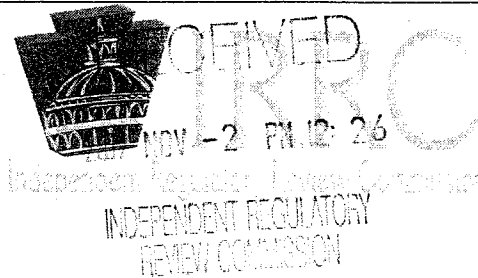


Regulatory Analysis Form

(Completed by Promulgating Agency)



SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine

(2) Agency Number: 16A

Identification Number: 4924

IRRC Number: 2690

(3) Short Title:

Acupuncture licensure

(4) PA Code Cite:

49 Pa. Code §§ 16.11, 16.13, 16.15, 18.11-18.13a, 18.15, 18.15a, 18.18

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Medicine**

(717)783-1400; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-medicine@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The act of November 29, 2006 (P.L. 1625, No. 186) (Act 186) amended the Acupuncture Registration Act (63 P.S. §§ 1801-1806.1) to delete the requirement that an acupuncturist practice only under the general supervision of a physician and to authorize an acupuncturist or practitioner of Oriental medicine (collectively referred to as acupuncturists) to treat a patient's symptoms through acupuncture or the use of herbal therapy for up to 60 days without the patient's condition first being diagnosed by a physician, dentist or podiatrist. The act of October 8, 2008 (P.L. 1092, No. 91) (Act 91) then amended the law to provide for licensure, rather than registration, of acupuncturists. This final rulemaking implements both Act 186 and Act 91.

(9) Include a schedule for review of the regulation including:

- | | |
|---|--------------------|
| A. The date by which the agency must receive public comments: | June 2, 2008 |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | by Dec. 31, 2009 |
| D. The expected effective date of the final-form regulation: | final promulgation |
| E. The date by which compliance with the final-form regulation will be required: | effective date |
| F. The date by which required permits, licenses or other approvals must be obtained: | effective date |

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

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the fourth Tuesday of each month. More information can be found on the Board's website (www.dos.state.pa.us/med).

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is authorized by section 3(b) of the Acupuncture Licensure Act (63 P.S. §§ 1803(b)) and by section 8 of the Medical Practice Act of 1985 (63 P.S. § 422.8).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, as explained in the response to question (8). The rulemaking is not mandated by any other federal or state law or court order or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

Prior to Act 186, an acupuncturist could treat only under the general supervision of a physician. In amending the Acupuncturist Registration Act, the General Assembly recognized the compelling interest in permitting acupuncturists to treat for up to 60 days without a diagnosis or referral.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

This rulemaking is not based upon any scientific data, studies, or references.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Board does not foresee any groups being adversely affected by the rulemaking.

(16) 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 acupuncturists will be required to comply with the rulemaking. There are currently approximately 500 acupuncturists registered with the Board.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(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. Explain how the dollar estimates were derived.

There are no costs or savings to the regulated community associated with compliance with the rulemaking.

(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. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(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. Explain how the dollar estimates were derived.

There are no costs or savings to state government associated with compliance with the rulemaking.

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

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	NA	NA	NA	NA	NA	NA

Regulatory Analysis Form

REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

Program	FY -3 (FY 05-06) actual	FY -2 (FY 06-07) actual	FY -1 (FY 07-08) projected	Current FY (FY 08-09) budget
Pa. State Board of Medicine	\$5,621,389	\$6,332,084	\$5,834,202	\$8,409,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board sent an exposure draft of the proposed rulemaking and solicited input from interested parties. The Board received comments from the Association for Professional Acupuncture in Pennsylvania and attorney David Dearden of KALOGREDIS, SANSWEET, DEARDEN AND BURKE, LTD. and incorporated those comments into its proposed rulemaking. Public and legislative comments on the published proposed rulemaking were discussed at public meetings of the Board, which are routinely attended by members of the regulated community and their professional association.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(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 regulations.

The proposed rulemaking is not more stringent and does not overlap or conflict with any federal requirements.

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

In Delaware, there is no separate acupuncturist licensure. Instead, licensure to practice as a medical doctor, osteopath, physician assistant or chiropractor authorizes the practice of acupuncture. Maryland separately licenses acupuncturists to practice acupuncture and Oriental medicine. New Jersey separately licenses acupuncturists, but treatment is only upon referral by a physician. New York also separately licenses acupuncturists. Ohio registers acupuncturists who may treat a patient only upon referral from a physician. West Virginia separately licenses acupuncturists.

The final rulemaking, which implements a statutory reduction in restrictions upon treatment, will not put Pennsylvania at a competitive disadvantage.

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

This final rulemaking will not affect other regulations of the Board or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

This final rulemaking would not require any additional recordkeeping or other paperwork.

(28) 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 determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE

DATE: June 3, 2009

SUBJECT: Final Rulemaking:
State Board of Medicine
Acupuncturist Licensure (16A-4924)

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

FROM: Thomas A. Blackburn, Regulatory Unit Counsel
Department of State



There are no significant legal and policy issues presented by this amendment to the regulations of the State Board of Medicine concerning acupuncturist licensure.

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.

TAB

**THERE WERE NO COMMENTATOR'S FOR
Regulation 16A-5417**

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

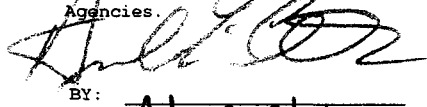
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to 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:

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



BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Medicine
(AGENCY)

BY: Andrew C. Clark
OCT 9 2009

DOCUMENT/FISCAL NOTE NO. 16A-4924

DATE OF APPROVAL

DATE OF APPROVAL

DATE OF ADOPTION:

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

BY: 
Ollice Bates, Jr., MD

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

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] 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 MEDICINE

49 Pa. Code §§ 16.11, 16.13, 18.11-18.13a, 18.15, 18.15a, 18.18
ACUPUNCTURE LICENSURE

The State Board of Medicine (Board) hereby amends §§ 16.11, 16.13, 16.15, 18.11—18.13a, 18.15, 18.15a and 18.18, to read as set forth in Annex A.

Description and Need for the Rulemaking

The act of November 29, 2006 (P.L. 1625, No. 186) (Act 186) amended the Acupuncture Registration Act (act) (63 P.S. §§ 1801-1806.1) to authorize an acupuncturist or practitioner of Oriental medicine (hereinafter referred to collectively as acupuncturists) to treat a patient's condition through acupuncture or the use of herbal therapy for up to 60 days without the condition first being diagnosed by a physician, dentist or podiatrist. See 63 P.S. § 1803.1. Subsequently, after the Board published proposed rulemaking intending to implement section 3.1 of the act, the act was amended and renamed as the Acupuncture Licensure Act by the act of October 8, 2008 (P.L. 1092, No. 91) (Act 91). Act 91 revised the act solely to refer to licensure, rather than registration, of acupuncturists. This final rulemaking implements both Act 186 and Act 91.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 38 Pa.B. 2059 (May 3, 2008) with a 30-day public comment period. The Board received written comments from the Association for Professional Acupuncture in Pennsylvania, endorsing the proposed rulemaking as published. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board received no comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC noted that the proposed regulation would require a physician, dentist or podiatrist to diagnose a condition past 60 calendar days of acupuncture treatment. The HPLC then asked if a diagnosis is the only requirement, or if it is intended that a physician, dentist or podiatrist give permission for continued treatment. The diagnosis is the only requirement, and the Board does not intend that a physician, dentist or podiatrist give permission for continued acupuncture treatment.

The HPLC also noted that § 18.15a(b) (relating to scope of practice of acupuncturists and practitioners of Oriental medicine) specifically addresses authorization for use of herbal therapy by practitioners of Oriental medicine. The HPLC suggested that the provision in proposed § 18.15(a)(7) (relating to practice responsibilities of acupuncturist and practitioner of Oriental medicine who is not a medical doctor) concerning herbal therapy would be better placed in § 18.15a. The Board agrees and has moved the reference to dispensing or administering therapeutic herbs to § 18.15a(b).

IRRC first questioned the Board's specific citation to its statutory authority in publishing the proposed rulemaking. The Board's statutory authority is section 3(b) of the act (63 P.S. §§ 1803(b)) and section 8 of the Medical Practice Act of 1985 (63 P.S. § 422.8), and not generally Act 186.

IRRC noted that by using the phrase "within 60 calendar days," proposed § 18.15(a)(4) would permit an acupuncturist to wait the full 60 days of treatment before referring a patient for care by a

physician, dentist or podiatrist. Additionally, that phrase would appear to limit the subsection's requirement for referral to apply only during the first 60 days of treatment. IRRC recommended deleting the phrase "within 60 days" and requiring an acupuncturist to refer a patient as soon as it is appropriate and necessary in order to protect the patient. The Board agrees with this recommendation and has revised the rulemaking accordingly.

In reviewing this rulemaking, the Board noted a discrepancy in its definition of "supplemental techniques" and its use of that term elsewhere in the regulations. In § 18.11 (relating to definitions), "supplemental techniques" is defined to include herbal therapy. Section 18.13a(a) (relating to requirement for a license as a practitioner of Oriental medicine) requires an acupuncturist who intends to use herbal therapy to become licensed by the Board as a practitioner of Oriental medicine. Section 18.15a(a) authorizes an acupuncturist to practice acupuncture and use supplemental techniques, but not use herbal therapy, and section 18.15a(b) authorizes a practitioner of Oriental medicine to practice acupuncture and use supplemental techniques including herbal therapy. In order to avoid any confusion as to whether an acupuncturist may use herbal therapy, the Board has amended the definition of "supplemental techniques" in § 18.11 to omit reference to the use of herbal therapy.

Additionally, the Board noted that the title of § 18.15 should remain in the singular, despite the references to both an acupuncturist and a practitioner of Oriental medicine. In §§ 18.15(a)(2) and (3), the rulemaking should address an acupuncturist or practitioner of Oriental medicine who is not a physician treating the patient's symptoms, rather than the patient's condition. Similarly in § 18.15(a)(7), the rulemaking is revised to provide that the acupuncturist or practitioner of Oriental medicine may not diagnose an ailment or condition, rather than medically diagnose, as that phrase is redundant.

Finally, the Board has revised §§ 16.11(b) and (c), 16.13(d), 16.15(a), 18.11, 18.12, 18.13(a) and (b), 18.13a, and 18.18 to refer to acupuncturist licensure, rather than registration, as provided by Act 91.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective date

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

Statutory Authority

The final rulemaking is authorized under section 3(b) of the Acupuncture Licensure Act (63

P.S. §§ 1803(b)) and section 8 of the Medical Practice Act of 1985 (63 P.S. § 422.8).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 21, 2008, the Board submitted a copy of the notice of proposed rulemaking, published at 38 Pa.B. 2059, 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 received 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 _____, 2009, the final-form rulemaking was approved by the HPLC. On _____, 2009, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2009, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-1400, or by e-mail at st-medicine@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.L. 769, No. 240) and 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) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 38 Pa.B. 2059.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Acupuncture Licensure Act and the Medical Practice Act of 1985.

Order

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

- (a) The regulations of the Board at 49 Pa. Code Chapters 16 and 18 are amended, by amending §§ 16.11, 16.13, 16.15, 18.11—18.13a, 18.15, 18.15a and 18.18, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval 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) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Ollice Bates, Jr., MD, Chairman
State Board of Medicine

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

CHAPTER 16. STATE BOARD OF MEDICINE—

GENERAL PROVISIONS

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND
REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

* * * * *

- (4) ACUPUNCTURIST LICENSE.
- (5) PRACTITIONER OF ORIENTAL MEDICINE LICENSE.

* * * * *

(c) The following registrations are issued by the Board:

* * * * *

- (2) ~~Registration as an acupuncturist.~~
- (3) ~~Registration as a practitioner of oriental medicine license.~~
- (4) * * *
- (5) (3) * * *

~~(6)~~ (4) * * *

~~(7)~~ (5) * * *

~~(8)~~ (6) * * *

~~(9)~~ (7) * * *

~~(10)~~ (8) Biennial registration of an acupuncturist ~~registration~~ LICENSE.

~~(11)~~ (9) Biennial registration as OF a practitioner of Oriental medicine
LICENSE.

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(d) *Acupuncturist ~~registration~~ LICENSES:*

* * * * *

(1) *Acupuncturist LICENSE:*

* * * * *

(2) *Practitioner of Oriental medicine ~~registration~~ LICENSE:*

* * * * *

§ 16.15. Biennial registration; inactive status and unregistered status.

(a) A person licensed ~~or~~, certified OR REGISTERED by the Board, ~~or~~
~~registered as an acupuncturist or as a practitioner of Oriental medicine with the Board,~~
shall register biennially to retain the right to engage in practice unless specifically
exempted within this section. Initial registration shall automatically occur when the
license, certificate or registration is issued.

* * * * *

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS
OTHER THAN MEDICAL DOCTORS

Subchapter B. ~~REGISTRATION LICENSURE AND PRACTICE OF~~
ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.11. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Acupuncturist – An individual ~~registered~~ LICENSED to practice acupuncture by the Board.

* * * * *

Practitioner of Oriental medicine – An acupuncturist who is ~~registered~~ LICENSED by the Board to use herbal therapy.

Supplemental techniques – The use of traditional and modern Oriental therapeutics, heat therapy, moxibustion, electrical and low level laser stimulation, acupressure and other forms of massage, [herbal therapy] and counseling that includes the therapeutic use of foods and supplements and lifestyle modifications.

* * * * *

§ 18.12. ~~Registration LICENSURE~~ as an acupuncturist.

A medical doctor who intends to practice acupuncture and any other individual who intends to practice acupuncture shall ~~register with~~ OBTAIN A LICENSE FROM the Board as an acupuncturist.

§ 18.13. Requirements for ~~registration~~ LICENSE as an acupuncturist.

(a) The Board will ~~register~~ LICENSE as an acupuncturist a person who satisfies the following requirements:

* * * * *

(b) The Board will ~~register~~ LICENSE as an acupuncturist a medical doctor who satisfies the following requirements:

* * * * *

§ 18.13a. Requirements for ~~registration~~ LICENSE as a practitioner of Oriental medicine.

(a) An acupuncturist who also intends to use herbal therapy is required to be ~~registered with~~ LICENSED BY the Board as a practitioner of Oriental medicine.

(b) The Board will ~~register~~ LICENSE an acupuncturist as a practitioner of Oriental medicine if the ~~registrant~~ LICENSEE, in addition to meeting the requirements under § 18.13 (relating to requirements for ~~registration~~ LICENSE as an acupuncturist) has fulfilled one of the following:

* * * * *

(c) An acupuncturist registered with the Board prior to April 14, 2007, may obtain a ~~registration~~ LICENSE as a practitioner of Oriental medicine if the acupuncturist can demonstrate one of the following:

* * * * *

(d) This subsection does not apply to a medical doctor ~~registered~~ LICENSED as an acupuncturist nor does it restrict the practice of medicine by a medical doctor.

* * * * *

§ 18.15. Practice responsibilities of acupuncturist ~~and practitioner of Oriental medicine~~
~~who [is] are not [a] medical [doctor] doctors~~ AND PRACTITIONER OF ORIENTAL
MEDICINE WHO IS NOT A MEDICAL DOCTOR.

(a) *Responsibilities to patient.* In relation to the acupuncture patient, the acupuncturist [shall comply with the following] and the practitioner of Oriental medicine:

(1) [Received, in writing, from the acupuncturist supervisor, approval to initiate acupuncture treatment] Shall perform an acupuncture or Oriental medicine evaluation and develop an acupuncture or Oriental medicine treatment plan.

(2) [Comply strictly with conditions or restrictions that may be placed on the course of acupuncture treatment by the acupuncturist supervisor] May treat the patient's condition SYMPTOMS without the condition being diagnosed by a physician, dentist or podiatrist for 60 calendar days from the date of the first treatment.

(3) May treat the patient's condition SYMPTOMS beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall: within 60 calendar days from the date of first treatment. PROMPTLY refer the patient to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist or practitioner of Oriental medicine determines that further acupuncture or Oriental medicine treatment is contraindicated for the patient or determines that the patient's condition has SYMPTOMS HAVE worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist in regard to the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) [Not] May not medically diagnose a physical or mental ailment or condition or prescribe or dispense a drug. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the federal Food and Drug Administration. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

[(4) Comply] (8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with the provisions of § 16.95 (relating to medical records).

(b) *[Responsibility to acupuncturist supervisor.* In relation to the acupuncturist supervisor, the acupuncturist shall comply with the following:

(1) Consult promptly with the acupuncturist supervisor regarding a new ailment or condition or a worsened ailment or condition of an acupuncture patient.

(2) Consult with the acupuncturist supervisor upon request of either the acupuncturist supervisor or the acupuncture patient.

(3) Practice acupuncture only under the general supervision of an acupuncturist supervisor.

(c) *Scope of acupuncturist's responsibility.*

(1) An acupuncturist is responsible solely for acupuncture evaluation and acupuncture treatment. The medical diagnosis is the responsibility of the acupuncturist supervisor.

(2) An acupuncturist is not required to practice acupuncture in the physical presence of the acupuncturist supervisor or at the location where the acupuncturist supervisor provides medical services. Where the acupuncturist may provide acupuncture services, and whether the acupuncturist may provide acupuncture services without the acupuncturist supervisor being physically present, shall be determined by the acupuncturist supervisor.

(d)] *Identification of acupuncturist or practitioner of Oriental medicine.* An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing [his] the acupuncturist's name and the title "acupuncturist" or "practitioner of Oriental medicine." as appropriate. The use of the word doctor on this tag or badge is prohibited.

§ 18.15a. Scope of practice of acupuncturists and practitioners of Oriental medicine.

* * * * *

(b) A practitioner of Oriental medicine may practice acupuncture and use supplemental techniques including herbal therapy. A PRACTITIONER OF ORIENTAL MEDICINE IS NOT PROHIBITED FROM DISPENSING OR ADMINISTERING THERAPEUTIC HERBS THAT CONTAIN INGREDIENTS THAT ARE SIMILAR OR EQUIVALENT TO ACTIVE INGREDIENTS IN DRUGS AS CLASSIFIED BY THE FEDERAL FOOD AND DRUG ADMINISTRATION.

* * * * *

§ 18.18. Disciplinary and corrective measures.

(a) The Board may refuse, revoke, suspend, limit or attach conditions to the ~~registration~~ LICENSE of an acupuncturist or practitioner of Oriental medicine for engaging in conduct prohibited by section 41 of the act (63 P.S. § 422.41) for Board-regulated practitioners.

(b) The Board will order the emergency suspension of the ~~registration~~ LICENSE of an acupuncturist or practitioner of Oriental medicine who presents an immediate and clear danger to the public health and safety, as required by section 40 of the act (63 P.S. § 422.40).

(c) The ~~registration~~ LICENSE of an acupuncturist or practitioner of Oriental medicine shall automatically be suspended, as required by section 40 of the act.

* * * * *

However, I question whether the need exists, at this time, to adjust the reporting period and filing deadline for the annual tracking report from April 30 to March 31. This report is used by the Commission to audit the TRS program. A change to the filing date of the access line report does not necessarily support a change to the tracking report filing deadline.

Despite my reservation regarding the change proposed to the tracking report deadline, I support the initiation of this rulemaking and look forward to reviewing the comments of the parties. In light of this proposed rulemaking, it may be prudent for the Commission to begin a comprehensive review of the reporting deadlines for each of the reports required by the Commission and evaluate whether consistency can be established for reporting deadlines rather than the current varying due dates.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 63. TELEPHONE SERVICE

Subchapter C. ACCOUNTS AND RECORDS

§ 63.37. Operation of the Telecommunications Relay Service System and Relay Service Fund.

(a) General.

(1) The Pennsylvania Telecommunications Relay Service (TRS), the Telecommunications Devices for the Deaf Program, and the Print Media Access System Program are codified in the Universal Telecommunications and Print Media Access Act (35 P. S. §§ 6701.1—6701.4). The Relay Service Fund (Fund) covers eligible intraState costs associated with the operation of the three programs. The costs are recovered from residential and business wireline access line end-users by a monthly surcharge on local service telephone bills.

(2) To permit the Commission to effectively monitor and evaluate the revenue and cost data associated with the Fund, each local exchange carrier (LEC) shall file an annual tracking report delineating monthly revenues collected and remittances for late payments for the preceding 12-month year and an annual access line summary report detailing its access line count as of December 31 of the preceding year. The tracking data are used for periodic audits of the Fund. The access line counts are used to calculate the next year's TRS surcharge.

(b) Timely remittance of revenues.

(1) LECs shall remit the TRS surcharge revenues to the Fund Administrator by the 20th of each month for revenues collected during the prior month.

(2) Delays or inaccuracies in remitting revenues to the Fund result in lost earnings by the Fund. An LEC that is late in remitting surcharge revenues shall remit an additional contribution to the Fund to make up for lost Fund earnings. The additional contribution must be based upon the published prime rate in effect at the time of the missed due date and cover the period beginning at the date of the occurrence of the failure to remit and continue until the surcharge revenues are properly remitted to the Fund.

(c) Filing of TRS reports.

(1) *Annual tracking report.* An LEC shall submit its annual tracking report to the Secretary's Bureau by

March 31 of each year, in the format and detail specified on the Commission's web site (www.puc.state.pa.us).

(2) *Annual access line summary report.* An LEC shall submit its annual access line summary report to the Secretary's Bureau by March 1 of each year, in the format and detail specified on the Commission's web site.

(d) *Failure to remit TRS revenues or to file TRS reports.* An LEC that fails to timely and accurately submit a tracking report or an access line summary report or that fails to timely and accurately submit TRS surcharge revenues may need to reimburse the Fund under subsection (b). The Commission will utilize all available remedies to ensure reporting and remittance compliance including fines and the revocation of Certificates of Public Convenience.

[Pa.B. Doc. No. 08-830. Filed for public inspection May 2, 2008, 9:00 a.m.]

STATE BOARD OF MEDICINE

[49 PA. CODE CH. 18]

Acupuncture Registration

The State Board of Medicine (Board) proposes to amend § 18.15 (relating to practice responsibilities of acupuncturist who is not a medical doctor), to read as set forth in Annex A.

A. Effective Date

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

B. Statutory Authority

The act of November 29, 2006 (P. L. 1625, No. 186) (Act 186) amended the Acupuncture Registration Act (act) (63 P. S. §§ 1801—1806) to authorize an acupuncturist or practitioner of Oriental medicine (hereinafter referred to collectively as acupuncturists) to treat a patient's condition though acupuncture or by dispensing or administering medicinal herbs for up to 60 days without the patient's condition first being diagnosed by a physician, dentist or podiatrist. See 63 P. S. § 1803.1. In addition, section 21 of the Medical Practice Act of 1985 (63 P. S. § 422.21), provides for the various levels of required medical doctor involvement with the care of patients who are being treated by nonphysicians.

C. Background and Purpose

This proposed rulemaking seeks to amend the Board's existing regulations to implement the 60-day direct access provision of Act 186 and provide for patient safety by establishing protocols for a cooperative relationship between the patient's acupuncturist and the patient's treating physician, as applicable.

Act 186 contains two substantive provisions regarding the practice of acupuncture:

1. It gives acupuncturists the authority to treat patients for 60 days without any physician involvement.
2. It deletes from the act the statutory requirement that a patient obtain a referral or prescription for acupuncture services and substitutes a requirement for a medical examination and diagnosis if treatment will continue beyond 60 days.

The 60-day access provision is self-executing. However, the provision dealing with physician involvement keeps open the question as to what responsibilities the physician still has under the Medical Practice Act regarding to the needs of the patient if the patient has contraindications for acupuncture or herbal treatments. Similarly, the act does not provide for the acupuncturists responsibilities to their patient when it is apparent that despite acupuncture treatment the patient's condition is worsening. Accordingly, it is appropriate for the Board to establish regulations to address the question as to the professionals' obligation to safeguard the well being of their joint patients.

D. Description of Amendments

The rulemaking proposes to amend § 18.15 to comport with Act 186 to authorize an acupuncturist or practitioner of Oriental medicine to treat a patient's condition for up to 60 days without the condition first being diagnosed by a physician, dentist or podiatrist. The rulemaking also proposes to amend § 18.15 to provide for the responsibilities of the acupuncturist regarding the coordination of patient care with the patient's physician, dentist or podiatrist.

Section 18.15 would be amended throughout to add "practitioners of Oriental medicine" consistent with the Board's prior final rulemaking published at 37 Pa.B. 1644 (April 14, 2007).

Subsection (a)(1) would require acupuncturists to perform an evaluation of the patient and develop an acupuncture or Oriental medicine treatment plan.

Subsection (a)(2) would provide for the acupuncturist to treat patients for 60 calendar days without the patient's condition being first diagnosed by a physician, dentist or podiatrist.

Subsection (a)(3) would permit continued acupuncture or Oriental medicine treatment beyond 60 calendar days if the patient obtains an examination and diagnosis from a physician, dentist or podiatrist.

Subsection (a)(4) would require acupuncturists to refer a patient within the 60 calendar days to a physician, dentist or podiatrist, as appropriate to the patient's condition, if acupuncture or Oriental medicine treatment is contraindicated for the patient or if the patient's condition worsens.

Subsection (a)(4) would require the acupuncturist to consult with the patient's physician, dentist, podiatrist or other health care practitioner at the patient's request.

Subsection (a)(5) would require the acupuncturist to cooperate with the patient's physician, dentist or podiatrist regarding the coordination of the patient's care, and to comply with restrictions or conditions as directed by the patient's physician, dentist or podiatrist.

Subsection (a)(6) would prohibit acupuncturists from diagnosing a physical or mental ailment or condition or prescribing or dispensing a drug. The subsection would allow practitioners of Oriental medicine to dispense and administer therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Food and Drug Administration.

The subsection would also permit the use of diagnostic billing codes used for payment and reimbursement.

Subsection (a)(7) would require compliance with sterilization standards relative to aseptic practices.

Subsection (a)(8) would require that patient records be maintained in a manner consistent with the Board's recordkeeping regulation in § 16.95 (relating to medical records).

Subsection (b) would be amended to delete outdated provisions pertaining to supervision of acupuncturists. The requirement that acupuncturists identify themselves as such is retained.

E. Compliance

The Board met with representatives of the Pennsylvania Association for Professional Acupuncture (Association). The comments from the Association were primarily technical in nature and were incorporated into this proposed rulemaking. The Association also commented on the language requiring referral if the patient's condition worsens. The Association's comments expressed concern that the patient's perception of his condition may not be accurate from clinical perspective. In recognition that the initial determination of the progress and appropriateness of treatment is a professional one, the Board has made it clear to the Association that it is the acupuncturist who is responsible for making that determination.

The law firm of Kalegredis, Sansweet, Dearden and Burke, LTD, submitted written comments. The comments asserted that requiring the acupuncturist to refer patients to other health care practitioners was problematic because such a requirement was not contemplated by Act 186 and because "worsening" of the patient's condition was subjective and undefined. The Board disagrees. Act 186 does not preclude the Board from adopting regulations giving effect to other related provisions of law, including section 21 of the Medical Practice Act of 1985, which provides for necessary medical doctor involvement with health care being administered by persons other than medical doctors. Moreover, one need only examine the warning labels of over-the-counter medications to appreciate that the term "worsens" is a commonly understood concept by patients as well as health care practitioners. Indeed, during Board meetings at which the proposal was being discussed, when asked by the Board how an acupuncturist knows when the acupuncture treatment being provided is contraindicated, the acupuncturist representatives of the Pennsylvania Association for Professional Acupuncture stated that the patient gets "worse." Lastly, this provision is consistent with existing § 18.15(b)(1), which this proposal would merely relocate to § 18.15(a).

Kalegredis, Sansweet, Dearden and Burke, LTD, also recommended that the Board allow for the use of diagnostic billing codes in § 18.15(a)(6). The Board agrees that this is a helpful clarification and has incorporated it into this proposed rulemaking. Kalegredis, Sansweet, Dearden and Burke, LTD, also recommended that the rulemaking clarify that practitioners of Oriental medicine may use other supplemental techniques. The Board does not believe this is necessary because under the Board's regulations all practitioners of Oriental medicine are acupuncturists, with the additional authority of being authorized

to provide Chinese herbal therapy. Accordingly, practitioners of Oriental medicine may use all the modalities that acupuncturists are authorized to use without further revision to the regulations.

Kalegredis, Sansweet, Dearden and Burke, LTD, also suggested that requiring acupuncturists to maintain records in a manner consistent with the Board's regulations in § 16.95 is inappropriate because that section refers to physicians. The Board believes the comment misapprehends that the use of the phrase "consistent with" qualifies the reference to § 16.95. The Board has not incorporated § 16.95 by reference, but rather requires the acupuncturist to maintain those records developed during the acupuncturist-patient relationship in a manner so that the records are accurate, legible, complete and accessible to patients. The Board believes it unnecessary to recreate these requirements for each Board-regulated practitioner. The Board has plans for future rulemaking that will amend and make more generic certain regulations that are of common application to all Board-regulated practitioners. This rulemaking is consistent with that plan.

F. Fiscal Impact and Paperwork Requirements

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivision or the private sector.

G. Sunset Date

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

H. Regulatory Review

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 21, 2008, 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 the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the 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 that have not been met. The 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 and objections raised.

I. Public Comment

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Gerald S. Smith, Senior Counsel in Charge, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication for the proposed regulation in the *Pennsylvania Bulletin*. Refer to 16A-4924: Acupuncture when submitting comments.

CHARLES D. HUMMER, Jr., M. D.,
Chairperson

Fiscal Note: 16A-4924. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter B. REGISTRATION AND PRACTICE OF ACUPUNCTURISTS AND PRACTITIONERS OF ORIENTAL MEDICINE

§ 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who [is] are not [a] medical [doctor] doctors.

(a) *Responsibilities to patient.* In relation to the acupuncture patient, the acupuncturist [shall comply with the following] and the practitioner of Oriental medicine:

(1) [Received, in writing, from the acupuncturist supervisor, approval to initiate acupuncture treatment] Shall perform an acupuncture or Oriental medicine evaluation and develop an acupuncture or Oriental medicine treatment plan.

(2) [Comply strictly with conditions or restrictions that may be placed on the course of acupuncture treatment by the acupuncturist supervisor] May treat the patient's condition without the condition being diagnosed by a physician, dentist or podiatrist for 60 calendar days from the date of the first treatment.

(3) May treat the patient's condition beyond 60 calendar days from the date of first treatment if the patient has obtained an examination and diagnosis from a physician, dentist or podiatrist.

(4) Shall, within 60 calendar days from the date of first treatment, refer the patient to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist or practitioner of Oriental medicine determines that further acupuncture or Oriental medicine treatment is contraindicated for the patient or determines that the patient's condition has worsened.

(5) Shall consult with the patient's physician, dentist, podiatrist or other health care practitioner upon request of the patient.

(6) Shall cooperate with the patient's physician, dentist or podiatrist regarding the coordination of the patient's care, and comply with restrictions or conditions as directed by the physician, dentist or podiatrist.

(7) [Not] May not medically diagnose a physical or mental ailment or condition or prescribe or dispense a drug. A practitioner of Oriental medicine is not prohibited from dispensing or administering therapeutic herbs that contain ingredients that are similar or equivalent to active ingredients in drugs as classified by the Food and Drug Administration. This provision does not prohibit the use of diagnostic billing codes for billing or reimbursement purposes.

[(4) Comply] (8) Shall comply strictly with sterilization standards relative to aseptic practices.

(9) Shall maintain patient records in a manner consistent with § 16.95 (relating to medical records).

(b) [*Responsibility to acupuncturist supervisor.* In relation to the acupuncturist supervisor, the acupuncturist shall comply with the following:

(1) Consult promptly with the acupuncturist supervisor regarding a new ailment or condition or a worsened ailment or condition of an acupuncture patient.

(2) Consult with the acupuncturist supervisor upon request of either the acupuncturist supervisor or the acupuncture patient.

(3) Practice acupuncture only under the general supervision of an acupuncturist supervisor.

(c) *Scope of acupuncturist's responsibility.*

(1) An acupuncturist is responsible solely for acupuncture evaluation and acupuncture treatment. The medical diagnosis is the responsibility of the acupuncturist supervisor.

(2) An acupuncturist is not required to practice acupuncture in the physical presence of the acupuncturist supervisor or at the location where the acupuncturist supervisor provides medical services. Where the acupuncturist may provide acupuncture services, and whether the acupuncturist may provide acupuncture services without the acupuncturist supervisor being physically present, shall be determined by the acupuncture supervisor.

(d)] *Identification of acupuncturist or practitioner of Oriental medicine.* An acupuncturist who is not a medical doctor shall wear a tag or badge with lettering clearly visible to the patient bearing [his] the acupuncturist's name and the title "acupuncturist" or "practitioner of Oriental medicine," as appropriate. The use of the word doctor on this tag or badge is prohibited.

[Pa.B. Doc. No. 08-831. Filed for public inspection May 2, 2008, 9:00 a.m.]

STATE EMPLOYEES' RETIREMENT BOARD

[4 PA. CODE CH. 247]

Priority of Taxation, Attachment and Assignment of Funds

The State Employees' Retirement Board (Board) proposes to add § 247.11 (relating to priority of taxation, attachments and assignments of funds).

A. *Effective Date*

This proposed rulemaking will go into effect upon publication in the *Pennsylvania Bulletin* as a final-form rulemaking.

B. *Contact Person*

For further information contact Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 787-9657, or Brian E. McDonough, Deputy Chief Counsel, State Employees'

Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716, (717) 783-7317. Information regarding submitting comments on this proposal appears in Section H of this preamble.

C. *Statutory Authority*

This proposed rulemaking is being made under the authority of 71 Pa.C.S. § 5902(h) (relating to administrative duties of the board).

D. *Background and Purpose*

This proposed new section sets priorities among conflicting demands of taxation, attachments and assignments on members' retirement benefits authorized under 71 Pa.C.S. Part XXV (relating to State Employees' Retirement Code). The court's decision in *Gail G. Marshall v. State Employees' Retirement System*, 887 A.2d 351 (Pa. Cmwlth. 2005) has offered partial guidance in this area. The regulation would enable consistent application of the statute and could avoid litigation of priority issues.

E. *Benefits, Costs and Compliance*

Benefits

The proposed rulemaking is intended to alleviate confusion and prevent possible disputes with regard to conflicting demands on members' retirement benefits.

Costs

There are no costs to the Commonwealth, its citizens or State employees associated with this proposal.

Compliance Costs

The proposed rulemaking is not expected to impose any additional compliance costs on State employees.

F. *Sunset Review*

There is no sunset review.

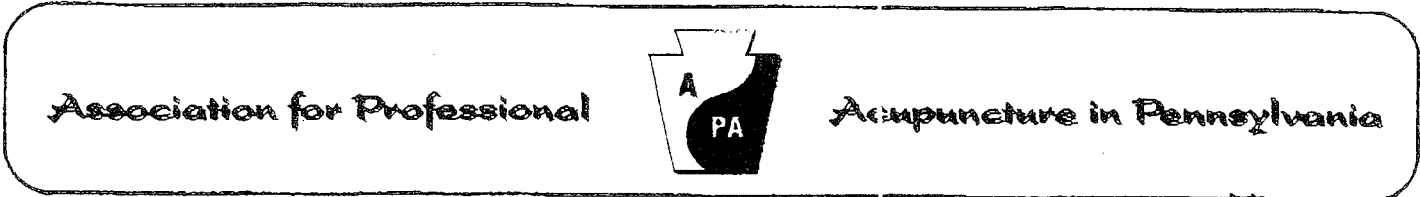
G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (act) (71 P. S. § 745.5(a)), on April 18, 2008, 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 Finance Committee and the House State Government Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the 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 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.

H. *Public Comments*

Written Comments—Interested persons are invited to submit comments regarding the proposed rulemaking to Robert Gentzel, Director of Communications and Policy, State Employees' Retirement System, 30 North Third Street, Suite 150, Harrisburg, PA 17101-1716. Comments submitted by facsimile will not be accepted. The Board must receive comments, suggestions or objections within 30 days of publication in the *Pennsylvania Bulletin*.



#2690

June 2, 2008

Dear Gerald Smith,

RECEIVED
 2008 JUN - 6 PM 1:22
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

I am writing in regard to the proposed regulations 16A-4924. We'd like to again acknowledge the State Board of Medicine for allowing us to participate in the regulatory process. We realize the Board's openness and generosity. Thank you.

The Association of Professional Acupuncture is very satisfied with the proposed regulations, especially compared to the former regulations. We feel they embody the main concept of the statute; maximizing both patient choice, as well as patient safety. Requiring a condition to be diagnosed within 60 days of treatment, only if it has not been diagnosed before the start of treatment, allows a few things. The patients have more choices for themselves to pursue courses of treatment they feel best aid in their healing. Additionally, they do not have to pester their physician for a signature to try something with a proven safety and efficacy record. Patient safety is ensured, in that if 60 days pass on a previously undiagnosed condition, further treatment is contingent upon procuring a diagnosis from their physician. Finally, requiring a diagnosis, and not a referral or general supervision, allows the physician in the process to be less liable, which has been a major concern for some physicians in the past.

If you have any questions or concerns, please contact me.

Sincerely,

Steve Mavros, L.O.M.

President of the APA

cc:

Marlene Tremmel, Senator Rhoades, Fran Cleaver



P. MICHAEL STURLA, MEMBER
MAJORITY DEPUTY WHIP
333 MAIN CAPITOL BUILDING
P. O. BOX 202096
HARRISBURG, PENNSYLVANIA 17120-2096
PHONE: (717) 787-3555
FAX: (717) 705-1923

THE GRIEST BUILDING
8 NORTH QUEEN STREET
SUITE 1100
LANCASTER, PENNSYLVANIA 17603
PHONE: (717) 295-3157
FAX: (717) 295-7816



House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE – MAJORITY CHAIRMAN
FINANCE
RULES
MAJORITY POLICY
CAPITOL PRESERVATION

#2690

June 11, 2008

Mr. Kim Kaufman
Executive Director
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Proposed Regulation 16A-4924
State Board of Medicine
Acupuncture Registration

Dear Mr. Kaufman:

The House Professional Licensure Committee on this date voted to take no formal action on Regulation 16A-4924 until final regulation is promulgated and submit the following comments:

1. The regulation requires a physician, dentist or podiatrist to diagnose a condition past 60 calendar days of acupuncture treatment. The committee would like to know if a diagnosis is the only requirement, or if it is intended that a physician, dentist or podiatrist give permission for continued acupuncture treatment.
2. The committee respectfully questions whether or not the provision regarding therapeutic herbs in §18.15(a)(7) is better placed §18.15a(b). Section 18.15a specifically addresses authorization of use of herbal therapy by Oriental medicine practitioners and acupuncturists. Since herbal therapy is outside the scope of acupuncturists, the section referring to herbal therapy and billing for herbal therapies would be better served in §18.15a.

Sincerely,

A handwritten signature in cursive script, appearing to read "P. Michael Sturla".

P. Michael Sturla
Chairman, House Professional Licensure Committee

ARTHUR COCCODRILLI, CHAIRMAN
ALVIN C. BUSH, VICE CHAIRMAN
NANCY SABOL FRANTZ, ESQ.
JOHN F. MIZNER, ESQ.
KAREN A. MILLER
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

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

July 2, 2008

Ollice Bates, Jr., M.D., Chairman
State Board of Medicine
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4924 (IRRC #2690)
State Board of Medicine
Acupuncture Registration

Dear Chairman Bates:

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 regulatory review criteria that have not been met.

The comments will be available on our website at www.irrc.state.pa.us. If you would like to discuss them, please contact me.

Sincerely,

Kim Kaufman
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 P. Michael Sturla, Majority Chairman, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Minority Chairman, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission



State Board of Medicine #16A-4924 (IRRC #2690)

Acupuncture Registration

July 2, 2008

We submit for your consideration the following comments on the proposed rulemaking published in the May 3, 2008 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Medicine (Board) to respond to all comments received from us or any other source.

1. General - Statutory authority.

In the Preamble, the Board's statutory authority is identified as Act 186 of 2006 (Act 186) which amended the Acupuncture Registration Act (Act) (63 P.S. §§ 1801-1806). The Board's specific rulemaking authority is found in Section 3 of the Act (63 P.S. § 1803). Section 3 should be included in the explanation of statutory authority in the Preamble and the Regulatory Analysis Form that are submitted with the final-form regulation. If the Board is relying on any other provisions for statutory authority, it should specifically cite them as well.

2. Section 18.15. Practice responsibilities of acupuncturist and practitioner of Oriental medicine who are not medical doctors. - Public health and safety; Reasonableness; Consistency; Clarity.

The proposed regulation contains a new Subsection (a)(4) which states that an acupuncturist or practitioner of Oriental medicine:

Shall, **within 60 calendar days** from the date of first treatment, refer the patient to a physician, dentist or podiatrist, as appropriate to the patient's condition, if the acupuncturist or practitioner of Oriental medicine determines that further acupuncture or Oriental medicine treatment is contraindicated for the patient or determines that the patient's condition has worsened. (Emphasis added.)

It is our understanding that, at least in part, the intent of this provision is to have the acupuncturist or practitioner of Oriental medicine refer a patient to

another health care professional if medically necessary before the 60-day period has expired. However, the use of the phrase “within 60 calendar days from the date of first treatment” is unclear. We have two concerns.

First, the phrase “within 60 calendar days” could be interpreted as allowing an acupuncturist to wait until the 60th day before referring even though an earlier referral might be appropriate and necessary to protect the health and safety of the patient. Subsection (a)(4) also indicates that a referral to a doctor shall be made only when the acupuncturist determines the following:

- 1) Acupuncture or Oriental medicine is contraindicated; or
- 2) The patient’s condition has worsened.

Acupuncturists should not wait until their patient’s condition worsens if they can immediately determine that care from a medical doctor is appropriate and necessary to protect or improve the patient’s health. The acupuncturist should refer a patient to a different provider as soon as he or she knows that the patient’s condition is beyond the scope of acupuncture or herbal therapy. Even though acupuncture treatment may occur up to 60 days without one, Act 186 still requires a medical diagnosis. Hence, the statute recognizes the need for medical involvement. There is no limitation on the Board requiring an acupuncturist to make the proper referral at any time it is necessary.

There are examples of similar provisions in existing regulations. Current mandates at 49 Pa. Code §§ 18.6(6) and 18.509(a)(7) require midwives and athletic trainers to refer a patient to a physician if the patient presents a medical problem that is beyond their scope of practice. Another example is an existing regulation for physical therapists at 49 Pa. Code § 40.61(d)(3), which requires referral to a physician if a patient’s case is beyond the education, expertise or experience of the physical therapist.

Second, the requirements of Subsection (a)(4) should not be limited to “within 60 days.” Even after the patient receives a diagnosis from a doctor, a situation may arise during acupuncture treatment when there is a need for the acupuncturist to refer the patient back to the doctor.

In the final-form regulation, the Board should delete the phrase “within 60 days” from Subsection (a)(4), and it should direct the acupuncturist and practitioner of Oriental medicine to refer a patient to a physician, dentist, or podiatrist as soon as it is appropriate and necessary to protect the patient. In addition, the Board should provide clear and thorough direction for when these referrals should occur.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1400

November 2, 2009

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

Re: Final Regulation
State Board of Medicine
16A-4924: Acupuncture Licensure

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Medicine pertaining to Acupuncture Licensure.

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 "Ollice Bates Jr.", written over a horizontal line.

Ollice Bates Jr., Chairperson
State Board of Medicine

OB:TAB/rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Peter V. Marks, Executive Deputy Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Thomas A. Blackburn, Counsel
State Board of Medicine
State Board of Medicine

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT

RECEIVED

I.D. NUMBER: 16A-4924
SUBJECT: ACUPUNCTURE LICENSURE
AGENCY: DEPARTMENT OF STATE
STATE BOARD OF MEDICINE

2009 NOV -2 PM 12: 26

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
_____	_____	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
11/2	<i>K. Mul</i>	MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
_____	_____	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
11/2	<i>Robt. M. Tomlinson</i>	MAJORITY CHAIRMAN <u>Robt. M. Tomlinson</u>
11/2/09	<i>J. Helmet</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)