

Regulatory Analysis Form

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INDEPENDENT REGULATORY REVIEW COMMISSION

11:35 AM

IRRC Number: 2566

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Physical Therapy

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

16A-6511

(3) Short Title

Biennial Renewal Fees

(4) PA Code Cite

49 Pa. Code, §40.5

(5) Agency Contacts & Telephone Numbers

Primary Contact: Beth Sender Michlovitz, Counsel
State Board of (717) 783-7200

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

(6) Type of Rulemaking (check one)

Proposed Rulemaking

Final Order Adopting Regulation

Final Order, Proposed Rulemaking Omitted

(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 regulation increases the biennial renewal fees for physical therapists, physical therapist assistants and holders of certificates to practice physical therapy without a referral. The new fees are needed because the current fees, established in 1988, 1988 and 2004, respectively, no longer cover the cost of sustaining the Board's operations.

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

The amendments are proposed under section 8(b) of the Physical Therapy Practice Act (act) (63 P.S. §1308(b)).

(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.

Yes. The Board is required by section 8(b) of the act (63 P.S. § 1308(b)) to reconcile its expenses and revenue biennially and to increase fees as needed to meet or exceed projected expenditures.

Regulatory Analysis Form

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

The Board is required by section 8(b) of the act (63 P.S. § 1308(b)) to set fees to raise sufficient revenue to meet expenditures. It is anticipated that without raising fees the Board will realize a deficit of \$282,664.81 for fiscal year 2007-2008.

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

Nonregulation would adversely impact the fiscal integrity of the Board.

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

Recipients of physical therapy services in the Commonwealth will benefit by having adequate funding for the Board to regulate the profession to insure that the appropriate standards of professional competence and integrity are maintained.

(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.)

The licensee population will bear the cost of the increased fees.

(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 physical therapists, holders of certificates to practice physical therapy without a referral and registered physical therapist assistants seeking to renew their licenses, certificates and registrations will be required to comply with this regulation. The board estimates 10,700 physical therapists will renew their licenses, 1,100 physical therapists with certificates to practice without a referral will renew their certificates and 3,734 physical therapist assistants will renew their registrations.

Regulatory Analysis Form

(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.

The reconciliation of its budget is an administrative function for which public input is not required. However, the Board receives its budget reports and discusses fee increases in public sessions. In addition, the Board published proposed rulemaking and received no public 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.

The Board estimates that 10,700 physical therapists will renew their licenses, 1,100 holders of certificates to practice physical therapy without a referral will renew their certificates and 3,734 physical therapist assistants will renew their registrations. Therefore, the anticipated biennial cost of the increase in renewal fees is estimated to be \$669,250. (See item No. 20.) No legal, accounting or consulting procedures will be implicated in complying with the regulatory amendments.

(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.

Local governments will not be affected by the regulation.

(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.

The Board will not incur an increase in administrative costs by implementing the regulation. Indeed, the regulatory amendments will permit the Board to recoup the costs of its operations.

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 07-08	FY +1 08-09	FY +2 09-10	FY +3 10-11	FY +4 11-12	FY +5 12-13
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	\$ 0	\$669,250	\$0	\$669,250	\$0	\$669,250
Local Government						
State Government						
Total Costs	\$ 0	\$669,250	\$0	\$669,250	\$0	\$669,250
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

The cost estimates are based upon the total licensee population of 15,534.

Biennial renewal – physical therapists

10,700 renewals x increase of \$53 over current fee = \$567,100

Biennial renewal – certificates to practice physical therapy without a referral

1,100 renewals x increase of \$8 over current fee = \$8,800

Biennial renewal – physical therapist assistants

3,734 renewals x increase of \$25 over current fee = \$93,350

The figures in (20) above represent the total increase to licensees, certificate holders and registrants, for the first year of each biennial renewal period beginning in January of 2009.

Regulatory Analysis Form

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

Program	FY -3	FY -2	FY -1	Current FY
State Board of Physical Therapy	\$268,110.98	\$259,358.51	\$206,679.59	\$287,000.00

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

The amendments to the existing regulations are mandated by section 8(b) of the act (63 P.S. § 1308(b)), so that Board revenues meet Board expenses.

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

No nonregulatory alternatives were considered. See Question 21.

(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. See Question 21.

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?

This regulation will not put Pennsylvania licensees at a competitive disadvantage with other states, as the proposed fees are lower than surrounding states. For example, the biennial renewal fee for physical therapists in New Jersey is \$110, the biennial renewal fee for a physical therapist assistant is \$100; in New York, physical therapists pay a triennial renewal fee of \$155 and physical therapist assistants pay a triennial renewal fee of \$50; in Delaware, physical therapists pay a biennial renewal fee of \$90 and physical therapist assistants pay a biennial renewal fee of \$90; physical therapists and physical therapist assistants pay a biennial renewal fee of \$120 in Ohio; in West Virginia, physical therapists pay a biennial renewal fee of \$120 and physical therapist assistants pay a biennial renewal fee of \$80; and in Maryland, physical therapists pay a biennial renewal fee of \$175 and physical therapist assistants pay a biennial renewal fee of \$150.

(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 reviews regulatory proposals at regularly scheduled public meetings. However, in light of the statutory mandate, the Board has not scheduled public hearings or informational meetings regarding this regulation. A list of scheduled Board meetings may be found at www.dos.state.pa.us.

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 changes to reporting, record keeping, or other paperwork is required by this 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 has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(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 Rulemaking in the Pennsylvania Bulletin. Compliance will be required as of January 1, 2009.

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

The Board reviews its revenues and costs of its programs on a fiscal year and biennial basis.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

11:35 AM

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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form and legality. Attorney General

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

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Executive or Independent
Agencies

State Board of Physical Therapy
(AGENCY)

[Signature]
BY: Andrew C. Clark

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-6511

APR 17 2008

DATE OF ADOPTION: _____

DATE OF APPROVAL

DATE OF APPROVAL

BY: Charles E. Meacci
Charles E. Meacci, PT

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

TITLE: Chairperson
(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.

FINAL RULEMAKING
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY
49 PA. CODE, CHAPTER 40, § 40.5

BIENNIAL RENEWAL FEES

The State Board of Physical Therapy (Board) hereby amends § 40.5 (relating to fees), to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication of the final-form rulemaking in the Pennsylvania Bulletin. The increased fees will be effective for the renewal period beginning January 1, 2009.

Statutory Authority

Section 8(b) of the Physical Therapy Practice Act (act) (63 P.S. §1308(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Purpose

The Board's current biennial license renewal fees for physical therapists and physical therapist assistants were adopted at 18 Pa.B. 4952 (November 4, 1988). The Board's current biennial renewal fees for certificates to practice physical therapy without a referral were adopted at 34 Pa.B. 3700 (July 16, 2004). Under section 8(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees.

At Board meetings in January and March, 2006, the Department of State's Offices of Revenue and Budget presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2003-2004 and FY 2004-2005, and projected revenue and expenses through FY 2012-2013. The Offices of Revenue and Budget projected a deficit of \$282,664.81 in FY 2007-2008, a deficit of \$205,664.81 in FY 2008-2009, a deficit of \$549,664.81 in FY 2009-2010, a deficit of \$485,664.81 in FY 2010-2011, a deficit of \$853,664.81 in FY 2011-2012 and a deficit of \$814,664.81 in FY 2012-2013. As a result of the projected deficits, the Offices of Revenue and Budget recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 8(b) of the act. Therefore, based upon the expense and revenue estimates provided to the Board, the Board is amending § 40.5 (relating to fees) to increase the fee for biennial renewal of licenses for physical therapists from \$37 to \$90, to increase the fee for biennial renewal of certificates to practice physical therapy without a referral from \$37 to \$45, and to increase the fee for biennial renewal of registrations to practice as physical therapist assistants from \$20 to \$45. The Budget Office anticipates that the proposed new biennial renewal fees will enable the Board to meet its estimated expenditures for at least 8 years.

Although the proposed fee increases are significant, they are not surprising in that the fees for physical therapists and physical therapist assistants have not been increased since 1988. Also, in spite of the proposed increases, the Board's new fees will still be lower than the surrounding states. For example, the following renewal fees are charged by neighboring states: biennial renewal fee for physical therapists in New Jersey is \$110, the biennial renewal fee for a physical therapist assistant is \$100; in New York, physical therapists pay a triennial renewal fee

of \$155 and physical therapist assistants pay a triennial renewal fee of \$50; in Delaware, physical therapists pay a biennial renewal fee of \$90 and physical therapist assistants pay a biennial renewal fee of \$90; physical therapists and physical therapist assistants pay a biennial renewal fee of \$120 in Ohio; in West Virginia, physical therapists pay a biennial renewal fee of \$120 and physical therapist assistants pay a biennial renewal fee of \$80; and in Maryland, physical therapists pay a biennial renewal fee of \$175 and physical therapist assistants pay a biennial renewal fee of \$150.

Summary of Comments and the Board's Response

Notice of proposed rulemaking was published at 36 Pa.B. 5982 (September 30, 2006). No public comments were received. In addition, neither the Senate Consumer Protection and Professional Licensure Committee nor the Independent Regulatory Review Commission commented on the proposed rulemaking as part of their review under the Regulatory Review Act. The House Professional Licensure Committee (HPLC) submitted one comment to the Board.

The HPLC noted that in the proposed rulemaking, the Board stated that the increases are needed partly because there has been a marked increase in disciplinary cases and related legal expenses. The HPLC asked the Board to provide specific information as to what types of disciplinary cases these are and the Board's determination for such escalation. As noted in the proposed rulemaking, the number of disciplinary cases opened increased from 21 in FY 2002-2003 to 65 in FY 2004-2005. Additionally, there were 53 disciplinary matters opened in FY 2005-2006 and 56 opened in FY 06-07. The types of disciplinary cases coming before the Board tend to fall in the following categories: Incompetence/Malpractice/Negligence; Unprofessional Conduct; Conviction of a Crime; Practicing on a Lapsed/Suspended License; Disciplinary Action in another State; Unlicensed Practice; Failure to keep Adequate Records; Practicing Outside the Scope of One's License; Fraud in the Practice of the Profession; and Sexual Misconduct. The Board believes one major reason for the increase in disciplinary matters is the public's increased awareness of the complaint process brought about by the Department's and the Board's presence on the internet. Complaints can now be filed online through the Department's website at www.dos.state.pa.us. The number of complaints filed dramatically increased with the advent of online complaints and is now averaging about 60 complaint files opened annually for this Board. Most of the other professional boards and commissions under the Bureau of Professional and Occupational Affairs have had the same experience in recent years. Each complaint must be investigated, and those with merit must be prosecuted, resulting in increases in investigative and legal costs that consume a greater portion of the revenues of the Board. The projected deficits are the result of the interplay between the dramatic increase in the number of disciplinary cases and the fact that the renewal fees for physical therapists and physical therapist assistants have not been increased since 1988. Until recently, revenues were adequate to meet the Board's expenses. Because this is no longer the case, the Board must raise its fees in order to support its continued operations.

Fiscal Impact

The regulation will increase the biennial renewal fee for physical therapists from \$37 to \$90, holders of a certificate to practice physical therapy without a referral from \$37 to \$45, and physical therapist assistants from \$20 to \$45. The proposed regulation should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed regulation will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the proposed regulations should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and cost on a fiscal year and biennial basis. 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 September 20, 2006, the Board submitted a copy of the proposed rulemaking, published at 36 Pa.B. 5982 (September 30, 2006), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (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 and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. §745.5a(j.2)), on _____, 2008, the final-form rulemaking was approved by the HPLC. On _____, 2008, the final-form rulemaking was deemed approved by SCP/PLC. Under section 5(g) of the Regulatory Review Act, the final-form rulemaking was deemed approved by IRRC on _____, 2008.

Additional Information

Interested persons may obtain information regarding the final-form rulemaking by writing to Beth Michlovitz, Counsel, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649, or bmichlovit@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.S. 769, No. 240) (45 P.S. §§ 7.1 and 7.2).
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) There are no amendments to the final-form rulemaking that would enlarge the purpose of the proposed rulemaking published at 36 Pa.B. 5982.
- (4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the act.

Order

The Board orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 40 are amended by amending § 40.5 (relating to fees) 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 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.

Charles E. Meacci, P.T.
Board Chairperson

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. GENERAL PROVISIONS

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

* * * * *

Biennial renewal.....\$[37]90

* * * * *

Biennial renewal of Certificate to Practice Physical Therapy without a
referral.....\$[37]45

* * * * *

Physical therapist assistants:

* * * * *

Biennial renewal of registration.....\$[20]45

* * * * *

PUBLIC COMMENTATORS FOR 16A-6511

There were no public comments received relating to Regulation 16A-6511.

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 must 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 Herbert Abramson, Board Counsel, State Board of Occupational Therapy Education and Licensure, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

ELLEN L. KOLODNER,
Chairperson

Fiscal Note: 16A-676. 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 42. STATE BOARD OF OCCUPATIONAL THERAPY EDUCATION AND LICENSURE

MINIMUM STANDARDS OF PRACTICE

§ 42.25. [Oral orders] Orders.

(a) [An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist or licensed podiatrist in accordance with section 14 of the act (63 P. S. § 1514) unless the urgency of the medical circumstances requires immediate treatment. In these circumstances, an occupational therapist may accept an oral order for occupational therapy from a licensed physician, licensed optometrist or licensed podiatrist, if the oral order is immediately transcribed, including the date and time, in the patient's medical record and signed by the occupational therapist taking the order.

(b) The countersignature of the licensed physician, licensed optometrist or licensed podiatrist shall be obtained within 5 days of receipt of the oral order in the case of an occupational therapist providing ordered services in a private office setting. In the case of an occupational therapist providing services in a setting that is independent of the prescribing physician's, optometrist's or podiatrist's office, the countersignature on a written copy of the order may be mailed or faxed to the occupational therapist.

(c) In the case of an occupational therapist providing services in a facility licensed by the Department of Health, the countersignature of the licensed physician, licensed optometrist or licensed podiatrist shall be obtained in accordance with applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and 601.31 (relating to oral and telephone

orders; and acceptance of patients, plan of treatment and medical supervision).]

Written orders. An occupational therapist shall accept a referral in the form of a written order from a licensed physician, licensed optometrist or licensed podiatrist.

(b) Oral orders.

(1) An occupational therapist may accept a referral in the form of an oral order if it is impractical for the order to be given in writing by the responsible licensed physician, licensed optometrist or licensed podiatrist.

(2) An occupational therapist receiving an oral order shall immediately transcribe the order in the patient's medical record, including the date and time the order was received, and shall sign the medical record.

(3) The occupational therapist in a private office setting who has received an oral order shall obtain the countersignature of the practitioner who issued the order within 5 days of receiving the order.

(4) If the occupational therapist who receives an oral order provides services in a setting that is independent of the prescriber's setting, the occupational therapist may accept the countersignature of the ordering practitioner on a written copy of the order that is mailed or faxed to the occupational therapist.

(5) If an occupational therapist provides services in a facility licensed by the Department of Health, the countersignature of the ordering practitioner shall be obtained in accordance with the applicable regulations of the Department of Health governing the facility, including 28 Pa. Code §§ 211.3 and 601.31 (relating to oral and telephone orders; and acceptance of patients, plan of treatment and medical supervision).

[Pa.B. Doc. No. 06-1905. Filed for public inspection September 29, 2006, 9:00 a.m.]

STATE BOARD OF PHYSICAL THERAPY

[49 PA. CODE CH. 40]

Biennial Renewal Fees

The State Board of Physical Therapy (Board) proposes to amend § 40.5 (relating to fees) to read as set forth in Annex A. The proposed rulemaking increases the biennial license renewal fee for physical therapists from \$37 to \$90, increases the biennial renewal fee for certificates to practice physical therapy without a referral from \$37 to \$45 and increases the registration renewal fee for physical therapist assistants from \$20 to \$45.

Effective Date

The proposed rulemaking will be effective upon final publication in the *Pennsylvania Bulletin*. The increased fees will be effective for the renewal period beginning January 1, 2009.

Statutory Authority

Section 8(b) of the Physical Therapy Practice Act (act) (63 P. S. § 1308(b)) requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Board expenditures.

Background and Purpose

The Board's current biennial license renewal fees for physical therapists and physical therapist assistants were adopted at 18 Pa.B. 4952 (November 5, 1988). The Board's current biennial renewal fees for certificates to practice physical therapy without a referral were adopted at 34 Pa.B. 3700 (July 16, 2004). Under section 8(b) of the act, the Board is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the act provides that the Board must increase fees if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period. The Board raises virtually all of its revenue through biennial renewal fees.

At Board meetings in January and March, 2006, the Department of State's Offices of Revenue and Budget presented a summary of the Board's revenue and expenses for Fiscal Year (FY) 2003-2004 and FY 2004-2005, and projected revenue and expenses through FY 2012-2013. The Offices of Revenue and Budget projected a deficit of \$282,664.81 in FY 2007-2008, a deficit of \$205,664.81 in FY 2008-2009, a deficit of \$549,664.81 in FY 2009-2010, a deficit of \$485,664.81 in FY 2010-2011, a deficit of \$853,664.81 in FY 2011-2012 and a deficit of \$814,664.81 in FY 2012-2013. The major reason for the deficits is that the renewal fees have not been increased since 1988. Those fees have carried the Board for almost 18 years. In addition, the need for an increase in fees is the result of an increase in the number of opened disciplinary cases over the last 3 fiscal years. In FY 2002-2003, there were 21 opened legal cases; in FY 2003-2004, there were 36 opened legal cases; and in FY 2004-2005, there was an all time high of 65 opened legal cases. As of May 11, 2006, there were 35 opened legal cases. The increase in the number of cases also resulted in an increase in hearing examiner expenses. As a result of the projected deficits, the Offices of Revenue and Budget recommended that the Board raise fees to meet or exceed projected expenditures, in compliance with section 8(b) of the act. The Budget Office anticipates that the proposed new biennial renewal fees will enable the Board to meet its estimated expenditures for at least 8 years.

Although the proposed fee increase is significant, it is not surprising. As already stated, the fees for physical therapists and physical therapist assistants have not been increased since 1988. Also, in spite of the proposed increases, the Board's new fees will still be lower than the surrounding states. For example, the following renewal fees are charged by neighboring states: biennial renewal fee for physical therapists in New Jersey is \$110 and the biennial renewal fee for a physical therapist assistant is \$100; in New York, physical therapists pay a triennial renewal fee of \$155 and physical therapist assistants pay a triennial renewal fee of \$50; in Delaware, physical therapists pay a biennial renewal fee of \$90 and physical therapist assistants pay a biennial renewal fee of \$90; physical therapists and physical therapist assistants pay a biennial renewal fee of \$120 in Ohio; in West Virginia, physical therapists pay a biennial renewal fee of \$120 and physical therapist assistants pay a biennial renewal fee of \$80; and in Maryland, physical therapists pay a

biennial renewal fee of \$175 and physical therapist assistants pay a biennial renewal fee of \$150.

Description of Proposed Amendments

Based upon the expense and revenue estimates provided to the Board, the Board proposes to amend § 40.5 to increase the fee for biennial renewal of licenses for physical therapists from \$37 to \$90, to increase the fee for biennial renewal of certificates to practice physical therapy without a referral from \$37 to \$45 and to increase the fee for biennial renewal of registrations to practice as physical therapist assistants from \$20 to \$40.

Fiscal Impact

The proposed rulemaking increases the biennial renewal fee for physical therapists, holders of a certificate to practice physical therapy without a referral and physical therapist assistants. The proposed rulemaking should have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

The proposed rulemaking will require the Board to alter some of its forms to reflect the new biennial renewal fees. However, the proposed rulemaking should not create additional paperwork for the private sector.

Sunset Date

The act requires that the Board monitor its revenue and cost on a fiscal year and biennial basis. 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 September 20, 2006, 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 must 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, suggestions or objections regarding this proposed rulemaking to Robert Kline, Administrative Assistant, State Board of Physical Therapy, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-6511, Biennial Renewal Fees, when submitting comments.

CHARLES E. MEACCI, PT,
Chairperson

Fiscal Note: 16A-6511. 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 40. STATE BOARD OF PHYSICAL THERAPY

Subchapter A. PHYSICAL THERAPISTS
GENERAL PROVISIONS

§ 40.5. Fees.

The following fees are charged by the Board:

Physical therapist:

	* * * * *	
Biennial renewal.....		\$[37]90
	* * * * *	

Biennial renewal of Certificate to Practice Physical Therapy without a referral.....		\$[37]45
	* * * * *	

Physical therapist assistants:

	* * * * *	
Biennial renewal of registration.....		\$[20]45
	* * * * *	

[Pa.B. Doc. No. 06-1906. Filed for public inspection September 29, 2006, 9:00 a.m.]

**STATE BOARD OF
VETERINARY MEDICINE**

[49 PA. CODE CH. 31]

Recordkeeping

The State Board of Veterinary Medicine (Board) proposes to amend § 31.22 (relating to recordkeeping rationale) to read as set forth in Annex A. The proposed rulemaking provides greater specificity to the Board's existing recordkeeping regulation. In addition, the proposed rulemaking sets forth the proper procedures for a veterinarian who is retiring or closing an office. Finally, the proposed rulemaking provides mandates for veterinary medical records from vaccine clinics.

Effective Date

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

Statutory Authority

Section 27.1 of the Veterinary Medicine Practice Act (act) (63 P. S. § 485.27a) requires the Board to promulgate regulations setting forth recordkeeping standards.

Background and Need for Amendment

Through the adjudication of numerous disciplinary cases over the past several years, the Board has determined the need to set additional requirements in its regulation of veterinary medical recordkeeping.

The reasons for this proposed rulemaking are threefold. First, the proposed rulemaking mandates contents of

medical records and further defines acceptable standards of veterinary medical recordkeeping practice in this Commonwealth. Second, the Board proposes minimum standards of records when veterinarians provide service in vaccination clinics. Finally, the Board proposes to add paragraph (10) to provide mandates for veterinarians who are retiring or closing their veterinary practices.

The Board is aware of the public health benefits of vaccination clinics. Public health vaccination clinics inoculate animals against diseases, such as rabies, that pose a threat to human health. Public health clinics are relatively common in this Commonwealth and serve to promote public health and safety. Animal health vaccination clinics inoculate animals against diseases, such as distemper, that pose a threat to animal health. Some animal owners do not obtain routine animal health vaccinations at a veterinary office. Thus, animal health vaccination clinics, while not ideal, serve to promote animal health and welfare.

Veterinarians have expressed confusion over the minimum recordkeeping requirements for these clinics. The proposed rulemaking recognizes that the acceptable and prevailing standards of practice for recordkeeping for public health and animal health vaccination clinics require only a minimum of information as compared to the entire veterinary medical record, of which vaccine history is but one part. The proposed rulemaking protects the public by mandating that a veterinarian who participates in a vaccination clinic provide a means for clients to obtain information should an adverse reaction occur.

Finally, the Board has received numerous inquiries regarding a veterinarian's recordkeeping responsibilities when closing a veterinary practice, which the Board also addresses in this proposed rulemaking.

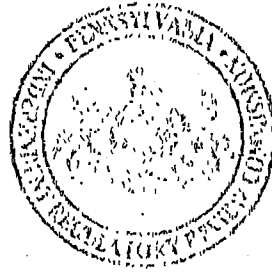
Description of Proposed Amendments

The general requirement that records be kept so that a veterinarian may, by reading the record, proceed with the proper care and treatment of an animal has been moved from current § 31.22(1). The proposed rulemaking would adopt the problem oriented medical record (POMR) or similar recordkeeping system. POMR is a recognized standard form of all medical recordkeeping. It involves creation of a record listing subjective and objective data, assessment and evaluation and a treatment plan. POMR recordkeeping is taught in all schools of veterinary medicine as the standard for veterinary practice. The Board also proposes language to note that the Board reviews veterinary medical records to determine the advice given and treatment recommended and performed by a veterinarian. Current paragraph (1) is deleted.

Proposed paragraph (1) is a general provision that requires a separate veterinary medical record for each patient, herd or group, as appropriate. This requirement accounts for differences in practice between veterinarians whose patients are companion animals and veterinarians whose patients are production animals. Proposed paragraph (1) also requires that veterinary medical records be accurate, legible and complete, as more fully set forth in proposed paragraph (3). Finally, proposed paragraph (1) requires that the veterinary medical record identify the treating individual after each entry. This requirement assists in communication among members of a practice or a subsequent treating veterinarian and allows for accurate review of the treatment provided to an animal.

Proposed paragraph (2) sets forth specific requirements for identifying the patient, herd or group. This paragraph is drafted to apply to both companion and production animals.

ALVIN C. DUBEL, CHAIRMAN
DAVID M. HARASCH, ESQ.
ARTHUR COCCORILLI
DAVID J. DEVRIES, ESQ.
JOHN F. MIZNER, ESQ.
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INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

November 29, 2006

Charles E. Meacci, PT, Chairman
State Board of Physical Therapy
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-6511 (IRRC #2566)
State Board of Physical Therapy
Biennial Renewal Fees

Dear Chairman Meacci:

The Independent Regulatory Review Commission has reviewed your proposed regulation. We have no objections, comments, or recommendations to offer on this regulation. If you deliver the final-form regulation without revisions, and the committees do not take any action, it will be deemed approved.

Sincerely,

Kim Kaufman
Executive Director

wbg

cc: Honorable Pedro A. Cortes, Secretary, Department of State

THOMAS P. GANNON, MEMBER
MAIN CAPITOL BUILDING
HOUSE BOX 202020
HARRISBURG, PENNSYLVANIA 17120-2020
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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

November 16, 2006

Alvin C. Bush, Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman Bush:

The House Professional Licensure Committee held a meeting on November 14, 2006, to consider the following:

Regulation 16A-4313 – Proposed rulemaking of the State Board of Chiropractic pertaining to patient records. The committee voted to take no formal action until the regulation is promulgated. The Committee submits the following comments:

1. The committee asks the board to provide specific information regarding the event which caused the board to write this regulation. In addition, the committee asks the board to explain in detail the problem(s) with chiropractic practice the board is trying to address with this regulation, as well as a detailed explanation of how the current regulation is inadequate to address the problem(s).

The committee notes that in the Regulatory Analysis Form, the board stated that it received a petition in December 2001 asking the board to write regulations regarding medical necessity. The board further stated in the Regulatory Analysis Form that it decided to write regulations regarding patient records instead of "defining what is medically necessary." The committee seeks detailed information regarding the rationale for this regulation, as well as the process it went through to promulgate this regulation.

2. The committee asks the board to conduct a survey of other boards with respect to regulations addressing patient records, in order to determine whether the State Board of Chiropractic is seeking to utilize a unique approach regarding the content of patient records.
3. The committee notes that the board, by promulgating this regulation, is providing criminal and civil penalties, as well as license revocation and suspension, for practitioners who do not adhere to the provisions of the proposed regulation. The committee asks the board if this was the intention of the board.

Alvin C. Bush, Chairman
November 16, 2006
Page 2

4. The committee notes that the definitions contained in the regulation do not provide guidance to practitioners regarding the type of care rendered. For example, the committee is having difficulty distinguishing the difference between "maintenance care" and "palliative care." Since there are different standards of recordkeeping based on the type of care given, the committee is concerned that practitioners will unintentionally err in making the proper notation in the patient record, thereby subjecting the practitioner to license revocation or suspension, civil penalty, and criminal prosecution.

In addition, the committee is concerned that if the definitions, which are linked to substantive provisions, are not descriptive enough, practitioners will not be put on notice as to what is expected of them. Under the Due Process Clause of the U.S. Constitution, penalties can only be assessed if the regulation puts the regulated community on notice as to what is required.

Finally, with respect to definitions, the committee seeks examples of the different kind of care which illustrates "maintenance care," "palliative care," "elective care," "preventive services," and "supportive care."

5. The committee notes the comments submitted by Michael D. Miscoe of Practice Masters regarding the definitions contained in the regulation and asks the board to review them very carefully.
6. The committee notes the language the board added to Section 5.51(c) does not speak to the existing language of the regulation ("care rendered, ordered or prescribed"). Hence, that phrase is not given legal meaning in terms of the type of records which must be kept. The committee asks the board to review this language and to determine whether additional provisions should be added which address "care rendered, ordered or prescribed."
7. The committee notes the existing language of Section 5.51(c) ("care rendered, ordered or prescribed") is very similar to the new language ("treatment, care or service provided"). The committee seeks an explanation from the board regarding the legal distinction between the two phrases as well as a legal rationale for including both phrases in the regulation.
8. The committee notes that in Section 5.51(c)(3), the term "therapeutic treatment, care or service" is used and that in other places in the regulation the phrase "treatment, care or service" is used.
9. The committee notes the provision of Section 5.51(c)(4)(v) and asks whether this language requires a practitioner to withdraw care in order to meet the recordkeeping requirements. Further, if the plain meaning of the language requires the practitioner to withdraw care, the committee asks the board to consider the effect such withdrawal may have on a patient.

Alvin C. Bush, Chairman
November 16, 2006
Page 3

10. The committee asks the board to consider requiring in the patient record a list of patient complaints and diagnosis of the ailment.
11. The committee notes "disease" is mentioned sparingly in the regulation. The committee asks the board whether it is appropriate to include information about a patient's disease in other portions of the regulation. For example, the committee asks the board to consider adding "disease" to that portion of the regulation which speaks to diagnostic testing.
12. With respect to elective care found at Section 5.51(c)(4)(i), the committee seeks examples of how a practitioner can demonstrate "how human performance and the sense of well-being was enhanced."

Regulation 16A-5719 – Proposed rulemaking of the State Board of Veterinary Medicine pertaining to recordkeeping. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The preamble of the rulemaking references federal regulations with respect to recordkeeping responsibilities of those veterinarians who provide medical services for production animals. The committee observes that no citations to federal regulation have been referenced in the text of this regulation and asks whether such citations should be provided.
2. With respect to Section 31.22(a), the last sentence of this provision reads, "The veterinary medical record shall identify the treating individual after each chart entry." The committee asks whether the term "individual" could be both a veterinarian and a veterinary technician, or whether the Board intended to only mean the veterinarian. Further, if the Board intended to refer to a veterinarian only, the committee asks the Board to consider whether the term "licensee" should be used.
3. The committee observes that a title has not been provided for subsections 31.22 (d) and (e) and asks, for purposes of consistency, whether titles to these subsections should be provided. Further, the committee notes that the language first appearing after Section 31.22 Recordkeeping, does not have a designation referencing a subsection. It is the committee's understanding that if language first appearing is not designated as a subsection, then paragraphs are the proper unit of drafting, not subsections.
4. The committee notes that in some places of the regulation the term "patient" is used and in other places the term "animal" is used, and asks the Board, for consistency, whether one term should be used throughout. In the alternative, the committee asks if there is a legal distinction between a "patient" and an "animal."

Alvin C. Bush, Chairman
November 16, 2006
Page 4

5. As a veterinarian is subject to discipline for failing to comply with recordkeeping requirements established by regulation, the committee asks the Board for clarification with respect to the public policy contained in Section 31.32(j). The first sentence establishes a bright line rule that notice must be given to clients at least 30 days in advance. However, the last sentence states that if prior notice could not be provided, the successor veterinarian shall provide notice. The committee asks the Board to provide guidance to veterinarians and successor veterinarians when: (1) the 30 day notice is not required; and (2) under what circumstance(s) the successor veterinarian will have to provide notice.

Regulation 16A-676 – Proposed rulemaking of the State Board of Occupational Therapy Education and Licensure pertaining to orders. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comment:

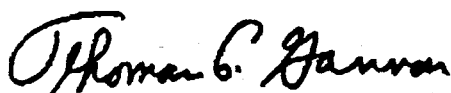
1. The committee notes that there is an inconsistency in the use of terminology relating to the individual who orders the services of an occupational therapist. Section 42.25(b)(1) refers to this individual as the “responsible” licensed physician, licensed optometrist or licensed podiatrist. Section 42.25(b)(3) refers to this individual as a “practitioner.” Finally, both Sections 42.25(b)(3) and (b)(4) refer to this individual as the “ordering practitioner.” For purposes of clarification and consistency, the committee recommends that the board use one term throughout the section.

Regulation 16A-6511 – Proposed rulemaking of the State Board of Physical Therapy pertaining to biennial renewal fees. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comment:

1. The committee notes the board stated that this regulation is needed as there has been a marked increase in disciplinary cases and legal expenses. The increase in the number of opened disciplinary cases tripled between the years 2002 and 2005. The committee asks the board for specific information as to what types of disciplinary cases these are and the board’s determination for such escalation.

Please feel free to contact my office if any questions should arise.

Sincerely,



Thomas P. Gannon, Chairman
House Professional Licensure Committee

TPG/lis

Alvin C. Bush, Chairman
November 16, 2006
Page 5

cc: The Honorable Pedro A Cortes, Secretary of the Commonwealth
Department of State
The Honorable Basil L. Merenda, Acting Deputy Secretary, Department of State, and
Commissioner Bureau of Professional and Occupational Affairs
Barbara Adams, General Counsel to the Governor
Peter V. Marks, Sr., Executive Deputy General Counsel
Albert H. Masland, Chief Counsel
Department of State
Cynthia K. Montgomery, Regulatory Counsel
Department of State
Samuel J. Denisco, Director of Legislative Affairs
Department of State
Ellen L. Kolodner, Chairperson
State Board of Occupational Therapy Education and Licensure
Jonathan W. McCullough, DC, Chairperson
State Board of Chiropractic
Thomas McGrath, D.V.M., Chairperson
State Board of Veterinary Medicine
Charles E. Meacci, PT, Chairperson
State Board of Physical Therapy

Commonwealth of Pennsylvania
Department of State

DATE: 3/28/08

SUBJECT: Final Rulemaking
State Board of Physical Therapy
16A-6511: Biennial Renewal Fees

TO: Andrew C. Clark, Deputy General Counsel
Office of General Counsel

FROM: ^{BSM} Beth Sender Michlovitz, Counsel
State Board of Physical Therapy

There are no significant legal and policy issues presented by this regulation which amends the Board regulation at 49 Pa. Code § 40.5 by increasing the biennial renewal fee for physical therapists, physical therapist assistants and holders of certificates to practice physical therapy without a referral.

I certify that I have reviewed this regulation for form and legality, that I have discussed any legal and policy issues with the administrative officers responsible for the program, and that all information contained in the Preamble and Annex is correct and accurate.

BSM:

PUBLIC COMMENTATORS FOR 16A-6511

There were no public comments received relating to Regulation 16A-6511.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF PHYSICAL THERAPY
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-7134

April 28, 2008

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101


Re: Final Regulation
State Board of Physical Therapy
16A-6511: Biennial Renewal Fees

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Physical Therapy pertaining to Biennial Renewal Fees.

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

Sincerely,


Charles E. Meacci, Chairperson
State Board of Physical Therapy

CEM/BSM:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Beth Sender Michlovitz, Counsel
State Board of Physical Therapy
State Board of Physical Therapy

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

I.D. NUMBER: 16A-6511
 SUBJECT: BIENNIAL RENEWAL FEES
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF PHYSICAL THERAPY

RECEIVED

APR 28 REC'D

INDEPENDENT REGULATORY
REVIEW COMMISSION

11:35 Am

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
<i>4/28/08</i>	<i>[Signature]</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Mike Sturlo</i>
<i>4/28/08</i>	<i>Mary Walmsley</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <i>Robert Anderson</i>
<i>4/28/08</i>	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only) LEGISLATIVE REFERENCE BUREAU (for Proposed only)