law 109-148, it amended the Public Health Code by adding section 319F-3, which addresses liability immunity, and section 319F-4, which creates a compensation program.<sup>46</sup> As part of this statutory scheme, the Secretary of the U.S. Department of Health and Human Services (HHS) may designate certain health care professionals as “qualified persons” who may prescribe, administer, or dispense a “covered countermeasure” against a public health threat.

As part of the effort to increase access to COVID-19 vaccines, the BPOA waived restrictions prohibiting certain professionals from administering vaccines.<sup>47</sup> Subsequently, the Biden administration announced the Seventh Amendment to the Declaration Under the PREP Act for Medical Countermeasures Against COVID-19 on March 16, 2021. This federal regulatory change expanded the definition of “qualified persons” who may prescribe, administer, or dispense a “covered countermeasure.”<sup>48</sup> The list of “qualified persons” was expanded to include:

- Midwives
- Paramedics
- Advanced or Intermediate Emergency Medical Technicians
- Students of Advanced or Intermediate Emergency Medical Technicians
- Physician Assistants
- Physician Assistant Students

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<sup>46</sup> 42 U.S.C. §§ 247d-6d and -6e.

<sup>47</sup> Waiving 49 Pa. Code §§ 33.208(a)(1)(i), which ordinarily requires dentists to prescribe, administer, or dispense medication only “in good faith in the course of the dentist’s professional practice.” Objective of the waiver was to expand the professionals to whom physicians could delegate certain tasks, including ostensibly vaccinating people against COVID-19.

<sup>48</sup> Seventh Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID-19, 86 FR 14463 (Mar. 16, 2021) (citing the authority of the PREP Act, codified at 42 U.S.C. § 247d-6d(i)(8)).

- Respiratory Therapists
- Respiratory Therapy Students
- Dentists
- Dental Students
- Podiatrists
- Podiatry Students
- Optometrists
- Optometry Students
- Veterinarian
- Veterinary Students
- Medical Students

Citing the authority of the federal PREP Act, the BPOA permitted the above-listed professionals to administer vaccines in the Commonwealth. By its own text, the PREP Act preempts state and local laws which are “different from, or [] in conflict with, any requirement applicable under” the PREP Act, or “relates to...the prescribing, dispensing, or administration by qualified persons of the covered countermeasure.”<sup>49</sup> With the HHS Secretary’s Seventh Amendment to the Declaration under the PREP Act designating the above-listed professionals and students as qualified persons, and with the COVID-19 vaccine being a “covered countermeasure,” there will be an expanded number of professionals who may administer that vaccine for the foreseeable future irrespective of any action or inaction by the BPOA or its respective Boards.

### **Institutional Licenses for Physicians**

The rules governing institutional licenses are perhaps a more obscure set of regulations waived by the BPOA. These licenses authorize “a qualified person to teach and practice medicine for a period of time specified by the Board, not exceeding 3 years, in one of the medical colleges, its affiliates, or community hospitals within this Commonwealth.”<sup>50</sup> Currently, the regulations permit a qualified physician to teach and practice at no more than two affiliated facilities. If a licensee wishes to practice at two facilities, a document of formal affiliation between the two facilities must be submitted to the Board of Medicine before it will authorize such practice.<sup>51</sup> However, during the Governor’s declared emergency for the COVID-19 pandemic, the limitation on practice to two affiliated facilities was waived by the BPOA.<sup>52</sup>

The limitation on the facilities at which a physician under an institutional license may practice is solely a product of the Board of Medicine’s regulations. There is no such limitation on practice found in the Medical Practice Act. There is no clear reason for this policy limiting such licensees to two facilities or that the facilities be affiliated, although it may have been thought necessary at the time to keep institutional licensees — whose licenses are related to their teaching of medicine — from being distracted by splitting their time practicing among multiple facilities,

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<sup>49</sup> 42 U.S.C § 247d-6d(b)(8).

<sup>50</sup> 49 Pa. Code § 17.3(a).

<sup>51</sup> 49 Pa. Code § 17.3(d).

<sup>52</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Medical Doctors’ Two-Facility Institutional License Limit Suspended During Coronavirus Emergency,” Mar. 20, 2020.

“moonlighting,” or preventing physicians from using institutional licenses as a “backdoor” or alternate route to licensure in the Commonwealth.

In communication with Commission staff, the Hospital and Health System Association of Pennsylvania (HAP) indicated its preference that the waiver be extended indefinitely.<sup>53</sup>

### **Pharmacist Authority to Immunize**

Pennsylvania law requires that the Board of Pharmacy establish regulations regarding education, training, and practice guidelines pursuant to which pharmacists may administer the flu vaccine to individuals aged nine years or older and any other injectable medication, biologic, or immunization to individuals aged 18 years or older.<sup>54</sup> Further, the pharmacist may only do so under “an order or written protocol.”<sup>55</sup>

Although these provisions were waived by the BPOA for the duration of the COVID-19 emergency declaration, the parameters on immunization authority for pharmacists set by the Commonwealth are superseded by the federal PREP Act. The Third Amendment to the Declaration under the PREP Act for Medical Countermeasures Against COVID-19 permits pharmacists “to order and administer...any vaccine that the Advisory Committee on Immunization Practices (ACIP) recommends to persons ages three through 18 according to ACIP’s standard immunization schedule.” Pharmacy interns are permitted to administer, but not order, such vaccines.<sup>56</sup>

The reasons given for expanding the immunization authority of pharmacists and pharmacy interns were myriad. Of paramount concern was that it would be likely that some children would fall behind on the recommended childhood vaccine schedule for reasons such as parent hesitancy to take their child to the pediatrician for a well-child visit and reduced hours and appointment available of pediatricians’ offices. Further, pharmacists offer extended hours, are trusted members of the medical establishment, and have a pre-existing relationship with many of their patients. Thus, to better ensure that children receive their childhood vaccinations it was decided by the Secretary of U.S. Health and Human Services to expand the authority of pharmacists and pharmacy interns to provide any vaccine recommended by ACIP to those aged between three and 18 years.<sup>57</sup>

Because the PREP Act supersedes state law regarding vaccinations, the Commission staff recommends that the BPOA, through the regulatory process, bring the Commonwealth’s regulations governing pharmacists and pharmacy interns into line with the federal PREP Act’s declarations. The Commonwealth’s rules should specifically address which vaccines pharmacists may give, the age groups to whom they may be given, and the authority of a pharmacy intern

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<sup>53</sup> Communication between the Hospital and Health System Association of Pennsylvania and Joint State Government Commission Staff, Jul. 21, 2021.

<sup>54</sup> 63 P.S. § 390-9.2(a).

<sup>55</sup> 49 Pa. Code § 27.404(a).

<sup>56</sup> Third Amendment to the Declaration Amendment to Declaration Under the Public Readiness and Emergency Preparedness Act for Medical Countermeasures Against COVID–19, 85 FR 52136, (Aug. 24, 2020).

<sup>57</sup> Id.

working under the supervision of a licensed pharmacist to administer (but not order) any ACIP-recommended vaccine.

<i>Continuing Education Requirements</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Accountancy	49 Pa. Code § 11.64(2)(iv)	Suspension of limitation on continuing education hours online or via distance learning
All Boards within BPOA	23 Pa. C. S. § 6383(b)(3)(i)	Suspends the requirement that all licensing boards must require their licensees complete three hours of child abuse recognition and reporting training
Dentistry	49 Pa. Code § 33.401(c), (d)	Suspension of limitation on continuing education hours online or via distance learning for <b>Dentists</b> and <b>Dental Hygienists</b>
Landscape Architects	49 Pa. Code § 15.73(c)	Suspends limitation on amount of continuing education hours that can be obtained via distance education
Massage Therapy	49 Pa. Code § 20.32	Suspension of limitation on continuing education hours online or via distance learning
Medicine	49 Pa. Code § 18.3(b)	Suspends the continuing education requirement to maintain <b>Nurse-Midwife</b> license
Medicine	49 Pa. Code §§ 309a(2),(3)	Suspension of limitation on continuing education hours online or via distance learning for <b>Respiratory Therapists</b>
Nursing	49 Pa. Code § 21.131	Suspends the requirement that <b>Registered Nurses</b> shall complete 30 hours of continuing education approved by the Board during the biennial renewal period
Optometry	49 Pa. Code § 23.86(f)	Suspension of limitation on continuing education hours online or via distance learning
Osteopathic Medicine	49 Pa. Code § 25.509a(a)(1)	Suspension of limitation on continuing education hours online or via distance learning for <b>Respiratory Therapists</b>
Podiatry	49 Pa. Code § 29.69(a)	Suspension of limitation on continuing education hours online or via distance learning

<i>Continuing Education Requirements</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Psychology	49 Pa. Code § 41.59(e)	Suspension of limitation on continuing education hours online or via distance learning
Social Workers, Marriage and Family Therapists, and Professional Counselors	49 Pa. Code §§ 47.33(e), 48.33(d), 49.33(d)	Suspension of limitation on continuing education hours online or via distance learning
Veterinary Medicine	49 Pa. Code § 31.15(b)	Suspension of limitation on continuing education hours online or via distance learning

**Expansion of Online or Distance Continuing Education Credits**

Some of the statutes and regulations pertaining to continuing education requirements have limitations on the number of credits that can be earned through online or distance-education methods. These rules were suspended to enable professionals to meet their continuing education requirements while complying with public health measures to lessen the impact of the COVID-19 pandemic.

The policy of eliminating restrictions on online or distance continuing education is popular with organizations representing professionals regulated by licensing boards overseen by the BPOA. The rationale behind limiting distance or online continuing education credits is unclear. It may have been that at the time such regulations were adopted, practitioners were too unfamiliar with the technological platforms available to effectively utilize them, such platforms did not work well, and the practitioners were not comfortable with or otherwise reluctant to use such technology. There may also have been concerns surrounding the quality of continuing education delivered via the Internet and limited course offerings.

Today, Internet-based video conferencing technologies are ubiquitous and were widely used during the pandemic-inspired lockdowns to conduct meetings of all types. Practitioners in many BPOA-regulated professions are now familiar with how they operate and younger practitioners especially, having grown up with the Internet, are comfortable navigating such communication platforms.

It is therefore recommended that the various Boards within the BPOA devise rules either expanding the number of continuing education credits available to practitioners via the Internet or eliminating the prohibition on distance or online-based continuing education credits in instances where they are currently prohibited.

## Mandated Child Abuse Training

The Child Protective Services Code requires that the Department of State require training and educational programs for all professional licensing boards whose licensees are “charged with responsibilities for reporting child abuse” under the Child Protective Services Code.<sup>58</sup> Specifically, the licensing boards must require that applicants for a license or certification issued by each respective board must “submit documentation acceptable to the licensing board of the completion of at least three hours of approved child abuse recognition and reporting training.”<sup>59</sup>

However, this requirement was waived by the BPOA in December of 2020, presumably to expedite the licensure of new entrants into health care fields. It is unclear if this specific waiver was extended by the General Assembly when it passed Act 73 of 2021 extending waivers issued by the BPOA until March 2022. That statute continues rules, regulations, or statutes which are “enforced” by the BPOA.

<i>Delegation of Duties</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine	49 Pa. Code §§ 18.5(a), 18.5(i), 18.6(7), (8), and 18.9(a)-(d)	Suspends requirement that <b>Nurse-Midwives</b> enter into a collaborative agreement with a physician and related rules
Medicine	63 P.S. §§ 422.2, 422.11(a) and 422.11(c)	Suspends requirement that <b>Clinical Clerks</b> be assigned to a hospital where they provide medical service (the Osteopathic Board does not have such a requirement); Suspends the limitation on the services <b>Clinical Clerks</b> are authorized to provide and waives the requirement for “direct and immediate” supervision
Pharmacy	49 Pa. Code § 27.12(b)	Suspends conditions under which <b>Pharmacists</b> may delegate aspects of the practice of pharmacy to <b>Interns</b> or <b>Technicians</b>
Pharmacy	49 Pa. Code §§ 27.12(b)(2) and 27.12(c)(1), (3)	Suspends requirement of “direct” and “personal” supervision of <b>Interns</b> and <b>Technicians</b>
Pharmacy	63 P.S. § 390-9.2(b), 49 Pa. Code § 27.403(b)	Suspends prohibition on <b>Pharmacists</b> delegating authority to administer injectable medications, biologicals, and immunizations

<sup>58</sup> 23 Pa. C.S. § 6383(b).

<sup>59</sup> 23 Pa. C.S. § 6383(b)(3)(i).

## Delegation by Pharmacists and the “Direct and Personal” Supervision Rule

Ordinarily, pharmacists may only delegate aspects of the practice of pharmacy to a pharmacy intern or pharmacy technician under certain conditions. Among those conditions are the pharmacist must review every prescription before its dispensation to the consumer, the pharmacist must ensure that the label of the container of nonproprietary drugs complies with the applicable labelling rules, and that the pharmacist provide “direct, immediate and personal supervision to pharmacy interns and pharmacy technicians.”

However, to allow pharmacy interns and technicians to better assist the response to the COVID-19 pandemic, the requirement for “direct, immediate, and personal” supervision was suspended. Pharmacists were still required to supervise interns and technicians but were permitted to do so via technological means (such as via the Internet). Pharmacists were also required to be available to answer questions and were still fully responsible for the practice and accuracy of the pharmacy intern or technician. Further, the relaxation of the supervision rule did not permit pharmacy technicians and interns to fill prescriptions from a remote location — a pharmacist was still required to be onsite to fill prescriptions during the pandemic.

Also suspended were the rules prohibiting pharmacists from delegating their authority to administer injectable medications, biologicals, and immunizations. While pharmacy interns are usually not permitted to engage in administering injectable medications, biologicals, and immunizations, with the need to relieve the burden on pharmacists and ensure enough personnel were available to administer the COVID-19 vaccines the BPOA permitted pharmacists with authorization to administer injectables to delegate this task to pharmacy interns so long as the pharmacist is providing “direct and immediate” supervision.

One minor change to the “direct and personal” supervision rule has already been made permanent via legislation. Act 140 of 2020 now permits data entry by pharmacy interns and pharmacy technicians “including prescription entry, drug order or patient information, into a patient profile via technological means without the immediate supervision of a board-licensed pharmacist.” In other words, the tasks that can be completed by pharmacy interns and pharmacy technicians without direct supervision by a pharmacist have been expanded. This expansion will allow more time for pharmacists to engage in other aspects of their work, including administering COVID-19 vaccines.<sup>60</sup>

However, the waivers of the rules affecting delegation of authority to administer injectable medications, biologicals, and immunizations and permit direct and personal supervision of pharmacy interns and pharmacy technicians via technological means were not extended by this legislation. Given that these waivers were viewed as a necessary response to a projected increase in sick persons and business interruptions — factors which were no longer present at the time of the expiration of these waivers — it may be best to allow them to remain in the past.

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<sup>60</sup> Act of November 30, 2020 (P.L. 1306, No. 140).

<i>Registering, Renewing, and Reinstating Licenses</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Crane Operators	63 P.S. § 2400.502(b)	Suspends provision relating to biennial renewal of license; extends period to recertify to 90 days after end of COVID-19 disaster declaration
Dentistry	63 P.S. § 122.1, 49 Pa. Code §33.122	Waives fees and requirement to complete biennial education requirements prior to license reactivation
Examiners in Speech-Language Pathology and Audiology	63 P.S. §§ 1705(7), 1708(a), 49 Pa. Code §§ 45.1, 45.14(a) and (d)	Waives fees and requirement to complete continuing education for renewal or reactivation of license for <b>Speech-Language Pathologists</b> ; also waives requirement to verify that professional did not practice while their license was inactive
Funeral Directors	63 P.S. § 479.10(b)(4), 49 Pa. Code § 13.231	Waives fees and requirement to complete continuing education before reactivation of license
Medicine	49 Pa. Code § 16.15(h), (j)	For <b>Nurse-Midwives</b> waives personal interview component and submission of resume, notarized affidavit, and payment for re-registration
Medicine	49 Pa. Code § 16.15	Suspends requirement that licensees biennially renew their license; extends period of time to renew
Medicine	63 P.S. § 422.25	Suspends provision limiting license renewal period to two years
Medicine	63 P.S. § 422.13c(n)(5) 49 Pa. Code § 18.610(a)(1)	Suspends requirement that a <b>Perfusionist</b> must prove compliance with continuing education requirements to reinstate inactive or lapsed license
Medicine	63 P.S. §§ 422.36(d), 422.36a(f)(5) 49 Pa. Code § 18.145(c),	Suspends continuing education requirements for <b>Physician Assistants</b> who seek to renew their licenses
Medicine	49 Pa. Code §§ 16.15(e)-(h)	Waives fee requirements for renewing license, certificate, or registration for <b>Physicians, Physician Assistants, Respiratory Therapists, and Perfusionists</b>

<i>Registering, Renewing, and Reinstating Licenses</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine	49 Pa. Code § 16.31	Waives requirement for “prompt application” for malpractice insurance for <b>Physicians</b>
Medicine	49 Pa. Code § 18.526	Waives fees for reactivation of license for <b>Behavior Specialists</b>
Medicine	49 Pa. Code § 422.10	Suspends requirement that licensees biennially renew their license; extends period of time to renew
Medicine	63 P.S. § 422.36(d)	Suspends requirement that <b>Physicians Assistants</b> biennially renew their license; extends period of time to renew
Nursing	49 Pa. Code §§ 21.5, 21.29(c)(2) and (3)	Suspends regulation relating to fees for renewal of license for <b>Registered Nurses</b> ; Suspends continuing education requirement for renewal of license
Nursing	49 Pa. Code § 21.29	Suspends the requirements relating to the biennial renewal of licenses for <b>Registered Nurses</b> ; extends period of time to renew
Nursing	49 Pa. Code § 21.253	Suspends regulation relating to fees for renewal of license for <b>Certified Registered Nurse Practitioners</b>
Nursing	49 Pa. Code §§ 21.271(a) and (b)	Suspends national certification requirements for <b>Certified Registered Nurse Practitioners</b>
Nursing	49 Pa. Code § 21.332a(a)	Suspends continuing education requirements for <b>Certified Registered Nurse Practitioners</b> to reinstate inactive or lapsed license
Nursing	49 Pa. Code § 21.805	Suspends national certification requirements for <b>Clinical Nurse Specialists</b>
Nursing	49 Pa. Code §§ 21.824 and 21.828(b)	Suspends continuing education requirements for <b>Clinical Nurse Specialists</b> to reinstate inactive or lapsed license
Nursing	63 P.S. § 222(e)	Suspends requirement that a licensee seeking to reinstate an inactive license show proof of compliance with continuing education requirements
Nursing	63 P.S. § 213(a)	Suspends the provision requiring adherence to provisions in 63 P.S. § 211 for inactive nurse to use “RN” or “LPN” in their title

<i>Registering, Renewing, and Reinstating Licenses</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Nursing	63 P.S. § 663.1 49 Pa. Code §§ 21.147 and 21.156	Waives fees for reactivation of license and extends period for biennial license renewal for <b>Licensed Practical Nurses</b>
Nursing	63 P.S. § 221(c), 49 Pa. Code §§ 21.5, 21.724, 21.725	Waives fees and requirement to complete continuing education for reactivation of license for <b>Dietitian-Nutritionists</b>
Nursing	63 P.S. § 221	Suspends provision relating to biennial renewal period for <b>Dietitian-Nutritionists</b> ; extends biennial renewal deadline by 30 days for the 2020 renewal period
Nursing Home Administrators	63 P.S. § 1109(b), 49 Pa. Code §§ 39.11(c)-(e), 39.61, and 39.72	Waives fees and requirement to complete continuing education before reactivation of license
Occupational Therapy	63 P.S. §§ 1515 and 1517, 49 Pa. Code §§ 42.16(g)(1), 42.17, 42.53	Waives fees and requirement to complete continuing education for reactivation of license for <b>Occupational Therapists</b> and <b>Occupational Therapy Assistants</b> ; also waives requirement to verify that professional did not practice while their license was inactive
Osteopathic Medicine	63 P.S. §§ 271.10(d), (f) 49 Pa. Code § 16.19(b)	Suspends requirement that <b>Physicians</b> complete continuing education within two years prior to re-registering
Osteopathic Medicine	63 P.S. § 271.10b(f)(5) 49 Pa. Code § 18.309a(a)(1)	Suspends requirement that a <b>Respiratory Therapist</b> must prove compliance with continuing education requirements to reinstate inactive or lapsed license
Osteopathic Medicine	63 P.S. § 271.13c(n)(5)	Suspends requirement that a <b>Perfusionist</b> must prove compliance with continuing education requirements to reinstate inactive or lapsed license
Osteopathic Medicine	49 Pa. Code §§ 25.163(b) and (c), 25.271(c)	Suspends continuing education requirements for <b>Physician Assistants</b> who seek to renew their licenses
Osteopathic Medicine	49 Pa. Code § 25.231	Suspends regulation relating to fees for renewal of license for <b>Physician Assistants</b>

**Registering, Renewing, and Reinstating Licenses**

<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Osteopathic Medicine	49 Pa. Code §§ 25.509a and 25.509(c)	Suspends regulation relating to fees for renewal of license for <b>Respiratory Therapists</b> ; suspends continuing education requirements for <b>Respiratory Therapists</b> to reinstate inactive or lapsed license
Osteopathic Medicine	49 Pa. Code §§ 25.807, 25.810(a)(1)	Suspends continuing education requirements for <b>Perfusionists</b> to reinstate inactive or lapsed license
Osteopathic Medicine	49 Pa. Code § 25.271	Suspends requirement that licensees biennially renew their license; extends period of time to renew
Podiatry	63 P.S. § 42.9a, 49 Pa. Code §§ 29.13 and 29.61	Waives fees requirement to attend approved educational conferences as a condition of license reactivation
Pharmacy	63 P.S. §§ 390-3(i), (j), 390-3.1	Suspends continuing education requirements for <b>Pharmacists</b> and <b>Assistant Pharmacists</b> who seek to renew their licenses
Pharmacy	49 Pa. Code §§ 27.31(b) and (d), 27.32, 27.91	Suspends regulation relating to fees for renewal of license for <b>Pharmacists</b> ; suspends continuing education requirements for <b>Pharmacists</b> to reinstate inactive or lapsed license
Physical Therapy	63 P.S. §§ 1309(c)(1), 1309.1(j), 49 Pa. Code §§ 40.5, 40.20(c) and (d), 40.191(g)(3)	Waives fees and requirement to complete continuing education for renewal or reactivation of license for <b>Physical Therapists</b> and <b>Physical Therapy Assistants</b> ; also waives requirement to verify that professional did not practice while their license was inactive
Psychology	49 Pa. Code §§ 41.11(d), 41.13, and 41.59	Waives fees and requirement to complete continuing education for reactivation of license for <b>Psychologists</b>
Social Workers, Marriage and Family Therapists, and Professional Counselors	49 Pa. Code §§ 47.4, 47.15(a)(5), 47.15(b)(2), 47.15(b)(3), 47.15(c)(1), And 47.40	Waives fees and requirement to complete continuing education for reactivation of license for all professions regulated by the Board

<i>Registering, Renewing, and Reinstating Licenses</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Social Workers, Marriage and Family Therapists, and Professional Counselors	49 Pa. Code §§ 48.41 and 49.41	Waives requirement to show proof of completed continuing education for reactivation of license for <b>Marriage and Family Therapists</b> and <b>Professional Counselors</b>
Veterinary Medicine	63 P.S. §§ 485.19(a)(1) and (a)(2), 49 Pa. Code §§ 31.13(d), and 31.36(c)	Waives fees and requirement to complete continuing education before reactivation of license

### **License Reactivation Fees and Continuing Education Requirements Waived**

The BPOA suspended the continuing education requirements and reactivation fees for certain licensed health care professionals whose licenses have been expired or inactive for at least three months but less than four years. Licensees subject to this suspension were permitted to practice and hold active status until October 31, 2020. This applied to medical doctors, physician assistants, respiratory therapists, and perfusionists under the jurisdiction of the Board of Medicine and the Board of Osteopathic Medicine.<sup>61</sup> The BPOA was later given authority to do the same for a broader range of professions, and additionally was permitted to waive reactivation prerequisites considered to be administrative in nature.<sup>62</sup>

### **Renewal Deadlines Extended**

The Board of Medicine’s regulations require that all regulated professionals renew their licenses biennially. For existing practitioners regulated by the Board of Medicine, the deadline to renew their licensure was extended by 90 days, from December 31, 2020 to March 31, 2021. According to the Department of State, the waiver of the biennial renewal deadlines affected 82,000 individuals in 17 different healthcare professions.

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<sup>61</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Waives Certain Licensing Requirements to Allow Retired Health Care Professionals to Practice During Coronavirus Emergency,” Mar. 25, 2020.

<sup>62</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Reactivation for Additional Retirees: Temporary Waivers Cover More Professions,” March 30, 2020.

Renewal deadlines were also extended to June 30, 2021 (from December 31, 2020) for out-of-state licensees who were granted emergency temporary licenses.

### **Crane Operators: Certification and its Effect on Licensure**

In ordinary times, a crane operator’s license is only valid if they are also certified to operate a crane by one of the national crane operator certification organizations. Crane operators must renew their certification before their biennial license renewal and provide evidence to the Board that they have done so.<sup>63</sup> To maintain eligibility for licensure a crane operator must be certified and must therefore not allow his or her certification to lapse. However, during the COVID-19 pandemic, crane operators may not have been able to renew their certifications in a timely fashion. Therefore, the BPOA waived the requirement that crane operators recertify and provide proof to the Board during the COVID-19 pandemic emergency declaration and for 30 days thereafter.<sup>64</sup>

<i>Educational, Experiential, and Examination Requirements for Licensure</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Accountancy	49 Pa. Code § 11.16(b)	Waives requirement to pass all portions of CPA exam within 18 months of passing first part of exam
Barber Examiners	49 Pa. Code §§ 3.71(a) and 3.90(e)	Suspends the requirements that every student shall be instructed in accordance with a specific schedule and in specific subjects; goal is to accommodate distance learning
Barber Examiners	49 Pa. Code § 3.71(d)(1)	Suspends the requirements that if a licensed cosmetologist wishes to take the barber examination, the cosmetologist shall have successfully completed specific subjects; goal is to accommodate distance learning
Barber Examiners	49 Pa. Code § 3.45	Waives requirement to take failed portion of exam within one year
Barber Examiners	63 P.S. §§ 553(a) and (d)	Suspends provisions that require the necessary education for <b>Barbers</b> and <b>Barber-Teachers</b> to be completed in a licensed barber school; now permits up to 50 percent of coursework to be completed via distance education

<sup>63</sup> 63 P.S. § 2400.502(b).

<sup>64</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Gives Licensed Crane Operators More Time to Recertify Due to COVID-19 Emergency,” Apr. 23, 2020.

<i>Educational, Experiential, and Examination Requirements for Licensure</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Certified Real Estate Appraisers	49 Pa. Code § 36.2(c)(1)	Waives provision requiring passage of the certification examination within one year; now allows appraiser applicants to take test within 24 months after submitting application
Cosmetology	49 Pa. Code § 7.32d(d)	Waives requirement to complete all training hours within 4 years
Cosmetology	49 Pa. Code § 7.113b(a)	Suspends the provision governing school location change
Cosmetology	49 Pa. Code § 7.116	Suspends the provision mandating that a school have a minimum area of 2,750 square feet and other physical space requirements
Cosmetology	49 Pa. Code § 7.136	Suspends 25 hours per week minimum work requirement for apprenticeship training
Cosmetology	49 Pa. Code § 7.129	Waives the provision limiting distance education; increases allowable distance education content for students to 50 percent of curriculum
Cosmetology	49 Pa. Code § 7.118a	Suspends the requirement that teachers and students be “attired in washable uniforms during school hours” and that teachers’ uniforms differ from those of students
Cosmetology	63 P.S. § 512(b.1)(1), 49 Pa. Code § 7.122	Suspends provisions limiting the length of training programs and limiting the maximum number of hours per day and week training can take place
Dentistry	49 Pa. Code §§ 33.103(a), (b)	Suspends the live-patient aspect of the dental hygiene clinical examination for <b>Dentists</b> and <b>Dental Hygienists</b>
Examiners in Speech-Language Pathology and Audiology	49 Pa. Code §§ 45.2 and 45.20(g)(2)(i)	Suspends direct supervision requirement for applicants for licensure as <b>Speech-Language Pathologists</b>
Funeral Directors	49 Pa. Code § 13.40	Suspends provision requiring a resident intern to start training period anew if the training period is interrupted for 30 days or more; allows resident interns up to a 120 day interruption in their training period

<i>Educational, Experiential, and Examination Requirements for Licensure</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Massage Therapy	49 Pa. Code § 20.11(a)	Suspends requirement that all hours of education be “in-class,” permitting limited amount of hours to be acquired via distance learning
Medicine	49 Pa. Code § 18.524(c)	Suspends requirement that <b>Behavior Specialists</b> receive 1,000 hours of in-person clinical experience; allows teletherapy hours instead
Medicine	49 Pa. Code §§ 17.5(d), (e)	Waives requirement for passage of USMLE <sup>65</sup> to advance in residency for <b>Physicians</b> ; program directors given authority to advance residents in their training
Nursing	49 Pa. Code §§ 21.273(b) and 21.273(c)(2)	Suspends requirement to provide documentation to the Board for initial certification and certification by endorsement
Nursing	49 Pa. Code § 21.17(5)	Waives requirement of Board approval to continue practicing if the <b>Nurse Anesthetist</b> applicant does not take and pass first available examination
Nursing Home Administrators	49 Pa. Code § 39.5(b)(3)(iii)(C)	Extends time to complete training requirement from 2 to 3 years
Physical Therapy	49 Pa. Code §§ 40.15(b) and 40.164(a)(2)	Waives provision requiring a <b>Physical Therapy</b> or <b>Physical Therapy Assistant</b> student to have graduated in order to sit for the licensure examination; waiver permits student to take exam beginning 180 days prior to graduation
Psychology	49 Pa. Code § 41.33(a)(5)	Suspends requirement that psychology interns meet face-to-face with their supervising psychologist, permitting such meetings to be held electronically
Psychology	49 Pa. Code §§ 41.32 and 41.33	Allows services provided via telemedicine to count toward clinical hours needed for licensure as a <b>Psychologist</b>
Real Estate Commission	49 Pa. Code § 35.201	Suspends the definition of “distance education”; now permits approved real estate education providers to live-stream their courses

<sup>65</sup> United States Medical Licensing Exam

<i>Educational, Experiential, and Examination Requirements for Licensure</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Social Workers, Marriage and Family Therapists, and Professional Counselors	49 Pa. Code §§ 47.12c(b)(5), 48.13(b)(5), 49.13(b)(5)	Permits required meetings between interns and supervisors to take place via electronic means
Social Workers, Marriage and Family Therapists, and Professional Counselors	49 Pa. Code §§ 47.12c(b) and 47.12d; 49 Pa. Code §§ 48.13(b) and 48.14 49 Pa. Code §§ 49.13(b) and 49.14	Waives any in-person requirement for needed clinical hours; allows services provided via telemedicine to count toward clinical hours needed for licensure as a <b>Licensed Clinical Social Worker; Marriage and Family Therapist; or Professional Counselor</b>

**Cosmetology Curriculum and Other Rules**

The regulation governing cosmetology curriculum does not specify that the required hours are to be attained in-person. However, for the sake of clarity and in the interest of enabling cosmetology students to continue their education during the COVID-19 pandemic, the allowable percentage of distance education hours as part of a cosmetology curriculum was set at 50 percent. This is an increase from previous guidance issued in March 2020 which permitted 20 percent of cosmetology curriculum hours to be completed via distance education.

Several other waivers were granted by the BPOA to accommodate cosmetology students during the COVID-19 pandemic. These include waivers of rules requiring specific attire for students and teachers, rules requiring a minimum area of 2,750 square feet of classroom space, other physical space requirements, and school location changes. Additionally, rules governing the time frame for completing education were waived. These rules included attaining a minimum of 25 hours per week of apprenticeship training, requiring that all requirements be completed in four years, and limiting the length of training programs and limiting the maximum number of hours per day and per week training can take place.

**Timeline for Examination Extended**

For accountants, barber examiners, certified real estate appraisers, and physical therapists, restrictions on the time frame in which students studying these professions could take the licensing exam were waived. For instance, accountants taking the CPA exam are ordinarily required to pass all parts of the exam within 18 months starting from the date the candidate passes the first part of

the exam; however, due to the constraints on testing imposed by the COVID-19 pandemic this rule was waived for the duration of the COVID-19 emergency declaration and for 180 days thereafter.<sup>66</sup> For physical therapists, the licensing exam was opened to students who have not yet graduated but are scheduled to do so within 180 days, meaning that students could take their licensure examination prior to graduation.

### **Telemedicine for Psychologists and Others for Supervision and Clinical Hours**

For the professions regulated by the Board of Social Workers, Marriage and Family Therapists, and Professional Counselors, in-person or face-to-face requirements were waived for clinical hours needed to obtain a license. Meeting with supervisors could take place via the Internet for candidates for licensure, and services provided via telemedicine could count toward their clinical hour requirements. A similar requirement was waived for psychologists, allowing candidates for licensure to count hours of therapy provided via telemedicine towards clinical hours.

### **Telemedicine Generally**

It should be noted that Pennsylvania has no statute either authorizing or prohibiting the provision of health services via telemedicine, and none of the Boards governed by the BPOA have regulations either authorizing or prohibiting telemedicine. During the COVID-19 pandemic, the BPOA issued guidance specifically allowing any licensed health care provider to provide services to patients via telemedicine. The Commission has in past reports supported the use of telemedicine and has recommended that the General Assembly pass legislation requiring payment parity by health insurers for telemedicine services if it is equivalent to the in-person service.<sup>67</sup>

To provide more clarity to practitioners, it is recommended that the General Assembly pass legislation requiring the medical licensing Boards within the jurisdiction of the BPOA promulgate regulations allowing for the use of telemedicine by the professions which they regulate.

<i>Practice by Out-of-State Licensed Professionals</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine; Osteopathic Medicine; Nursing	35 P.S. § 872.9a	Suspends requirement that individuals applying for an initial license receive 2 hours of pain management or identification of addiction continuing education within 12 months

<sup>66</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Changes Certain Requirements for Barbers, Cosmetologists, Accountants and Nursing Home Administrators During COVID-19 Emergency,” Apr. 6, 2020.

<sup>67</sup> See Joint State Government Commission, “Pennsylvania Health Care Workforce Needs,” p. 109, Apr. 2019.

<i>Practice by Out-of-State Licensed Professionals</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Medicine	63 P.S. § 422.33	Suspends the requirement that limits out-of-state physician to participating in the treatment of a specific patient
Medicine	63 P.S. § 422.2	Suspends definitions to enable COVID-19 vaccines to be administered by practitioners licensed out-of-state
Medicine	63 P.S. §422.12	Suspends requirement to comply with Board rules to practice without a license in order to enable COVID-19 vaccines to be administered by <b>Midwives</b> licensed out-of-state
Nursing	49 Pa. Code §§ 21.7(b)(5)-(7)	Waives requirements to renew temporary practice license for out-of-state <b>Registered Nurses</b>
Nursing	49 Pa. Code §§ 21.149(b)(5)-(7)	Waives requirements to renew temporary practice license for out-of-state <b>Licensed Practical Nurses</b>
Nursing	63 P.S. §§ 216.2(c)(1) and 218.5(a), 49 Pa. Code § 21.812(a)	Waives educational equivalency requirement for <b>Clinical Nurse Specialists</b> licensed in another state
Nursing	63 P.S. § 656, 49 Pa. Code § 21.149(b)(2)	Suspends English proficiency requirement to obtain temporary practice permit for out-of-state <b>Licensed Practical Nurses and Registered Nurses</b>
Nursing	63 P.S. § 655, 49 Pa. Code §21.158	Suspends requirement for having obtained 1500 clinical practice hours in 12 months for licensure as a <b>Licensed Practical Nurse</b> for applicants licensed in another state
Nursing	49 Pa. Code § 21.7(b)(2)	Waives requirements for issuance of temporary practice permit for <b>Registered Nurses</b> licensed in other states
Nursing	49 Pa. Code §§ 21.155(b) and (d)	Waives requirement for licensure by endorsement for <b>Licensed Practical Nurses</b> educated outside the U.S.
Osteopathic Medicine	63 P.S. § 271.4(3); 49 Pa. Code §§ 25.231 and 25.246	Waives requirements for the Board to issue a short-term “camp” license to out-of-state or Canadian osteopathic physicians
Osteopathic Medicine	63 P.S. §§ 271.2 and 271.3	Suspends the provision that prohibits the practice of medicine by <b>Osteopathic Physicians</b> and <b>Physician Assistants</b> unless licensed in the Commonwealth; reason for suspension is to expand pool of medical personnel to provide COVID-19 vaccines

<i>Practice by Out-of-State Licensed Professionals</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Osteopathic Medicine	49 Pa. Code § 25.242	Suspends provision requiring that an out-of-state applicant for licensure by endorsement take and pass the examination in osteopathic manipulation
Pharmacy	63 P.S. §§ 390-4.1(d) and 390-8(2)	Suspends laws prohibiting out-of-state pharmacist from delivering legend devices or drugs and practicing pharmacy without a Pennsylvania license

### **Nonresident Pharmacies and Practice by Out-of-State Pharmacists**

Non-resident pharmacists were not permitted, prior to the COVID-19 pandemic, to “engage in the business of shipping, mailing or delivering legend devices or legend drugs in this Commonwealth unless the nonresident pharmacy has been issued as certificate of registration by the board and has paid the fee established...”<sup>68</sup> During the pandemic, this statutory requirement was waived, permitting out-of-state pharmacies to ship medications to Pennsylvanians even if they had not previously been issued the aforementioned certificate of registration. However, the nonresident pharmacies must still meet certain prerequisites as provided for in the statute, such as having a business relationship with a Pennsylvania pharmacy, being licensed in good standing in their home state, and having access to common patient files.<sup>69</sup>

### **Camp Licenses for Osteopathic Physicians**

Pennsylvania law governing practice by osteopathic physicians has a provision allowing “short-term camp licenses.” These licenses are valid for a period not to exceed three months and limit the physician to practicing at “camps.” To be granted a camp license, an osteopathic physician must be licensed in another state or Canada.<sup>70</sup>

To better accommodate out-of-state licensed physicians who came to the Commonwealth to assist with efforts to provide medical care to residents during the COVID-19 pandemic, several aspects of the rules surrounding camp licenses were waived. The three-month limitation on the duration of the camp license was waived, and the camp licenses were valid through October 31, 2020. The rule restricting practice to “camps” was waived, permitting physicians possessing a

<sup>68</sup> 63 P.S. § 390-4.1(d).

<sup>69</sup> Pennsylvania Suspends Certain Licensing and Regulatory Requirements for Pharmacies and Pharmacists, *supra* n. 25.

<sup>70</sup> 63 P.S. §271.4(3); 49 Pa. Code § 25.246. What constitutes a “camp” under these provisions is left undefined in both the Osteopathic Practice Act and its attendant regulations.

camp license to practice in any facility or wherever osteopathic physicians are needed in the Commonwealth.<sup>71</sup>

Further, after it is determined that the out-of-state or Canadian licensed osteopathic physician is licensed and in good standing, the BPOA will waive other requirements such as the requirement for letter of good standing, criminal history record checks, National Practitioner Data Bank reports, and the provision of the statute which requires that physicians possessing a camp license be deemed “health care providers” who conduct 50 percent or less of their health care business or practice within the Commonwealth. Also waived are the malpractice insurance requirements.<sup>72</sup>

### **Licensure by Endorsement for Osteopathic Physicians**

The Board of Osteopathic Physicians does not have a mechanism to grant temporary licensure to out-of-state osteopathic physicians. Aside from camp licenses, the only other pathway for an osteopathic physician licensed in another state to obtain licensure in the Commonwealth is to attain licensure by endorsement. One requirement to obtain a licensure by endorsement is to have received “a passing score on the practical examination in osteopathic diagnosis and manipulative therapy developed and administered by the Board.”<sup>73</sup>

However, according to the BPOA, this requirement only applies to an osteopathic physician licensed in another state prior to 2005. The reason for this is that prior to 2005 osteopathic physicians were not required to take and pass a hands-on practical examination to obtain licensure, as the COMLEX-USA Level 2 PE was not offered at that time. Thus, only osteopathic physicians licensed out-of-state prior to that time were required by the Board’s regulation to take and pass the practical examination in osteopathic diagnosis and manipulative therapy. This rule was waived for the duration of the COVID-19 pandemic emergency declaration, but any license issued while the waiver is in effect is valid until October 31, 2022.<sup>74</sup>

### **Board of Medicine’s Specific Patient Requirement**

The Board of Medicine may issue temporary licenses to physicians who possess an unrestricted license in another state and who plan to teach medicine and surgery or participate in a medical procedure necessary for the well-being of a specified patient within this Commonwealth,” or “practice medicine and surgery at a camp or resort for no more than three months.” Additionally, the Board of Medicine is empowered to impose “any appropriate limitation in scope, duration or site of practice on the temporary license.”<sup>75</sup> Thus, the statute and its attendant

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<sup>71</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Provides Short Term Licensure for Osteopathic Physicians and Surgeons Licensed in Other States During Coronavirus Emergency,” Mar. 30, 2020.

<sup>72</sup> *Id.*

<sup>73</sup> 49 Pa. Code § 25.242(4).

<sup>74</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Pennsylvania Temporarily Waives Practical Examination Requirement for Out-of-State Osteopathic Physicians,” Mar. 15, 2021.

<sup>75</sup> 63 P.S. § 422.33.

regulation governing the issuance of temporary licenses impose restrictions on the practice of medicine by temporary licensees.

To better facilitate out-of-state physicians’ ability to assist the Commonwealth with treating patients during the COVID-19 pandemic, the part of the law that limits a temporarily licensed physician to treat a “specified patient” was waived. Thus, an out-of-state physician granted a temporary license by the Board of Medicine can see any patient in need of treatment.<sup>76</sup>

While it may be prudent to keep the restrictions on “temporary licenses” as delineated in this statute, reducing barriers to practice for out-of-state physicians (whether they are regulated by the Board of Medicine or the Board of Osteopathic Medicine) is worthy of consideration. In fact, the General Assembly had enacted into law an authorization for the Governor to “execute a compact...with any one or more of the states of the United States” to create a new class of expedited medical licenses for licensing out-of-state physicians.<sup>77</sup> The law was intended to permit Pennsylvania to join the Interstate Medical Licensure Compact (IMLC). However, to date, no action has been taken by the Governor, the Department of State, the Board of Medicine, or the Board of Osteopathic Medicine in moving toward reciprocal recognition of out-of-state medical licenses of physicians or joining the IMLC.

Commission staff has in the past recommended interstate licensure compacts as one way to reduce barriers to providing medical care to Pennsylvanians.<sup>78</sup> This recommendation is repeated here. Rather than maintain the waivers provided by the BPOA to the requirements of temporary and “camp” licenses, the Department of State should be more proactive in implementing Act 112 of 2016 and finally bring Pennsylvania into the IMLC as the General Assembly intended. This way, physicians, their employers, and patients will not have to rely on a temporary licensing scheme designed for a limited medical practice.

<i>Miscellaneous Regulations</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Accountancy	63 P.S. § 9.2c(c)	Suspending physical presence requirement for board meetings
Certified Real Estate Appraisers	63 P.S. § 457.4(i)	<i>same</i>
Chiropractic	63 P.S. § 625.301(c)	<i>same</i>

<sup>76</sup> Pennsylvania Department of State, Bureau of Professional and Occupational Affairs, “Issuance of Temporary Licenses to Health Care Practitioners Not Licensed in Pennsylvania to be Expedited During Coronavirus Emergency,” Mar. 18, 2020.

<sup>77</sup> Act of Oct. 26, 2016 (P.L. 891, No. 112).

<sup>78</sup> Joint State Government Commission, “Behavioral Health Care System Capacity in Pennsylvania and its Impact on Hospital Emergency Departments and Patient Health,” p. 18, Jun. 2020, <http://jsg.legis.state.pa.us/resources/documents/ftp/publications/2020-07-30%20ER-BH%20REPORT%20%20web%207.30.20.pdf>.

<i>Miscellaneous Regulations</i>		
<b>Professional Board</b>	<b>Statute or Regulation</b>	<b>Description of Rule Waived</b>
Crane Operators	63 P.S. § 2400.301(g)	Suspending physical presence requirement for board meetings
Dentistry	63 P.S. § 121.1(c)	<i>same</i>
Examiners of Nursing Home Administrators	63 P.S. § 1103.1(g)	<i>same</i>
Massage Therapy	63 P.S. § 627.3(i)	<i>same</i>
Medicine	63 P.S. § 422.3(c)	<i>same</i>
Nursing	63 P.S. § 212.1(c)	<i>same</i>
Optometry	63 P.S. § 244.2a(c)	<i>same</i>
Podiatry	63 P.S. § 42.2a(c)	<i>same</i>
Pharmacy	63 P.S. § 390-6(c)	<i>same</i>
Physical Therapy	63 P.S. § 1302.1(d)	<i>same</i>
Professional Engineers, Land Surveyors, and Geologists	63 P.S. § 151.1(c)	<i>same</i>
Psychology	63 P.S. § 1203.1(c)	<i>same</i>
Social Workers, Marriage and Family Therapists, and Professional Counselors	63 P.S. § 1905(i)	<i>same</i>
Veterinary Medicine	63 P.S. § 485.4(c)	<i>same</i>
Nursing	49 Pa. Code § 21.112	Suspends provisions governing student employment; objective is to increase the number of health care professionals available to administer COVID-19 vaccines
Nursing	49 Pa. Code § 21.222(d)	Suspends provision requiring written policies for the type of employment and the conditions of employment for students studying to become <b>Licensed Practical Nurses</b>
Pharmacy	49 Pa. Code § 27.11(f)	Suspends rule requiring pharmacies closed for more than 30 days to return its permit and cease business
Physical Therapy	63 P.S. § 1302	Suspends requirement in definition of “direct on-premises supervision” to include in person supervision

## **Physical Presence Requirement for Board Meetings**

Of the 29 Boards overseen by the BPOA, 17 have statutory provisions prohibiting board members from being counted as part of a quorum or vote at a board meeting if they are physically present. This means that board meetings must occur in person. During the COVID-19 pandemic, in-person board meetings ceased. To facilitate the work of these 17 boards the BPOA suspended the physical presence requirement, thereby permitting them to conduct meetings by conference call or the Internet.

## PROPOSED LEGISLATION

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The following is a list of legislation introduced in the Pennsylvania General Assembly during the 2021-2022 legislative session related to professional licensing. This list was generated by Commission staff based on a review of bills referred to the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee as of October 2021. Bills which are summarized below were considered relevant to the statutes and regulations studied pursuant to House Resolution 88 and which could have an impact on the practice and employment of licensed professionals within the Commonwealth.

### Professional Practice

#### Behavioral Analyst

**House Bill 19, Printer's No. 864**, would create a professional licensure for Behavior Analysts. Currently, providers cannot work with insurance to care for individuals in the same manner they are able to do in the 30 other states that have licensure laws.<sup>79</sup>

Status: Referred to Professional Licensure, March 11, 2021.

#### Advisory Opinions to Licensees

**House Bill 325, Printer's No. 299**, would permit licensed professionals to receive advice from licensing boards concerning the meaning or interpretation of an act or regulation pertaining to the licensee. Title 63 outlines the powers and duties of licensing boards and commissions within the Bureau of Professional and Occupational Affairs. However, it does not contain specific language giving the boards and commissions authority to provide advisory opinions to licensees.<sup>80</sup>

Status: Referred to Consumer Protection and Professional Licensure, March 25, 2021.

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<sup>79</sup> House Bill 19, Printer's No. 864, introduced and referred to Professional Licensure, March 11, 2021.

<sup>80</sup> House Bill 325, Printer's No. 299 received third consideration and final passage in the House and was referred to the Senate Consumer Protection and Professional Licensure Committee, March 25, 2021.

## Social Workers

**House Bill 786, Printer's No. 774**, would require the State Board of Social Workers, Marriage and Family Therapists, and Professional Counselors to create a Licensed Art Therapist certification that ensures that individuals providing art therapy have the necessary training. Currently, individuals can practice art therapy in Pennsylvania without obtaining state certification ensuring their proficiency.<sup>81</sup>

Status: Referred to Professional Licensure, March 8, 2021.

## Electricians

**House Bill 1110, Printer's No. 1149**, would establish a statewide licensing requirement for electrical contractors, electricians, and apprentice electricians. Some municipalities license electricians, but Pennsylvania remains one of a handful of states that does not require state-wide licensing. This would also allow for reciprocity with other states.<sup>82</sup>

Status: Referred to Professional Licensure, April 6, 2021.

## Acupuncture

**House Bill 1186, Printer's No. 1242**, would require a license for acupuncture, thereby promoting consumer confidence that any acupuncturist advertising in Pennsylvania has been adequately trained to practice. Additionally, it would set a minimum number of continuing education hours for license renewal, bringing the regulation of acupuncturists in Pennsylvania in line with the requirements in other states.<sup>83</sup>

Status: Referred to Professional Licensure, April 15, 2021.

## Teledentistry

**House Bill 1729, Printer's No. 1959**, would establish teledentistry in the Commonwealth and would require insurance plans to cover this service through negotiated rates by the insurer and the provider. Through virtual connections, a dentist can assess a patient and determine if they require in-person care. This may be done by a dentist assessing a patient's immediate issue to determine whether the patient needs emergency care, a prescription for antibiotics, or an at-home remedy. This could occur by a dental hygienist taking x-rays at an off-site location, such as a school or nursing home, sending the clinical information to the dentist through a secure connection, with the dentist responding with a treatment plan. Dentists can also use virtual technology to conveniently educate patients on proper care technique, as well as monitor a patient's treatment.<sup>84</sup>

Status: Referred to Professional Licensure, July 20, 2021.

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<sup>81</sup> House Bill 786, Printer's No. 774, introduced and referred to Professional Licensure, March 8, 2021.

<sup>82</sup> House Bill 1110, Printer's No. 1149, introduced and referred to Professional Licensure, April 6, 2021.

<sup>83</sup> House Bill 1186, Printer's No. 1242, introduced and referred to Professional Licensure, April 15, 2021.

<sup>84</sup> House Bill 1729, Printer's No. 1959, introduced and referred to Professional Licensure, July 20, 2021.

## Nursing

**Senate Bill 25, Printer's No. 219**, would amend the Professional Nursing Law for Advanced Practice Registered Nurses (APRNs). Under the bill, the State Board of Nursing is to establish an Advanced Practice Registered Nurse-Certified Nurse Practitioner (APRN-CNP) license in areas of expertise consistent with training and focus. This would replace the current state certification requirement. Additionally, after meeting a three-year, 3,600-hour physician collaboration requirement APRN-CNPs would not be subject to the requirement for a formal collaborative agreement as is currently required for both practice and prescription authority.<sup>85</sup>

Status: Laid on the table pursuant to Senate Rule 9, September 29, 2021.

## Hair Braiding

**Senate Bill 60, Printer's No. 37**, would eliminate the requirement to possess a license for natural hair braiders in Pennsylvania. The bill would eliminate the license entirely, removing current rule requiring that natural hair braiders complete 300 hours of instruction at a cosmetology school prior to examination and licensing.<sup>86</sup>

Status: Referred to Consumer Protection and Professional Licensure, January 20, 2021.

## Physical Therapy

**Senate Bill 485, Printer's No. 514**, would amend the Pennsylvania Physical Therapy Act to explicitly include the performance of dry needling therapy in the scope of practice for physical therapists in the Commonwealth of Pennsylvania. This would clarify that the definition of "physical therapy" includes dry needling, a practice similar to acupuncture and which is already common among many physical therapists throughout the United States. Though dry needling is not expressly prohibited in Pennsylvania, most physical therapists do not practice this treatment technique due to the ambiguity in the licensing statute as well as insurance-related concerns.<sup>87</sup>

Status: Referred to Consumer Protection and Professional Licensure, April 8, 2021.

## Plumbing

**Senate Bill 800, Printer's No. 997**, would require plumber and plumbing contractor licensing. Under this bill, the consumer would have the ability to easily review a website to ensure the individuals they are looking to contract with are trained, licensed, and possess the skills to provide the services they are advertising. Also, contractors from other states

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<sup>85</sup> Senate Bill 25, Printer's No. 219, laid on the table pursuant to Senate Rule 9, September 29, 2021.

<sup>86</sup> Senate Bill 60, Printer's No. 37, introduced and referred to Consumer Protection and Professional Licensure, Jan. 20, 2021.

<sup>87</sup> Senate Bill 485, Printer's No. 514, introduced and referred to Consumer Protection and Professional Licensure, April 8, 2021.

can currently enter Pennsylvania to perform plumbing services and plumbing projects because there is no statewide system of licensing plumbers and plumbing contractors in the Commonwealth.<sup>88</sup>

Status: Referred to Consumer Protection and Professional Licensure, July 20, 2021.

## Scope of Practice

### Certified Registered Nurse Anesthetist

**House Bill 931, Printer's No. 1714**, would recognize Certified Registered Nurse Anesthetists (CRNAs) under Pennsylvania statute. Currently, there is no definition for CRNAs under the state's Professional Nursing Law and nurse anesthetists are recognized only as Registered Nurses.<sup>89</sup>

Status: Referred to Consumer Protection and Professional Licensure, June 16, 2021.

### Genetic Counselors

**House Bill 1233, Printer's No. 1298**, would amend the Osteopathic Medical Practice Act to allow genetic counselors to order genetic testing. Pennsylvania is currently the only state with genetic counselor licensure to explicitly disallow their ability to order genetic testing.<sup>90</sup>

Status: Referred to Professional Licensure, April 20, 2021.

**House Bill 1236, Printer's No. 1300**, would amend the Medical Practice Act to allow genetic counselors to order genetic testing. Pennsylvania is currently the only state with genetic counselor licensure to explicitly disallow their ability to order genetic testing.<sup>91</sup>

Status: Referred to Professional Licensure, April 20, 2021.

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<sup>88</sup> Senate Bill 800, Printer's No. 997, introduced and referred to Consumer Protection and Professional Licensure, July 20, 2021.

<sup>89</sup> House Bill 931, Printer's No. 1714, received third consideration and final passage in the House and was referred to the Senate Consumer Protection and Professional Licensure Committee, June 16, 2021.

<sup>90</sup> House Bill 1233, Printer's No. 1298, introduced and referred to Professional Licensure, April 20, 2021.

<sup>91</sup> House Bill 1236, Printer's No. 1300, introduced and referred to Professional Licensure, April 20, 2021.

## Estheticians

**House Bill 1249, Printer's No. 1318**, would amend the Cosmetology Law of 1933 to permit licensed estheticians in Pennsylvania to perform microdermabrasion and microneedling in salons. Microdermabrasion is a procedure that exfoliates and removes the superficial layer of dry, dead skin cells. Microneedling, also known as percutaneous collagen induction, involves superficial controlled puncturing of the skin at a set depth with fine needles that create channels in the skin.<sup>92</sup>

Status: Referred to Professional Licensure, April 20, 2021.

## Medical Imaging

**House Bill 1440, Printer's No. 1555**, would create new licensing provisions under the purview of the Board of Medicine to create specialty areas within the field of medical imaging. These new licensing provisions would include fluoroscopy, radiography, nuclear medicine, diagnostic sonography (ultrasound), magnetic resonance imaging (MRI), computed tomography (CT), radiation therapy, and radiologist assistant. The Board would establish the scope of practice, set requirements for licensure and renewal of licenses, determine proper training, and develop standards to improve medical imaging and radiation therapy procedures.<sup>93</sup>

Status: Referred to Professional Licensure, May 17, 2021.

## Pharmacists

**House Bill 1535, Printer's No. 1666**, would make Pennsylvania's Pharmacy Practice Act consistent with federal guidance as well as current practice in the Commonwealth for access and coverage of childhood and COVID-19 vaccines. It would allow pharmacists, pharmacy interns, and pharmacy technicians to continue administering any immunization to a child aged three and older with parental consent. It would also establish training and education prerequisites approved by the State Board of Pharmacy and the Accreditation Council for Pharmacy Education to be completed by the pharmacy technicians, interns, and pharmacists who administer these vaccines. Additionally, this bill would require pharmacists to report the administration of these vaccines to the Department of Health's immunization registry and to the patient's primary care physician.<sup>94</sup>

Status: Referred to Professional Licensure, June 3, 2021.

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<sup>92</sup> House Bill 1249, Printer's No. 1318, introduced and referred to Professional Licensure, April 20, 2021.

<sup>93</sup> House Bill 1440, Printer's No. 1555, introduced and referred to Professional Licensure, May 17, 2021.

<sup>94</sup> House Bill 1535, Printer's No. 1666, introduced and referred to Professional Licensure, June 3, 2021.

## Institutional Licenses for Physicians

**House Bill 1862, Printer's No. 2108**, would allow physicians with an institutional license in a teaching hospital to serve patients at more than just two facilities within the health system in which they are employed.<sup>95</sup> This would preserve a waiver during the pandemic which has allowed health systems with teaching facilities to deploy physicians throughout the health system, rather than at only two of its facilities, at a time when clinician shortages exist in every hospital in the nation.<sup>96</sup>

Status: Referred to Professional Licensure, September 14, 2021.

## Opioids

**Senate Bill 169, Printer's No. 210**, would limit the prescription for a controlled substance containing an opioid to seven days unless there is a medical emergency that puts the patient's health or safety at risk. The legislation would also require all prescribers who are licensed, registered, or otherwise lawfully authorized to distribute, dispense, or administer a controlled substance containing an opioid to discuss the risks of addiction and dangers of overdose associated with the medication.<sup>97</sup>

Status: Referred to Consumer Protection and Professional Licensure, February 18, 2021.

## COVID-19 Vaccines

**Senate Bill 511, Printer's No. 584**, would make Pennsylvania's Pharmacy Practice Act consistent with federal guidance as well as current practice in the Commonwealth for access and coverage of childhood and COVID-19 vaccines. It would allow pharmacists, pharmacy interns, and pharmacy technicians to continue administering any immunization to a child aged three and older with parental consent. It would also establish training and education prerequisites approved by the State Board of Pharmacy and the Accreditation Council for Pharmacy Education to be completed by the pharmacy technicians, interns, and pharmacists who administer these vaccines. Additionally, this bill would require pharmacists to report the administration of these vaccines to the Department of Health's immunization registry and to the patient's primary care physician.<sup>98</sup>

Status: Referred to Consumer Protection and Professional Licensure, April 13, 2021.

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<sup>95</sup> House Bill 1862, Printer's No. 2108, introduced and referred to Professional Licensure, Sept. 14, 2021.

<sup>96</sup> Rep. Keith Gillespie, "Institutional License waiver," HB 1862 Memorandum, <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=36142>.

<sup>97</sup> Senate Bill 169, Printer's No. 210, introduced and referred to Consumer Protection and Professional Licensure, Feb. 18, 2021.

<sup>98</sup> Senate Bill 511, Printer's No. 584, introduced and referred to Consumer Protection and Professional Licensure, April 13, 2021.

## **Continuing Education Requirements**

### Cosmetology Domestic Violence Training

**House Bill 1132, Printer's No. 1180**, would require cosmetologists, nail technicians, estheticians, and natural hair braiders to complete a one-hour training in domestic violence and sexual assault awareness as approved by the State Board of Cosmetology as part of the licensing and renewal process.<sup>99</sup>

Status: Referred to Professional Licensure, April 7, 2021.

### Real Estate Remote Instruction

**House Bill 1849, Printer's No. 2092**, would amend the Real Estate Licensing and Registration Act (RELRA) to ensure that real estate schools that have been approved to provide a course via traditional in-person instruction may also livestream that course to remotely located students.<sup>100</sup> This legislation is the result of a review of regulatory provisions which were waived in response to COVID-19 and is also included in a proposed regulatory revision. "The State Real Estate Commission agrees that instruction provided in an instructor-led synchronous format (livestreamed) is the equivalent, and should be regulated in the same manner, as live in-person instruction."<sup>101</sup>

Status: Re-referred to Appropriations, October 18, 2021.

### Lyme Disease

**Senate Bill 281, Printer's No. 262**, would require health care practitioners renewing a license or certification to complete a certain number of approved continuing education classes which address Lyme disease and other tick-borne illnesses. The continuing education curriculum would be approved by the respective licensing boards, in consultation with key stakeholders. This legislation would not increase the total amount of continuing education but would only require that part of the current requirement of continuing education hours be comprised of Lyme disease and other tick-borne illness prevention, diagnosis, and management information.<sup>102</sup>

Status: Referred to Consumer Protection and Professional Licensure, February 24, 2021.

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<sup>99</sup> House Bill 1132, Printer's No. 1180, introduced and referred to Professional Licensure, April 7, 2021.

<sup>100</sup> House Bill 1849, Printer's No. 2092, first consideration, September 29, 2021.

<sup>101</sup> Rep. F. Todd Polinchock, "Real Estate Distance Education waiver," HB 1849, Memorandum, <https://www.legis.state.pa.us/cfdocs/Legis/CSM/showMemoPublic.cfm?chamber=H&SPick=20210&cosponId=36138>.

<sup>102</sup> Senate Bill 281, Printer's No. 262, introduced and referred to Consumer Protection and Professional Licensure, Feb. 24, 2021.

## Registering, Renewing, and Reinstating Licenses

### License Fee Increases

**House Bill 744, Printer's No. 729**, would temporarily waive the fee increase for nurses and other related health professionals during the COVID-19 crisis and for six months following the suspension of the disaster declaration.<sup>103</sup>

Status: Referred to Professional Licensure, March 3, 2021.

### Application by Paper

**House Bill 855, Printer's No. 1336**, would provide individuals seeking to become licensed in Pennsylvania the option of applying by paper application under certain circumstances. The licensing process in Pennsylvania has transitioned to an online system referred to as PALS. While this transition to an online system has streamlined the process for many, it has made the process increasingly more difficult for those who do not have access to a computer or those who have personal convictions against computers or credit cards.<sup>104</sup>

Status: Referred to Consumer Protection and Professional Licensure, May 4, 2021.

### Funeral Director Licensing

**House Bill 1450, Printer's No. 1582**, would remove the remarriage penalty language of the Funeral Director's Law to allow funeral directors to remarry without giving up their interest in the business. Existing law allows the widow or widower of a deceased funeral director to be issued a special license in order to continue an existing funeral practice, provided they employ a licensed funeral director to supervise the practice. The law authorizes this special license only as long as the widow or widower remains unmarried. Currently, when the widow or widower remarries, they are prohibited from renewing their license and are required to sell their interest in the business.<sup>105</sup>

Status: Referred to Professional Licensure, May 21, 2021.

### Criminal Records Check

**House Bill 1492, Printer's No. 1781**, would require all licensing boards to review the criminal records of individual applying for licensure to determine if an individual's specific prior offense should prevent that individual from entering a particular profession. In addition, the bill would allow the licensing fee to be waived for individuals with household incomes below 200 percent of the federal poverty level (currently \$24,000 per year for an individual).<sup>106</sup>

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<sup>103</sup> House Bill 744, Printer's No. 729, introduced and referred to Professional Licensure, March 3, 2021.

<sup>104</sup> House Bill 855, Printer's No. 1336, received third consideration and final passage in the House and was referred to the Senate Consumer Protection and Professional Licensure Committee, May 4, 2021.

<sup>105</sup> House Bill 1450, Printer's No. 1582, introduced and referred to Professional Licensure, May 21, 2021.

<sup>106</sup> House Bill 1492, Printer's No. 1781, introduced and referred to Professional Licensure, June 11, 2021.

Status: Professional Licensure, June 11, 2021.

### Engineer-in-Training

**House Bill 1801, Printer's No. 2043**, would amend the Engineer, Land Surveyor and Geologist Registration Law to evaluate qualified experience by the licensing board without regard to the timing of the issuance of the engineer-in-training certificate. Currently, for an applicant to be granted licensure as a professional engineer, they must hold an engineer-in-training certificate and show proof of four or more years of experience in engineering work performed after the issuance of their engineer-in-training certificate. In some cases, an individual may have the years of required experience and training, but it may have occurred prior to them obtaining their engineer-in-training certificate in Pennsylvania.<sup>107</sup>

Status: Removed the table, October 6, 2021.

## **Educational, Experiential, and Examination Requirements for Licensure**

### International Medical School Graduates

**House Bill 245, Printer's No. 213**, would alter the process by which graduates of international medical schools become licensed. Currently, graduates of U.S. and Canadian medical schools must successfully complete two years of training through an approved medical residency program in order to apply for a medical license in Pennsylvania. Under existing requirements, international medical graduates must complete an additional year, for a total of three years of residency training, before they can apply for that same license. The differing residency requirements were initially created many years ago in response to concerns that international medical graduates faced less rigorous testing and training than students completing their medical education in the United States. However, international medical graduates have been held to the same demanding educational standards as students attending U.S. medical schools in recent years. This bill would require that graduates of international medical schools complete two years of postgraduate training instead of three.<sup>108</sup>

Status: Re-referred to Appropriations, September 22, 2021.

### International Nursing Education Programs

**House Bill 889, Printer's No. 880**, would allow the Board of Nursing to approve graduates of international professional nursing education programs to sit for the RN licensure examination, provided that such programs are determined to be equivalent to those which are offered in Pennsylvania. Currently, the Professional Nursing Law allows graduates of

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<sup>107</sup> House Bill 1801, Printer's No. 2043, laid on the table, October 4, 2021.

<sup>108</sup> House Bill 245, Printer's No. 213, re-referred to Appropriations, September 22, 2021.

nursing programs in countries outside of the United States to sit for the RN licensure examination, but only if they have first been licensed, registered, or duly recognized in their home country. If such graduates move to Pennsylvania before obtaining licensure in their home country, the currently law prohibits them from sitting for the licensure examination despite the fact these graduates have completed their education and obtained their nursing degree.<sup>109</sup>

Status: Removed from the table, October 6, 2021.

### Barber-Teachers

**House Bill 1268, Printer's No. 1348**, would allow licensed barbers who have three years of experience or licensed manager-barbers with one year of experience as of January 1, 2015, to opt to become licensed as a barber-teacher without examination. This is contingent upon no record of disciplinary action and payment of the required fee. The objective of this bill is to address the shortage of barber-teachers in the Commonwealth.<sup>110</sup>

Status: Referred to Professional Licensure, April 23, 2021.

### **Practice by Out-of-State Licensees**

#### Out-of-State Medical Licensing

**House Bill 192, Printer's No. 161**, would amend the criminal background check provision of Act 112 of 2016 (P.L. 891, No. 112) to address the concerns that have been raised so that Pennsylvania can fully join the Interstate Medical Licensure Compact (IMLC). The IMLC provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. Unfortunately, due to concerns raised by the Federal Bureau of Investigation regarding information sharing for purposes of criminal background checks, Pennsylvania has never been able to fully participate in the IMLC.<sup>111</sup>

Status: Referred to Consumer Protection and Professional Licensure, March 23, 2021.

#### Nurse Licensure Compact

**House Bill 966, Printer's No. 976**, would create a process for qualified nurses in Pennsylvania to receive a multistate license and provide care here or in any of the other 34 member states in the Nurse Licensure Compact (NLC). Likewise, the bill would create a

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<sup>109</sup> House Bill 889, Printer's No. 880, laid on the table, October 4, 2021.

<sup>110</sup> House Bill 1268, Printer's No. 1348, introduced and referred to Professional Licensure, April 23, 2021.

<sup>111</sup> House Bill 192, Printer's No. 161, received third consideration and final passage in the House and was referred to the Senate Consumer Protection and Professional Licensure Committee, March 23, 2021.

pathway for nurses in other member states to practice in the Commonwealth, thereby expanding the availability of health care services in Pennsylvania.<sup>112</sup>

Status: Referred to Professional Licensure, March 18, 2021.

#### Criminal Records Check — Interstate Medical Licensure Compact

**Senate Bill 444, Printer’s No. 446**, would amend the criminal background check provision of Act 112 of 2016 (P.L. 891, No. 112) to address the concerns that have been raised so that Pennsylvania can fully join the Interstate Medical Licensure Compact (IMLC). The IMLC provides a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license and ensuring the safety of patients. Unfortunately, due to concerns raised by the Federal Bureau of Investigation regarding information sharing for purposes of criminal background checks, Pennsylvania has never been able to fully participate in the IMLC.<sup>113</sup>

Status: Referred to Consumer Protection and Professional Licensure, March 18, 2021.

#### **Miscellaneous Regulations**

##### Hearings before Licensing Boards

**House Bill 131, Printer’s No. 97**, would require a defendant/respondent to appear in person for any scheduled hearing that is being held before a licensing board, commission, or hearing examiner. The objective of this legislation is to provide additional recourse to victims of licensed professionals in cases where the licensed professional has a case before their licensing board. This legislation would also allow the victim or anyone directly affected by the defendant/respondent’s actions or wrongdoing the opportunity to provide a statement to the board.<sup>114</sup>

Status: Referred to Professional Licensure, January 12, 2021.

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<sup>112</sup> House Bill 966, Printer’s No. 976, introduced and referred to Professional Licensure, March 18, 2021.

<sup>113</sup> Senate Bill 444, Printer’s No. 446, introduced and referred to Consumer Protection and Professional Licensure, Mar. 18, 2021.

<sup>114</sup> House Bill 131, Printer’s No. 97, introduced and referred to Professional Licensure, Jan. 12, 2021.

## Virtual Public Board Meetings

**Senate Bill 869, Printer's No. 1074**, would allow the licensing boards and commissions to permanently continue to utilize public virtual board meetings, establish quorums through public virtual means, provide licensees with the opportunity to receive virtual continuing education, and permit certain individuals who need clinical or supervision hours to qualify for licensure to be supervised virtually. As continuing education and supervision are specific to each board or commission and licensee, this legislation grants each board and commission with the flexibility to provide a path forward to meet the needs of each license.<sup>115</sup>

Status: Referred to Professional Licensure, September 29, 2021.

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<sup>115</sup> Senate Bill 869, Printer's No. 1074, referred to Professional Licensure, Sept. 29, 2021.

## ENACTED LEGISLATION

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The following is list of bills enacted during the 2021-2022 legislative session related to professional licensing as of October 2021.

**Act 60 of 2021 (P.L. 326, No. 60), Senate Bill 416, Printer's No. 910**, officially recognizes Certified Registered Nurse Anesthetists (CRNAs) under Pennsylvania statute. Previously, there was no definition for CRNAs under the state's Professional Nursing Law and nurse anesthetists were recognized only as Registered Nurses.<sup>116</sup>

**Act 68 of 2021 (P.L. 358, No. 68), Senate Bill 115, Printer's No. 473**, authorizes the Commonwealth to join the Nurse Licensure Compact (NLC). Pennsylvania joins 34 states as members of the NLC, which recognizes mutual agreement in the requirements of the professional licensure of nurses and reciprocity of license transfer between member states.<sup>117</sup>

**Act 76 of 2021 (P.L. 410, No. 76), House Bill 1182, Printer's No. 1715**, amends the Barber Law of 1931 to provide schools that offer barber programs the ability to offer up to 50 percent of the educational program through online or other remote instruction. This flexibility is only permitted for theory-based content hours — practical “hands-on” hours in the curriculum are still required to be delivered through in-person instruction.<sup>118</sup>

**Act 77 of 2021 (P.L. 411, No. 77), House Bill 1183, Printer's No. 1716**, amends the Cosmetology Law of 1933 to provide schools that offer cosmetology programs the ability to offer up to 50 percent of the educational program through online or other remote instruction. This flexibility is only permitted for theory-based content hours — practical “hands-on” hours in the curriculum does not have this flexibility and is still required to be delivered through in-person instruction. This Act also allows some flexibility in teacher-to-student ratios for the hours delivered remotely, but existing teacher-to-student ratios will remain in place for in-person instruction.<sup>119</sup>

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<sup>116</sup> Senate Bill 416, Printer's No. 910, enacted as Act of Jun. 30, 2021, P.L. 326, No. 60, known as the Professional Nursing Law – Omnibus Amendments.

<sup>117</sup> Senate Bill 115, Printer's No. 473, enacted as Act of Jul. 1, 2021, P.L. 358, No. 68, known as the Nurse Licensure Compact Act.

<sup>118</sup> House Bill 1182, Printer's No. 1715, enacted as Act of Oct. 7, 2021, P.L. 410, No. 76, known as the Barber's License Law.

<sup>119</sup> House Bill 1183, Printer's No. 1716, enacted as Act of Oct. 7, 2021, P.L. 411, No. 77, known as the Cosmetology Law.

**Act 78 of 2021 (P.L. 412, No. 78), Senate Bill 397, Printer's No. 870**, amends the Osteopathic Medical Practice Act to create a permanent seat on the Osteopathic Board for a physician assistant. This bill also removes the requirement for a physician countersignature on all patient files and allows a written agreement to be "filed" instead of "approved" by the Osteopathic Board. This allows physician assistants to immediately begin working instead of waiting 120 days or longer for the Medical Board's review and approval. The bill also outlines appropriate supervision requirements based on the needs of the physicians, physician assistants, patients, and overall healthcare system.<sup>120</sup>

**Act 79 of 2021 (P.L. 418, No. 79), Senate Bill 398, Printer's No. 871**, amends the Medical Practice Act to create a permanent seat on the Medical Board for a physician assistant. This bill also removes the requirement for a physician countersignature on all patient files and allows a written agreement to be "filed" instead of "approved" by the Medical Board. This allows physician assistants to immediately begin working instead of waiting 120 days or longer for the Medical Board's review and approval. The bill also outlines appropriate supervision requirements based on the needs of the physicians, physician assistants, patients, and overall healthcare system.<sup>121</sup>

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<sup>120</sup> Senate Bill 397, Printer's No. 870, enacted as Act of Oct. 7, 2021, P.L. 412, No. 78, known as the Physician Assistants Modernization of Practice Act.

<sup>121</sup> Senate Bill 398, Printer's No. 871, enacted Act of Oct. 7, 2021, P.L. 418, No. 79, known as the Physician Assistants Modernization of Practice Act.

2021 HOUSE RESOLUTION 88

PRINTER'S NO. 1204

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION

No. 88 Session of 2021

INTRODUCED BY POLINCHOCK, HENNESSEY, HICKERNELL, JAMES, MASSER,  
MILLARD, ROTHMAN, ROWE, SAYLOR AND THOMAS, APRIL 8, 2021

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, APRIL 8, 2021

A RESOLUTION

1 Directing the Joint State Government Commission to conduct a  
2 comprehensive study of the regulatory waivers and suspensions  
3 issued by the Bureau of Professional and Occupational Affairs  
4 during the COVID-19 pandemic.

5 WHEREAS, The Bureau of Professional and Occupational Affairs  
6 within the Department of State is charged with oversight of 29  
7 licensing boards and commissions and the facilitation of roughly  
8 130 individual licenses and 39 facility licenses; and

9 WHEREAS, Professionals licensed under the Bureau of  
10 Professional and Occupational Affairs range from health-related  
11 professionals, including physicians and nurses, to business-  
12 related professionals, including cosmetologists and realtors;  
13 and

14 WHEREAS, Each licensing board and commission under the Bureau  
15 of Professional and Occupational Affairs has its own practice  
16 act and regulations; and

17 WHEREAS, Currently, 25% of employees in the United States  
18 need professional licenses to work in their occupations; and

19 WHEREAS, As a result, states have taken an active role in

1 developing effective regulatory policies that protect consumers,  
2 but also promote economic growth and employment opportunities;  
3 and

4 WHEREAS, Since March 2020, there have been nearly 100  
5 regulatory waivers and suspensions issued by the Bureau of  
6 Professional and Occupational Affairs to temporarily remove  
7 barriers to work and practice in this Commonwealth during the  
8 COVID-19 pandemic; and

9 WHEREAS, The Bureau of Professional and Occupational Affairs  
10 continues to issue new regulatory waivers and suspensions and  
11 update existing waivers; therefore be it

12 RESOLVED, That the House of Representatives direct the Joint  
13 State Government Commission to conduct a comprehensive study of  
14 the regulatory waivers and suspensions issued by the Bureau of  
15 Professional and Occupational Affairs during the COVID-19  
16 pandemic; and be it further

17 RESOLVED, That the Joint State Government Commission  
18 specifically study, at a minimum, the regulatory waivers and  
19 suspensions issued by the Bureau of Professional and  
20 Occupational Affairs during the COVID-19 pandemic pertaining to  
21 license renewal extensions, continuing education requirements  
22 and distance education, temporary licensure and reactivation of  
23 licenses for retired professionals; and be it further

24 RESOLVED, That the Joint State Government Commission's  
25 findings in the report include all of the following:

26 (1) A description of a list of the regulatory waivers  
27 and suspensions issued by the Bureau of Professional and  
28 Occupational Affairs during the COVID-19 pandemic.

29 (2) The impact of each regulatory waiver and suspension  
30 on practice and employment in this Commonwealth.

1           (3) Recommendations on which, if any, regulatory waivers  
2           and suspensions should permanently remain in place or what  
3           other permanent statutory or regulatory changes should be  
4           pursued in an effort to reduce barriers to practice and  
5           employment in the Commonwealth;  
6           and be it further

7           RESOLVED, That the Joint State Government Commission solicit  
8           input from organizations of licensed professionals in this  
9           Commonwealth and representatives from the Bureau of Professional  
10          and Occupational Affairs to assist the Joint State Government  
11          Commission with its findings and recommendations in the report;  
12          and be it further

13          RESOLVED, That the Joint State Government Commission issue a  
14          report of its findings and recommendations to the chair and  
15          minority chair of the Professional Licensure Committee of the  
16          House of Representatives no later than six months after the  
17          adoption of this resolution.