

Regulatory Analysis Form

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2003 DEC 17 PM 2:45

REVIEW COMMISSION

(1) Agency
Department of State, Bureau of Professional and Occupational Affairs, State Board of Psychology

(2) I.D. Number (Governor's Office Use)
16A-6314

IRRC Number: 2378

(3) Short Title
Notice Requirements

(4) PA Code Cite
49 Pa. Code §§41.65 and 41.66.

(5) Agency Contacts & Telephone Numbers

Primary Contact: Judith Pachter Schulder, Counsel
State Board of Psychology
783-7200
Secondary Contact: Joyce McKeever, Deputy Chief
Counsel, Department of State 783-7200

(6) Type of Rulemaking (check one)

Proposed Rulemaking X
Final Order Adopting Regulation
Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

No X
Yes: By the Attorney General
Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.

The regulation adds provisions which require licensees to notify the Board of any felony or misdemeanor plea or conviction and any disciplinary action taken by a licensing body in another jurisdiction. The regulation also adds a provision which requires licensees to return their license to the Board within 30 days of being actively suspended or revoked and notify all of their current patients of the disciplinary action.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The amendments are proposed under the authority of Sections 3.2(2), 8(a)(6), 8(a)(7), 8(a)(8), 8.1 and 17 of the Professional Psychologists Practice Act, 63 P.S. §§ 1203.2(2), 1208(a)(6), 1208(a)(7), 1208(a)(8), 1208.1 and 1217.

10/6/03

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

No.

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The amendments address the following:

Reporting of crimes and disciplinary actions. Sections 8(a)(6) through 8(a)(8) of the Act, 63 P.S. §§1208(a)(6), 1208(a)(7) and 1208(a)(8), authorize the Board to discipline licensees who have been convicted of or plead guilty or nolo contendere to either any felony or misdemeanor in the practice of psychology, disciplined by the licensing authority of another state, territory or country, or are unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material. However, there is no provision in the Board's regulations which requires licensees to report pleas or convictions to the Board in advance of biennial renewal. As such, the Board may not learn of the conviction/plea for almost 2 years. Similarly, although Section 17 of the Act, 63 P.S. §1217), requires licensees to return suspended and

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(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

By requiring psychologist who have been convicted of felonies or misdemeanors or have been disciplined in another state to notify the Board within a set time of the action, the Board can, in a more timely manner, assure that the licensees who are providing psychological services are not a danger to their patients. Additionally, by requiring psychologists who have been actively suspended or revoked to notify their patients of the action, the patients can make an informed determination whether to continue to receive services, which may fall within the rubrick of another recognized profession, from the psychologist.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Individuals who receive psychological services from licensed psychologists will benefit from this regulations in that the Board will be better able to monitor its licensees and clients/patients will be informed within 30 days of any active suspension or revocation of their psychologist.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

There are no perceived people or groups of people who will be adversely affected by the proposed regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

Any licensee of the Board who has been convicted or entered into a plea to a felony or misdemeanor, has been disciplined by a Psychology Board in another jurisdiction or has been actively suspended or revoked will be required to comply with the notice requirements. Currently, there are approximately 5,000 licensees of the Board.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In compliance with Executive Order 1996-1, the Commission extended an invitation to the following individuals and associations to preliminarily review and comment on the Board's draft regulatory proposal: Academy of Psychologists Engaged in Private Practice in Lehigh Valley; Berks Area Psychological Society; Central Pennsylvania Psychological Association; Delaware County Association of School Psychologists; Delaware Valley Association of Black Psychologists; Greater Pittsburgh Psychological Association; Lancaster/Lebanon Psychological Association; Laurel Mountains Psychological Association; Lehigh Valley Psychological Association; Mideast PA School Psychological Association; Northeastern PA Psychological Association; Northwestern PA Psychological Association; Philadelphia Society of Clinical Psychologists; Philadelphia Neuropsychology Society; National Association of School Psychologists; Association of School Psychologists of Pennsylvania; Pennsylvania Mental Health Consumer's Association; Pennsylvania Psychological Association; Harrisburg Area Psychological Association; Hospital Association of Pennsylvania; Mental Health Association in PA; National Alliance for the Mentally Ill of PA; Richard Dumaresq, Ed.D.; Pennsylvania Association of Private School Administrators; Paul Bartoli; Laura Greenlee, MS, Ph.D.; Marsha V. Hammond, Ph.D.; Cheryl V. Mack; Bill Burrichter, and Jed A. Yalof, Psy.D.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

N/A

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

There are no costs or savings to state government associated with the implementation of this regulation. Currently, the Board learns through a variety of avenues that a licensee had been disciplined in another state or has been convicted or entered plea to a felony or misdemeanor. Licensees are asked to report felonies or misdemeanor actions to the Board when they renew their licenses. Disciplinary actions are posted on the National Practitioner's Data Bank. This proposed regulation provides licensees with a time frame when this information must be reported to the Board in order for the Board to take timely appropriate action, where necessary.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated	N/A	N/A	N/A	N/A	N/A	N/A
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

N/A

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY99-00	FY00-01	PROJECTED FY01-02	BUDGET FY 02-03
State Board of Psychology	\$355,791.54	\$396,549.30	\$441,377.32	\$418,000.00

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

In that there are no additional costs associated with this regulation, there should be no adverse effects and costs associated with compliance.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Nonregulatory alternatives were not considered because policy statements on any of the issues covered by the amendments would not have the force or effect of law.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No other regulatory schemes were considered.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Missouri and Nebraska licensees are required to disclose any sanctions to all their patients. Ohio requires licensees to insure for "continuity of care" for patients of suspended or revoked licensees. New York licensees are not required to report, but all suspensions and revocations are followed up by their Office of Professional Discipline. The regulation will not put Pennsylvania at a competitive disadvantage.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The regulation will not affect any regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

In light of the extensive public outreach already conducted in promulgating this proposed regulation and the discussions about the proposed regulation at the Board's regular meetings which are open to the public, the Board has not scheduled any public meetings or hearings regarding the regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

This regulation changes the timeframes for reporting adverse actions against licenses. Instead of reporting felony or misdemeanor convictions or pleas only at biennial renewal, licensees will have 30 days to do so. Similarly, instead of by Board Order, licensees will be required by Board regulation to return the licensure documents within 30 days. This regulation imposes an additional regulatory reporting requirement on licensees who have been suspended or revoked by the Board. Currently, Board adjudications require these licensees to notify their client/patients of suspensions and revocations. The proposed amendment codifies this notification provision into a regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board is aware of no special needs of any subset or group which should be excepted.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as an Order of Final Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of that date.

(31) Provide the schedule for continual review of the regulation.

The Board continuously reviews its regulations.

(Continued from No. 11)

revoked licenses to the Board, there is no provision in the Board's regulations which requires that they be returned within a specified time.

- *Notice of active suspension or revocation.* Section 8.1 of the Act, 63 P.S. §1208.1, prohibits suspended and revoked licensees from providing any service which falls within the practice of psychology. However, Section 3 of the Act, 63 P.S. §1203, carves out numerous exemptions from the licensure requirement, including one for qualified members of other recognized professions. As such, a suspended or revoked psychologist who provides services that also fall within the practice of another recognized profession may continue to provide that service to his or her clients/patients without any interruption. The Board believes that in order to properly protect the clients/patients of suspended or revoked licensees, the licensees must advise their clients/patients of the disciplinary action so that the client/patients can make an informed decision about continuing to receive service from the provider.

(Continued from No. 16)

In formulating this proposal, the Commission reviewed and considered the comments and suggestions it received from the Pennsylvania Psychological Association, the Laurel Mountains Psychological Association and the Central Pennsylvania Psychological Association.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE
REVIEW COMMISSION

#2378

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Anthony M. Elliott

BY: _____
(DEPUTY ATTORNEY GENERAL)

DEC 08 2003

DATE OF APPROVAL

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

State Board of Psychology
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-6314

DATE OF ADOPTION: _____

BY: *Alex M. Siegel*
Alex M. Siegel PH.D./J.D.

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: *[Signature]*

10/6/03
DATE OF APPROVAL

(Deputy General Counsel
~~Chief Counsel~~
~~Independent Agency~~
~~Strike inapplicable title~~)

[] Check if applicable
Copy not approved.
Objections attached.

[] Check if applicable. No Attorney General approval or objection within 30 day after submission.

PROPOSED RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PSYCHOLOGY
49 Pa. Code, Chapter 41
Notice Requirements

The State Board of Psychology (Board) proposes to add two new Notice provisions to Chapter 41 as set forth in Annex A.

A. Effective Date

The amendments will be effective upon publication of the final-form regulation in the Pennsylvania Bulletin.

B. Statutory Authority

The amendments are proposed under the authority of Sections 3.2(2), 8(a)(6), 8(a)(7), 8(a)(8), 8.1, 11(c) and 17 of the Professional Psychologists Practice Act (Act) (63 P.S. §§1203.2(2), 1208(a)(6), 1208(a)(7), 1208(a)(8), 1208.1, 1211(c) and 1217).

C. Purpose and Background

Sections 8(a)(6) through 8(a)(8) of the Act (63 P.S. §§1208(a)(6), 1208(a)(7) and 1208(a)(8)), authorize the Board to discipline licensees who have been convicted of or plead guilty or nolo contendere to any felony or to any misdemeanor in the practice of psychology; have been disciplined by the licensing authority of another state, territory or country; or are unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material. However, there is no provision in the Board's regulations that requires licensees to report pleas or convictions to the Board in advance of biennial renewal. As such, it may be almost 2 years before the Board first learns of the conviction. Similarly, although Section 11(c) of the Act (63 P.S. §1211(c)), requires licensees to return suspended and revoked licenses to the Board, there is no provision in the Board's regulations which requires that they be returned within a specified time.

Additionally, although Section 8.1 prohibits suspended and revoked licensees from providing any service that falls within the practice of psychology, Section 3 of the Act (63 P.S. §1203) carves out numerous exemptions for licensure, including one for qualified members of other recognized professions. As such, a suspended or revoked psychologist may continue to provide similar services to clients/patients under another title without any interruptions. The Board believes that in order to properly protect the clients/patients of suspended or revoked licensees, the licensees must advise their clients/patients of the disciplinary action so that the clients/patients can make an informed decision whether to continue treatment with the provider.

D. Description of Proposed Amendments:

1. Reporting of crimes and disciplinary actions.

Proposed Section 41.65(a) would require licensees who have been convicted of or pleaded guilty or nolo contendere to a felony or misdemeanor to notify the Board of the action within 30 days of the verdict or plea or on the biennial renewal application, whichever is sooner. In requiring that all misdemeanors be reported, the Board recognizes that it may only take disciplinary action against a licensee where the misdemeanor involves the practice of psychology or where the misdemeanor evidences that the licensee is unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other type of material. Under this proposal, summary offenses would not have to be reported.

Proposed Section 41.65(b) tracks the language of Section 8(a)(7) of the Act (63 P.S. § 1208(a)(7)) in connection with disciplinary actions taken by other jurisdictions. Licensees would be required to report those disciplinary actions within 30 days or on the biennial renewal application, whichever is sooner.

2. Notice of active suspension or revocation.

In addition to requiring licensees who have been actively suspended or revoked to return their license to the Board within 30 days, proposed Section 41.66 would require these licensees to advise their current clients/patients of the disciplinary action in writing.

E. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on December 17, 2003 to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the committees with a copy of a detailed Regulatory Analysis Form prepared by the Board. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has comments, recommendations or objections regarding any portion of the proposed rulemaking, it will notify the Board within 30 days from the close of the public comment period. The notification will specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of comments, recommendations and objections by the Board, the General Assembly, and the Governor prior to publication of the regulations.

F. Fiscal Impact and Paperwork Requirements

The proposed amendments should have no fiscal impact on the Commonwealth, its political subdivisions or the public, i.e., the regulated community. The proposed amendments would cause additional reporting and other paperwork requirements on those licensees who are disciplined by the Board in that they would be required to notify their patients of the Board's disciplinary action. Because the Act currently requires all licensees to report nolo or guilty pleas and licensees with multiple licenses to report discipline taken in other states, there are no new legal, reporting or other paperwork requirements on these licensees.

G. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Judith Pachter Schulder, Counsel, State Board of Psychology, P. O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

Alex M. Siegel, Ph.D./J.D., Chair

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
SUBPART A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 41. STATE BOARD OF PSYCHOLOGY

* * *

NOTICE REQUIREMENTS

§41.65. Reporting of crimes and disciplinary actions.

(a) A licensee shall notify the Board of having been convicted of, or having pleaded guilty or nolo contendere to, a felony or misdemeanor, within 30 days of the conviction, verdict or plea.

(b) A licensee shall notify the Board of disciplinary action in the nature of a final order taken against the licensee by the licensing authority of another state, territory or provincial Board of Psychology within 30 days of receiving notice of the disciplinary action, or on the biennial renewal application, whichever is sooner.

§41.66. Notice of active suspension or revocation.

A licensee whose license has been actively suspended or revoked by the Board shall return the suspended or revoked license to the Board and shall notify all current clients/patients of the disciplinary action in writing within 30 days of receiving notice of the disciplinary action. The notice shall contain, the following:

(a) The sanction imposed.

(b) The effective date and length of the sanction.

(c) The nature of the violation.

(d) A statement that the licensee will assist patient in obtaining alternative professional resources and in transferring psychological records.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PSYCHOLOGY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-3658

December 17, 2003

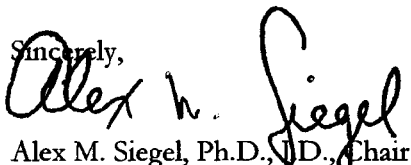
The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Psychology
16A-6314: Notice of Requirements

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Psychology pertaining to Notice of Requirements.

The Commission will be pleased to provide whatever information you may require during the course of its review of the rulemaking.

Sincerely,

Alex M. Siegel, Ph.D., J.D., Chair
State Board of Psychology

AMS:JPS:apm

Enclosure

c: Andrew Sislo, Chief Counsel
Department of State
Scott J. Messing, Deputy Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Judith Pachter Schulder, Counsel
State Board of Psychology
State Board of Psychology

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-6314
 SUBJECT: Notice of Requirements
 AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
12/17/03	<i>Sandra J. Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
12/17/03	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
12/17/03	<i>E. Page</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
12/17/03	<i>Robert B. ...</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)