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ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>

**INDEPENDENT REGULATORY REVIEW COMMISSION**  
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 1, 1999

Honorable Jay B. Tanner, O.D., Chairman  
State Board of Optometry  
116 Pine Street  
Harrisburg, PA 17105

Re: IRRC Regulation #16A-527 (#2032)  
State Board of Optometry  
Application Fees

Dear Chairman Tanner:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Mary Lou Harris at 772-1284.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Nyce".

Robert E. Nyce  
Executive Director

REN:kcg  
Enclosure  
cc: April L. McClaine  
C. Michael Weaver  
Kim Pizzigrilli  
Dorothy Childress  
Office of General Counsel  
Office of Attorney General  
Pete Tartline

# **COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION**

**ON**

## **STATE BOARD OF OPTOMETRY REGULATION NO. 16A-527**

### **APPLICATION FEES**

**JULY 1, 1999**

We have reviewed this proposed regulation from the State Board of Optometry (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to fiscal impact and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

#### **Section 23.91. Fees. - Fiscal impact and Clarity**

##### *Administrative overhead costs*

In the proposed regulation's Fee Report Forms, there are significant differences in the costs covered by different fees except for "Administrative Overhead" costs. According to staff at the Department of State and its Bureau of Professional and Occupational Affairs (BPOA), the allocated share of overhead cost for each fee category is calculated by dividing total overhead costs by the number of active licensees. This methodology for overhead cost allocation is not unreasonable and has been consistently applied. On the other hand, the staff cost allocations are based on estimates of the actual time BPOA staff spends performing the tasks related to each fee.

For overhead cost allocations, there appears to be no relationship to the services covered by the fees or frequency of fee payments. Therefore, there is no indication that the fees will recover actual or projected overhead costs. In addition, the allocated costs are based on past expenditures rather than estimates or projections of future expenditures. Hence, there is no certainty that the fees' "projected revenues will meet or exceed projected expenditures" pursuant to Section 9(c) of the Optometric Practice and Licensure Act (63 P.S. §244.9(c)).

We question the use of a constant overhead cost allocation that appears to be unrelated to the actual costs of activities covered by different fees. Even though this process was used to determine other fees, why should BPOA maintain this approach? The Board and BPOA should specifically identify the overhead costs, or portion of the total overhead, to be recouped by these fees, and review their methodology for allocating these overhead costs. Is it the Board's goal to allocate all overhead costs by category to each fee? If so, we do not believe the current allocation formula gives the desired result.

*Differing overhead costs*

The administrative overhead costs for all fees are \$15.77, except for the verification of licensure and certification of scores, or licensure, or both, which is \$9.76. The Board should explain why the administrative costs for the verification of licensure and certification of scores, or licensure, or both are different.

*Unclear estimate of applicants on Fee Report Form*

The Board is adding a fee for application for continuing education program approval. The Fee Report Form for the "Application for Continuing Education Program Approval" estimates that 1,500 approvals will be issued for the biennial period.

In their comments, the House Professional Licensure Committee observed that the estimated number of applicants seemed excessive. They asked the Board to explain how continuing education programs are approved, and whether the fee is paid by licensees, providers, or both. We agree with the Committee's comments. We request that the Board provide the additional information requested by the Committee.

*Inconsistency in fee title*

The fee for "certification of scores or licensure, or both", as written, states that a request for either certification of scores or licensure costs \$25, while certification for both, if asked for simultaneously, costs \$25. We understand that this category is actually a fee for certification of examination scores. The Board should clarify this category in its final-form rulemaking. For instance, this provision could be revised to read "certification of **examination** scores [or licensure, or both]."