

# PROPOSED RULEMAKING

## INSURANCE DEPARTMENT

[31 PA. CODE CH. 146a]

[Correction]

### Privacy of Consumer Financial Information

An error occurred in a proposal published at 31 Pa.B. 1748, 1755 (March 31, 2001). The definition of "consumer" was incorrect. The correct version, as submitted by the Department, appears in Annex A, with ellipses referring to the existing text of the proposal.

#### Annex A

#### TITLE 31. INSURANCE

#### PART VIII. MISCELLANEOUS PROVISIONS

#### CHAPTER 146a. PRIVACY OF CONSUMER FINANCIAL INFORMATION

#### § 146a.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context requires otherwise:

\* \* \* \* \*

*Consumer*—An individual who seeks to obtain, obtains or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative. Examples include:

- (i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.
- (ii) An applicant for insurance prior to the inception of insurance coverage is a licensee's consumer.
- (iii) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.
- (iv) An individual is a licensee's consumer if the individual is:
  - (A) A beneficiary of a life insurance policy underwritten by the licensee.
  - (B) A claimant under an insurance policy issued by the licensee.
  - (C) An insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee.
  - (D) A mortgagor of a mortgage covered under a mortgage insurance policy.
  - (E) Licensee discloses nonpublic personal financial information about the individual to a third party other than as permitted under §§ 146a.31—146a.33.
  - (v) Provided that the licensee provides the initial, annual and revised notices under §§ 146a.11, 146a.12 and 146a.15 to the plan sponsor, group or blanket insurance policyholder or group annuity contractholder, workers' compensation plan participant, and further provided that the licensee does not disclose to a third party

nonpublic personal financial information about such an individual other than as permitted under §§ 146a.31—146a.33, an individual is not the consumer of the licensee solely because the individual is:

- (A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary.
- (B) Covered under a group or blanket insurance policy or group annuity contract issued by the licensee.
- (C) A beneficiary in a workers' compensation plan.
- (vi) The individuals described in subparagraph (v) are consumers of a licensee if the licensee does not meet all the conditions of subparagraph (v).
- (vii) In no event shall the individuals, solely by virtue of the status described in subparagraph (v) be deemed to be customers for purposes of this chapter.
- (viii) An individual is not a licensee's consumer solely because the individual is a beneficiary of a trust for which the licensee is a trustee.
- (ix) An individual is not a licensee's consumer solely because the individual has designated the licensee as trustee for a trust.

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[Pa.B. Doc. No. 01-550. Filed for public inspection March 30, 2001, 9:00 a.m.]

## STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]

### Fees

The State Board of Podiatry (Board) proposes to amend §§ 29.12, 29.13 and 29.83 (relating to adoption of National board examination; fees; and examinations) to read as set forth in Annex A, by revising those fees which are not related to license renewals but rather to applications and specific services to accurately reflect the cost of processing applications and providing services, and by omitting reference to the examination fees for the National licensing examination and podiatry radiology examination.

#### A. Effective Date

The proposed amendments will be effective upon publication of the final-form regulations in the *Pennsylvania Bulletin*.

#### B. Statutory Authority

The proposed amendments are authorized under section 14 of the Podiatry Practice Act (act) (63 P. S. § 42.14).

#### C. Background and Purpose

Section 14 of the act requires the Board to set fees by regulation so that revenues meet or exceed expenditures over a biennial period. General operating expenses of the Board are funded through biennial license renewal fees. Expenses related to applications or services which are provided directly to individual licensees or applicants are

excluded from general operating revenues and are funded through fees in which the cost of providing the service forms the basis for the fee.

In a recent systems audit of the operations of the Board within the Bureau of Professional and Occupational Affairs (Bureau), the fees for services for licensees and applicants were analyzed to determine if the fees reflected the actual cost of providing the services. Actual cost calculations are based upon the following formula:

$$\begin{aligned} & \text{Number of minutes to perform the function} \\ & \quad \times \\ & \text{Pay rate for the classification of the personnel performing} \\ & \quad \text{the function} \\ & \quad + \\ & \text{A proportionate share of administrative overhead} \end{aligned}$$

As a result of the audit, the Board proposes to increase four existing fees, to decrease one fee and to add one additional fee. The analysis determined that current fees do not accurately reflect the actual cost of processing applications and providing other services.

In this proposal, fees for the services identified would be adjusted to allocate costs to those who use the service or submit an application. The Board would continue to apportion its enforcement and operating costs to the general licensing population when the Board makes its biennial reconciliation of revenues and expenditures.

*Administrative Overhead*

During reviews of other Bureau proposed fee regulations, the Independent Regulatory Review Commission (IRRC) requested that the Bureau and the boards: (1) itemize the overhead cost to be recouped by the fees; and (2) reexamine the method that is used to determine the administrative overhead factor for each fee.

IRRC commented that although the Bureau's method was reasonable, there was no assurance that the fees would recover the actual overhead cost because the charge was not related to the service, and because the charge was based on the actual rather than the projected expenditures. IRRC also commented that there was no certainty that the projected revenues would meet or exceed projected expenditures, as required under the Boards' enabling statutes.

In computing overhead charges, the boards and the Bureau include expenses resulting from service of support staff operations, equipment, technology initiatives or upgrades, leased office space and other sources not directly attributable to a specific board. Once determined, the Bureau's total administrative charge is apportioned to each board based upon that board's share of the total active licensee population. In turn, the boards' administrative charge is divided by the number of active licensees to calculate a "per application" charge which is added to direct personnel cost to establish the cost of processing. The administrative charge is consistently applied to every application regardless of how much time the staff spends processing the application.

This method of calculating administrative overhead to be apportioned to fees for services was first included in the biennial reconciliation of fees and expenses conducted in 1988-89. In accordance with the regulatory review, the method was approved by the Senate and House Standing Committees and IRRC as reasonable and consistent with the legislative intent of statutory provisions which require the Board to establish fees which meet or exceed expenses.

IRRC suggested that within each Board, the administrative charge should be determined by the amount of time required to process each application. For example, an application requiring 1/2 hour of processing time would pay one-half as much overhead charge as an application requiring 1 hour of processing time. The Bureau concurs with IRRC that by adopting this methodology the Bureau and the boards would more nearly and accurately accomplish their objective of setting fees that cover the cost of the service. Therefore, in accordance with IRRC's suggestions, the Bureau conducted a test to compare the resulting overhead charges obtained by applying IRRC's suggested time factor versus the current method.

This review of Board operations showed that approximately 25% of staff time was devoted to providing services described in the regulations. The current method recouped 22% to 28% of the administrative overhead charges versus the 25% recouped using a ratio-based time factor. However, when the time factor is combined with the licensing population for each Board, the resulting fees vary widely even though different licensees may receive the same services. For example, using the time-factor method to issue a verification of licensure would cost \$34.58 for a landscape architect as compared with a cost of \$10.18 for a cosmetologist. Conversely, under the Bureau method the administrative overhead charge of \$9.76 represents the cost of processing a verification application for all licensees in the Bureau. Also, the Bureau found that employing a time factor in the computation of administrative overhead would result in a different amount of overhead charge being made for each fee proposed.

With regard to IRRC's suggestions concerning projected versus actual expenses, the boards noted that the computation of projected expenditures based on amounts actually expended has been the basis for biennial reconciliations for the past 10 years. During these 5 biennial cycles, the experience of both the boards and the Bureau has been that using established and verifiable data which can be substantiated by collective bargaining agreements, pay scales and cost benefit factors, provides a reliable basis for fees. Also, the fees are kept at a minimum for licensees, but appear adequate to sustain the operations of the boards over an extended period. Similarly, accounting, recordkeeping and swift processing of applications, renewals and other fees were the primary basis for "rounding up" the actual costs to establish a fee. This rounding up process has in effect resulted in the necessary but minimal cushion or surplus to accommodate unexpected needs and expenditures.

In the past, questions have arisen as to the difference between certification and verification fees. The certification of a score is made at the request of a licensee when the licensee is seeking to obtain licensure in another state based upon licensure in this Commonwealth which was issued on the basis of a uniform National or regional examination which was taken in this Commonwealth. Generally, the state of original licensure is the only source of the score of the licensee, as testing agencies do not maintain this information. The licensure laws of many states include provisions that licensure by reciprocity or endorsement based on licensure in another state will be granted only if the board or agency determines that the qualifications are the same or substantially similar. Many state agencies have interpreted this provision to require that licensees have attained a score equal to or exceeding the passing rate in that jurisdiction at the time of original licensure. For this reason, these states

require that the Pennsylvania Board and other boards certify the examination score the applicant achieved on the licensure examination.

The difference between the verification and certification fees is the amount of time required to produce the document requested by the licensee. As noted, states request different information when making a determination as to whether to grant licensure based on reciprocity or endorsement from another state. The Bureau has been able to create two documents from its records that will meet all of the needs of the requesting state. The licensee, when the licensee applies to the other state, receives information as to what documentation and form is acceptable in the requesting state. The Bureau then advises the licensee of the type of document the Bureau can provide and the fee.

In the case of a verification, the staff produces the requested documentation by a letter, usually computer-generated, which contains the license number, date of original issuance and current expiration date, and status of the license. The letters are printed for the Bureau's central computer records and sent to the Board staff responsible for handling the licensee's application. The letters are sealed, folded and mailed in accordance with the directions of the requestor. The Bureau estimates the average time to prepare this document to be 5 minutes.

The Bureau uses the term "certification fee" to describe the fee for a request for a document, again generally to support reciprocity or endorsement applications to other states, territories or countries, or for employment or training in another state. A certification document contains information specific to the individual requestor. It may include dates or locations where examinations were taken, or scores achieved or hours and location of training. The information is entered onto a document which is usually supplied by the requestor. The average time to prepare a certification is 45 minutes. This is because a number of resources, such as files, microfilm and rosters must be retrieved and consulted to provide the information requested. The Board staff then seals and issues this document.

The Board is also taking this opportunity to eliminate references to the National Board of Podiatric Medical Examiners examination fee over which the Board has no control or involvement. Currently, candidates take the National board examination and the PM Lexis examination sequentially. Both examinations are recognized uniform examinations used throughout the United States. The General Assembly has indicated its preference for the recognition of National uniform examinations and grading services in accordance with section 812.1 of The Administrative Code of 1929 (71 P. S. § 279.3a). The fee for the examination is established by the National examiner and communicated directly to the applicants. Applicants for the exam pay the examination fee directly to the National examiner. Thus, it is unnecessary and impractical for the Board to continue to publish the National examiner's examination fee in the Board's regulations. Therefore, the Board is eliminating reference to the examination fee. Moreover, since examination fees are no longer established by the Board, sections 4, 8 and 14 of the act (63 P. S. §§ 42.4, 42.8 and 42.14) are inapplicable as to National uniform examinations.

In addition, the Board is also taking this opportunity to eliminate references to the examination fee for the podiatry radiology examination over which the Board has no control or involvement. A person may, within the practice of podiatric medicine, perform radiologic procedures on

the premises of a podiatrist and under the direct supervision of the podiatrist if the person has passed an examination approved and administered by the Board. See § 29.82(a)(3) (relating to auxiliary personnel performing radiologic procedures). Recently, through a competitive bidding process, the Board has contracted with Professional Credential Service (PCS) to develop and administer the podiatry radiology examination for a period of 5 years, beginning September 1, 2000. The examination is administered twice a year. During the past year, 33 candidates have taken the examination. Candidates for the exam pay the examination fee directly to PCS. Because this contract has been secured by PCS through a competitive bidding process, it is unnecessary and impractical for the Board to continue to publish the fee for this examination in the Board's regulations. Therefore, the Board is eliminating reference to the examination fee.

The Board, moreover, proposes a new fee which will be charged to all applicants who take the radiology technician examination. This fee, which will be charged only once per applicant, is in addition to the examination fee and will be paid directly to PCS prior to the applicant taking the examination. This proposed fee, which will be forwarded back to the Bureau, will cover the administrative costs to the Bureau of providing an authorization form permitting each person who passes the examination to perform radiologic procedures on the premises of a podiatrist and under the direct supervision of a podiatrist. It is presumed that any applicant who fails the examination will retake the examination until the applicant passes and that this "one-time only" fee will be applied toward the authorization form subsequent to the applicant passing the examination.

*D. Description of Proposed Amendments*

The following table outlines the affected application fees, proposed changes and date the indicated fee was last changed:

<i>Fee Type</i>	<i>Current Fee</i>	<i>Effective Date</i>	<i>Proposed Fee</i>
1. Initial License	\$25	03/17/90	\$30
2. License By Reciprocity	105	02/18/89	95
3. Application For Approval of Educational Conference	50	02/18/89	75
4. Certification of Licensure or Scores	15	02/18/89	25
5. Verification of License	10	02/18/89	15
6. Application for Authorization to Perform Radiologic Procedures	0		25

*E. Compliance with Executive Order 1996-1*

In accordance with Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the amendments the Board considered the least restrictive alternative to regulate costs for services requested by licensees and applicants.

*F. Fiscal Impact and Paperwork Requirements*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The fees will have a modest fiscal impact on those members of the private sector who apply for services from

the Board. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

G. *Sunset Date*

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

H. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), March 23, 2001, the Board submitted a copy of these proposed amendments to IRRC and the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee (Committees). In addition to submitting the proposed amendments, the Board has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Board, the General Assembly and the Governor, of objections raised.

I. *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed amendments to Roberta L. Silver, Counsel, State Board of Podiatry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649, within 30 days of publication of this proposed rulemaking. Please reference No.16A-444 (Fees), when submitting comments.

JEFFREY S. GERLAND, D.P.M.,  
*Chairperson*

**Fiscal Note:** 16A-444. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS**

**CHAPTER 29. STATE BOARD OF PODIATRY LICENSES**

**§ 29.12. Adoption of National board examination.**

(a) The Board adopts as part of its examination the [ **National Board Examination** ] examination given by the National Board of Podiatric Medical Examiners. Candidates who have passed this examination under the standards [ **set forth** ] in section 8 of the act (63 P. S. § 42.8) will be considered as having passed this portion of the Board's examination.

(b) Applicants who have passed the National Board will be permitted to take the [ **State portion of the** ] **PM Lexis examination or an examination given by its**

**current provider or successor** provided they meet the other requirements for examination imposed by the act or by this chapter.

**(c) The State Board of Podiatry has adopted Nationally recognized examinations for both of the examinations in subsections (a) and (b). Fees are established by the National owners/providers of the examinations. Candidates for examination shall obtain applications directly from the provider and pay the fee for the examination directly to the provider.**

**§ 29.13. Fees.**

(a) The schedule of fees charged by the Board is as follows:

<b>[ Examination or reexamination.....</b>	<b>\$345</b>
<b>Effective June 1996.....</b>	<b>\$395 ]</b>
Initial license.....	\$ [ <b>25</b> ] <b>30</b>
	* * * * *
License by reciprocity.....	\$ [ <b>105</b> ] <b>95</b>
	* * * * *
Application for approval of educational conference.....	\$ [ <b>50</b> ] <b>75</b>
Certification of licensure or scores.....	\$ [ <b>15</b> ] <b>25</b>
Verification of licensure.....	\$ [ <b>10</b> ] <b>15</b>
<b>Application for authorization to perform radiologic procedures.....</b>	<b>\$25</b>

(b) [ **Fees for examination or reexamination and initial license shall accompany the application. Refunds of fees for examination or reexamination and initial license shall be as specified in the application for examination.**

**Other fees ] Fees** shall accompany applications and be made payable to the "Commonwealth of Pennsylvania" by personal check or money order. These fees will not be refunded.

**PERFORMANCE OF RADIOLOGICAL PROCEDURES BY AUXILIARY PERSONAL**

**§ 29.83. Examinations.**

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(b) Applications for examination shall be completed on forms furnished by the Board and submitted at least 60 days prior to the scheduled date of the examination [ **to the State Board of Podiatry, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649** ] to the address indicated on the application materials with the fee as required by the examination administrator.

**[ (c) The fee for examination is \$87. ]**

[Pa.B. Doc. No. 01-591. Filed for public inspection April 6, 2001, 9:00 a.m.]