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

November 3, 2004

Jeffrey S. Gerland, D.P.M., Chairman  
State Board of Podiatry  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-447 (IRRC #2424)  
State Board of Podiatry  
Professional Liability Insurance

Dear Chairman Gerland:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director

wbg

Enclosure

cc: Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Pedro A. Cortes, Secretary, Department of State

# **Comments of the Independent Regulatory Review Commission**

**on**

## **State Board of Podiatry Regulation #16A-447 (IRRC #2424)**

### **Professional Liability Insurance**

**November 3, 2004**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Podiatry (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on October 4, 2004. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Section 29.52. Requirements for applications. – Statutory authority; Reasonableness; Clarity.**

The House Professional Licensure Committee (House Committee) questioned the exemption for federal employees in Section 29.52(b). Section 711(i) of the Medical Care Availability and Reduction of Error Act (40 P.S. § 1303.711(i)) (Mcare Act) specifically includes employees of a governmental entity and Section 711(j) of the Mcare Act (40 P.S. § 1303.711(j)) does not exempt federal employees. We agree with the House Committee's comment and question the statutory authority for the exemption.

As the House Committee correctly noted, the definition of "government" in Section 702 of the Mcare Act (40 P.S. § 1303.702) includes the Government of the United States. Furthermore, Section 711(j) of the Mcare Act (40 P.S. § 1303.711(j)) specifically lists the three types of providers exempt from the insurance provision, and the list does not include government employees. Therefore, Subsection (b) should be deleted, unless the Board can justify its statutory authority for the provision.

#### **2. Section 29.53. Original license. – Consistency with statute.**

This section requires a podiatrist applying for an original license to, "within 90 days after receipt of the podiatrist's original license, furnish the Board with the information required in Section 29.51 (relating to applicants)." However, Section 711(b) of the Mcare Act (40 P.S. § 1303.711(b)) requires medical professionals to "submit proof of insurance or self-insurance to the department within 60 days of the policy being issued." The Board should revise Section 29.53 to be consistent with the Mcare Act.

#### **3. Miscellaneous clarity issues.**

Sections 29.52(a) and 29.54 contain general citations to the Mcare Act. For clarity, the citations to the Mcare Act should be specific to the subjects in these sections.

**Facsimile Cover Sheet**

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**INDEPENDENT REGULATORY REVIEW COMMISSION**  
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**To:** Suzanne Hoy  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251  
**Date:** November 3, 2004  
**Pages:** 3

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Podiatry regulation #16A-447 (IRRC #2424). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:**

*Suzanne Hoy*

**Date:**

11/04/04