



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

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August 6, 2012

The Honorable Silvan B. Lutkewitte, III, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Omitted Regulation
State Board of Medicine
16A-4925: Mcare

Dear Chairman Lutkewitte:

Enclosed is a courtesy copy of a final omitted rulemaking package of the State Board of Medicine pertaining to Mcare which includes corrections of typographical errors discussed with IRRC staff and at the August 2, 2012, Commission meeting. The amendments will change the word "license" to "licensee" in section 16.35 and will align the regulation's references to "professional liability insurance" in section 16.31. A copy of these amendments has also been provided to the Legislative Committees.

Sincerely,

James W. Freeman, Chair
State Board of Medicine

CKM/TL:jsg

Enclosure

cc: Katie True, Commissioner
Bureau of Professional and Occupational Affairs
Rebecca Oyler, Director of Policy, Department of State
Steven V. Turner, Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Teresa Lazo, Counsel
State Board of Medicine
State Board of Medicine

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16A-4925 - Mcare
Final (with Proposed Omitted) Preamble
August 3, 2012

The State Board of Medicine (Board) hereby amends §§ 16.1, 16.18, 16.31 - 16.35, 17.4, 17.6 and 17.7 to read as set forth in Annex A.

Effective Date

The amendments will be effective upon publication in the Pennsylvania Bulletin.

Statutory Authority

Section 8 of the Medical Practice Act (63 P.S. § 422.8) authorizes the Board to adopt regulations that are reasonably necessary to carry out the purposes of the act.

Omission of Proposed Rulemaking

Under section 204 of the Act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. § 1204), known as the Commonwealth Documents Law (CDL), the Board is authorized to omit the procedures for proposed rulemaking in sections 201 and 202 of the CDL (45 P.S. §§1201 and 1202) if the Board finds that the criteria of section 204 are met.

Throughout the Board's regulations are references to the Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006), which was repealed by the act of March 20, 2002 (P.L. 154, No. 13) (Act 13 of 2002). Act 13 of 2002 also enacted the Medical Care Availability and Reduction of Error Act (40 P.S. §§ 1303.101-1303.910) (Mcare Act). Under authority of section 204(3) of the CDL (45 P.S. § 1204(3)), proposed rulemaking has been omitted as unnecessary because the amendments are required to delete references to the repealed Health Care Services Malpractice Act, and to replace them, as applicable, by references to the Mcare Act.

Background and Need for Amendment

Due to the repeal of the Health Care Services Malpractice Act and enactment of the Mcare Act, the Board's regulations must be amended to reference the current applicable law. In addition, because the Mcare act applies to both physicians and nurse-midwives, the Board must amend its references to the requirements of the Mcare Act to include both physicians and nurse-midwives.

Description of Amendments

The Board is amending §§ 16.1, 16.18, 16.31 - 16.35, 17.4, 17.6 and 17.7 to delete references and citations to the Health Care Services Malpractice Act and replace these references and citations to the applicable sections of the Mcare Act.

The Board is also amending the references to “physicians and surgeons” in these sections by replacing them with references to “physicians and nurse-midwives” because (1) the Board no longer uses the term “physicians and surgeons” to refer to its physician licensees and (2) because the Mcare Act applies to both physicians and nurse-midwives.

Fiscal Impact

The amendments will have no fiscal impact on the Board, its licensees, the private sector, the general public or political subdivisions.

Paperwork Requirements

The regulation will not create additional paperwork for the Board, its licensees, the private sector, the general public or political subdivisions.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. 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 June 26, 2012, 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 Commission 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. §745.5(j.2)), the final rulemaking was deemed approved by the HPLC and SCP/PLC on August 1, 2012. Under section 5.1(e) of the RRA (71 P.S. § 745.5a(e)), IRRC met on August 2, 2012, and approved the final rulemaking.

Additional Information

For additional information about the final rulemaking, submit inquiries to Teresa Lazo, Counsel, State Board of Medicine, P.O. Box 2649, Harrisburg, PA 17105-2649, (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 this rulemaking merely deletes references to a repealed statute and replaces them with references to the current statute.
- (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 regulations of the Board, 49 Pa. Code, Chapters 16 and 17, at §§ 16.1, 16.18, 16.31 - 16.35, 17.4, 17.6 and 17.7 are 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*.

James W. Freeman, M.D.
Chair, State Board of Medicine

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter A. BASIC DEFINITIONS AND INFORMATION

§ 16.1. Definitions.

The following words and terms, when used in this chapter and Chapters 17 and 18 (relating to State Board of Medicine—medical doctors; and State Board of Medicine—practitioners other than medical doctors), have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Mcare Act — The Medical Care Availability and Reduction of Error Act (40 P.S. §§ 1303.101-1303.910).

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Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION

PROVISIONS

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§ 16.18. Volunteer license.

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(e) *Renewal of license.* A volunteer license [shall] must be renewed biennially on forms provided by the Board. The applicant [shall be] is exempt from payment of the biennial renewal fee of § 16.13 (relating to licensure, certification, examination and registration fees), and [shall

be] is exempt from the requirements with regard to the maintenance of liability insurance coverage under [section 701 of the Health Care Services Malpractice Act (40 P.S. § 1301.701) and § 16.31 (relating to notification)] section 711 of the Mcare Act (40 P.S. §§ 1303.711), as provided in section 9 of the Volunteer Health Services Act (35 P.S. § 449.49).

* * * * *

Subchapter D. HEALTH CARE [MALPRACTICE] PROFESSIONAL LIABILITY

§ 16.31. Notification.

(a) *Applicants for original licensure.* A physician [or surgeon] who has successfully [passed the medical examination or who has been approved for licensure by endorsement] met the qualifications for licensure will be notified by letter that he may enter upon the practice of medicine in this Commonwealth only after [:

(1) Registering with the Department of State under section 25 of the act (63 P.S. § 422.25).

(2) Complying] complying with section [701 of the Health Care Services Malpractices Act (40 P.S. § 1301.701)] 711 of the Mcare Act (40 P.S. § 1303.711), by making prompt application for [malpractice] professional liability insurance.

(b) *Licensees applying for biennial renewal.* A licensee applying for biennial renewal will be notified with the renewal application that if he practices in this Commonwealth he is required to furnish satisfactory proof [to the Office of the Medical Professional Liability Catastrophe Loss Fund that he is in compliance with the Health Care Services Malpractices Act (40 P.S. §§ 1301.101-1301.1006)] of compliance with the professional liability insurance and Medical Care Availability and Reduction of Error Fund provisions under sections 711 and 712 of the Mcare Act (40 P.S. §§ 1303.711 and 1303.712) as a condition of practice.

§ 16.32. Requirements of the [Health Care Services Malpractice] Mcare Act.

[An applicant for licensure or a licensee applying for biennial review as required by the Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006), and the regulations pertaining thereto, shall maintain the required amount of professional liability insurance or an approved self-insurance plan and shall have paid the required fee and surcharges as set forth therein.]

(a) Except as provided in subsections (b) and (c), a physician or nurse-midwife shall maintain the required amount of professional liability insurance, or have an approved self-insurance plan, and pay the required Medical Care Availability and Reduction of Error (Mcare) Fund assessment as a condition of practice under sections 711 and 712 of the Mcare Act (40 P.S. §§ 1303.711 and 1303.712). Failure to comply with this section subjects the physician or nurse-midwife to disciplinary action by the Board.

[(1)] (b) A [licensee] physician or nurse-midwife practicing solely as a Federal [employee] employee is not required to participate in the professional liability insurance program, nor is the [licensee] physician or nurse-midwife required to comply with the [Health Care Services Malpractice] Mcare Act.

[(2)] (c) A [licensee] physician or nurse-midwife who provides no medical service in this Commonwealth is not required to pay the [arbitration fees] Mcare Fund assessment or comply with the insurance requirements of the [Health Care Services Malpractice] Mcare Act. Proof of nonpractice [shall] must be furnished by notarized statement.

§ 16.33. Certification of noncompliers; noncompliance letters.

The Director of the [Medical Professional Liability Catastrophe Loss] Medical Care Availability and Reduction of Error (Mcare) Fund will furnish the Board office with a

certification of the names of those licensed physicians and [surgeons] nurse-midwives who are not in compliance with the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006)] Mcare Act (40 P.S. §§ 1303.101-1303.910) or have not demonstrated compliance. Upon receipt of the certification, the Board will forward a letter to the physician or nurse-midwife requiring [him] the physician or nurse-midwife to either furnish sufficient evidence of compliance to the Office of the [Medical Professional Liability Catastrophe Loss] Mcare Fund or to request a hearing.

§ 16.34. Formal hearings for noncompliance.

A physician or [surgeon] nurse-midwife who has requested a hearing or who has failed to demonstrate compliance with the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006)] Mcare Act (40 P.S. §§ 1303.101-1303.910), will be issued a citation and notice of hearing. The formal hearings will be conducted under Subchapter E (relating to medical disciplinary process and procedures).

§ 16.35. Penalty.

Failure to comply with the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006)] Mcare Act (40 P.S. §§ 1303.101-1303.910), the regulations issued thereunder, and this subchapter [will] may result in [the suspension or revocation] discipline of a [license] licensee after a formal hearing.

CHAPTER 17. STATE BOARD OF MEDICINE—MEDICAL DOCTORS

Subchapter A. LICENSURE OF MEDICAL DOCTORS

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§ 17.4. Extraterritorial license.

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(b) An extraterritorial license will be issued under the following circumstances:

(1) The applicant shall satisfy the following:

* * * * *

(iii) Submit evidence with the application that the applicant is in compliance with professional liability insurance responsibilities imposed by the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101—1301.1006)] Mcare Act (40 P.S. §§ 1303.101 – 1303.910).

* * * * *

§ 17.6. Temporary license.

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(h) Temporary licensees are considered health care providers who conduct 50% or less of their health care business or practice within this Commonwealth for purposes of the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006)] Mcare Act (40 P.S. §§ 1303.101-1303.910).

§ 17.7. Interim limited license.

* * * * *

(c) To qualify for an interim limited license, an applicant shall satisfy the following:

* * * * *

(7) Present evidence of having made arrangements for professional liability insurance coverage in accordance with the [Health Care Services Malpractice Act (40 P.S. §§ 1301.101-1301.1006)] Mcare Act (40 P.S. §§ 1303.101-1303.910).

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