

<h1>Regulatory Analysis Form</h1>		This space for use by IRRC  2004 AUG 23 AM 11:25  REVIEW COMMISSION
(1) Agency  <b>Department of State, Bureau of Professional and Occupational Affairs, State Board of Podiatry</b>		IRRC Number: 2424
(2) I.D. Number (Governor's Office Use)  16A-447		
(3) Short Title  <b>Licensure Applications</b>		
(4) PA Code Cite  <b>49 Pa. Code, §§ 29.51 – 29.54</b>	(5) Agency Contacts & Telephone Numbers Primary Contact: <b>Roberta L. Silver, Counsel</b> <b>State Board of Podiatry (717) 783-7200</b> Secondary Contact: <b>Joyce McKeever, Deputy Chief Counsel</b> <b>Department of State (717) 783-7200</b>	
(6) Type of Rulemaking (check one)  <input checked="" type="checkbox"/> <b>Proposed Rulemaking</b> <input type="checkbox"/> <b>Final Order Adopting Regulation</b> <input type="checkbox"/> <b>Policy Statement</b>	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> <b>No</b> <input type="checkbox"/> <b>Yes: By the Attorney General</b> <input type="checkbox"/> <b>Yes: By the Governor</b>	
(8) Briefly explain the regulation in clear and nontechnical language.  <b>The State Board of Podiatry (Board) proposes to amend §§ 29.51 – 29.54 to eliminate references to the repealed Health Care Services Malpractice Act and replace them with references to the Mcare Act.</b>		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  <b>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.”</b>		

### 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.**

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

**The regulation must be amended to give notice to applicants for licensure and current licensees that they must comply with the professional liability insurance provisions of the Mcare Act.**

(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 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 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.**

### 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
<b>SAVINGS:</b>	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
<b>COSTS:</b>	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
<b>REVENUE LOSSES:</b>	\$ 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	FY00-01	FY01-02	Projected FY02-03	Budget FY03-04
State Board of Podiatry	\$110,045.68	\$125,467.40	\$227,396.18	\$269,000.00

(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?

**It appears that 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 scheduled no 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](http://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.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU  
(Pursuant to Commonwealth Documents Law)

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REVIEW COMMISSION

#2424

DO NOT WRITE IN THIS SPACE

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

BY: Angela Elliott  
(DEPUTY ATTORNEY GENERAL)

MAY 10 2004

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: Jeffrey S. Gerland, D.P.M.

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

BY: Tanya C. Gable

4/12/04  
DATE OF APPROVAL

Asst.  
(Deputy General Counsel  
(Chief Counsel,  
Independent Agency  
Strike inapplicable  
title)

TITLE: Chairman  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- [ ] 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 PODIATRY  
49 PA. CODE, CHAPTER 29

PROFESSIONAL LIABILITY INSURANCE

The State Board of Podiatry (Board) proposes to amend §§ 29.51 – 29.54 (relating to licensure applications) 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

The regulations are authorized by 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), 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 regulation 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 Amendments

Section 1303.103 of the Mcare Act lists “podiatrist” as a health care provider. Section 1303.702 of the Mcare Act 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 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 Pennsylvania.

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

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

Section 29.54 would provide the podiatrist with notice that failure to comply with the requirements of 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.

#### Compliance with Executive Order 1996-1, Regulatory Review and Promulgation.

In compliance with Executive Order 1996-1, the Board extended an invitation to comment on early drafts of this proposed rulemaking to parties who have indicated an interest in the Board's regulatory activities. The list of these persons is available upon request from the contact person listed in this Preamble. The Board did not receive any comments.

#### 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*.

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Jeffrey S. Gerland, D.P.M.  
State Board of Podiatry

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 \_\_\_\_\_

\* \* \*

**§ 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 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] provisions 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 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 (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.



**COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF PODIATRY  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-4858**

August 23, 2004

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

Re: Proposed Regulation  
State Board of Podiatry  
Fees: 16A-447

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Podiatry pertaining to Professional Liability Insurance.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey S. Gerland".

Jeffrey S. Gerland, D.P.M., Chairperson  
State Board of Podiatry

JSG/RLS:apm

Enclosure

cc: Linda C. Barrett, Chief Counsel  
Department of State  
Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel  
Department of State  
Gerald S. Smith, Senior Counsel in Charge  
Department of State  
Roberta L. Silver, Counsel  
State Board of Podiatry  
State Board of Podiatry

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

I.D. NUMBER: 16A-447

SUBJECT: Professional Liability Insurance

AGENCY: DEPARTMENT OF STATE

#2424

**TYPE OF REGULATION**

X 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 ACT

**FILING OF REGULATION**

DATE

SIGNATURE

DESIGNATION

8/23 Sandra J. Laper HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

8/23 Brian B. Cleaver

SENATE COMMITTEE ON CONSUMER PROTECTION &  
PROFESSIONAL LICENSURE

8/23 [Signature]

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

8/23 [Signature]

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

May 11, 2004