

# Regulatory Analysis Form

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

(1) Agency

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

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

16A-4317

IRRC Number: 2746

(3) Short Title

Needle Acupuncture

(4) PA Code Cite

49 Pa. Code § 5.81(1)(xv)

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Thomas A. Blackburn, Regulatory  
Unit Counsel, Department of State (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  
 Policy Statement

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

- No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

**This proposed rulemaking would amend § 5.81(1)(xv) to remove the prohibition against advertising or practicing needle acupuncture for those licensees who are registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the Acupuncture Registration Act and regulations of the appropriate medical board.**

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

**The rulemaking is adopted under sections 302(3), 506(a)(4), and 506(a)(11) of the Chiropractic Practice Act (63 P.S. §§ 625.302(a), 625.506(a)(4), and 625.506(a)(11)).**

(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.

No.

## Regulatory Analysis Form

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

**Under the Board's current regulations, a chiropractor who advertises or practices needle acupuncture is subject to disciplinary action for committing professional misconduct. However, an individual chiropractor may become authorized to practice needle acupuncture under the Acupuncture Registration Act. There is no compelling reason to prohibit a chiropractor who is qualified and legally authorized to practice acupuncture from doing so.**

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

**Without amending the Board's regulations, a licensed chiropractor who is qualified and registered under the Acupuncture Registration Act would continue to risk disciplinary action by the Board for advertising or practicing needle acupuncture.**

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

**Those licensed chiropractors who intend to practice needle acupuncture in accordance with the Acupuncture Registration Act and their patients will benefit from the proposed rulemaking. The Board does not currently have any information about how many licensees may become registered to practice needle acupuncture.**

(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 Board has identified no persons that will be adversely affected by the proposed rulemaking.**

(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 chiropractors in this Commonwealth will be required to comply with the proposed rulemaking. Approximately 4,000 chiropractors hold an active license to practice chiropractic in this Commonwealth.**

(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 Board did not solicit input from or provide an exposure draft of this proposed rulemaking to interested parties. However, the proposed rulemaking was extensively discussed at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.**

## Regulatory Analysis Form

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

**There are no costs to members of the regulated community associated with compliance with the rulemaking. There should be an unquantifiable savings for those few members of the regulated community who become registered and practice needle acupuncture.**

(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.

**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.

**There are no costs or savings to state government associated with implementation of 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	FY+1	FY+2	FY+3	FY+4	FY+5
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Costs</b>						
<b>REVENUE</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>LOSSES:</b>						
<b>Regulated Community</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue</b>						
<b>Losses</b>						

## Regulatory Analysis Form

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

**Not applicable.**

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

Program	FY-3 (FY 04-05)	FY-2 (FY 05-06)	FY-1 (FY 06-07)	Current FY (FY 07-08)
Pa. State Board of Chiropractic	\$391,000	\$430,000	\$502,000	\$513,000

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

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

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

**No nonregulatory alternatives were considered, because the Board determined that the current regulatory scheme was inadequate, requiring regulatory action.**

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

**No alternative regulatory schemes were considered.**

(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.

**The proposed rulemaking does not overlap or conflict with any federal requirements.**

## Regulatory Analysis Form

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

**Maryland, New Jersey, New York, and West Virginia all have separate acupuncture licensing authority. A chiropractor in those states may practice acupuncture upon meeting the qualifications and becoming authorized to practice under the acupuncture law. In Ohio, a chiropractor may practice acupuncture by meeting certain standards and becoming authorized to practice acupuncture by the chiropractic licensing authority. In Delaware, a chiropractor may practice acupuncture without any additional certification.**

**The proposed rulemaking will not put Pennsylvania at a competitive disadvantage.**

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

**This rulemaking will have no effect on other regulations of the Board or other state agencies.**

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

**The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the third Thursday of each odd-numbered month. More information can be found on the Board's website (<http://www.dos.state.pa.us/chiro>), or by calling the Board office at (717) 783-7155.**

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

**No.**

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

**The Board has determined that there are 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 rulemaking will be effective upon publication of the final form rulemaking in the Pennsylvania Bulletin.**

## **Regulatory Analysis Form**

(31) 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.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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INDEPENDENT REGULATORY  
COMMISSION

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.

*Amey M. Elliott*

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

NOV 20 2008

DATE OF APPROVAL

State Board of Chiropractic

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4317

DATE OF ADOPTION:

*Jonathan W. McCullough*

BY: \_\_\_\_\_  
Jonathan W. McCullough, DC

*Andrew C. Clark*

BY: \_\_\_\_\_

OCT 29 2008

DATE OF APPROVAL

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

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

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable.  
No Attorney General approval  
or objection within 30 day  
after submission.

PROPOSED RULEMAKING

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

49 Pa. Code § 5.81(1)(xv)  
NEEDLE ACUPUNCTURE

The State Board of Chiropractic (Board) proposes to amend § 5.81(1)(xv) (relating to unprofessional and immoral conduct), 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*.

#### Statutory Authority

The amendments are authorized under sections 302(3), 506(a)(4), and 506(a)(11) of the Chiropractic Practice Act (act) (63 P.S. §§ 625.302(3), 625.506(a)(4), and 625.506(a)(11)).

#### Background and Need for the Amendment

Section 102 of the act (63 P.S. § 625.102) generally defines chiropractic as a branch of the healing arts dealing with the relationship between the articulations of the vertebral column, as well as other articulations, and the neuro-musculo-skeletal system and the role of these relations in the restoration and maintenance of health. This definition explicitly excludes surgery from the scope of chiropractic practice. Without statutory support for the practice of needle acupuncture to be considered part of the practice of chiropractic (as it is in some other jurisdictions), the Board previously prohibited its licensees from advertising or practicing needle acupuncture. Because the Board may take disciplinary action against a licensee who has displayed misconduct in the practice of chiropractic or committed unprofessional conduct, the Board achieved this prohibition by defining misconduct to include advertising or practicing needle acupuncture.

Under the Acupuncture Registration Act (63 P.S. §§ 1801-1806.1), a qualified person may become registered to practice acupuncture by the State Board of Medicine or the State Board of Osteopathic Medicine. Unlike dentists, podiatrists and veterinarians as provided in section 3(h) of the Acupuncture Registration Act (63 P.S. § 1803(h)), a chiropractor seeking to practice acupuncture must become registered with one of these medical boards under the Acupuncture Registration Act and be subject to regulation of that medical board. Although it is not the practice of chiropractic, the Board sees no compelling basis to prohibit the practice of acupuncture by a licensed chiropractor who is registered with a medical board to practice acupuncture and is acting in accordance with that medical board's regulations concerning the practice of acupuncture.

#### Description of the Proposed Amendments

The proposed rulemaking would amend § 5.81(1)(xv). A licensee who is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the Acupuncture Registration Act and regulations of the appropriate medical board would not be subject to the prohibition against advertising or practicing needle acupuncture.



### Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

### Sunset Date

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

### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on \_\_\_\_\_, 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 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

### Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Deborah L. Smith, Administrator, State Board of Chiropractic, by mail at P. O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-chiro@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4317 (Needle acupuncture), when submitting comments.

Jonathan W. McCullough, DC  
Chairperson

## ANNEX A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 13. STATE BOARD OF CHIROPRACTIC

\* \* \* \* \*

#### Subchapter H. DISCIPLINARY ACTION

\* \* \* \* \*

#### § 5.81. Unprofessional and immoral conduct.

A licensee who engages in unprofessional or immoral conduct is subject to disciplinary action in accordance with section 506 of the act (63 P.S. § 625.506).

- (1) Unprofessional conduct includes the following.

\* \* \* \* \*

- (xv) Practicing or advertising needle acupuncture, unless the licensee is registered to do so by the State Board of Medicine or the State Board of Osteopathic Medicine and acting in accordance with the Acupuncture Registration Act (63 P.S. §§ 1801-1806.1) and regulations of the State Board of Medicine at 49 Pa. Code §§ 18.11-18.18 (relating to registration and practice of acupuncturists) or regulations of the State Board of Osteopathic Medicine at 49 Pa. Code §§ 25.301-25.308 (relating to registration and practice of acupuncturists).


\* \* \* \* \*

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE

**DATE:** September 24, 2008

**SUBJECT:** Proposed Rulemaking:  
State Board of Chiropractic  
Needle acupuncture (16A-4317)

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

**FROM:** Thomas A. Blackburn, Counsel   
State Board of Chiropractic

There are no significant legal and policy issues presented by this proposed rulemaking of the State Board of Chiropractic regarding needle acupuncture. For those licensees registered and acting in accordance with the Acupuncture Registration Act, act of February 14, 1986 (P.L. 2, No. 2), *as amended*, 63 P.S. §§ 1801-1806.1), the proposed rulemaking would eliminate the prohibition against advertising or practicing needle acupuncture.

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



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CHIROPRACTIC  
Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-7155

February 11, 2009

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

Re: Proposed Regulation  
State Board of Chiropractic  
16A-4317: Needle Acupuncture

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Chiropractic pertaining to 16A-4317: Needle Acupuncture.

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 "Kathleen G. McConnell".

Kathleen G. McConnell, DC, Chairperson  
State Board of Chiropractic

KGM/DM: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  
David Markowitz, Counsel  
State Board of Chiropractic  
State Board of Chiropractic

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

I.D. NUMBER: 16A-4317  
 SUBJECT: NEEDLE ACUPUNCTURE  
 AGENCY: DEPARTMENT OF STATE  
 STATE BOARD OF CHIROPRACTIC

**TYPE OF REGULATION**

X Proposed Regulation  
 Final Regulation  
 Final Regulation with Notice of Proposed Rulemaking Omitted  
 120-day Emergency Certification of the Attorney General  
 120-day Emergency Certification of the Governor  
 Delivery of Tolled Regulation  
 a. With Revisions                      b. Without Revisions

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 REGULATORY REVIEW DIVISION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
<u>02/11/09</u>	<u>Blaine A. Davis</u>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Michael P. McGowan</u>
<u>2/11/09</u>	<u>Mary Walmer</u>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robert Tomlinson</u>
<u>2/11/09</u>	<u>Kathy Cooper</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
<u>March 2009</u>	<u>L. L. L. 2/11/09</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)