

TO: Reproductive Health Access Project
FROM: If/When/How
DATE: December 14, 2016
RE: Physician Licensing Requirements – Pennsylvania

Disclaimer: This memorandum includes general information about legal issues and developments in the law. Such materials are for informational purposes only, and are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances.

Note: Footnote in section heading applies to contents of entire section unless otherwise indicated.

I) General Requirements – Board of Medicine Licenses¹

For all licenses and certificates issued by the Pennsylvania Board of Medicine (“the Board”), the applicant must satisfy the following requirements:

- 1) The applicant is of legal age
- 2) The applicant is of good moral character
- 3) The applicant is not intemperately using alcohol or habitually using narcotics or other habit-forming drugs
- 4) The applicant has not been convicted of a felony under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-144) or of an offense under the statutes of another jurisdiction which, if committed within Pennsylvania, would be a felony under The Controlled Substance, Drug, Device and Cosmetic Act, unless:
 - a. At least ten years have elapsed from the date of conviction
 - b. The applicant satisfactorily demonstrates to the Board that he has made significant progress in personal rehabilitation since the conviction so that licensure or certification of the applicant is not expected to create a substantial risk of harm to the health and safety of patients or the public or substantial risk of further criminal violations
 - c. The applicant otherwise satisfies the qualifications for specific licenses and certificates

¹ 49 Pa. Code § 16.12.

if
when
how

A) Biennial Registration²

Licenses without restrictions and by endorsement and extraterritorial licenses require biennial registration. Registration for a biennium expires December 31 of every even-numbered year. If the licensee does not pay the current licensing fees by the required time, the license becomes unregistered. Registered status will be restored upon the payment of fees and penalties which have accrued, assuming all other standards are met. The licensee is not permitted to engage in practice unless the registration fee is paid. If the licensee engages in practice during an unregistered period, the individual must pay a \$5 fee for each month they practice after the required renewal date and may be subject to disciplinary and/or criminal proceedings.

B) Reporting of disciplinary actions, criminal dispositions, and other licenses, certificates or authorizations to practice.³

An individual that applies for, or is in possession of, a license, certificate or registration must inform the Board of any of the following:

- 1) A license, certificate or other authorization to practice a profession issued, denied or limited by another state, territory or possession of the United States, another country or a branch of the Federal government
- 2) Disciplinary action instituted against the applicant by a licensing authority of another state, territory or possession of the United States, another country or a branch of the Federal government
- 3) A finding or verdict of guilt, an admission of guilt, a plea of *nolo contendere*, probation without verdict, a disposition in lieu of trial or an accelerated rehabilitative disposition with respect to a felony offense or a misdemeanor offense relating to a health care practice or profession

II) Requirements – Medical Doctor Licenses

The Board issues the following medical doctor licenses.

² 49 Pa. Code § 16.15.

³ 49 Pa. Code § 16.16.

if
when
how

A) License Without Restriction⁴

The requirements for this license are:

- 1) Pass an examination or combination of examinations approved by statute
- 2) Graduate from an accredited or unaccredited medical college. If the school is unaccredited, it must be certified by the Education Commission for Foreign Medical Graduates (ECFMG) and the applicant must also submit a diploma and transcript verified by a medical college listed in the International Medical Education Directory and chartered and recognized by the country in which the school is situated for the provision of medical doctor education
- 3) Successfully complete graduate medical training as required by statute

The application fee is \$35 for graduates of accredited medical colleges and \$85 for graduates of unaccredited medical colleges.⁵

B) License Without Restriction – Endorsement⁶

An applicant who does not meet the standard license requirements for a license without restriction will be granted a license without restriction – endorsement if they have achieved cumulative qualifications the Board considers as equivalent to the standard requirements:

- 1) Graduation from an unaccredited medical college: Completed the formal requirements for graduation from an unaccredited medical college, except an internship or social service requirement, and qualifies for and successfully completes a fifth pathway program.
- 2) Pass a license examination: Earned a passing score on a licensing examination acceptable to the Board. In lieu of the examination requirement, the Board may consider whether the applicant has a significant history in the practice of medicine, has recognized professional and academic achievement and credentials and has obtained certification by a Board

⁴ 49 Pa. Code § 17.1.

⁵ 49 Pa. Code § 16.13.

⁶ 49 Pa. Code § 17.2.

recognized specialty certification body.

- 3) ECFMG certification: For purposes of endorsement, a graduate from an unaccredited medical school who has obtained certification by the ECFMG is deemed to have the equivalent of a passing score on steps 1 and 2 of the U.S. Medical Licensing Examination.

C) Institutional License⁷

The Board may grant an institutional license to an applicant who is a graduate of an unaccredited medical college who has attained, through professional growth and teaching experience, the status of teacher, or who is not otherwise licensed to practice medicine and surgery in Pennsylvania but has achieved outstanding medical skills in a particular area of medicine and surgery and wishes to practice, demonstrate, or teach with those outstanding medical skills.⁸ The Board will only issue an institutional license when it determines that it will benefit the health, safety, and welfare of the general public.⁹

An institutional license authorizes the licensee to teach and practice medicine for a period of time specified by the Board, not exceeding 3 years, in one of Pennsylvania's medical colleges, its affiliates, or community hospitals. The license only authorizes the licensee to teach and to practice in those areas of medicine and surgery for which the Board has determined the licensee to have achieved outstanding medical skills. An institutional license will not be issued for the purpose of authorizing a medical doctor to train in a graduate medical training program.

An institutional license may authorize a qualified medical doctor to teach and practice at more than one facility, but at no more than two affiliated facilities. If a licensee desires to practice at two facilities, a document of formal affiliation between the two facilities shall be submitted to the Board.

An institutional license may not be renewed, but, if issued for a period of less than 3 years, may be extended by the Board for the remainder of the 3 years.

To qualify for an institutional license, an applicant must satisfy one of the following:

⁷ 49 Pa. Code § 17.3.

⁸ 63 P.S. §422.32(b).

⁹ 63 P.S. §422.32(c).

if
when
how

- 1) Be a graduate of an unaccredited medical college who has attained through professional growth and teaching experience the status of teacher.
- 2) Have achieved outstanding medical skills in a particular area of medicine and wish to practice, demonstrate or teach in that area, but not otherwise be licensed to do so.

The application fee is \$35.¹⁰

D) Extraterritorial License¹¹

The Board may issue an extraterritorial license to an applicant who holds the equivalent of a license without restriction from a state adjoining Pennsylvania. The licensing authority of the adjoining state must reciprocate by extending the same privileges to medical doctors licensed in Pennsylvania. This license authorizes a medical doctor who possesses a license to practice medicine and surgery without restriction or an equivalent license, in a state adjoining Pennsylvania, to practice medicine and surgery in Pennsylvania.

The applicant must satisfy the following:

- 1) Possess a license to practice medicine and surgery without restriction or an equivalent license in a state adjoining Pennsylvania.
- 2) Reside in or maintain an office of practice in the adjoining state near its boundary line with Pennsylvania and desire to extend that practice into Pennsylvania.
- 3) Submit evidence with the application that the applicant is in compliance with professional liability insurance responsibilities imposed by the MCARE Act.
- 4) Arrange for the licensing authority of the adjoining state to file a certification with the Board, issued by that licensing authority, attesting to the fact that the applicant is licensed in that state.

¹⁰ 49 Pa. Code § 16.13.

¹¹ 49 Pa. Code § 17.4.

if
when
how

5) Satisfy general qualifications for licenses

An extraterritorial license is automatically revoked if the licensee relocates a residence or office of practice, the location of which is relevant to the issuance of the license. If a medical doctor who holds an extraterritorial license intends to change a residence or office of practice, the doctor must advise the Board in writing prior to doing so.

In order to receive an extraterritorial license, the applicant must provide the Board with an application that includes information on malpractice insurance coverage compliance and a certification by the authorized licensing board of the state of the current license and of residence and primary practice.¹² The application fee is \$30.¹³

E) Graduate License¹⁴

A graduate license authorizes the licensee to participate in a year of graduate medical training within the complex of the hospital to which the licensee is assigned, and a satellite facility or other training location utilized in the graduate training program.

A graduate license is only valid for a maximum of twelve consecutive months, but may be renewed by the Board to permit additional training.

To secure a graduate license, an applicant must satisfy one of the following:

- 1) Have graduated from an accredited medical college or an unaccredited medical college and received a medical degree.
- 2) Have completed the formal requirements for graduation from an unaccredited medical college, except an internship or social service requirement, and have successfully completed a fifth pathway program and an ECFMG certification examination.
- 3) Hold a license to practice medicine without restriction in Pennsylvania or an equivalent license granted by another state, territory or possession of the

¹² 63 P.S. §422.34(c).

¹³ 49 Pa. Code § 16.13.

¹⁴ 49 Pa. Code § 17.5.

if
when
how

United States or Canada.

Graduates of an unaccredited medical college or applicants who have completed the formal requirements for graduation from an unaccredited medical college must also submit a diploma and transcript verified by a medical college listed in the International Medical Education Directory and chartered and recognized by the country in which it is situated for the provision of medical doctor education. The transcript must identify the successful completion of the equivalent of four academic years of medical education, including two years in the study of the arts and sciences of medicine generally recognized by the medical education community in the United States and two academic years of clinical study of the practice of medicine as generally recognized by the medical education community in the United States.

To participate in graduate medical training at a second-year or higher levels under the authority of a graduate license, the licensee must obtain passing scores on the relevant medical exams or hold a license to practice medicine without restriction in Pennsylvania or an equivalent license granted by another state, territory or possession of the United States or Canada.

If a graduate of an unaccredited medical college does not possess the qualifications for the issuance of a graduate license, the Board may waive the unmet qualifications if it determines that the applicant possesses the technical skills and educational background to participate in the training and that the issuance of a graduate license to the applicant is beneficial to the health, safety and welfare of the people of Pennsylvania.

The application fee for graduates of accredited medical colleges is \$30 and for graduates of unaccredited medical colleges is \$85.¹⁵

F) Interim Limited License¹⁶

A person who holds a graduate license is limited to providing medical services embraced within the graduate medical training program in which the person is participating unless that person also holds an interim limited license or other license issued by the Board. An interim limited license empowers the licensee to provide medical services, other than authorized by the graduate medical training

¹⁵ 49 Pa. Code § 16.13.

¹⁶ 49 Pa. Code § 17.7.

if
when
how

program, for a period of up to twelve consecutive months. The Board may extend the validity of an interim limited license for a period of up to twelve additional consecutive months, but no more than one extension may be granted.

To qualify for an interim limited license, an applicant shall satisfy the following requirements:

- 1) Be a graduate of an accredited medical college.
- 2) Hold a valid graduate license.
- 3) Have successfully completed a year of graduate medical training.
- 4) Have passed an examination specified under qualifications for a license without restriction
- 5) Provide a detailed written statement of the medical services to be provided beyond the parameters of the graduate medical training program.
- 6) Have the written approval of the director of the graduate medical training program to provide the enumerated services.
- 7) Present evidence of having made arrangements for professional liability insurance coverage in accordance with the MCARE Act.
- 8) Be evaluated by the Board as having received ample education and training to perform the specified medical services.

The application fee is \$30.¹⁷

G) Temporary License¹⁸

The Board may issue a temporary license to an applicant who holds the equivalent of a license without restriction granted by another state, territory, possession, or country. The Board may impose appropriate limitations on the scope, duration or site of practice for temporary licenses.

A temporary license will be issued to permit one of the following:

- 1) The teaching and demonstration of advanced medical and surgical techniques to facilitate the presentation of medical and surgical seminars and demonstrations in Pennsylvania. The person applying for a temporary license for this purpose shall be sponsored by a medical training facility licensed or authorized to do business in Pennsylvania.

¹⁷ 49 Pa. Code § 16.13.

¹⁸ 49 Pa. Code § 17.6.

if
when
how

- 2) Participation in a medical or surgical procedure necessary for the well-being of a specified patient. A temporary license issued for this purpose enables persons uniquely qualified to perform new and difficult medical or surgical procedures to administer that procedure in Pennsylvania if it is necessary for the well-being of a specified patient. The person applying for a temporary license for this purpose shall be sponsored by a health care facility licensed or authorized to do business in Pennsylvania and shall work in collaboration with a medical doctor holding a license without restriction in Pennsylvania.
- 3) The practice of medicine and surgery in a camp or resort for no more than 3 months. The person applying for a temporary license for this purpose shall be required to provide evidence that adequate arrangements have been made for back-up medical care if the person is unable to continue to serve as a medical doctor for the camp or resort.
- 4) Attending to the medical and surgical needs of a person visiting Pennsylvania for a brief period of time. A temporary license will be issued to permit the administration of medical and surgical procedures to a person visiting Pennsylvania 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.
- 5) 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. A temporary license will be issued to a doctor who is participating in Project U.S.A. to serve as a short-term (2—4 weeks) substitute for a doctor of medicine employed by the Federal government in a National Health Service Corps Clinic.

The Board will impose limitations on a temporary license, with respect to scope, duration and site of practice, as it deems appropriate. Temporary licensees are considered health care providers who conduct fifty percent or less of their health care business or practice within Pennsylvania for purposes of the MCARE Act. A temporary license may be issued for a purpose other than those specified above, as deemed appropriate by the Board, on a case by case basis. The application fee is \$45.¹⁹

¹⁹ 49 Pa. Code § 16.13.

III) Special Requirements for Medical Students

There appears to be no special licensing provisions for medical students other than those of the graduate license, discussed above.

IV) Training Sites

The training sites for graduate medical education programs are monitored by the State Board of Medicine.²⁰ The Board works with the Accreditation Council for Graduate Medical Education (ACGME) of the American Medical Association to evaluate and approve the training programs.²¹

V) Grounds for Denial or Revocation of License

63 P.S. § 422.41 provides the conditions for which a license may be denied or revoked. These conditions can also trigger suspension, or other "corrective" (disciplinary) action against the licensee. The conditions are as follows:

- 1) Failing to demonstrate the qualifications and standards for license issuance
- 2) Making fraudulent, misleading, deceptive or untrue representation in the practice of their profession, or in obtaining a license, certification, or registration, or admission to medical college, alone or as a conspirator
- 3) Felony conviction or misdemeanor relating to health profession, or probation without verdict, or a disposition in lieu of trial
- 4) Having a license to practice revoked or suspended or having other disciplinary action taken, or an application refused, revoked or suspended by another jurisdiction within the United States
- 5) Being unable to practice their profession with reasonable skill and safety to patients for reason of illness, addiction to drugs or alcohol, or conviction of a felonious act prohibited by the Controlled Substance, Drug, Device and Cosmetic Act,²² or being convicted of a felony relating to a controlled

²⁰ 49 Pa. Code § 17.23.

²¹ 49 Pa. Code § 17.23.

²² P.L. 233, No. 64 (April 14, 1972).

if
when
how

substance in any other jurisdiction (including internationally), or by reason of mental incompetence²³

- 6) Violation of a lawful regulation promulgated by the Board, or violation of a lawful order of the Board issued in a disciplinary proceeding
- 7) Knowingly maintaining a professional connection or association with any person in violation of this act or regulations of the Board, or knowingly aiding, assisting, procuring, or advising an unlicensed person to practice their profession contrary to the act or regulations of the Board
- 8) Being guilty of immoral or unprofessional conduct. Unprofessional conduct includes departure from or failing to conform to an ethical or quality standard of the profession. Actual injury to a patient is not required

Ethical standards of the profession are defined as "those ethical tenets which are embraced by the professional community in this Commonwealth."²⁴

Practitioners depart from or fail to conform to quality standards when the medical service is provided at a "level beneath the accepted standard of care."²⁵ The Board may promulgate regulations to define acceptable levels of care.²⁶ Where the Board does not make such regulations, the standard is that which "would normally be exercised by the average professional of the same kind in this Commonwealth under the circumstances, including locality and whether the practitioner and whether the practitioner is or purports to be a specialist in the area."²⁷

A non-exhaustive list of unprofessional conduct includes:²⁸

- Revealing personally identifiable facts obtained in the course of the practitioner-patient relationship, without prior consent of the patient
- Violating a statute, or regulation that imposes a standard for the practice of "the healing arts"

²³ The paragraph also provides that any professional affected by it shall have opportunity at "reasonable intervals" to demonstrate that they are able to resume practice with reasonable skill and safety once more.

²⁴ 63 P.S. § 422.41(8)(i).

²⁵ 63 P.S. § 422.41(8)(ii).

²⁶ 63 P.S. § 422.41(8)(ii).

²⁷ 63 P.S. § 422.41(8)(ii).

²⁸ 49 Pa. Code § 16.61.

if
when
how

- Performing medical treatment or act incompetently, or performing an act or treatment that the professional knows or has reason to know they are not competent to perform
- Unconditionally guarantee that a cure will result from the performance of medical services or treatment
- Advertising intended to or having a tendency to deceive the public
- Practice fraudulently, or with reckless indifference to the interests of a patient on one occasion, or with negligence on repeated occasions
- Practicing while ability to practice is impaired by alcohol, drugs, or physical or mental disability
- Knowingly permitting, aiding, abetting a person not licensed or certified, or exempt from certification requirements, to perform activities requiring license
- Continuing to practice while license or certification has expired, is not registered or is suspended or revoked
- Impersonating another health-care practitioner
- Possessing, using, prescribing for use or distributing a controlled substance or legend drug in a way other than for acceptable medical purpose
- Offering, undertaking or agreeing to cure or treat a disease by secret method, procedure, treatment, which the practitioner refuses to divulge to the board on demand of the board
- Charging a patient or third party payor for medical service or treatment not performed
- Delegating a medical responsibility to a person that the practitioner knows or has reason to know is not qualified by training, experience, license or certification to perform
- Failing to exercise proper supervision over a person authorized to practice only under supervision of the practitioner

if
when
how

- Willfully harassing, abusing, or intimidating a patient
- Abandoning a patient. Includes ending practitioner-patient relationship without sufficient notice to allow patient to find replacement; or where the physician leaves group practice without sufficient notice resulting in impairment of delivery of services
- Failing to make available to patient or another health care practitioner, upon patient's written request, the medical record or copy of the original, or failing to complete forms and reports required for reimbursement or direct payment by a third party of the expenses of a patient that result from the practice of the healing arts
- Violating a provision of this chapter or other chapters related to the Board fixing a standard of professional conduct

The Board has also made regulations regarding immoral conduct, including:²⁹

- Misrepresentation or concealment of a material fact in obtaining a license or certificate issued by the board or reinstatement thereof
- Commission of an act involving moral turpitude, dishonesty, or corruption where that act directly or indirectly affects the health, welfare, or safety of citizens of the Commonwealth. Where the act constitutes a crime, conviction is not a pre-condition to disciplinary action

Cases elaborating on these provisions and the regulations have upheld:

- Revocation of the license of a doctor for two years after treating his girlfriend and interfering with a psychiatrist's treatment of her (*Moscato v. State Board of Medicine*, 965 A.2d 1234 (2008))
- Various applications of the out-of-state license requirements detailed above (63 P.S. § 422.41(4)), including it not being arbitrary or unreasonable (*Tandon v. State Bd. Medicine*, 705 A.2d 1338 (1997)). One condition on out-of-state conduct seems to be that it cannot be too remote in time (*Id.*)

²⁹ 49 Pa. Code § 16.61.

if when how

- Guilty pleas are sufficient to constitute "convictions" (*Herberg v. Com., State Bd. of Medical Educ. and Licensure*, 442 A.2d 411 (1982)), and if plea or conviction is overturned on appeal, practitioner can apply for reinstatement of medical license (*Id., Zimmerman v. Com., State Bd of Medical Ed. and Licensure*, 423 A.2d 34 (1980));
- Aiding and abetting unlicensed practice where circumstances alert or should alert practitioners to the unlicensed status of their colleagues, for example where they plan to move into the state if their license is approved (*Gleeson v. State Bd. of Medicine*, 900 A.2d 430 (2006)). Further those involved can be held to be guilty of a "pretense" that may induce others to become prey to exploitation (*State Bd. of Medical Ed. and Licensure v. Ferry*, 94 A.2d 121 (1953), and constitutes "grossly unethical practice" (*Id.*).

VI) Medical Malpractice Insurance

Pennsylvania does not have any statute, regulation, or other relevant rule that require physicians to obtain malpractice insurance in the state of Pennsylvania. There are similar provisions for dentists, surgeon assistants, etc., however none exist for doctors.

VII) Special Provisions for Abortion Procedures

A) General Provisions

Physicians performing abortions must "possess the requisite profession skill and competence as determined and approved by the medical facility in accordance with appropriate procedures."³⁰ Further, each facility must have at least one physician who is Board eligible by the American Board of Obstetrics and Gynecology or the American Osteopathic Board of Obstetrics and Gynecology, either as a staff member or consultant, with the purpose of consulting and advising staff in respect of maintenance of quality of treatment.³¹

Patients must be supervised constantly while recovering from surgery or anesthesia, until they are released from recovery by a registered nurse or a

³⁰ 28 Pa. Code § 29.33(3); see *Bingham v. Department of Health*, 2011 WL 10845851 (Commonwealth Court of Pennsylvania, 2011) (concerning a failure of a facility to ensure that physicians were licensed to perform abortions in its freestanding facility, a subsequent settlement agreement, and the breach of that agreement).

³¹ 28 Pa. Code § 29.33(4).

if
when
how

licensed practical nurse under the direction of a registered nurse or physician, and the nurse must evaluate the patient's condition and enter a report of the evaluation and orders in the patient's medical record.³²

Corridor doors, elevators, and other passages shall be adequate in size and arrangement to allow a stretcher-borne patient to be moved from each procedure room and recovery room to a street-level exit.³³

Pennsylvania law also provides for procedures for determining that the patient is pregnant prior to the abortion procedure³⁴, that the tissue removed was fetal tissue, action to be taken should the tissue removed not be fetal tissue,³⁵ and procedures for the disposition of fetal remains³⁶

Clinics are encouraged to provide contraceptive counselling and supportive counselling, which are to be made available through referral if not on site.³⁷ These services are not mandatory for patients.³⁸

B) Freestanding Clinic Provisions

Every freestanding clinic is required to have a written transfer agreement with a hospital capable of providing routine emergency services.³⁹ Routine emergency services include but are not limited to:⁴⁰

- 1) A physician available at all times to provide emergency services
- 2) Full surgical or full obstetrical and gynecological surgical capability, including anesthesia, available within thirty minutes' notice
- 3) Blood bank, clinical laboratory, and diagnostic radiological services available within 30 minutes' notice

³² 28 Pa. Code § 29.33(13).

³³ 28 Pa. Code 29.33(14).

³⁴ 28 Pa. Code § 29.33(5).

³⁵ 28 Pa. Code § 29.33(8).

³⁶ 28 Pa. Code § 29.33(15).

³⁷ 28 Pa. Code § 29.33(9).

³⁸ 28 Pa. Code § 29.33(9).

³⁹ 28 Pa. Code § 29.33(10).

⁴⁰ 28 Pa. Code § 29.33(10).