

# RULES AND REGULATIONS

## Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

### STATE BOARD OF PODIATRY [49 PA. CODE CH. 29] Biennial Renewal Fees

The State Board of Podiatry (Board) amends § 29.13 (relating to fees), by raising the biennial renewal fee for podiatrists to read as set forth at 32 Pa.B. 946 (February 16, 2002).

#### A. *Effective Date*

The amendment is effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*. The new fee will take effect January 1, 2003.

#### B. *Statutory Authority*

The amendment is authorized under section 14 of the Podiatry Practice Act (act) (63 P. S. § 42.14).

#### C. *Background and Purpose*

At its May 28, 2001, meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the Bureau of Professional and Occupational (Bureau) Affairs Revenue Office and the Bureau of Finance and Operations, showed that the Board must raise the biennial renewal fee to meet or exceed projected expenditures.

If the biennial fee is not increased, the Department of State (Department) anticipates that a significant deficit will occur during FY 2003-2004. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA). Since this Board is not a part of the PLAA, it cannot utilize any fiscal backing to carry it through budget shortfalls. Therefore, any budget shortfall will stop operations of this Board until a positive balance is maintained. A detailed explanation of the background of this fee as well as a description of the fee was published at 32 Pa.B. 946.

#### D. *Comment and Regulatory Review of Proposed Rule-making*

Publication of proposed rulemaking at 32 Pa.B. 946 was followed by a 30-day public comment period during which the Board received no public comments. Following the close of the public comment period, the Board received comments from the House Professional Licensure Committee (HPLC). The Board did not receive comments from either the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) or the Independent Regulatory Review Commission (IRRC).

The following are the comments submitted by the HPLC and the Board's response:

1. The HPLC asked why the need to increase the fee was not recognized or anticipated by the Board at an earlier time so that fee increases could be phased in rather than resorting to one fee increase?

Section 14 of the act states, "If the revenues raised by fees, fines and civil penalties imposed under this act are

not sufficient to meet expenditures over a 2-year period, the Board shall increase those fees by regulation so that projected revenues will meet or exceed projected expenditures."

The Department, before recommending or suggesting a fee increase to any board, must be certain that a fee increase is required and to what degree that increase will be necessary. That determination can only be made after tracking revenue and expenses and insuring that increase is essential. When a revised fee is proposed, the Department is hopeful that fee will be adequate to sustain for several fee cycles. The Department then will meet with that particular board and outline the affects of a fee increase and several fee options and the results of each option. A biennial renewal fee increase is not recommended until a deficit is projected for the board.

Until FY 01-02, the Board had sufficient revenue to meet or exceed its projected expenditures. However, when the Department of State implemented the License 2000 program, the \$3 million expenditure was apportioned among all 27 licensing boards within the Bureau. This Board was assessed an amount of approximately \$11,000 plus maintenance costs. It was at this point that a fee increase was recommended as necessary to avoid a deficit.

2. The HPLC noted that by FY 2005-2006, the Board's projected expenditures will be \$53,000 more than the FY 2000-2001 and asked why the expenditures of the Board were expected to increase so sharply.

In an effort to develop a budget and to project expenses over fiscal periods, the Department will usually extend the current expenditure base, using a 3% increase over the previous year base deducting any known nonrecurring items. This will account for inflation and any cost of living increases, which are required to be funded. Therefore, the expenditure base will increase exponentially to account for those increased annual costs. This concept (3%) would be a conservative mirror image for the relative rate of increase of a total budget.

The fee that the Board was assessed for the implementation of the License 2000 program was significant. Once there is a deficit, the amount rolls over into subsequent years. Without a fee increase to cover the expenditures, the Board will be unable to continue its operations.

#### E. *Description of Amendment*

<i>Application</i>	<i>Current Fee</i>	<i>Amended Fee</i>
Biennial Renewal Fee	\$ 175	\$ 395

#### F. *Compliance with Executive Order 1996-1*

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

#### G. *Fiscal Impact and Paperwork Requirements*

The amendment will increase the biennial renewal fee for podiatrists in this Commonwealth but, otherwise, should have no fiscal impact on the private sector, the general public or political subdivisions.

The amendment will require the Board to alter some of its forms to reflect the new biennial renewal fees; however, the amendment should create no additional paperwork for the private sector.

H. *Sunset Date*

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

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Board submitted copies of the notice of proposed rulemaking, published at 32 Pa.B. 946 to IRRC, the SCP/PLC and the HPLC for review and comment.

In preparing the final-form regulation, the Board has considered any comments received from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P. S. § 745.5a(d)), this final-form regulation was deemed approved by the HPLC and the SCP/PLC on July 16, 2002. Under section 5.1(e) of the Regulatory Review Act, this final-form regulation was approved by IRRC effective July 18, 2002.

J. *Contact Person*

Further information may be obtained by contacting Gina Bittner, Board Administrator, State Board of Podiatry, 116 Pine Street, Post Office Box 2649, Harrisburg, PA 17105-2649 (gbittner@state.pa.us).

K. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) This amendment does not enlarge the purpose of proposed rulemaking published at 32 Pa.B. 946.

(4) This amendment is necessary and appropriate for administering and enforcing the authorizing act identified in Part B of this Preamble.

L. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 29, are amended by amending § 29.13 to read as set forth at 32 Pa.B. 946.

(b) The Board shall submit this order and 32 Pa.B. 946 to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and 32 Pa.B. 946 and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect January 1, 2003.

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

*(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 32 Pa.B. 4211 (August 24, 2002).)*

**Fiscal Note:** Fiscal Note 16A-445 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 02-1519. Filed for public inspection August 30, 2002, 9:00 a.m.]

## Title 58—RECREATION

### GAME COMMISSION

#### [58 PA. CODE CH. 135]

#### Use of and Permissible Activities on State Game Lands

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its April 9, 2002, meeting adopted the following changes:

Amend §§ 135.2 and 135.41 (relating to unlawful actions; and State game lands) to restrict specified detrimental uses and further define permitted acts and unlawful activities.

These amendments were adopted under the authority of 34 Pa.C.S. (relating to the Game and Wildlife Code) (code).

#### 1. *Introduction*

Section 722(a) of the code (relating to use of property) provides that lands or waters title to which has been acquired by the Commission "... may be used only to create and maintain public hunting and furtaking, game or wildlife propagation areas ... or other uses incidental to hunting, furtaking and game or wildlife resource management." Section 721(a) of the code places the administration of all lands and waters owned or controlled by the Commission under the sole control of the Executive Director and authorizes the Commission to promulgate regulations "... for its use and protection as necessary to properly manage these lands or waters."

The Commonwealth has allowed various recreational uses of the game lands system. Unfortunately, an increase of these recreational uses has resulted in a corresponding increase in user conflicts and habit degradation and fragmentation. The Commission at its January 15, 2002, meeting proposed, and at its April 9, 2002, meeting finally adopted, changes to §§ 135.2 and 135.41 to place restrictions on some of these recreational uses and to clarify permitted acts.

#### 2. *Purpose and Authority*

The purpose and authority of the adopted changes are outlined in the Introduction. The changes clarify existing regulations regarding use of and permissible activities on game lands and restrict certain recreational uses by the time of year, areas to be used and number of participants. The changes also make it unlawful, while on State game lands, to consume or possess alcohol, possess controlled substances, or engage in any commercial activity without the written permission of the Executive Director.

#### 3. *Regulatory Requirements*

The adopted changes make it unlawful to violate restrictions on specified recreational uses or to engage in prohibited activities.

#### 4. *Persons Affected*

Individuals wishing to use State game lands for specified detrimental uses will be limited. Individuals wishing to use State game lands for other uses will be affected.

### 5. *Comment and Response Summary*

Seventy-six official comments were received with regard to the adopted changes. Those supporting strongly favored requirement of nonhunters to wear hunter orange when afield on State game lands during hunting seasons; that regulations would reduce or eliminate nonhunting conflicts during hunting seasons; and that regulations would help reduce impacts to both wildlife and habitat. Those opposing primarily voiced the opinion that these were State, public lands and should be open, without restrictions, to all users.

### 6. *Cost and Paperwork Requirements*

There will be additional cost to the Commission in posting designated routes for specified users as well as posting new regulations on State game lands to inform users of changes. Usual, customary costs associated with signage for any new program can be expected. The anticipated costs are minimal.

### 7. *Effective Dates*

The adopted changes will be effective February 1, 2003, and will remain in effect until changed by the Commission.

### 8. *Contact Person*

For further information regarding these changes, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

### *Findings*

The Commission finds that:

(1) Public notice of intention to adopt the administrative amendments adopted by this order has been given under sections 201 and 202 of the July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of the amendments of the Commission in the manner provided in this order is necessary and appropriate for the administration and enforcement of the authorizing statute.

### *Orders*

The Commission, acting under authorizing statute, orders that:

(a) The regulations of the Commission, 58 Pa. Code Chapter 135, are amended by amending §§ 135.2 and 135.41 to read as set forth in Annex A to this order.

(b) The Executive Director shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(c) This order shall take effective upon final publication in the *Pennsylvania Bulletin*.

VERNON R. ROSS,  
*Executive Director*

**Editor's Note:** Fiscal Note 48-140 remains valid for the final adoption of the subject regulations.

## **Annex A**

### **TITLE 58. RECREATION**

#### **PART III. GAME COMMISSION**

#### **CHAPTER 135. LANDS AND BUILDINGS**

#### **Subchapter A. GENERAL PROVISIONS**

#### **§ 135.2. Unlawful actions.**

In addition to the prohibitions in the act on lands, waters or buildings under Commission ownership, lease

or jurisdiction, it is unlawful, except with the permission of the person in charge of the lands, to:

(1) Camp or use campsites.

(2) Plant, gather, cut, dig, remove or otherwise injure plants or parts thereof, including trees, shrubs, vines, flowering plants, cultivated crops, mushrooms and fruits of berry-producing plants.

(3) Travel on lands by means of vehicle or conveyance propelled by motorized power. This prohibition does not include the travel by individuals permanently confined to a wheelchair propelled by electric power obtained from batteries. Individuals desiring to hunt from an electric powered wheelchair shall have a disabled person permit under section 2923 of the act (relating to disabled person permits).

(4) Swim in a dam, pond, lake or stream.

(5) Injure, destroy or cause damage to property—real, personal or mixed.

(6) Remove or attempt to remove any manmade or natural object except wildlife and fish lawfully taken during the open season. Objects which may not be removed include animals, rocks, minerals, sand and historical or archaeological artifacts.

(7) Participate in, become a part of, contribute to or engage in disorderly conduct as defined in 18 Pa.C.S. §§ 5503 and 5505 (relating to disorderly conduct; and public drunkenness).

(8) Kindle, use or maintain an open fire.

(9) Travel on roads open to vehicular travel with vehicle or conveyance propelled by motorized power which is not licensed or authorized for operation on a public highway under 75 Pa.C.S. (relating to the Vehicle Code).

(10) Violate, fail or neglect to follow instructions posted on signs authorized by the Director.

(11) Travel by mechanical or motorized conveyance or ride animals on newly constructed, seeded or planted roads, or other areas, when posted against the travel.

### **Subchapter C. STATE GAME LANDS**

#### **§ 135.41. State game lands.**

(a) *Restrictions limited.* The following exceptions to § 135.2 (relating to unlawful actions) pertain to lands and waters designated as State game lands:

(1) Mushrooms and fruits of berry-producing plants may be picked.

(2) Small open fires for cooking or warming purposes are permitted only at places where adequate precautions are taken to prevent the spread of fire which may damage adjacent areas and shall be attended at all times and completely extinguished before leaving the site of the fire. Open fires are prohibited when the fire index rating used by the Department of Conservation and Natural Resources, is high, very high or extreme. A person causing a wildfire, in addition to possible criminal penalty, is liable for all damages, cost of extinguishing and fines.

(3) Snowmobiles, as defined in 75 Pa.C.S. § 7702 (relating to definitions) may be driven beginning on the third Sunday in January through April 1 on designated areas, roads and trails marked with appropriate signs, so long as snowmobiles are registered and display valid registration decal as required under 75 Pa.C.S. §§ 7711.1 and 7711.2 (relating to registration of snowmobile or ATV; and limited registration of snowmobile or ATV).

(b) *Closure of game lands.*

(1) When the threat of forest fires exists, the Director has emergency authority to restrict the use of smoking materials on State game lands or to close State game lands to hunting, trapping, fishing, recreational use and other activity which may be or become detrimental to those lands or the flora or fauna thereon until the Director removes the restrictions. Emergency restrictions or closures will be announced to the news media.

(2) The Director has the authority to close State game lands or portions thereof, to recreational or other uses, when the specified uses may be or have become detrimental to those lands or the flora or fauna thereon, or where the uses conflict with legal hunting, furtaking or fishing activities or the Commission's management or administration of State game lands. The closure may be seasonal or year-round and shall remain in effect until the Director removes the restrictions.

(3) It is unlawful to violate restrictions or closure placed on these lands by the Director.

(c) In addition to the prohibitions contained in the act pertaining to State game lands and § 135.2 (relating to unlawful actions), except with the written permission of the Director, it is unlawful to:

(1) Contaminate, pollute or degrade groundwaters or surface waters or any waterways.

(2) Graze or permit the grazing of livestock, place or maintain beehives or beekeeping apparatus.

(3) Solicit, or place advertisements, signs or posters.

(4) Ride a nonmotorized vehicle, conveyance or animal, except on roads normally open to public travel, or designated routes as posted, or while lawfully engaged in hunting, trapping or fishing.

(5) Ride a nonmotorized vehicle, conveyance or animal from the last Saturday in September until the third Saturday in January, and before 1 p.m. from the second Saturday in April through the last Saturday in May inclusive, except on Sundays or while lawfully engaged in hunting, trapping or fishing.

(6) Ride a nonmotorized vehicle, conveyance or animal on roads open to foot travel only.

(7) Drive motor vehicles with or without attachments having a registered gross vehicle weight in excess of 12,000 pounds.

(8) Use boats propelled by a motor. Battery powered electric motors may be used on waterways unless posted otherwise.

(9) Consume, possess or transport any alcohol, liquor, beer, malt or brewed alcoholic beverage.

(10) Use or possess any controlled substance as defined or classified under The Controlled Substance, Drug, Device and Cosmetic Act (35 P. S. §§ 780-101—780-143).

(11) Occupy, use or construct, place or maintain structures or other tangible property, except that portable hunting blinds or stands may be used, provided no visible damage is caused to trees.

(12) Feed wildlife or lay or place any food, fruit, hay, grain, chemical, salt or other minerals.

(13) Release domestic animals, captive bred or captive raised game or wildlife.

(14) Operate a motor vehicle in willful and wanton disregard for the safety of persons or property or in excess of posted speed limits, or where no speed limit is posted, in excess of 25 miles per hour.

(15) Target shoot with firearms, bows and arrows or devices capable of launching projectiles in a manner that could cause injury to persons or property, or on areas posted closed to those activities.

(16) Except as provided in Subchapter J (relating to shooting ranges), discharge any firearm, bow and arrow, or device capable of launching projectiles that is not a lawful device to hunt game or wildlife.

(17) Engage in an activity or event involving more than ten persons, which may conflict with the intended purposes or uses as defined in section 722 of the act (relating to use of property), or poses a potential environmental or safety problem.

(18) Sell, distribute, deliver, service, guide or rent any equipment, material or commodity or otherwise transact or engage in any commercial activity. Commercial activity is any activity in which a person directly or indirectly accepts consideration of value as compensation for the provision of goods or services, including transportation.

(19) Use State game lands for any personal, organizational or commercial purpose other than the intended use as defined in section 722 of the act (relating to use of property).

(20) Operate under authority of a contract, lease, agreement or permit and fail to abide by the terms and conditions contained in the contract, lease, agreement or permit.

(21) Except on Sundays, be present on State game lands from November 15 through December 15 and fail to wear a minimum of 250 square inches of daylight fluorescent orange-colored material on the head, chest and back combined or, in lieu thereof, a hat of the same colored material. The material shall be worn so it is visible in a 360° arc. Persons using shooting ranges are exempted from this requirement.

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