RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF FUNERAL DIRECTORS

[49 PA. CODE CH. 13]

Renewal Fee

The State Board of Funeral Directors (Board) amends § 13.12 (relating to fees).

Description and Need for Final-Form Rulemaking

This final-form rulemaking raises the biennial renewal fee from $130 to $185.

The Board is required by law to support its operations from revenue it generates from fees, fines and civil penalties and to periodically review its expenditures and revenue streams to assure that revenues meet or exceed expenses. If the revenues are not sufficient to meet expenditures over a 2-year period, the Board must increase its fees by regulation. The Department of State's Bureau of Financial Operations (Bureau) has projected that, with the current renewal fee, the Board will have a deficit of almost $26,000 at fiscal year ending June 30, 2003, a deficit of over $230,000 at fiscal year ending June 30, 2005, and a deficit of over $500,000 at fiscal year ending June 30, 2007. The Board will begin recovering that deficit during the 2004-06 biennial period. The Board anticipates that it will be able to meet its estimated expenditures for the upcoming fiscal years and generate a surplus of approximately $160,000 at the end of fiscal year 2004-05. The Board was last required to increase its biennial renewal fees in 1992.

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 33 Pa.B. 1358 (March 15, 2003) with a 30-day public comment period. The Board received comments from the Pennsylvania Funeral Directors Association (PFDA). The Board also received comments from the Independent Regulatory Review Commission (IRRC) as part of its review of proposed rulemaking under the Regulatory Review Act (71 P. S. §§ 745.1—745.12). The Board did not receive comments from the House Professional Licensure Committee (HPLC) or the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of their review of proposed rulemaking under the Regulatory Review Act.

The PFDA commented that, because the renewal fee would increase over 40% from $130 to $185, the Board should consider smaller incremental increases of a period of several biennial renewal cycles. Given the temporary and relatively modest savings to licensees under a graduated approach, as well as the cost to the Board to recreate renewal forms with the changing renewal fees and potential for confusion as to the actual fee to be paid, the Board believes that licensees would be better served by a single increase in the renewal fee at this time.

As part of the proposed rulemaking, the Board provided a table of projected revenue and expenditures and end of year balances from fiscal years 2000-01—2006-07. IRRC commented that, to fulfill its duty under the Regulatory Review Act to measure the reasonableness of the proposed rulemaking, it needed additional information. In response, the Board provides the following tables (in actual dollars) of projected expenditures by cost center and revenue by source.

Expense Cost Center	*Actual FY 00-01*	*Projected FY 01-02*	*Projected FY 02-03*	*Projected FY 03-04*	*Projected FY 04-05*	*Projected FY 05-06*	*Projected FY 06-07*
BPOA Admin.	$ 13,297	$ 11,234	$ 10,000	$ 10,000	$ 10,000	$ 10,000	$ 10,000
Commissioner's Office	8,001	5,874	9,000	9,000	10,000	10,000	10,000
Law Enforcement	209,347	235,012	245,000	252,000	260,000	269,000	277,500
Board Members	16,539	19,233	20,000	21,000	22,000	23,000	24,000
Hearing Expenses	2,710	2,079	5,000	5,000	5,000	5,000	5,000
Departmental Services	17,521	21,250	22,000	23,000	24,000	25,000	26,000
Board Admin.	68,015	74,239	75,000	77,000	79,000	81,000	83,000
Public Info. Office	1,462	1,000	1,000	1,000	1,000	1,000	1,000
Legis. and Reg. Analyses	5,326	2,433	3,000	3,000	3,000	3,000	3,000
Legal Office	107,039	114,875	135,000	140,000	144,000	149,000	153,500
Total	$449,258	$487,228	$525,000	$541,000	$557,000	$575,000	$592,000

Revenue Source	*Actual FY 00-01*	*Projected FY 01-02*	*Projected FY 02-03*	*Projected FY 03-04*	*Projected FY 04-05*	*Projected FY 05-06*	*Projected FY 06-07*
Renewals	$19,460	$797,096	$27,200	$797,096	$27,200	$797,096	$27,200
Applications	13,265	14,000	14,000	14,000	14,000	14,000	14,000
Letters of Good Standing	925	1,050	1,000	1,050	1,000	1,050	1,000
Act 48	9,100	6,500	7,000	6,500	7,000	6,500	7,000
Fines	29,000	23,000	0	23,000	0	23,000	0
Total	$71,750	$841,646	$49,200	$841,646	$49,200	$841,646	$49,200

Fiscal Impact

According to projections of the Bureau, the final-form rulemaking will generate approximately $358,050 in additional revenue in each biennial renewal cycle as the result of increasing the renewal fee from $130 to $185 for each of the approximately 6,510 licensees.

Paperwork Requirements

The final-form rulemaking will require the Board to change its biennial renewal forms to reflect the new fees. The final-form rulemaking will not create additional paperwork requirements for licensees.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin* and will initially apply to licensees who renew their licenses for the 2004-2006 biennial renewal period.

Statutory Authority

Section 18.1 of the Funeral Director Law (act) (63 P. S. § 479.18.1) requires the Board to establish fees by regulation and to increase its fees by regulation so that projected revenues will meet or exceed projected expenditures.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 5, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1358, to IRRC and the Chairpersons of the SCP/PLC and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the SCP/PLC, the HPLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 17, 2003, the final-form rulemaking was deemed approved by the SCP/PLC and approved by the HPLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on December 4, 2003, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Michelle Smey, Administrator, State Board of Funeral Directors, P. O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-3397, funeral@pados.dos.state.pa.us.

Findings

The Board finds that:

(1) Public notice of intention to adopt the amendments adopted by this order has been 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) The final-form rulemaking adopted by 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 Chapter 13, are amended by amending § 13.12 to read as set forth at 33 Pa.B. 1358.

(b) The Board shall submit this order and 33 Pa.B. 1358 to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and 33 Pa.B. 1358 and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES O. PINKERTON, FD,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 6376 (December 20, 2003).)

Fiscal Note: Fiscal Note 16A-4811 remains valid for the final adoption of the subject regulation.

[Pa.B. Doc. No. 04-10. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE BOARD OF MEDICINE
[49 PA. CODE CH. 16]
Sexual Misconduct

The State Board of Medicine (Board) amends § 16.1 (relating to definitions) and adds § 16.110 (relating to sexual misconduct) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Under sections 8 and 41(8) of the Medical Practice Act of 1985 (act) (63 P. S. §§ 422.8 and 422.41(8)), the Board has authority to establish standards of professional conduct for Board-regulated practitioners under its jurisdiction. These individuals include physicians, physician assistants, nurse midwives, respiratory care practitioners, drugless therapists, acupuncturists and athletic trainers. The final-form rulemaking identifies when sexual contact by Board-regulated practitioners with patients, and under certain circumstances, immediate family members of patients, will be deemed unprofessional conduct.

C. *Background and Purpose*

The final-form rulemaking seeks to better protect patients by providing guidance to the profession and the public as to prohibited conduct relating to sexual contact between practitioners and patients. The final-form rulemaking prohibits any sexual contact between a Board-regulated practitioner and a current patient. The final-form rulemaking further prohibits any sexual contact between a Board-regulated practitioner and a former patient prior to the 2-year anniversary of the termination of the professional relationship when the Board-regulated practitioner has been involved with the management or treatment of a patient for a mental health disorder. This 2-year period was developed from professional literature which indicates that an imbalance of power between health care practitioners and patients continues after the professional relationship ends. The final-form rulemaking

specifically exempts spouses of Board-regulated practitioners from the provisions prohibiting sexual contact with patients.

The final-form rulemaking also prohibits sexual exploitation by a Board-regulated practitioner of a current or former patient or immediate family member of a patient. "Sexual exploitation" is defined as sexual behavior that uses the trust, knowledge, emotions or influence derived from the professional relationship. The Board believes that it is appropriate to protect immediate family members from sexual exploitation by Board-regulated practitioners because immediate family members are often as vulnerable as the patients.

The final-form rulemaking also provides that Board-regulated practitioners who engage in prohibited sexual contact with patients or former patients will not be eligible for placement in the Board's impaired professional program in lieu of disciplinary or corrective actions. The impaired professional program is unable to effectively monitor Board-regulated practitioners who have engaged in sexual misconduct.

The final-form rulemaking also provides that patient consent will not be considered a defense to disciplinary action in these cases. The imbalance of power inherent in the health care practitioner-patient relationship not only serves as the basis for the prohibition but also undermines the patient's ability to consent to the sexual contact as an equal. Indeed, the Board's experience in adjudicating these cases has repeatedly demonstrated the reality of the inherent imbalance of the relationship and the patient's inability to give meaningful consent to sexual contact.

D. *Summary of Comments and Responses to Proposed Rulemaking*

Notice of proposed rulemaking was published at 31 Pa.B. 6453 (November 24, 2001). The Board received comments from the Independent Regulatory Review Commission (IRRC), the Pennsylvania Medical Society (PMS), Representative Kerry Benninghoff and several individuals.

IRRC commented that the rulemaking should be broken into two sections—one for definitions and one for substantive regulatory provisions. The Board incorporated this recommendation into the final-form rulemaking by moving the definitions to § 16.1. IRRC also recommended that the Board add the definition of "Board-regulated practitioner" to its definition section. Although this definition is included in the act, the Board accepted IRRC's suggestion and added it to the general definition section of the final-form rulemaking as well. The Board also accepted IRRC's recommendation that the definition of "immediate family member" clarify that the term included those related by blood or marriage. The Board chose not to adopt IRRC's recommendation to extend the final-form rulemaking's protection to "significant others," as they felt that "significant others" are not a legally recognized, defined group of people and that inclusion would create undue vagueness to the final-form rulemaking. The Board did incorporate IRRC's suggestion that the final-form rulemaking provide a cross-reference to the statutory citation for disciplinary actions. IRRC recommended that the Board delete the phrase "mental health disorder" and substitute diagnoses under the Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV). The Board chose not to make this change. There are certain "mental health disorders" that are not included in the DSM-IV, but which may nonetheless make an individual partially vulnerable, such as an individual suffering from anxiety, fearfulness and sadness, who is not clinically depressed.

Finally, IRRC expressed concern that the rulemaking appeared to be somewhat vague and suggested that the Board consider providing examples of prohibited conduct. It has been the Board's experience that when examples are used, situations not depicted are often deemed acceptable. The Board does not wish to inadvertently approve sexual misconduct by omission, and therefore declines IRRC's invitation to provide examples of prohibited conduct.

The PMS opined that it is impossible to write regulations for sexual misconduct that clearly define prohibited behavior without also creating the possibility of prosecution for innocent behavior. While the Board agrees that these are difficult regulations to write, it believes that sexual contact with patients and certain vulnerable family members so severely threatens public safety that an effort must be made to put physicians on further notice that the conduct is prohibited. While some practitioners are currently being prosecuted for sexual exploitation of patients, the Board feels strongly that it must be as clear as possible that a healthcare practitioner-patient relationship must never contain elements of sexual behavior. Moreover, prosecutors are routinely responsible for exercising professional judgment in regard to matters more complex than these.

Representative Benninghoff wrote in support of the proposed rulemaking, but suggested that the rulemaking be amended to specifically prohibit voyeurism. While the Board was mindful of the Representative Benninghoff's concerns, the Board finds that the current definition of sexual exploitation would permit prosecution for voyeurism.

An attorney who frequently represents physicians in disciplinary matters before the Board wrote to object to the Board's determination that a physician engaging in conduct prohibited by this section would not be eligible for the impaired professional program instead of discipline. The Board based its determination on information from peer reviewed literature and experts in the field of sexual behaviors that practitioners who engage in sexual misconduct are not impaired and are not good candidates for a monitoring program such as the Professional Health Monitoring Program.

The Governor's Policy Office recommended that the final-form rulemaking specifically exempt spouses of Board-regulated practitioners from the provisions prohibiting sexual contact with patients. The Board amended the final-form rulemaking to comply with this request.

E. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the final-form rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

F. *Sunset Date*

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

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 7, 2001, the Board submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 6453, to IRRC and the Chairpersons of the

Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the House Professional Licensure Committee (HPLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), the final-form rulemaking was approved by the HPLC on November 18, 2003, and deemed approved by SCP/PLC on November 19, 2003. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2003, and approved the final-form rulemaking.

H. *Contact Person*

Further information may be obtained by contacting Amy L. Nelson, Board Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649.

I. *Findings*

(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 in 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) These amendments do not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 6453.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

J. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 16, are amended by amending § 16.1 and by adding § 16.110 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 as required by law.

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr., M.D.,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5994 (December 6, 2003).)

Fiscal Note: Fiscal Note 16A-497 remains valid for the final adoption of the subject regulations.

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:

Accredited medical college—An institution of higher learning accredited by the Liaison Committee on Medical Education to provide courses in the arts and sciences of medicine and related subjects and empowered to grant professional and academic degrees in medicine.

Act—The Medical Practice Act of 1985 (63 P. S. §§ 422.1—422.45).

Board—The State Board of Medicine.

Board-regulated practitioner—A medical doctor, midwife, physician assistant, drugless therapist, athletic trainer, acupuncturist or an applicant for a license or certificate that the Board may issue.

Conviction—A judgment of guilt, an admission of guilt or a plea of nolo contendere.

ECFMG—The Educational Commission for Foreign Medical Graduates.

FLEX—This examination provided by the Federation of State Medical Boards of the United States, Inc., comprised of FLEX I and FLEX II, was used by the Board to test applicants for a license to practice medicine and surgery without restriction. This uniform examination was administered simultaneously in most of the states, territories and possessions of the United States.

FLEX I—The examination component of the FLEX designed to evaluate measurable aspects of knowledge and understanding of basic and clinical science principles and mechanisms underlying disease and modes of therapy. This component will be last regularly administered in December 1993.

FLEX II—The examination component of the FLEX designed to measure a core of competence involved in the diagnosis and management of selected clinical problems frequently encountered by a physician engaged in the independent practice of medicine. This component will be last regularly administered in December 1993.

Federation—The Federation of State Medical Boards of the United States, Inc.

Fifth pathway program—A program that satisfies standards equivalent to those recommended for fifth pathway programs by the Council on Medical Education of the American Medical Association, and which is recognized by the licensing authority in the state, territory or possession of the United States in which the program is physically located.

Graduate medical training—Training accredited as graduate medical education by the Accreditation Council for Graduate Medical Education or by another accrediting body recognized by the Board for the purpose of accrediting graduate medical education, or training provided by a hospital accredited by the Joint Commission on Accreditation of Hospitals which is acceptable to an American Board of a Medical Specialty towards the training it requires for the certification it issues in a medical specialty or subspecialty.

Immediate family member—A parent or guardian, child, sibling, spouse, or other family member, whether related by blood or marriage, with whom a patient resides.

NBME—The National Board of Medical Examiners of the United States, Inc.

National Boards—The examination of the National Board of Medical Examiners of the United States, Inc. NBME Part I was last administered in June 1992, NBME Part II was last administered in April 1992 and NBME Part III will be last administered in May 1994.

SPEX—Special purpose examination offered by the Federation and NBME to assist the assessment of current competence requisite for the practice of medicine and surgery by physicians who hold or have held a license in the United States or another jurisdiction.

Sexual behavior—Any sexual conduct which is nondiagnostic and nontherapeutic; it may be verbal or physical and may include expressions of thoughts and feelings or gestures that are sexual in nature or that reasonably may be construed by a patient as sexual in nature.

Sexual exploitation—Any sexual behavior that uses trust, knowledge, emotions or influence derived from the professional relationship.

USMLE—The United States Medical Licensing Examination, a single, uniform examination for medical licensure consisting of three steps.

USMLE, Step 1—Assesses whether an examinee understands and can apply key concepts of basic biomedical science, with an emphasis on principles and mechanisms of health, disease and modes of therapy.

USMLE, Step 2—Assesses whether an examinee possesses the medical knowledge and understanding of clinical science considered essential for the provision of patient care under supervision, including emphasis on health promotion and disease prevention.

USMLE, Step 3—Assesses whether an examinee possesses the medical knowledge and understanding of biomedical and clinical science considered essential for the unsupervised practice of medicine.

Unaccredited medical college—An institution of higher learning which provides courses in the arts and sciences of medicine and related subjects, is empowered to grant professional and academic degrees in medicine, is listed by the World Health Organization or is otherwise recognized as a medical college by the country in which it is situated, and is not accredited by an accrediting body recognized by the Board.

Subchapter H. SEXUAL MISCONDUCT

§ 16.110. Sexual misconduct.

(a) Sexual exploitation by a Board-regulated practitioner of a current or former patient, or of an immediate family member of a patient, constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action under section 41(8) of the act (63 P. S. § 422.41(8)).

(b) Sexual behavior that occurs with a current patient other than the Board-regulated practitioner's spouse constitutes unprofessional conduct, is prohibited and subjects the practitioner to disciplinary action under section 41(8) of the act.

(c) When a Board-regulated practitioner is involved with the management or treatment of a patient other than the practitioner's spouse for a mental health disorder, sexual behavior with that former patient which occurs prior to the 2-year anniversary of the termination of the professional relationship constitutes unprofessional conduct, is prohibited and subjects the practitioner to disciplinary action under section 41(8) of the act.

(d) A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.

(e) Consent is not a defense to conduct prohibited by this section.

[Pa.B. Doc. No. 04-11. Filed for public inspection January 2, 2004, 9:00 a.m.]

[49 PA. CODE CH. 18]
Physician Delegation of Medical Services

The State Board of Medicine (Board) adds §§ 18.401 and 18.402 (relating to definitions; and delegation) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking is effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Section 17(b) of the Medical Practice Act of 1985 (act) (63 P. S. § 422.17(b)) authorizes the Board to promulgate criteria under which a medical doctor may delegate the performance of medical services, preclude a medical doctor from delegating the performance of certain types of medical services or otherwise limit the ability of a medical doctor to delegate medical services.

C. *Background and Purpose*

The Board routinely receives inquiries about whether particular delegations are appropriate. To assist medical doctors in exercising professional judgment regarding delegation, the Board published in its Summer 1997 newsletter an article which provided an analytical framework for making delegation decisions. The concepts discussed in that article were well received by the medical doctor community. However, the Board continued to receive numerous requests for regulatory guidelines pertaining to delegation. In an effort to be responsive to the regulated community, and to provide a framework that placed patient safety and welfare at the forefront of the medical doctor's decision making process, the Board determined to codify basic criteria under which a medical doctor may delegate the performance of medical services.

D. *Description of Amendments*

Section 17 of the act authorizes medical doctors to delegate the performance of medical services. Section 17 of the act provides as follows:

(a) *General rule.* A medical doctor may delegate to a health care practitioner or technician the performance of a medical service if:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth.

(2) The delegation is not prohibited by regulations promulgated by the Board.

(3) The delegation is not prohibited by statutes or regulations relating to other licensed health care practitioners.

(b) *Regulations.* The board may promulgate regulations which establish criteria pursuant to which a medical doctor may delegate the performance of medical services, preclude a medical doctor from delegating the performance of certain types of medical services or otherwise limit the ability of a medical doctor to delegate medical services.

(c) *Responsibility.* A medical doctor shall be responsible for the medical services delegated to the health care practitioner or technician in accordance with subsections (a) and (b). A medical doctor's responsibility for the medical service delegated to the health care practitioner or technician is not limited by any provisions of this section.

Section 18.402 establishes general criteria under which a medical doctor may exercise professional judgment in making the decision to delegate medical services. In response to comments received, the Board added § 18.401. This section adds the statutory definition of "emergency medical services personnel," which is referenced in § 18.402(e).

Section 18.402(a) establishes criteria under which delegation could occur.

Section 18.402(a)(1) reiterates the statutory requirement found in section 17(a)(1) of the act that the delegation be consistent with standards of acceptable medical practice. The final-form rulemaking identifies examples of sources of standards of acceptable medical practice such as current medical literature and texts, medical teaching facilities, publications and faculty, expert practitioners in the field and the commonly accepted practice of practitioners experienced in the field.

Section 18.402(a)(2) reiterates section 17(a)(3) of the act. This section prohibits a medical doctor from expanding the scope of practice of other health care practitioners when the General Assembly or the licensing board responsible for regulating the other health care practitioner has prohibited the performance of those services by the other health care practitioner. Section 18.402(a)(3) requires the medical doctor to assure that the individual practitioner or technician to whom the delegation is being given has sufficient education, training, experience and competency so that they know how to perform the service safely. Accordingly, the medical doctor is obligated to determine whether the delegatee is competent to perform the procedure. This may be accomplished by determining whether the delegatee is licensed, certified or possesses documented education and training related to the service. The physician may choose to monitor the delegatee to become satisfied as to the delegatee's competence.

Section 18.401(a)(4) as proposed was deleted; the requirement that the physician determine that the delegatee is competent to perform the delegated task was incorporated into § 18.402(a)(3). Renumbered § 18.402(a)(4) (proposed paragraph (5)) prohibits delegations when the particular patient presents with unusual complications, family history or condition so that the performance of the medical service poses a special risk to that particular patient. Unlike the other provisions, this provision directs the medical doctor's attention to the needs of the particular patient. A determination must be made that the service may be rendered to the particular patient without undue risk. It is the physician's responsibility to make that assessment.

Section 18.402(a)(5) (proposed § 18.401(a)(6)) recognizes that patients are autonomous and that consideration of patient autonomy and dignity is a responsibility of the medical doctor. Thus, it is the medical doctor's responsibility to assure that the patient is advised as to the nature of the medical service and the reason for the delegation, so that the patient might exercise the right to request the service be performed by the medical doctor. The primary relationship in the delivery of medical services is between the patient and the physician. The person in charge of this relationship is the patient. Communication with the patient and education of the patient is essential to the proper delivery of medical services, and a primary obligation of physicians.

Section 18.402(a)(6) (proposed § 18.401(a)(7)) directs the medical doctor to provide the level of supervision and direction appropriate to the circumstance surrounding the delivery of the medical service. It underscores the fact that the medical doctor is ultimately responsible for the patient's well being and requires the doctor to maintain the level of involvement in the treatment process as required by section 21 of the act (63 P. S. § 422.21).

Section 18.402(b) prohibits the delegation of a medical service when the service is sufficiently complicated, difficult or dangerous so that it would require a degree of knowledge and skill possessed by medical doctors, but not commonly possessed by nonphysicians. Additionally, this subsection prohibits delegation of medical services in situations when potential adverse reactions may not be readily apparent to an individual without medical doctor training. These criteria are intended to prohibit the delegation of medical services when the delegation poses undue risk to patients generally.

Section 18.402(c) requires the medical doctor to be sufficiently knowledgeable about the medical service so that the medical doctor is not merely a straw man. It should be axiomatic that the individual who has responsibility and authority for directing others in delivering medical services has the knowledge, ability, and competency pertaining to the performance of those services.

Section 18.402(d) reiterates the statutory requirement contained at section 17(c) of the act. It reminds medical doctors that they retain responsibility for the performance of the service whether they perform it themselves or direct another to do so.

Section 18.402(e) recognizes the reality that emergencies arise when available health care personnel must immediately attend to patients, even though under nonemergency circumstances, the medical doctor would be

the most appropriate person to care directly for the patient.

Section 18.402(f) recognizes that licensed or certified health care practitioners have scope of practice defined by statute and regulations. This final-form rulemaking is not intended to restrict or limit the performance of medical services that fall within the parameters established by law. Specific examples have been provided because of concerns that were expressed to the Board pertaining to those practitioners. They are provided as examples and are not intended to be all inclusive.

E. *Public Comment.*

The Board entertained public comment for a period of 30 days during which time the Board received 11 comments from individuals and organizations. Following the close of the public comment period, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC). The following is a summary of the comments and the Board's response.

IRRC submitted several comments and suggestions. IRRC expressed concern that the rulemaking merely restated the statutory delegation provisions and did not provide guidance beyond those. The Board disagrees with that assessment. The rulemaking provides a framework for practitioners to determine if delegation is appropriate. IRRC also suggested that the Board define the terms "medical service," "health care practitioner" and "technician." Because those terms are defined in the act, the Board declined to restate the definitions in the final-form rulemaking. IRRC also recommended that the Board clarify in subsection (a)(1) what constitutes standards of acceptable medical practice. The law firm of Kalogredis, Sansweet, Dearden and Burke also recommended that an explanation of that term be added to subsection (a)(1). The Board agreed that an explanation would be helpful, and therefore it amended the final-form rulemaking to include the explanation set forth in the preamble.

IRRC also expressed concern that subsection (a)(4) of the proposed rulemaking did not indicate how a doctor was to determine that a delegatee was competent to perform the delegated service. The Board agreed, and amended the final-form rulemaking by deleting subsection (a)(4) and amending (a)(3) to require the doctor to have actual knowledge that the delegatee has the necessary education, training, experience and competency to safely perform the delegated task. The Board declined IRRC's suggestion that proposed subsection (a)(5) (now subsection (a)(4)) be amended to require the doctor to document in the patient's chart that the delegation does not present an undue risk to the patient. Many of the delegated tasks are routine medical procedures such as taking blood pressure or giving a shot. It would be burdensome to require that each delegated task be separately documented. The Board did amend proposed subsection (a)(6) (now subsection (a)(5)) to further clarify the manner in which the nature of the service and delegation are explained to the patient. IRRC also recommended amending proposed subsection (a)(7) (now subsection (a)(6)) to clarify that the physician must retain responsibility for the delegated service. The Board agreed with this suggested and amended the final-form rulemaking.

The Board also accepted IRRC's recommendation that it replace the language "medical doctor education and training" in section (b) with the phrase "knowledge and skill not ordinarily possessed by nonphysicians." The Board also accepted IRRC's suggestion that it use the term "health care practitioner" rather than "health care provider" in subsections (e) and (f).

The HPLC questioned why delegation is necessary if a nonphysician health care provider is licensed or certified to perform the delegated service. Section 17 of the act specifically permits a doctor to delegate the performance of a medical service to a health care practitioner. A health care practitioner is defined in section 2 of the act (63 P. S. § 422.2) as an individual, other than a physician assistant, who is authorized to practice some component of the healing arts by a license, permit, certificate or registration issued by a Commonwealth licensing agency or board. A medical service is defined in section 2 of the act as an activity which lies within the scope of the practice of medicine and surgery. In the Board's view the legislation signifies an intent that delegation of a medical service to a licensed or certified individual is appropriate, and that the individual's license or certificate does not authorize the individual to perform medical services absent delegated authority from the physician.

The HPLC shared IRRC's concerns about the manner in which the nature of the service and delegation are explained to the patient in proposed subsection (a)(6) (now subsection (a)(5)). The Board added language to further clarify that subsection. The Board also amended proposed subsection (a)(7) (now subsection (a)(6)) to include the language suggested by the HPLC.

The HPLC asked "what kind of medical services do not require medical education and training as opposed to those that do require medical education and training." A medical doctor may not delegate the performance of a medical service if performance of the medical service requires medical doctor education and training or if recognition of the complications or risks associated with the delegated medical services requires medical doctor education and training knowledge and skill not ordinarily possessed by nonphysicians. That subsection was included to prohibit a physician from delegating those medical services which are so complicated, difficult or dangerous that they would normally require a degree of education and training possessed by physicians, but not normally possessed by nonphysicians. Subsection (f) was added in response to concerns expressed by groups representing various nonphysician licensed or certified health care practitioners that the proposed rulemaking may prohibit these licensees from performing medical services that fall within the parameters established by their licensing acts.

The Pennsylvania Medical Society (PMS) wrote in favor of the rulemaking, but suggested that proposed subsection (a)(5) (now subsection (a)(4)) be amended to indicate that the individual explaining the nature and delegation of the service be the physician or the physician's designee so that only the physician or a direct agent of the physician is responsible for this task. The Board agreed that this change clarified the lines of responsibility. The PMS also suggested that subsection (c) be amended to read that the physician must be trained, qualified and currently competent to perform the delegated service. The Board determined that adding the word "currently" would be superfluous, since a doctor who was not currently competent would not be considered qualified to perform the delegated service.

The Pennsylvania Academy of Family Physicians (PAFP) and the Pennsylvania College of Internal Medi-

cine wrote to request clarification of proposed subsection (a)(6) (now subsection (a)(5)) regarding the manner in which the explanation of the medical service and delegation is given, as well as who will have responsibility for giving the explanation. The Board amended that language accordingly. The PAFP also requested clarification of the terms "education and training" in subsection (b). As previously noted, the Board replaced this language with the phrase "knowledge and skill not ordinarily possessed by nonphysicians." The PAFP also objected to the language "trained and qualified and competent" in subsection (c), claiming that it was too vague. The Board disagrees and believes that this subsection is consistent with existing § 16.61(a)(3) (relating to unprofessional and immoral conduct) and provides sufficient guidance to physicians that they may not delegate medical services which they do not have sufficient knowledge, ability and competency to perform themselves.

The Hospital and Healthsystem Association of Pennsylvania, the Pennsylvania Association of Nurse Anesthetists, the Pennsylvania State Nurses Association and the Pennsylvania Higher Education Nursing Schools Association all expressed concern that the proposed rulemaking would restrict the practice of other licensed health care practitioners. The Hospital and Healthsystem Association of Pennsylvania also expressed concern that this rulemaking could enable doctors to delegate things to unlicensed individuals that should be done by other licensed health care practitioners. Under the act, this delegation may currently occur. The final-form rulemaking will give further guidance to physicians in delegating medical services to both licensed health care practitioners as well as unlicensed technicians. A private attorney, Louis J. Dell'Aquila, wrote to oppose the rulemaking claiming that it would create an additional basis for negligence or malpractice litigation. Obviously, there are some individuals and attorneys who will use the final-form rulemaking and any others published by the Board for their own gain. However, the Board believes that the final-form rulemaking will be helpful and will provide guidance to most physicians. Subsection (f) specifically states that the final-form rulemaking does not prohibit or restrict other licensed or certified health care practitioners from practicing within the scope of their license or certification. The Insurance Federation of Pennsylvania asked the Board to delay implementation of the regulation until the Pennsylvania Supreme Court decided *Kleinberg v. SEPTA*. The Board has long been of the opinion that these regulations do not favor either party's position in *Kleinberg*. Moreover, that case was decided by the Supreme Court on November 13, 2002.

The Pennsylvania Society of Anesthesiologists wrote in support of the final-form rulemaking.

F. *Fiscal Impact and Paperwork Requirements*

There is no adverse fiscal impact or paperwork requirement imposed on the Commonwealth, political subdivisions or the private sector. Citizens of this Commonwealth will benefit in that this final-form rulemaking promotes patient safety and welfare as a consideration in making medical service delegation decisions.

G. *Sunset Date*

The Board continuously monitors 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)), on August 24, 2001, the Board submitted a copy of the notice of proposed rulemaking, published at 31 Pa.B. 5113 (September 8, 2001), to IRRC and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) and the HPLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the SCP/PLC and the HPLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on November 17, 2003, the final-form rulemaking was approved by the HPLC and deemed approved by SCP/PLC on November 19, 2003. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2003, and approved the final-form rulemaking.

I. *Contact Person*

Further information may be obtained by contacting Gerald S. Smith, Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, gerasmith@state.pa.us.

J. *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 final-form rulemaking does not enlarge the purpose of proposed rulemaking published at 31 Pa.B. 5113.

(4) This final-form rulemaking is necessary and appropriate for administering and enforcing the authorizing acts identified in Part B of this preamble.

K. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 18, are amended by adding §§ 18.401 and 18.402 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 as required by law.

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

CHARLES D. HUMMER, Jr. M.D.,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5994 (December 6, 2003).)

Fiscal Note: Fiscal Note 16A-4912 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter G. MEDICAL DOCTOR DELEGATION OF MEDICAL SERVICES

Sec.
18.401. Definitions.
18.402. Delegation.

§ 18.401. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Emergency medical services personnel—Individuals who deliver emergency medical services and who are regulated by the Department of Health under the Emergency Medical Services Act (35 P. S. §§ 6921—6938).

§ 18.402. Delegation.

(a) A medical doctor may delegate to a health care practitioner or technician the performance of a medical service if the following conditions are met:

(1) The delegation is consistent with the standards of acceptable medical practice embraced by the medical doctor community in this Commonwealth. Standards of acceptable medical practice may be discerned from current peer reviewed medical literature and texts, teaching facility practices and instruction, the practice of expert practitioners in the field and the commonly accepted practice of practitioners in the field.

(2) The delegation is not prohibited by the statutes or regulations relating to other health care practitioners.

(3) The medical doctor has knowledge that the delegatee has education, training, experience and continued competency to safely perform the medical service being delegated.

(4) The medical doctor has determined that the delegation to a health care practitioner or technician does not create an undue risk to the particular patient being treated.

(5) The nature of the service and the delegation of the service has been explained to the patient and the patient does not object to the performance by the health care practitioner or technician. Unless otherwise required by law, the explanation may be oral and may be given by the physician or the physician's designee.

(6) The medical doctor assumes the responsibility for the delegated medical service, including the performance of the service, and is available to the delegatee as appropriate to the difficulty of the procedure, the skill of the delegatee and risk level to the particular patient.

(b) A medical doctor may not delegate the performance of a medical service if performance of the medical service or if recognition of the complications or risks associated with the delegated medical service requires knowledge and skill not ordinarily possessed by nonphysicians.

(c) A medical doctor may not delegate a medical service which the medical doctor is not trained, qualified and competent to perform.

(d) A medical doctor is responsible for the medical services delegated to the health care practitioner or technician.

(e) A medical doctor may approve a standing protocol delegating medical acts to another health care practitioner who encounters a medical emergency that requires medical services for stabilization until the medical doctor or emergency medical services personnel are available to attend to the patient.

(f) This section does not prohibit a health care practitioner who is licensed or certified by a Commonwealth agency from practicing within the scope of that license or certificate or as otherwise authorized by law. For example, this section is not intended to restrict the practice of certified registered nurse anesthetists, nurse midwives, certified registered nurse practitioners, physician assistants, or other individuals practicing under the authority of specific statutes or regulations.

[Pa.B. Doc. No. 04-12. Filed for public inspection January 2, 2004, 9:00 a.m.]

STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

Sexual Misconduct

The State Board of Osteopathic Medicine (Board) adds §§ 25.215 and 25.216 (relating to definitions; and sexual misconduct) to read as set forth in Annex A.

A. *Effective Date*

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

B. *Statutory Authority*

Under sections 10.1(c), 15(a)(8) and (b)(9) and 16 of the Osteopathic Medical Practice Act (act) (63 P. S. §§ 271.10a(c), 271.15(a)(8) and (b)(9) and 271.16), the Board has authority to establish standards of professional conduct for Board-regulated practitioners under its jurisdiction. These individuals include osteopathic physicians, physician assistants, respiratory care practitioners and athletic trainers. The final-form rulemaking identifies when sexual contact by Board-regulated practitioners with patients, and under certain circumstances, immediate family members of patients, will be deemed unprofessional conduct.

C. *Background and Purpose*

It should be axiomatic that it is unprofessional conduct for a health care practitioner to engage in sexual contact with patients. Past decisions of the Board have been upheld by the Commonwealth Court; the Code of Ethics, as published by the American Osteopathic Association; and responsible professional publications addressing the issue denounce sexual contact between practitioner and patient. Nevertheless, complaints are filed each year by consumers who have been harmed by Board-regulated practitioners who engage in this conduct.

The final-form rulemaking seeks to better protect patients by providing guidance to the profession and the public as to prohibited conduct relating to sexual contact between practitioners and patients. The final-form rulemaking prohibits any sexual contact between a Board-regulated practitioner and a current patient. The final-form rulemaking further prohibits any sexual contact between a Board-regulated practitioner and a former

patient prior to the 2-year anniversary of the termination of the professional relationship when the Board-regulated practitioner has been involved with the management or treatment of a patient for a mental health disorder. This 2-year period was developed from professional literature which indicates that an imbalance of power between health care practitioners and patients continues after the professional relationship ends. The final-form rulemaking specifically exempts spouses of Board-regulated practitioners from its provisions prohibiting sexual contact with patients.

The final-form rulemaking also prohibits sexual exploitation by a Board-regulated practitioner of a current or former patient or immediate family member of a patient. "Sexual exploitation" is defined as sexual behavior that uses the trust, knowledge, emotions or influence derived from the professional relationship. The Board believes that it is appropriate to protect immediate family members from sexual exploitation by Board-regulated practitioners because immediate family members are often as vulnerable as the patients.

The final-form rulemaking further provides that Board-regulated practitioners who engage in prohibited sexual contact with patients or former patients will not be eligible for placement in the Board's impaired professional program instead of disciplinary or corrective actions. The impaired professional program is unable to effectively monitor Board-regulated practitioners who have engaged in sexual misconduct.

The final-form rulemaking also provides that patient consent will not be considered a defense to disciplinary action in these cases. The imbalance of power inherent in the health care practitioner-patient relationship not only serves as the basis for the prohibition but also undermines the patient's ability to consent to the sexual contact as an equal. Indeed, the Board's experience in adjudicating these cases has repeatedly demonstrated the reality of the inherent imbalance of the relationship and the patient's inability to give meaningful consent to sexual contact.

D. *Summary of Comments and Responses on Proposed Rulemaking*

Notice of proposed rulemaking was published at 32 Pa.B. 1734 (April 6, 2002). The Board received comments from the Independent Regulatory Review Commission (IRRC) and the Pennsylvania Medical Society (PMS). The Board also received public comments from five osteopathic physicians and one member of the public, including representatives of the Pennsylvania Osteopathic Medical Association.

IRRC recommended that the definitions section be separated from the substantive portions of the rulemaking. The Board agreed that this change would improve clarity and created § 25.216 for the substantive portions of the final-form rulemaking. Additionally, IRRC recommended amending the definition of "immediate family member" to clarify whether the phrase "other family member" included those related by blood, marriage or law. The Board amended the language to indicate that it included those related by blood or marriage. The Board declined IRRC's recommendation to extend the final-form rulemaking's protections to nonfamily members and to those immediate family members not residing with the patient because it felt that the current definitions included those individuals most likely to be victims of sexual exploitation. Expanding the definition would increase the risk of prosecution for innocent behavior.

IRRC further recommended that the term "Board-regulated practitioner" in subsection (b) (now § 25.216(a)) be defined. Although this term is already defined by the act, the Board accepted IRRC's request that it be included in the definition section of the final-form rulemaking. The Board also accepted IRRC's recommendation that a cross reference be made to the disciplinary provisions of the act in subsections (b)—(d) (now § 25.216(a)—(c)).

The Board declined to accept IRRC's recommendation that it further define the term "mental health disorder" in subsection (d) (now § 25.216(c)). IRRC recommended that the Board refer to patients who are diagnosed under the Diagnostic and Statistical Manual of Mental Disorders-IV. The Board chose to retain the term "mental health disorder," believing that it encompassed a wider variety of mental and emotional conditions that would potentially make a patient more vulnerable to inappropriate sexual advances by a Board-regulated practitioner.

The Board also declined IRRC's invitation to provide examples of behavior deemed inappropriate under this final-form rulemaking. It has been the Board's experience that when examples are used, situations not depicted are often deemed acceptable. The Board does not wish to inadvertently approve sexual misconduct by omission.

The House Professional Licensure Committee (HPLC) declined to comment until final-form rulemaking is published.

The PMS expressed their opinion that it is impossible to write regulations for sexual misconduct that clearly define prohibited behavior without creating the possibility of prosecution for innocent behavior. Several commentators also expressed similar concerns. While the Board agrees that these are difficult regulations to write, it believes that sexual contact with patients and certain vulnerable family members so severely threatens public safety that an effort must be made to put physicians on further notice that the conduct is prohibited. While some Board-regulated practitioners are currently being prosecuted for sexual exploitation of patients, the Board feels strongly that it must be as clear as possible that a health care practitioner-patient relationship must never contain elements of sexual behavior. Moreover, prosecutors are routinely responsible for exercising professional judgment in regard to matters more complex than these.

The PMS expressed concern that innocent behavior will be subject to punishment. The final-form rulemaking is directed at behavior that is exploitive of the health care practitioner-patient relationship; that is, situations in which the health care practitioner abuses the position of power over the patient. Clearly the scenario that the PMS suggests, for example, a patient offering the phone number of the patient's sibling, cannot in any way be considered exploitive.

The PMS's concerns about the 2-year "cooling off" period for health care practitioners involved in the management or treatment of a patient for a mental health disorder are unpersuasive. The scenario suggested by PMS, for example, a physician who prescribes an antidepressant to a patient suffering from a painful condition, does not meet the rulemaking's requirement that the practitioner be managing or treating a mental health disorder. If the patient has a related mental health disorder that the practitioner is, in fact, treating, then the practitioner is prohibited from engaging in sexual behavior with that patient for 2 years from the termination of the health care practitioner-patient relationship.

Several osteopathic physicians wrote to express their concern that innocent behavior will be subject to prosecution. As noted previously, the Board prosecutors routinely exercise professional judgment in these types of matters. Two of the doctors requested clarification of the 2-year "cooling off" period and one recommended grammatical changes to the proposed rulemaking.

One individual urged the Board to consider amending the rulemaking to include specific directions regarding the use of gowns and chaperones. Because this rulemaking is intended to prohibit sexual misconduct, and not to address practice policies, the Board declined to adopt the recommendation.

The Governor's Policy Office recommended that the rulemaking specifically exempt spouses of Board-regulated practitioners from the provisions prohibiting sexual contact with patients. The Board amended the final-form rulemaking to comply with this request.

E. *Fiscal Impact and Paperwork Requirements*

The final-form rulemaking should have no fiscal impact on the Commonwealth or its political subdivisions. Likewise, the final-form rulemaking should not necessitate any legal, accounting, reporting or other paperwork requirements.

F. *Sunset Date*

The Board continuously monitors its regulations. Therefore, no sunset date has been assigned.

G. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 27, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 1734, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), these final-form regulations were approved by the HPLC on November 18, 2003, and deemed approved by SCP/PLC on November 19, 2003. Under section 5.1(e) of the Regulatory Review Act, IRRC met on November 20, 2003, and approved the final-form rulemaking.

H. *Contact Person*

Interested persons may obtain information regarding the final-form rulemaking by writing to Amy L. Nelson, Board Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649.

I. *Findings*

(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) The final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble.

(4) These amendments are necessary and appropriate for administration and enforcement of the authorizing act identified in Part B of this preamble and do not enlarge the purpose of the proposed rulemaking published at 32 Pa.B. 1734.

J. *Order*

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

(a) The regulations of the Board, 49 Pa. Code Chapter 25, are amended by adding §§ 25.215 and 25.216 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 to the Office of Attorney General as required by law.

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

(d) This order shall take effect on publication in the *Pennsylvania Bulletin*.

THOMAS R. CZARNECKI, D.O.,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 33 Pa.B. 5994 (December 6, 2002).)

Fiscal Note: Fiscal Note 16A-539 remains valid for the final adoption of the subject regulations.

Annex A

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 D. MINIMUM STANDARDS OF PRACTICE

§ 25.215. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Board-regulated practitioner—An osteopathic physician, physician assistant, respiratory care practitioner, athletic trainer, acupuncturist or an applicant for a license or certificate issued by the Board.

Immediate family member—A parent or guardian, child, sibling, spouse or other family member, whether related by blood or marriage, with whom a patient resides.

Sexual behavior—Any sexual conduct which is nondiagnostic and nontherapeutic; it may be verbal or physical and may include expressions of thoughts and feelings or gestures that are sexual in nature or that reasonably may be construed by a patient as sexual in nature.

Sexual exploitation—Any sexual behavior that uses trust, knowledge, emotions or influence derived from the professional relationship.

§ 25.216. Sexual misconduct.

(a) Sexual exploitation by a Board-regulated practitioner of a current or former patient, or of an immediate family member of a patient, constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action under section 15(a)(8) and (b)(9) of the act (63 P. S. § 271.15(a)(8) and (b)(9)).

(b) Sexual behavior that occurs with a current patient other than the Board-regulated practitioner's spouse, constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action under section 15(a)(8) and (b)(9) of the act.

(c) When a Board-regulated practitioner has been involved with the management or treatment of a patient other than the practitioner's spouse for a mental health disorder, sexual behavior with that former patient which occurs prior to the 2-year anniversary of the termination of the professional relationship constitutes unprofessional conduct, is prohibited, and subjects the practitioner to disciplinary action under section 15(a)(8) and (b)(9) of the act.

(d) A practitioner who engages in conduct prohibited by this section will not be eligible for placement into an impaired professional program in lieu of disciplinary or corrective actions.

(e) Consent is not a defense to conduct prohibited by this section.

[Pa.B. Doc. No. 04-13. Filed for public inspection January 2, 2004, 9:00 a.m.]

Title 61—REVENUE

DEPARTMENT OF REVENUE

[61 PA. CODE CH. 872]

Match 6 Lotto

The Secretary of Revenue (Secretary), under the authority contained in section 303 of the State Lottery Law (72 P. S. § 3761-303), adds Chapter 872 (relating to Match 6 Lotto).

Because of time constraints associated with the establishment, operation and administration of lottery games, the Department of Revenue (Department), under section 204 of the act of July 31, 1968 (P. L. 769, No. 240) (CDL) (45 P. S. § 1204) and the regulation thereunder, 1 Pa. Code § 7.4, finds that notice of proposed rulemaking is under the circumstances impracticable and, therefore, may be omitted.

Based upon the time constraints associated with the establishment, operation and administration of lottery games, the Department is adopting this rulemaking as a final-omitted. The efficient and successful operation of the Lottery requires that the Lottery implement the latest innovations and trends in the lottery industry. The inability to adapt marketing strategies quickly may lead to a reduction in Lottery revenues. The necessity of the Lottery to react quickly to market forces has been recognized in the past as an appropriate justification for utilizing the proposed rulemaking omitted process as evidenced by the approval of these types of regulations in the past.

Purpose of Final-Omitted Rulemaking

This final-omitted rulemaking establishes and details the procedures that will be followed in operating and administering the Match 6 Lotto game.

Explanation of Regulatory Requirements

Match 6 Lotto is designed to give players the opportunity to win up to four prizes in each game.

For a $2 purchase, the player gets a ticket containing three sets of six numbers, the numbers in each of these sets ranging from 1 to 49. Players can win one, two or three prizes by matching, in each of their sets of numbers, three or more of the six winning numbers randomly drawn twice a week or as determined and publicly announced by the Secretary.

The combination of the player's 18 numbers generated by the single $2 purchase (arranged in the three sets of six numbers each), offers the player an additional opportunity to win. Players can win by matching any four or more numbers from among all of their three sets of numbers to any of the winning numbers selected by the Lottery.

Fiscal Impact

The Department has determined that the final-omitted rulemaking will have no adverse fiscal impact on the Commonwealth and that the game described by this final-omitted rulemaking could increase revenues available to older Pennsylvanians.

Paperwork

The final-omitted rulemaking will not generate substantial paperwork for the public or the Commonwealth.

Effectiveness/Sunset Date

The final-omitted rulemaking will become effective upon publication in the *Pennsylvania Bulletin*. The final-omitted rulemaking is scheduled for review within 5 years of publication. No sunset date has been assigned.

Contact Person

The contact person is Anita M. Doucette, Office of Chief Counsel, Department of Revenue, Dept. 281061, Harrisburg, PA 17128-1061.

Regulatory Review

Under section 5.1(c) of the Regulatory Review Act (71 P. S. § 745.5a(c)), on November 25, 2003, the Department submitted a copy of the rulemaking with proposed rulemaking omitted to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Committee on Finance and the Senate Committee on Finance. On the same date, the rulemaking was submitted to the Office of Attorney General for review and approval under the Commonwealth Attorneys Act (71 P. S. §§ 732-101—732-506).

In accordance with section 5.1(j.1) of the Regulatory Review Act (71 P. S. § 745.5a(j.1)), the final-omitted rulemaking was deemed approved by the Committees on December 15, 2003. IRRC met on December 18, 2003, and approved the final-omitted rulemaking under section 5.1(e) of the Regulatory Review Act.

Findings

The Department finds that the final-omitted rulemaking is necessary and appropriate for the administration and enforcement of the authorizing statute. Under section 204 of the CDL, the Department also finds that the proposed rulemaking procedures in sections 201 and

202 of the CDL (45 P. S. §§ 1201 and 1202) are unnecessary because of the time constraints associated with the establishment, operation and administration of Lottery games.

Order

The Department, acting under the authorizing statute, orders that:

(a) The regulations of the Department, 61 Pa. Code, are amended by adding §§ 872.1—872.17 to read as set forth in Annex A.

(b) The Secretary shall submit this order and Annex A to the Office of General Counsel and Office of Attorney General for approval as to form and legality as required by law.

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

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

GREGORY C. FAJT,
Secretary

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 134 (January 3, 2004).)

Fiscal Note: 15-424. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 61. REVENUE

PART V. STATE LOTTERIES

CHAPTER 872. MATCH 6 LOTTO

Sec.

§ 872.1. Creation.

Under the act and this part, there is created a numbers game, called Match 6 Lotto, which will commence at the discretion of the Secretary, and will continue until the Secretary publicly announces a suspension or termination date.

§ 872.2. Purpose.

(a) Match 6 Lotto is designed to give players the opportunity to win up to four prizes in each game.

(b) For a $2 purchase, the player gets a ticket containing three sets of six numbers, the numbers in each of these sets ranging from 1 to 49. Players can win one, two or three prizes by matching, in each of their sets of numbers, three or more of the six winning numbers randomly drawn twice a week or as determined and publicly announced by the Secretary. Correctly matching three or more of the six winning numbers selected by the Lottery and meeting the other validation criteria, entitles the ticket holder to a prize identified in § 872.8(a) (relating to determination of prize winners).

(c) The combination of the player's 18 numbers generated by the single $2 purchase (arranged in the three sets of six numbers each), offers the player an additional opportunity to win. Matching any four or more numbers from among all of their three sets of numbers to any of the winning numbers selected by the Lottery and meeting the other validation criteria, entitles the ticket holder to a prize identified in § 872.8(b).

§ 872.3. Definitions.

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

Apparent winning ticket—A game ticket bearing winning numbers which has not been validated by the Lottery.

Base play—Each of the three sets of six numbers resulting from a $2 purchase.

Combined game—The combination of the 18 numbers (three plays) on a player's ticket.

Drawing—The process of selecting winning numbers that determine the number of winners for each prize category of the game.

First place (jackpot) prize pool—The amount allocated from Match 6 Lotto gross sales for a particular Match 6 Lotto Game drawing for the purpose of paying first place (jackpot) prizes, which may include first place (jackpot) prize moneys from previous drawings when a first place prize (jackpot) was not won as provided in § 872.8(a)(2) (relating to determination of prize winners).

Game section—One of 5 areas of the Match 6 Lotto bet slip that contains 49 squares each numbered 1 through 49. Each area is lettered Game A, B, C, D or E, and when used to purchase a ticket, corresponds to the numbers selected and the numbers that are quick picked and printed on the ticket.

Match 6 Lotto bet slip—A card having a game section used by a player to play the game.

On-line retailer or retailer—A person who is properly authorized by the Lottery to sell tickets.

Quick pick—The random selection through a Lottery terminal of six different numbers from 1 through 49 that appear as a play in the Match 6 Lotto Game.

Ticket—A Match 6 Lotto ticket is a Lottery ticket produced by a licensed retailer in an authorized manner, and contains, at the discretion of the player 1, 2, 3, 4 or 5 games, designated respectively as Game A, B, C, D and E. Each game designation is followed by its three plays. The ticket also contains at a minimum, the drawing date, the amount bet and validation data. Each game consists of three plays. A play consists of six numbers, either player or quick pick selected, from 1 through 49. The player may select or designate as quick pick selection one play per game, the remaining two plays of the game are quick pick selections.

Winning numbers—Six numbers, from 1 through 49, selected in a Match 6 Lotto drawing and which have been subsequently validated by the Lottery, which shall be used to determine the winning plays and the combined game winners on Match 6 Lotto Game tickets.

§ 872.4. Ticket sales retailers.

(a) Match 6 Lotto Game ticket sales may only be made through licensed retailers the Director will appoint and contract with as provided in § 815.42 (relating to ticket sales agents).

(b) The Lottery may terminate sales by a retailer without prior notice to the retailer if the retailer becomes delinquent in payment of proceeds due the Lottery, or fails to handle Lottery funds in the prescribed manner, or if the retailer fails to follow the contract or an addendum thereof, this part or procedures established governing the sale of tickets or if the Lottery deems it to be in the best interest of the Commonwealth.

§ 872.5. Ticket price.

Match 6 Lotto game tickets may be purchased for $2 per game. Each game shall consist of three individual plays, one of which, at the player's option may be numbers selected by the player; the remaining two number plays are quick pick selections. These three individual plays combined constitute a game. Additional games may be purchased at the discretion of the player. A ticket may contain one to five games.

§ 872.6. Match 6 Lotto bet slip and ticket characteristics and restrictions.

(a) The player shall select, or request selection by computer, six numbered squares, in one or more of the game sections on a Match 6 Lotto bet slip. Match 6 Lotto bet slips shall be available at no cost to the player. The minimum entry is $2. For $2, play game A; for $4, play games A and B; for $6, play games A, B and C; for $8, play games A, B, C and D; for $10, play games A, B, C, D and E. Game sections shall be selected in alphabetical order in accordance with the instructions printed on the Match 6 Lotto bet slip. A Match 6 Lotto bet slip has no pecuniary or prize value and does not constitute evidence of the purchase of a ticket or the numbers selected.

(b) To purchase a ticket, players shall, in addition to the purchase price, submit the completed Match 6 Lotto bet slip, or request number selection, either by quick pick or manual terminal entry, to an on-line retailer to have issued a ticket. The ticket shall consist of one to five games, each containing three six number selections, two of which will be quick pick selections, in each game section (for each $2 wager) identified by a letter, the drawing date, amount bet and validation number data. This ticket shall be the only valid proof of the bet placed, and the only valid receipt for claiming a prize. The ticket shall only be valid for the drawing dates printed on the ticket.

(c) If Match 6 Lotto bet slips are unavailable, number selections may be given to an on-line retailer in groups of six number selections, one for each game section and for each $2 wagered. The retailer shall manually enter the selections into the computer terminal.

(d) A Match 6 Lotto ticket may not be canceled or voided once printed by the Lottery terminal, even if the ticket is printed in error.

(e) It is the sole responsibility of the ticket holder to verify the accuracy and condition of data printed on the ticket. The placing of plays is done at the player's own risk through the on-line retailer who is acting on behalf of the player in entering the play or plays.

§ 872.7. Time, place and manner of conducting drawing.

(a) *Time of drawing.* A Match 6 Lotto drawing will be held twice a week or as determined and publicly announced by the Secretary.

(b) *Place of drawing.* A Match 6 Lotto drawing will be conducted in the Harrisburg area unless the Secretary directs that a drawing or part of the drawing procedure be conducted at some other location.

(c) *Manner of conducting drawings.* The Lottery will draw at random, six numbers from 1 through 49, with the aid of mechanical devices or any other selection methodology as authorized by the Secretary. The six numbers selected will be used in determining base play winners and combined game winners for each individual drawing. The validity of a drawing will be determined solely by the Lottery.

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§ 872.8. Determination of prize winners.

(a) The Match 6 Lotto base play prizes and determination of Match 6 Lotto base prize play winners is as follows:

Tickets Containing The Following, In One Single Play	*Prize Category*	*Prize*	*Percent (%) of Sales Anticipated To Be Paid In Prizes/Category*
All Six Winning Numbers	1st	Jackpot	12.83% Actual
Five Winning Numbers	2nd*	$1,000	2.76%
Four Wining Numbers	3rd*	$20	2.92%
Three Winning Numbers	4th*	$2	5.30%

*Indicates set prize.

(1) Prize money allocated to the base play first prize category (jackpot) will be paid on a pari-mutuel basis, divided equally by the number of plays on tickets determined by the Lottery to be entitled to claim a first prize. The Lottery will estimate and announce the projected amount of the upcoming jackpot (first place prize pool) prior to the drawing. Payment will be made only in the amount actually in the first place (jackpot) prize pool.

(2) If, in a Match 6 Lotto drawing, there are no winning base play first place prize plays (jackpots), prize money allocated to that prize category will be added to the amount allocated for the first prize category money in the next Match 6 Lotto drawing.

(3) If more than one winning base play first place prize play is determined, each, upon meeting the requirements of §§ 872.10 and 872.11 (relating to ticket validation requirements; and procedures for claiming and payment of prizes), is entitled to a prorated payment share of the total first prize category.

(b) The Match 6 Lotto combined game prizes and determination of Match 6 Lotto combined game prize play winners is as follows:

Tickets Containing the Following, In One Single Game	*Prize**	*Percent (%) of Sales Anticipated To Be Paid In Prizes/Category*
10 or More Winning Numbers	$2,500	0.21%
9 Winning Numbers	$1,000	1.11%
8 Winning Numbers	$50	0.58%
7 Winning Numbers	$25	2.12%
6 Winning Numbers	$10	4.66%
5 Winning Numbers	$5	9.49%
4 Winning Numbers	$2	11.02%

*All prizes listed are set prizes.

(c) All Match 6 Lotto prize payments, including a jackpot prize, will be made as a one time lump-sum cash payment.

(d) A winning Match 6 Lotto game ticket is entitled only to the highest prize won by those numbers on each play plus the highest prize won by those numbers on the combined game.

(e) The number of prize categories, the allocation of prize money among the prize categories and the minimum base play first place prize category (jackpot) amount may be changed at the discretion of the Secretary and the change will be announced by public notice. The changes will only apply prospectively to Match 6 Lotto drawings as of the date specified in the public notice.

(f) Retailer incentive and marketing promotion programs, including the use of unfunded free tickets, may be implemented at the discretion of the Secretary. Funds for the programs, if needed, will be drawn from the Lottery fund.

§ 872.9. Ticket responsibility.

(a) A ticket is a bearer document deemed to be owned by the person holding the ticket, except that if a name is contained on the back of the ticket, the person so named will, for all purposes, be considered the owner of the ticket.

(b) The Commonwealth will not be responsible for lost or stolen tickets.

(c) The purchaser of the ticket has the sole responsibility for checking the accuracy and condition of the data printed on the ticket.

(d) The Commonwealth will not be responsible for tickets redeemed in error by an on-line retailer.

§ 872.10. Ticket validation requirements.

(a) *Valid tickets.* To be a valid ticket, the following conditions shall be met:

(1) The ticket validation numbers shall be present in their entirety and shall correspond, using the computer validation file, to the selected numbers printed on the ticket for the date printed on the ticket.

(2) The ticket shall be intact.

(3) The ticket may not be mutilated, altered, reconstituted or tampered with.

(4) The ticket may not be counterfeit or an exact duplicate of a winning ticket.

(5) The ticket shall have been issued by the Lottery through a licensed retailer.

(6) The ticket may not have been stolen.

(7) The ticket shall be validated in accordance with § 872.11 (relating to procedures for claiming and payment of prizes).

(8) The player-selected or computer-selected numbers on the ticket shall be in individual groups of six numbers each. Each group of six numbers shall be a play. Each group of three plays shall be preceded with the designation Game A, B, C, D or E. The game and its lettered designation and the following three plays constitute a single game.

(9) The ticket data shall have been recorded on the Lottery's central computer system prior to the drawing and the ticket data shall match this computer record in every respect.

(10) The player and computer-selected numbers, the validation data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets. A ticket with that exact data may not have been previously paid.

(11) The ticket may not be misregistered, defectively printed, or printed or produced in error to an extent that it cannot be processed by the Lottery.

(12) The ticket shall pass other confidential security checks of the Lottery.

(13) By submitting a ticket for validation, the player agrees to abide by this chapter as determined by the Secretary.

(14) There may not be another breach of this part in relation to the ticket which, in the opinion of the Secretary, justifies disqualification.

(b) *Invalid or defective tickets/disputes.* A ticket not passing the validation checks in subsection (a) will be considered invalid and will not be paid.

(1) In cases of doubt, the determination of the Secretary is final and binding. The Secretary may replace an invalid ticket with a ticket of equivalent sale price from a current Lottery game.

(2) If a defective ticket is purchased or if the Secretary determines to adjust an error, the sole and exclusive remedy will be the replacement of the defective or erroneous ticket with a ticket of equivalent sale price from a current Lottery game.

(3) If a ticket is not paid by the Lottery and a dispute occurs as to whether the ticket is a winning ticket, the Lottery may replace the ticket as provided in paragraph (2). This is the sole and exclusive remedy of the holder of the ticket.

§ 872.11. Procedures for claiming and payment of prizes.

(a) A prize shall be claimed only through a licensed on-line retailer as soon as that drawing is placed in pay status by the Lottery.

(b) An online retailer is authorized and required to make payment of a prize of $2,500 or less, if the ticket is

presented within a designated time period as announced by the Secretary, on an individual winning ticket, if the retailer has sufficient funds available for payment.

(c) The holder of an apparent winning ticket representing a prize of $2,500 or less will be paid by participating on-line retailers as provided in subsection (b), if the ticket validation requirements in § 872.10 (relating to ticket validation requirements) have been met, a proper validation pay ticket has been issued by the retailer's computer terminal and other retailer procedures have been met.

(d) The holder of an apparent winning ticket representing a prize in excess of $2,500, with the exception of the first place prize (jackpot), shall present the winning ticket to an on-line retailer or authorized claim center under Chapter 811 (relating to prizes).

(e) The holder of an apparent winning ticket representing a first place prize (jackpot) shall present, in person, the apparent winning ticket to Lottery Headquarters or a Lottery area office under Chapter 811.

(f) The payment of a prize to a person who dies before receiving a particular prize or to a person under 18 years of age will be paid under §§ 811.16 and 811.27 (relating to prizes payable after death of prize winner; and payment of prizes to persons under 18 years of age).

(g) The Commonwealth will be discharged of liability after payment of prizes as provided in § 811.26 (relating to discharge of State liability upon payment).

§ 872.12. Prizes.

(a) If the total of the set prizes won in a particular Match 6 Lotto drawing exceed sales for that drawing by 100% or more, then those set prize tiers, in which the stated prizes won exceed the percentage of sales anticipated to be paid in prizes/category, will become parimutuel. Moneys will be drawn from the Lottery Fund, to the extent necessary, to fund the payment of prizes under this subsection.

(b) If the Match 6 Lotto is terminated for any cause, prize moneys remaining undistributed will be paid out of the State Lottery Fund and used for purposes otherwise provided for by law.

§ 872.13. Unclaimed prize money.

Prize money on a winning Match 6 Lotto play may be retained by the Secretary for payment to the person entitled to it. If within 1 year of the drawing date on the ticket, no claim is made on a winning play, as determined by the Secretary, the right to claim prize money terminates, and the prize money will be paid into the State Lottery Fund and used for purposes otherwise provided for by statute.

§ 872.14. Withholding.

Federal withholding taxes will be withheld by the Lottery for prize payments in amounts required in accordance with applicable provisions of law.

§ 872.15. Purchase and prize restrictions.

A ticket may not be purchased by, and a prize will not be paid to, an officer or employee of the Lottery, Lottery professional services contractors or subcontractors, who are involved in the operation of the on-line lottery games system or its associated drawings, or to a spouse, child, brother, sister or parent residing in the same household of the officer, employee, contractor or subcontractor.

§ 872.16. Governing law.

(a) In purchasing a ticket, the purchaser agrees to comply with and abide by applicable laws, this part, instructions, conditions and final decisions of the Secretary, and procedures established by the Secretary for the conduct of the Match 6 Lotto.

(b) Decisions made by the Secretary including the declaration of prizes and the payment thereof in interpretation of this part are final and binding on players and persons making a claim in respect thereof.

§ 872.17. Probability of winning.

(a) Probabilities of winning per game:

Number of Winning Numbers Selected By Player	*Prize Category*	*Probability* of Winnings Per Game*
All 6 Winning Numbers	Jackpot	1:4,661,272.3
5 Winning Numbers	$1,000	1:18,067.3
4 Winning Numbers	$20	1:344.5
3 Winning Numbers	$2	1:19.2

*Odds that one or more plays in a 3-play game will win a prize at the given level. Since more than one play can win a prize, levels are not mutually exclusive.

(b) Probability of winning combined game:

Number of Winning Numbers Selected By Player	*Prize**	*Probability of Winnings Per Game*
10 or More Winning Numbers	$2,500	1:597,302.6
9 Winning Numbers	$1,000	1:45,267.4
8 Winning Numbers	$50	1:4,440.4
7 Winning Numbers	$25	1:590.9
6 Winning Numbers	$10	1:106.7
5 Winning Numbers	$5	1:26.4
4 Winning Numbers	$2	1:9.1

*All combined game prizes are set prizes.

[Pa.B. Doc. No. 04-14. Filed for public inspection January 2, 2004, 9:00 a.m.]