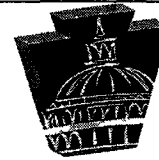


Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

INDEPENDENT REGULATORY REVIEW COMMISSION

SECTION I: PROFILE

(1) Agency:

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

(2) Agency Number: 16A

Identification Number: 5322

IRRC Number: 2816

(3) Short Title:

Reduction of Biennial Renewal Fee for Osteopathic Physicians

(4) PA Code Cite:

49 Pa. Code § 25.231

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

Primary Contact: **Steven R. Dade, Assistant Counsel, Department of State; sdade@state.pa.us**

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State;**

jmckeever@state.pa.us

**State Board of Osteopathic Medicine, P.O. Box 2649, Harrisburg, PA 17105
(717) 783-7200 (phone); (717) 787-0251 (fax)**

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

(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 regulation decreases the biennial renewal fees from \$440 to \$220 for Osteopathic Medicine Physicians. The Board has elected to reduce this fee because the current fee, established in 2002 as a proactive measure in response to the Mcare Act, is creating a surplus in revenue over and above the cost of sustaining the Board's operations.

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

- | | |
|---|-----------------------------------|
| A. The date by which the agency must receive public comments: | <u>N/A</u> |
| B. The date or dates on which public meetings or hearings will be held: | <u>N/A</u> |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>No later than July 1, 2010</u> |
| D. The expected effective date of the final-form regulation: | <u>Upon final publication</u> |
| E. The date by which compliance with the final-form regulation will be required: | <u>November 1, 2010</u> |
| F. The date by which required permits, licenses or other approvals must be obtained: | <u>N/A</u> |

(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 once a month. More information can be found on the Board's website (www.dos.state.pa.us/). Additionally, the Department of State, Bureau of Finance and Operations, makes annual financial reports to the Board. With this input, the Board regularly considers whether to amend its renewal fees.

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

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

The regulatory amendment is adopted under section 13.1 of the Osteopathic Medical Practice Act (act), 63 P.S. § 271.13a.

(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.

No, although the Board is required by statute to set fees by regulation, the reduction of the fee was not mandated by any outside authority. The Board is merely reconciling its expenditures and revenue and setting the fee at a more realistic level to eliminate the surplus of funds.

(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.

The Board is reducing its surplus funds by adopting a more realistic biennial renewal fee. The Board is not a for-profit entity. Its fees should be set at a level that covers the costs of its operations, without building excessive surplus funds.

(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 based upon financial reports made by the Department of State's Bureau of Finance and Operations. This rulemaking is not based upon any other 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 anyone being adversely affected by the rulemaking.

Regulatory Analysis Form

(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 osteopathic physicians seeking to renew their licenses will be required to comply with this regulation. The Board estimates 6,530 osteopathic physicians will renew their licenses.

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.

The savings to the regulated community of the reduced fee will be \$1,436,600 in each renewal year. (Osteopathic physicians renew their licenses in November of even-numbered years). There are no other 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.

The Board will not incur an increase in administrative costs by implementing the rulemaking. Although the Board will incur a revenue loss of approximately \$1,436,600 per biennium, the regulatory amendment will permit the Board to continue to fund the costs of its operations, without building up additional surplus funds. There are no other costs or saving to state government associated with compliance with the rulemaking.

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 09-10	FY +1 Year 10-11	FY +2 Year 11-12	FY +3 Year 12-13	FY +4 Year	FY +5 Year
SAVINGS:						
Regulated Community	\$0	\$1,436,600	\$0	\$1,436,600	\$0	\$1,436,600
Local Government						
State Government						
Total Savings	\$0	\$1,436,600	\$0	\$1,436,600	\$0	\$1,436,600
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	\$0	\$0	\$0	\$0	\$0	\$0
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government (State Board of Osteopathic Medicine)	\$0	\$1,436,600	\$0	\$1,436,600	\$0	\$1,436,600
Total Revenue Losses	\$0	\$1,436,600	\$0	\$1,436,600	\$0	\$1,436,600

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

Program	FY -3 FY 06-07 Actual	FY -2 FY 07-08 Actual	FY -1 FY 08-09 Projected	Current FY FY 09-10 Projected
State Board of Osteopathic Medicine	\$822,868.53	\$761,791.05	\$1,349,000	\$1,389,000

Regulatory Analysis Form

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

The regulation will set the biennial renewal fee for osteopathic physicians at a more realistic level, which will continue to fund the Board's operations without building additional surplus funds. It is anticipated that the reduction will continue to support the operations of the Board for many years to come.

(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.

Because the reconciliation of its budget is an administrative function for which public input is not required, the Board did not solicit input from or provide an exposure draft of this rulemaking to interested parties. However, the Board received the various financial reports and discussed possible renewal fee decreases in public session at meetings routinely attended by members of the regulated community and their professional associations.

(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.

The Board carefully considered reports and recommendations from the Department's Bureau of Finance and Operations (BFO) in drafting this rulemaking. BFO presented various alternatives to the Board to reduce its surplus funds, including a one-time waiver of the biennial renewal fee, a one-time reduction (of various levels) of the biennial renewal fee, or a permanent reduction (of various levels) of the biennial renewal fee. The Board has elected to reduce the fee to a level that the Board believes will sustain its operations without the need for another increase for a number of years to come. The Board concludes that this rulemaking is the least burdensome acceptable alternative.

(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.

There are no federal licensure standards.

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

This regulation will not put Pennsylvania licensees at a competitive disadvantage with other states, as the proposed fees are being decreased by \$220. Indeed, the reduced biennial renewal fee is less than all of the surrounding states.

Regulatory Analysis Form

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

The regulation would 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 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 perceived no special needs of any subset of its applicants or licenses for whom special accommodations should be made.

FEE REPORT FORM

Agency: State - BPOA

Date: June 9, 2009

Contact: Basil Merenda

Commissioner, Bureau of Professional and Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

Osteopathic Physicians and Surgeons Biennial Renewal Fee: \$220.00

Osteopathic Physician Assistant Biennial Renewal Fee: \$10.00

Osteopathic Acupuncturist Biennial Renewal Fee: \$25.00

Osteopathic Respiratory Care Biennial Renewal Fee: \$25.00

Graduate Osteopathic Trainee Biennial Renewal Fee: \$25.00

Osteopathic Physician Acupuncturist Biennial Renewal Fee: \$25.00

Athletic Trainer Biennial Renewal Fee: \$37.00

Estimated Biennial Revenue:

Osteopathic Physicians and Surgeons - \$1,436,600.00 (6,530 renewals x \$220.00)

Osteopathic Physician Assistant - \$6,020.00 (602 renewals x \$10)

Osteopathic Acupuncturist - \$3,375.00 (135 renewals x \$25.00)

Osteopathic Respiratory Care - \$11,700.00 (468 renewals x \$25.00)

Graduate Osteopathic Trainee - \$46,700.00 (1,868 renewals x \$25.00)

Osteopathic Physician Acupuncturist - \$750.00 (30 renewals x \$25.00)

Athletic Trainer - \$2,072.00 (56 renewals x \$37.00)

Total Estimated Biennial Revenue: \$1,507,217.00

Fee Description:

The fee will be charged biennially to every applicant for license renewal.

Fee Objective:

The fee should defray a substantial portion of the State Board of Osteopathic Medicine's administrative overhead, specifically the difference between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources

Fee-Related Activities and Costs:

Estimated balance at end of 09/10 cycle:	5,135,323.24
FOR BIENNIAL CYCLE 7/01/10-6/30/11	
Estimated non-renewal revenue:	100,000.00
Estimated renewal revenue @ above rates:	1,476,000.00
Total revenue available:	1,576,000.00
Estimated expenditures:	925,000.00
Estimated ending balance on 6/30/11:	<u>5,786,323.24</u>
FOR BIENNIAL CYCLE 7/01/11-6/30/12	
Estimated non-renewal revenue:	100,000.00
Estimated renewal revenue @ above rates:	.00
Estimated expenditures:	971,000.00
Estimated ending balance on 6/30/12:	<u>4,915,323.24</u>

Analysis, Comment, and Recommendation:

It is recommended that the above renewal fee's be established to cover projected funding shortfalls between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

RECEIVED

DEC 15 2009

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

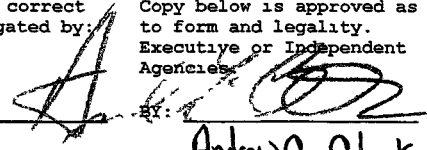
Copy below is hereby approved as to form and legality. Attorney General

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 Osteopathic Medicine
(AGENCY)


BY: _____
Andrew C. Clark

DOCUMENT/FISCAL NOTE NO. 16A-5322

DEC 15 2009

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: 
Joseph C. Gallagher, Jr., D.O.

(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
(WITH PROPOSED RULEMAKING OMITTED)

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OSTEOPATHIC MEDICINE
49 PA. CODE § 25.231

REDUCTION OF BIENNIAL RENEWAL FEE
FOR OSTEOPATHIC PHYSICIANS

The State Board of Osteopathic Medicine (Board) hereby amends § 25.231 (relating to schedule of fees) to read as set forth in Annex A. This rulemaking decreases the biennial license renewal fee for an osteopathic physician from \$440 to \$220.

Effective Date

The amendment will be effective upon final-form publication in the Pennsylvania Bulletin. The new reduced biennial renewal fee will take effect for the biennial renewal period commencing November 1, 2010.

Statutory Authority

Section 13.1(a) of the Osteopathic Medical Practice Act (act) (63 P.S. § 271.13a(a)) requires the Board to fix all fees by regulation. The Board is to set its fees such that projected revenues will meet or exceed projected expenditures.

Omission of Proposed Rulemaking

Under section 204(3) of the Act of July 31, 1968 (P.L. 769, No. 240) known as the Commonwealth Documents Law (CDL) (45 P.S. §1204), the Board may omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) if the Board for good cause finds that the specified procedures are impracticable, unnecessary or contrary to the public interest. The Board finds for good cause that publication of this rulemaking as proposed is unnecessary. As discussed below, the increase in Board expenditures was not as great as anticipated when the Board previously increased the renewal fee, resulting in a significant surplus. The amendment will reconcile the Board's revenue with its expenditures while maintaining the fiscal integrity of the Board. Because the reduction in renewal fee will only beneficially affect the regulated community, there is no need for the public to comment. Accordingly, the Board adopts this amendment without prior notice of proposed rulemaking. Comments on the amendment may, however, be submitted within 30 days of publication to the contact person for the Board indicated below.

Background and Need for Amendment

In 2002, the Board increased its biennial renewal fees for osteopathic physicians significantly, from \$140 to \$440, as a proactive measure to be able to respond to the anticipated increase in complaints filed against physicians under the newly enacted Medical Care Availability and Reduction of Error Act (Mcare Act) (40 P.S. §§ 1303.101–1303.910). *See* 32 Pa.B. 3220. At the time, the Board expected its expenses to nearly double as a result of the increases in cases filed against physicians under the mandatory reporting requirements of the Mcare Act, and projected that Board expenses would increase from \$632,000 in FY 2001-2002 to \$1,171,605 in FY 2002-2003. It is now apparent that those projections were over-estimated. The number of cases opened has increased fairly significantly since the passage of the Mcare Act from 232 in FY 2000-2001 to 644 in FY 2008-2009, and costs have also increased during that time period from \$560,818.70 in FY 2000-2001 to an estimated \$1,349,000 in FY 2008-2009. However, the increase was much more gradual

than expected, and the increased fee imposed beginning in November of 2002 has resulted in a significant surplus, currently estimated at \$6,484,575.93. Therefore, at its meeting on January 14, 2009, the Bureau of Finance and Revenue (BFO) presented the Board with several options for reducing the surplus in its accounts, including a one-time fee reduction, a one-time waiver of the biennial renewal fee, or a “permanent” fee reduction. The Board voted at its meeting on February 11, 2009, to reduce its biennial renewal fee by half from \$440 to \$220, beginning with the November 1, 2010 – October 31, 2012 renewal period. At this level, BFO projects that the Board will have adequate revenue to meet its projected expenditures for a number of years before they would need to consider an increase.

Description of Amendment

The Board amends § 25.231 (relating to schedule of fees) to decrease the biennial renewal fee for osteopathic physicians from \$440 to \$220.

Fiscal Impact

The amendment decreases the biennial renewal fee for osteopathic physicians. The rulemaking will have no other fiscal impact on the private sector, the general public or political subdivisions.

Paperwork Requirements

Although the rulemaking requires the Board to alter some of its forms to reflect the new biennial renewal fee, the rulemaking will not create additional paperwork for the private sector.

Sunset Date

The act requires the Board to monitor its revenue and costs on a fiscal year and biennial basis. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (RRA) (71 P.S. §745.5a(c)), on January 14, 2010, the Board submitted copies of the final rulemaking, with proposed rulemaking omitted, to the Independent Regulatory Review Commission (IRRC), and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC). On the same date, the Board submitted a copy of the regulation to the Office of Attorney General under the Commonwealth Attorneys Act (71 P.S. §§732-101--732-506).

Under section 5.1(j.2) of the RRA (71 P.S. §745.5a(j.2)), the final rulemaking was approved by the HPLC on _____, 2010, and deemed approved by the SCP/PLC on _____, 2010. Under section 5.1(e) of the RRA (71 P.S. § 745.5a(e)), IRRC met on _____, 2010, and approved the final rulemaking.

Additional Information

For additional information about the final rulemaking or to comment, interested parties may contact Steven R. Dade, Counsel, State Board of Osteopathic Medicine by mail at P.O. Box 2649, Harrisburg, PA 17105-2649 or by telephone at (717) 783-7200.

Findings

The Board finds that:

- (1) Public notice of the Board's intention to amend its regulations under the procedures in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) has been omitted under the authority of section 204 of the CDL (45 P.S. §1204), because public comment is unnecessary in that no person is adversely affected by the reduction in the biennial renewal fee and the Board, by simply reconciling its expenditures and revenue, will maintain its fiscal integrity.
- (2) The amendment of the Board's regulations in the manner provided in this order is necessary and appropriate for the administration of the act.

Order

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

- (a) The regulation of the Board at 49 Pa. Code § 25.231 (relating to schedule of fees) is amended 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 the Office of Attorney General for approval as to form and legality as required by law.
- (c) The Board shall certify this order and Annex and deposit them with the Legislative Reference Bureau as required by law.
- (d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

Joseph C. Gallagher, Jr., DO
Chairperson

ANNEX

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 25. STATE BOARD OF OSTEOPATHIC MEDICINE

Subchapter F. FEES

§ 25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * * * *

Biennial renewal - physicians.....\$[440] 220

* * * * *



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

January 14, 2010

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

Re: Final Proposed Omitted Regulation
State Board of Osteopathic Medicine
16A-5322: Reduction of Biennial Renewal Fee for Osteopathic Physicians

Dear Chairman Coccodrilli:

Enclosed is a copy of a final rulemaking package of the State Board of Osteopathic Medicine pertaining to Reduction of Biennial Renewal Fee for Osteopathic Physicians.

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 "Joseph C. Gallagher, Jr." with a stylized flourish at the end.

Joseph C. Gallagher, Jr., D.O., Chairperson
State Board of Osteopathic Medicine

JCG/SRD:klh

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Steven R. Dade, Counsel
State Board of Osteopathic Medicine
State Board of Osteopathic Medicine

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

I.D. NUMBER: 16A-5322
 SUBJECT: REDUCTION OF BIENNIAL RENEWAL FEE FOR OSTEOPATHIC PHYSICIANS
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF OSTEOPATHIC MEDICINE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- X 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
1/14/10	<i>K. Miller</i>	MAJORITY CHAIRMAN <i>Michael P. McGeehan</i>
1/14/10	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
		MAJORITY CHAIRMAN <i>Robert M. Tomlinson</i>
1/14/10	<i>Kathy Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
1/14/10	<i>Maya Garas</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)