

Regulatory Analysis Form

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INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

**Department of State, Bureau of Professional and
Occupational Affairs, State Board of Podiatry**

(2) I.D. Number (Governor's Office Use)

16A-447

IRRC Number: **2424**

(3) Short Title

Licensure Applications

(4) PA Code Cite

49 Pa. Code, §§ 29.51 – 29.54

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Steven Wennberg, Counsel**

State Board of Podiatry (717) 783-7200

Secondary Contact: **Joyce McK**, Deputy Chief Counsel
Department of State (717) 783-7200

(6) Type of Rulemaking (check one)

☐ Proposed Rulemaking

☒ Final Order Adopting Regulation

☐ Policy Statement

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

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

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

The State Board of Podiatry (Board) amends §§ 29.51 – 29.54 to eliminate references to the repealed Health Care Services Malpractice Act and replace them with references to the MCARE Act. In addition, the Board added language to clarify that a podiatrist must carry liability insurance for the services he or she performs.

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

Under the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101 – 1303.910), a podiatrist is considered a “health care provider,” and is required to comply with the professional liability insurance provisions of the MCARE Act. Section 15 of the Podiatry Practice Act (63 P.S. § 42.15) authorizes the Board to “make such reasonable rules and regulations as it deems necessary and proper in order to carry out the intent and purposes of this act within the scope of this act.”

Regulatory Analysis Form

(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.

The regulation is not mandated by any federal or state law or court order, or federal regulation. However, as the Health Care Services Malpractice Act was repealed and replaced by the MCARE Act, the amendments are necessary to conform the regulations to current statutory provisions.

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

The regulation must be amended to conform to the new statutory provisions.

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

The amendments will conform the Board's regulations to provisions of the MCARE Act and ensure that the podiatrists who practice in the Commonwealth maintain malpractice insurance deemed necessary by the Legislature to protect the citizens of the Commonwealth.

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

Podiatrists who practice in the Commonwealth would maintain malpractice insurance with minimum amounts to cover claims as determined by the Legislature. Approximately 1330 podiatrists are currently registered with the Board.

Regulatory Analysis Form

(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 would be adversely affected by this regulation.

(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.)

All licensed podiatrists in this Commonwealth will be required to comply with the regulation. There are approximately 1330 podiatrists licensed by 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 Board extended an invitation to comment on a draft of this proposal to parties who have indicated an interest in the Board's regulatory activities. The Board did not receive any comments.

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

There should be no additional cost to the regulated community associated with compliance with this regulation. Savings to the regulated community are not specifically quantifiable.

Regulatory Analysis Form

(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 may be a cost associated with prosecuting podiatrists who do not comply with the requirement that they maintain professional liability insurance in compliance with the MCARE Act. However, this cost should be no different than costs associated with the prior version of the regulations.

Regulatory Analysis Form

(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:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Any costs or savings associated with this regulation would be minimal. (See question 19).

Regulatory Analysis Form

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

Program	FY02-03	FY03-04	Projected FY04-05	Budget FY05-06
State Board of Podiatry	\$146,686.07	\$137,280.35	\$134,000.00	\$333,000.00

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

There should be no adverse effects and costs associated with compliance with the regulation. The benefits of the regulation are described in paragraphs 11 and 13 above.

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

Non-regulatory alternatives were not considered by the Board.

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

No alternative 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.

No.

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

Professional liability insurance is a requirement for all health care providers.

This regulation will not put Pennsylvania at a competitive disadvantage with other states.

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

No.

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

The Board has not scheduled any public hearings or informational meetings regarding this regulation. However, the Board meets bi-monthly. Comments from the public are always welcome. A schedule of Board meetings is available on the Department of State's website at www.dos.state.pa.us/bpoa.

Regulatory Analysis Form

(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.

No.

(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 not aware of any group with special needs that should be excepted from this regulation.

(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 of final-form 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, periodically communicates with licensees through newsletters and obtains information and feedback from its licensees on a frequent basis.

REGULATORY ANALYSIS ADDENDUM REGARDING
1 PA. CODE §307.2(c)(6)

Because the Board did not receive any public comments during proposed rulemaking, there is no listing of commentators who had requested additional information on the final-form regulation.

**FACE SHEET
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(Pursuant to Commonwealth Documents Law)

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INDEPENDENT AGENCY
LEGISLATION

DO NOT WRITE IN THIS SPACE

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

BY: _____
(DEPUTY ATTORNEY GENERAL)

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 Podiatry

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-447

DATE OF ADOPTION: _____

BY: S. Ronald Miller
S. Ronald Miller, D.P.M.

Chairman

TITLE: _____
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

BY: David J. Devries
DAVID J. DEVRIES

FEB 10 2006

DATE OF APPROVAL

EXECUTIVE

(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.

FINAL RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PODIATRY

49 Pa. Code, Chapter 29
LICENSURE APPLICATIONS

The State Board of Podiatry (Board) amends §§ 29.51 – 29.54 (relating to licensure applications) to read as set forth in Annex A.

Effective Date

The rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under section 15 of the Podiatry Practice Act (63 P.S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101 – 1303.910).

Background and Purpose

The Health Care Services Malpractice Act (*formerly* 40 P.S. §§ 1303.101 – 303.901), including provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, has been repealed and replaced by the MCARE Act. This rulemaking amends the Board's current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act. In addition, the amendment more clearly notifies the Board's licensees that they must carry liability insurance as set forth in the MCARE Act.

Description of Amendments

Section 303 of the MCARE Act (40 P.S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P.S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) is amended to require an applicant for licensure to inform the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) is amended to require applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, to furnish satisfactory proof to the Board that they are complying with the provisions of the MCARE Act. The amendment also deletes references to minimum amounts of liability insurance that were required by

the repealed Health Care Services Malpractice Act. A technical correction was made to § 29.52(a) to provide parallel construction within the subsection.

Subsection 29.52(c) is amended on final rulemaking to add a statement requiring the Board's licensees to carry liability insurance or an approved self-insurance plan as required by the MCARE Act. In addition, a statement was added to clarify that licensees must be insured for all professional services the licensee performs. For example, a licensee may only perform surgery if the licensee carries surgical liability insurance.

Section 29.53 (relating to original license), requires podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance. The Board deleted outdated references to the Arbitration Panels and CAT fund.

Section 29.54 (relating to penalty), which provides the podiatrist with notice that failure to comply with liability insurance requirements will result in discipline, was amended to replace the reference to the repealed Health Care Services Malpractice with the MCARE Act.

Comment and Regulatory Review of Proposed Rulemaking

Publication of proposed rulemaking, at 34 Pa. B. 4902 (September 4, 2004), was followed by a 30-day public comment period. The Board received no public comments.

Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Existing § 29.52(b) provides that licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program or to comply with the provisions of the Health Care Services Malpractice Act. As proposed, § 29.52(b) would be amended to replace Health Care Services Malpractice Act with MCARE Act. HPLC asked the Board to confirm that MCARE did not apply to federal employees. IRRC commented that subsection (b) should be deleted in its entirety unless the Board could justify the statutory authority for its position.

The definition of "Government" in Section 702 (40 P.S. § 1303.702) is the same as the definition of "Government" in Section 103 of the Health Care Services Malpractice Act, *formerly* 40 P.S. § 1301.103. Similarly, Section 711(i) which states that governmental entities may satisfy their obligations under the act, and the obligations of their employees, by purchasing insurance or self

insuring is a restatement of Section 701(c) of the Health Care Services Malpractice Act, *formerly* 40 P.S. § 1301.701(c). (Section 711(i) also requires such governmental entities to pay assessments to the Commonwealth Medical Care Availability and Reduction of Error Fund.) In interpreting the relevant provisions of the Health Care Services Malpractice Act, a Pennsylvania Attorney General Opinion ruled that that “[h]ealth care providers employed by the Federal government do not have to comply with the fee and insurance provisions of [the Health Care Services Malpractice Act].” 1976 Op.Atty.Gen. No. 4. The Opinion relied upon the Federal Tort Claims Act (28 U.S.C.A. § 2679(d)(1)) which provides that “[u]pon certification by the [United States] Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose . . . the United States shall be substituted as the party defendant.” The purpose of this amendment to the Federal Tort Claims Act was to “remove the potential personal liability of Federal employees for common law torts committed within the scope of their employment, and . . . instead provide that the exclusive remedy for such torts is through an action against the United States under the FTCA.” H.R. Rep. No. 700, 100th Cong., 2d Sess. 4 (1988).

Inasmuch as there is no substantive difference between the language of the two acts, the Board believes that the MCARE insurance provisions were not intended to reverse the Attorney General’s ruling and that the existing language of § 25.52(b) should not be deleted.

The HPLC also suggested that if the Board found that licensees employed by the Federal government do not have to comply with the MCARE Act, the Board should rewrite § 29.52(b) so that, if the Federal government changes its policy, licensees employed by the Federal government may comply with the MCARE Act. Section 29.52(b) does not prohibit licensees who are employed by the Federal government from complying with the MCARE Act. Rather, § 29.52(b) provides that these licensees are not required to comply with the MCARE Act. For this reason, the Board believes that § 29.52(b) will apply whether or not the Federal government changes its policy.

IRRC recommended that the Board amend § 29.53 to mirror section 711(b) of the MCARE Act, which requires health care providers to “submit proof of insurance or self-insurance to the department within 60 days of the policy being issued.” The Board has complied with IRRC’s recommendation by changing its original 90-day requirement to 60 days.

IRRC further recommended that the citations to the MCARE Act in §§ 29.52(a) and 29.54 be specific to the subjects in these sections. The Board believes that it is incumbent upon the licensee to familiarize himself with all relevant provisions of the MCARE Act relating to podiatrists. For this reason, the Board respectfully declines IRRC’s recommendation.

Fiscal Impact and Paperwork Requirements

The amendments should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the amendments should not necessitate any legal, accounting, reporting or other paperwork requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of the notice of proposed rulemaking, published at 34 Pa. B. 4902, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under Section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, the final-form rulemaking was approved by the HPLC. On _____, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, and approved the final-form rulemaking.

Contact Person

Further information may be obtained by contacting Gina Bittner, Board Administrator, State Board of Podiatry, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649 (gbittner@state.pa.us).

Findings

The State Board of Podiatry finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) This final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 34 Pa. B. 4902.
- (4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

Order

The Board, acting under its authorizing statutes, orders that:

- (a) The regulations of the Board at 49 Pa. Code §§ 29.51-29.54 are amended to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of the Attorney General as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

ANNEX A
TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 29. STATE BOARD OF PODIATRY

* * *

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1- [50] 20% _____ [51] 21% or more _____

(If the answer to question (1) is 0%, or if practicing only as a Federal [employee] employee, (2) and (3) need not be answered.)

* * *

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or [licenses] licensees applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with [the provisions of] the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101 – 1301.1006) Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101 - 1303.910)], in that the applicant OR LICENSEE, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an

approved self-insurance plan, and has paid the required fees and surcharges, [as set forth therein:

- (1) Proof of coverage of 100,000/300,000, if more than 50% of his practice is conducted in this Commonwealth, and proof that his insurance company has paid the required surcharge into the Medical Professional Liability Loss Fund or that he has paid the \$50 fee to the office of the Administrator for Arbitration Panels for Health Care, should be furnished.
- (2) Basic coverage insurance in the amount of 200,000/600,000 or an approved self-insurance plan is required if 50% or less of his practice is in this Commonwealth. The licensee is not required to pay the required surcharge nor is the licensee entitled to participate in the Medical Professional Liability Catastrophe Loss Fund. The licensee is required to pay the \$50 fee to the Administrator for Arbitration Panels for Health Care.

(3)][b] Licensees practicing solely as Federal [employees] employees are not required to participate in the professional liability insurance program, nor are they required to comply with [the provisions of] the [Health Care Services Malpractice] MCARE Act.

[(4)][c] ALL LICENSEES PRACTICING PODIATRY IN THIS COMMONWEALTH SHALL CARRY AT LEAST THE MINIMUM AMOUNT OF PROFESSIONAL LIABILITY INSURANCE OR AN APPROVED SELF-INSURANCE PLAN AS SET FORTH IN THE MCARE ACT. THE LICENSEE SHALL CARRY LIABILITY INSURANCE OR AN APPROVED SELF-INSURANCE PLAN TO COVER ALL PROFESSIONAL SERVICES PERFORMED BY THE LICENSEE. Licensees who ~~have no~~ DO NOT practice in this Commonwealth are not required to [pay the arbitration fees or] comply with the [provisional insurance requirements of the Health Care Services

Malpractice] MCARE Act.

§ 29.53. Original license.

A podiatrist applying for ~~his~~ AN original license[,] to practice podiatry shall, within ~~90~~ 60 days after receipt of [his] the podiatrist's original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance AS REQUIRED BY § 29.52(a) (RELATING TO REQUIREMENTS FOR APPLICANTS) [, the payment of the \$50 fee to the Administrator for Arbitration Panels for Health Care, and payment of the surcharge to the Medical Professional Liability Catastrophe Loss Fund].

§ 29.54. Penalty.

Failure to comply with [the requirements of] the [Health Care Services Malpractice (40 P.S. §§ 1301.101 – 1301.1006)] MCARE Act (40 P.S. §§ 1303.101 – 1303.910), the regulations issued thereunder, and this subchapter shall result in a suspension or revocation of [his] the licensee's license after a formal hearing before the Board.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL
STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL
AFFAIRSCHAPTER 27. STATE BOARD OF PHARMACY
FEES

§ 27.91. Schedule of fees.

An applicant for a license, certificate, permit or service shall pay the following fees at the time of application:

* * * * *

[North American Pharmacist Licensure Examination (NAPLEX).....	\$250
Multistate Pharmacy Jurisprudence Examination (MPJE).....	\$85]
* * * * *	

[Pa.B. Doc. No. 04-1637. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD
OF PODIATRY

[49 PA. CODE CH. 29]

Professional Liability Insurance

The State Board of Podiatry (Board) proposes to amend §§ 29.51—29.54 to read as set forth in Annex A.

Effective Date

The proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

This rulemaking is proposed under section 15 of the Podiatry Practice Act (63 P. S. § 42.15) and the Medical Care Availability and Reduction of Error (MCARE) Act (40 P. S. §§ 1303.101—1303.910).

Background and Purpose

The Health Care Services Malpractice Act (40 P. S. §§ 1303.101—1303.901), in particular provisions that relate to requirements for the maintenance of professional liability insurance by podiatrists, have been repealed and replaced by the MCARE Act. This proposed rulemaking would amend the current regulations by eliminating references to the Health Care Services Malpractice Act and replacing them with references to the MCARE Act.

Description of Proposed Rulemaking

Section 303 of the MCARE Act (40 P. S. § 1303.303) lists "podiatrist" as a health care provider. Section 702 of the MCARE Act (40 P. S. § 1303.702) defines "participating health care provider" as "[a] health care provider as defined in section 103 that conducts more than 20% of its health care business or practice within this Commonwealth." In compliance with these provisions of the MCARE Act, § 29.51 (relating to applicants) would be amended to require an applicant for licensure to inform

the Board as to what percentage of the applicant's practice is conducted in this Commonwealth.

Section 29.52 (relating to requirements for applicants) would be amended to require applicants for licensure or licensees applying for biennial renewal, who practice in this Commonwealth, to furnish satisfactory proof to the Board that they are complying with the MCARE Act. The proposed rulemaking would also delete references to amounts of liability insurance that were required by the repealed Health Care Services Malpractice Act.

Section 29.53 (relating to original license) would require podiatrists applying for original licensure to furnish the Board with proof of professional liability insurance.

Section 29.54 (relating to penalty) would provide the podiatrist with notice that failure to comply with the MCARE Act may result in a suspension or revocation of the podiatrist's license after a formal hearing before the Board.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the proposed rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 23, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Roberta L. Silver, Counsel, State Board of Podiatry, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

JEFFREY S. GERLAND, D.P.M.,
Chairperson

Fiscal Note: 16A-447. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 29. STATE BOARD OF PODIATRY

LICENSURE APPLICATIONS

§ 29.51. Applicants.

On applications for licensure or the biennial renewal of a license, the applicant shall answer the following three questions:

(1) Using as a base the number of patients served in an annual period, what percentage of your practice is in Pennsylvania?

0% _____ 1— [50%] 20% _____ [51%]
21% or more _____

(If the answer to question (1) is 0%, or if practicing only as a Federal [employee] employee, (2) and (3) need not be answered.)

* * * * *

§ 29.52. Requirements for applicants.

(a) Applicants for licensure or [licenses] licensees applying for biennial renewal, who practice in this Commonwealth, shall furnish satisfactory proof to the Board that they are complying with [the provisions of] the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)] Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. §§ 1303.101—1303.910), in that the applicant, if required by the act and the rules and regulations pertaining thereto, is maintaining the required amount of professional liability insurance or an approved self-insurance plan, and has paid the required fees and surcharges. [as set forth therein:

(1) Proof of coverage of 100,000/300,000, if more than 50% of his practice is conducted in this Commonwealth, and proof that his insurance company has paid the required surcharge into the Medical Professional Liability Loss Fund or that he has paid the \$50 fee to the office of the Administrator for Arbitration Panels for Health Care, should be furnished.

(2) Basic coverage insurance in the amount of 200,000/600,000 or an approved self-insurance plan is required if 50% or less of his practice is in this Commonwealth. The licensee is not required to pay the required surcharge nor is the licensee entitled to participate in the Medical Professional Liability Catastrophe Loss Fund. The licensee is required to pay the \$50 fee to the Administrator for Arbitration Panels for Health Care.

(3) [(b) Licensees practicing solely as Federal [employees] employees are not required to participate in the professional liability insurance program, nor are they required to comply with [the provisions of] the [Health Care Services Malpractice] MCARE Act.

[(4)] (c) Licensees who have no practice in this Commonwealth are not required to [pay the arbitration

fees or] comply with the [provisional insurance requirements of the Health Care Services Malpractice] MCARE Act.

§ 29.53. Original license.

A podiatrist applying for his original license[,] to practice podiatry shall, within 90 days after receipt of [his] the podiatrist's original license, furnish the Board with the information required in § 29.51 (relating to applicants), and proof of professional liability insurance[, the payment of the \$50 fee to the Administrator for Arbitration Panels for Health Care, and payment of the surcharge to the Medical Professional Liability Catastrophe Loss Fund].

§ 29.54. Penalty.

Failure to comply with [the requirements of] the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)] MCARE Act (40 P.S. §§ 1303.101—1303.910), the regulations issued thereunder, and this subchapter shall result in a suspension or revocation of [his] the licensee's license after a formal hearing before the Board.

[Pa.B. Doc. No. 04-1638. Filed for public inspection September 3, 2004, 9:00 a.m.]

STATE BOARD OF
PSYCHOLOGY

[49 PA. CODE CH. 41]

Education Requirements

The State Board of Psychology (Board) proposes to amend §§ 41.1 and 41.31 (relating to definitions; and qualifications for taking licensure examination) to read as set forth in Annex A.

A. Effective Date

This proposed rulemaking will be effective for applicants for licensure who first enrolled in a psychology or psychology related educational program at least 2 academic years from the publication of the final-form rulemaking in the *Pennsylvania Bulletin*. Applicants who are currently enrolled in a doctoral degree program on the date prior to publication of final-form rulemaking would qualify under existing language and would have 5 years from the effective date of the final-form rulemaking to obtain the requisite education to become eligible to sit for the license examination. Applicants who do not obtain the requisite education within the 5 years would be required to comply with the requirements set forth in this proposed rulemaking.

B. Statutory Authority

This proposed rulemaking is made under sections 3.2(1) and 6(a)(2) of the Professional Psychologists Practice Act (act) (63 P.S. §§ 1203.2(1) and 1206(a)(2)).

C. Purpose and Background

Section 6(a)(2) of the act mandates that applicants for licensure have a doctoral degree in psychology or a field related to psychology. The Board has defined "doctoral degree in psychology" and "doctoral degree in a field related to psychology" in § 41.1.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS



STATE BOARD OF PODIATRY
P.O. BOX 2649
HARRISBURG, PENNSYLVANIA 17105-2649

Telephone: (717) 783-4858
Fax: (717) 787-7769
www.dos.state.pa.us/pod

March 16, 2006

The Honorable John R. McGinley, Jr., Esq.
Chairman, Independent Regulatory Review Commission
Harristown II, 14th Floor
333 Market Street
Harrisburg, PA 17101

RE: Final Rulemaking of State Board of Podiatry Relating to
Licensure Applications (16A-447)

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Podiatry relating to licensure applications. The Board did not receive any public comments during proposed rulemaking.

The Board stands ready to provide whatever information or assistance your Commission may require during its review of the final rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Ronald Miller".

S. Ronald Miller, D.P.M., Chairman
State Board of Podiatry

SRM:SW
Enclosure

cc: Albert H. Masland, Chief Counsel
Department of State

Joyce McKeever, Deputy Chief Counsel
Department of State

Cynthia Montgomery, Regulatory Counsel
Department of State

Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs

Gerald S. Smith, Senior Counsel in Charge
Department of State

Steven Wennberg, Counsel
State Board of Podiatry

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

RECEIVED

I.D. NUMBER: 16A-447
SUBJECT: State Board of Podiatry: Licensure Applications
AGENCY: DEPARTMENT OF STATE

2006 MAR 16 PM 4:22

INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

- Proposed Regulation
- X 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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/16/06	<i>Nancy Sheale</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/16/06	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/16/06	<i>Dr. Helmett</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

February 10, 2006