

Comments of the Independent Regulatory Review Commission



State Board of Osteopathic Medicine Regulation #16A-5334 (IRRC #3254)

Fees

May 6, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the March 7, 2020 *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 Osteopathic Medicine (Board) to respond to all comments received from us or any other source.

Whether the regulation is consistent with the intent of the General Assembly; Fiscal Impact; Reasonableness; Implementation procedures.

This rulemaking proposes graduated increases in application fees and biennial renewal fees for osteopathic physicians and other medical practitioners regulated by the Board. Under Section 13.1(a) of the Osteopathic Medical Practice Act (Act), the Board is required to support its operations from the revenue it generates from fees, fines and civil penalties. In addition, the Act provides that the Board shall increase fees if the revenue generated is not sufficient to meet expenditures over a two-year period. The revenue generated must meet or exceed projected expenses. The proposed fee increases are projected to cover the Board's operating expenses at least through 2025-2026 fiscal year.

We have three concerns with this proposed rulemaking. First, the Majority and Minority Chairs of the House Professional Licensure Committee submitted a joint letter recommending that the fee increases in this proposed regulation be delayed until after the end of the COVID-19 emergency. Osteopathic physicians submitted comments opposing the amount and timing of the proposed increases. These commentators believe imposing substantial biennial fee increases at this time is not reasonable and will harm them financially. We agree with commentators that a fee increase at this time is not reasonable. The extraordinary pressures and work burden placed on medical professionals during this pandemic necessitate additional time for the regulated community to review and comment on the proposal. We ask the Board to withdraw the rulemaking and resubmit it at a later date.

Second, the Pennsylvania Osteopathic Medical Association and the Pennsylvania Medical Society have expressed concern with how biennial fee increases will be implemented if this rulemaking is not finalized before the start of the biennial renewal period beginning on November 1, 2020. They point out that the Board begins accepting renewal applications and fees two months in advance of the beginning of the renewal period. In response to Question #29 of the Regulatory Analysis Form submitted with this proposal, the Board indicates that it expects

to deliver the final-form regulation in the summer of 2020. If the Board does not withdraw this proposal as suggested above, it should ensure that the delivery of the final-form regulation allows for it to be formally promulgated and effective in advance of the opening of the biennial renewal period beginning November 1, 2020.

Third, in previous rulemakings submitted by the Department of State's Bureau of Professional and Occupational Affairs, other licensure boards have included "fee reports forms" and other financial reports that document the effect of the proposed fee increases on future biennial cycles. The Board did not submit similar documentation with this rulemaking. The Board should submit financial documentation that shows projected revenues and expenses through the 2025-2026 fiscal year. This would demonstrate that the Board is meeting its statutory obligation to ensure revenues meet or exceed projected expenses over a two-year period.