

# PROPOSED RULEMAKING

## DEPARTMENT OF AGRICULTURE

[7 PA. CODE CH. 104]

### Sheep and Lamb Marketing Program; Wine Marketing and Research Program

The Department of Agriculture (Department) proposes to delete Subchapter C (relating to sheep and lamb marketing program) and add Subchapter F (relating to wine marketing and research program) to read as set forth in Annex A. The Pennsylvania Sheep and Lamb Marketing Program (Sheep Program) is no longer in existence. Therefore, Subchapter C is unnecessary. Proposed Subchapter F provides the Pennsylvania Wine Marketing and Research Program (Wine Program) needed regulatory authority, while providing affected wine producers guidance as to their obligations to the Wine Program.

#### *Statutory Authority*

The Agricultural Commodities Marketing Act (act) (3 Pa.C.S. §§ 4501—4513) provides the legal authority for this proposed rulemaking. Both the Sheep Program and the Wine Program are agricultural commodity programs established under authority of the act. Section 11 of the act (3 Pa.C.S. § 4511) authorizes the Department to promulgate regulations necessary to enforce the provisions of any marketing program established under its authority.

#### *Purpose*

The proposed rulemaking deletes Subchapter C. Due to the termination of the Sheep Program, Subchapter C serves no purpose.

The proposed rulemaking also affirms the obligations of affected wine producers with respect to the Wine Program, provides a mechanism for accounting and payment of producer charges and establishes a mechanism for the collection of producer charges from affected producers who do not pay their fair share to support the Wine Program.

#### *Background*

The act authorizes the establishment of an agricultural commodity marketing program through a referendum among affected producers of the agricultural commodity involved. The Wine Program was established through a referendum among persons who produce or sell wine under authority of a limited winery license issued in accordance with the Liquor Code (47 P.S. §§ 1-101—8-803).

The production of wine is closely regulated. Holders of limited winery licenses are required to report their wine production and sales to the Liquor Control Board. This production information assists the Wine Program in calculating the producer charges owed it by each affected wine producer. The producer charges are 15¢ per gallon of wine sold within a particular January 1—December 31 marketing season.

The proposed rulemaking emphasizes the obligation of an affected wine producer to account for and pay the appropriate producer charges to the Wine Program and

provides the Wine Program a mechanism by which to pursue collection of unpaid producer charges.

#### *Need for the Proposed Rulemaking*

The proposed rulemaking is necessary for the operation of the Wine Program and makes extensive use of language from existing regulations for other act-based agricultural commodity marketing programs. The Department is satisfied of the need for the proposed rulemaking.

#### *Overview of the Major Provisions of the Proposed Rulemaking*

Proposed §§ 104.73 and 104.74 (relating to producer charges; and responsibility for payment of producer charge), respectively, set forth the formula for calculation of producer charge amounts and the responsibility of an affected wine producer to pay these charges.

Proposed § 104.75 (relating to accounting and payment) describes the annual production verification statement forms by which an affected wine producer is to verify the quantity of wine produced within a given marketing season. It also describes the procedures for payment of producer charges and allows for the imposition of a penalty of between \$100 and \$5,000 against affected producers who are delinquent with payment.

#### *Affected Individuals and Organizations*

There are approximately 70 holders of limited winery licenses at present. The proposed rulemaking affects these persons.

#### *Fiscal Impact*

*Commonwealth*—The proposed rulemaking imposes no costs and has no fiscal impact on the Commonwealth.

*Political Subdivisions*—The proposed rulemaking imposes no costs and has no fiscal impact on political subdivisions.

*Private Sector*—The proposed rulemaking imposes no costs and has no adverse fiscal impact upon the private sector. Although the proposed rulemaking references the 15¢ per gallon producer charge, the charge has been established through a referendum among affected producers in accordance with the provisions of the act. The proposed rulemaking repeats this existing obligation. The proposed rulemaking does not create it. The proposed rulemaking helps to fully fund the research and marketing efforts of the Wine Program. Although this is expected to have a favorable economic impact upon this Commonwealth's wine production industry, this benefit is not readily quantifiable.

*General Public*—The proposed rulemaking imposes no costs and has no adverse fiscal impact upon the general public.

#### *Paperwork Requirements*

The proposed rulemaking does not appreciably increase the paperwork burden of the Department, other government units or affected wine producers.

#### *Effective Date*

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

#### *Sunset Date*

There is no sunset date for the proposed rulemaking. The Department will review the efficacy of these regulations on an ongoing basis.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 16, 2004, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Standing Committees on Agriculture and Rural Affairs. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment Period/Contact Person*

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days following publication in the *Pennsylvania Bulletin* to the Department of Agriculture, Bureau of Market Development, 2301 North Cameron Street, Harrisburg, PA 17110-9408, Attn: Kyle Nagurny.

DENNIS C WOLFF,  
*Secretary*

**Fiscal Note:** 2-142. No fiscal impact; (8) recommends adoption.

**Annex A****TITLE 7. AGRICULTURE****PART IV. BUREAU OF MARKET DEVELOPMENT****CHAPTER 104. ENFORCEMENT OF MARKETING PROGRAMS****Subchapter C. [ SHEEP AND LAMB MARKETING PROGRAM ] (Reserved)**

*(Editor's Note:* As part of this proposed rulemaking, the Department is proposing to rescind §§ 104.21—104.30, which appear in 7 Pa. Code pages 104-10—104-16, serial pages (266924)—(266930).)

**§§ 104.21—104.30. (Reserved).****Subchapter F. WINE MARKETING AND RESEARCH PROGRAM**

Sec.	
104.71.	Scope.
104.72.	Definitions.
104.73.	Producer charges.
104.74.	Responsibility for payment of producer charge.
104.75.	Accounting and payment.

**§ 104.71. Scope.**

This subchapter establishes the procedures by which persons who produce or sell wine under authority of a limited winery license shall account for and pay producer charges owed the Program.

**§ 104.72. Definitions.**

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

*ACMA*—The Agricultural Commodities Marketing Act (3 Pa.C.S. §§ 4501—4513).

*Board*—The persons appointed by the Secretary from among those producers whose commodities are subject to the marketing and research program set forth in this subchapter.

*Department*—The Department of Agriculture of the Commonwealth.

*Limited winery*—The holder of a limited winery license issued under authority of the Liquor Code (47 P. S. §§ 1-101—8-803).

*Marketing contract*—Any contract or agreement between the Board and a person for the performance of service related to advertising, promotion, research, marketing, or other objectives in furtherance of the marketing and research program set forth in this subchapter.

*Marketing season*—

(i) The initial marketing season for purposes of this subchapter shall be from July 1, 2001, through December 31, 2001.

(ii) Thereafter, the marketing season shall be the period beginning January 1 of any year and extending through December 31 of the same year.

*PLCB*—The Pennsylvania Liquor Control Board.

*Person*—An individual, partnership, firm, corporation, association or any other business unit.

*Producer*—A person who produces or sells wine under authority of a limited winery license during a particular marketing season.

*Program*—The Pennsylvania Wine Marketing and Research Program.

*Secretary*—The Secretary of the Department.

**§ 104.73. Producer charges.**

The producer charges owed the Program shall be 15¢ per gallon of wine sold within a given marketing season, except in-State winery-to-winery sales in bond. In-State winery-to-winery sales in bond are exempt from charges. The producer charges may be changed by subsequent amendment of the Program in accordance with the referendum procedure in Chapter 103 (relating to referendums).

**§ 104.74. Responsibility for payment of producer charge.**

It is the responsibility of the producer to pay the appropriate producer charge owed the Program within the time period set forth in § 104.75(b) (relating to accounting and payment) and in the manner set forth in § 104.75(a).

**§ 104.75. Accounting and payment.**

(a) *Annual production statement.* The Program will provide a producer with annual production statement forms with which to verify the quantity of wine that it has produced within a particular marketing season. The producer shall provide the following information on the annual production statement and submit the form in accordance with this section:

(1) The name and address of the producer.

(2) The number of gallons of wine sold within the marketing season, or other time period designated by the Program.

(3) A calculation of the amount of producer charges owed the Program by the producer.

(b) *Deadlines.* The payment of the producer charges shall be postmarked and mailed, or actually delivered to the Program, by the first day of February immediately following the previous marketing season.

(c) *Form of payment.* Payments of producer charges shall be by check or money order made payable to the "PA Wine Marketing Program."

(d) *Address.* Payments of producer charges shall be mailed or delivered to:

Department of Agriculture,  
Bureau of Market Development  
Attn: Pennsylvania Wine Marketing Program  
2301 North Cameron Street  
Harrisburg, Pennsylvania 17110-9408.

(e) *Penalty for failure to account or pay.* Producers who fail to mail or deliver the required producer charges owed the Program within 30 days of the due date, as described in subsection (b), shall be required to pay a penalty of at least \$100 but not more than \$5,000, and as nearly equivalent to 100% of the amount of the delinquent producer charges as is practicable. An action seeking the imposition of a penalty, plus payment of producer charges due the Program, may be brought in the appropriate magisterial district. A penalty imposed shall be in addition to the delinquent producer charges owed the Program.

[Pa.B. Doc. No. 04-176. Filed for public inspection January 30, 2004, 9:00 a.m.]

## STATE BOARD OF OSTEOPATHIC MEDICINE

[49 PA. CODE CH. 25]

### Continuing Medical Education

The State Board of Osteopathic Medicine (Board) proposes to amend §§ 25.1 and 25.271 (relating to definitions; and requirements for renewal) to read as set forth in Annex A.

#### *Effective Date*

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*. The Legislature has required that the Board promulgate regulations within 6 months of the effective date of section 910 of the Medical Care Availability and Reduction of Error (MCARE) Act (act) (40 P. S. § 1303.910).

#### *Statutory Authority*

Under section 910 of the act, the Board is required to establish requirements for continuing medical education for physicians as a condition for renewal of their licenses. Physicians are required to complete 100 credit hours of mandatory continuing medical education during each 2-year licensure period.

#### *Background and Purpose*

The proposed rulemaking implements section 910 of the act, which requires completion of 100 credit hours of continuing education as a condition of biennial licensure renewal of physician licenses by the State Board of Medicine and the Board. Although the Board already required 100 credit hours of continuing medical education each biennium, the act imposed a requirement that the

Board establish a minimum number of hours in the areas of patient safety and risk management.

#### *Description of Proposed Rulemaking*

The proposed rulemaking requires proof of completion of 100 credit hours of continuing medical education as a condition of license renewal, and sets forth a requirement that at least 20 of the 100 hours be American Osteopathic Association (AOA) category 1 credits and that at least 10 credit hours must be in the area of patient safety and risk management. Courses in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The proposed rulemaking further designates the Accreditation Council on Continuing Medical Education and the AOA as the accrediting bodies for purposes of approving continuing medical education providers.

#### *Fiscal Impact and Paperwork Requirements*

The proposed rulemaking requires the Board to alter its license renewal forms to include data regarding the physician's compliance with the continuing education requirements, and also requires physicians to maintain their own records of continuing education credits, but otherwise, should have no adverse fiscal impact on the Commonwealth or its political subdivisions.

#### *Sunset Date*

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

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

#### *Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding this proposed rulemaking to Amy L. Nelson, Counsel, State Board of Osteopathic Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

THOMAS R. CZARNECKI, D.O.,  
*Chairperson*

**Fiscal Note:** 16A-5313. No fiscal impact; (8) recommends adoption.

## Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL  
STANDARDS

## PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL  
AFFAIRSCHAPTER 25. STATE BOARD OF OSTEOPATHIC  
MEDICINE

## Subchapter A. GENERAL PROVISIONS

## § 25.1. Definitions.

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

\* \* \* \* \*

**Approved course**—A continuing medical education course offered by a provider accredited by the ACCME or the AOA.

\* \* \* \* \*

**Immediate family member**—A parent, a spouse, a child or an adult sibling residing in the same household.

\* \* \* \* \*

Subchapter G. LICENSING, EDUCATION AND  
GRADUATE TRAININGLICENSURE RENEWAL AND CONTINUING  
EDUCATION

## § 25.271. Requirements for renewal.

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(c) Beginning with [ 1994 renewals ] the licensure renewal period commencing November 1, 2004, proof of completion of 100 credit hours of continuing medical education in the preceding biennial period will be required for licensure renewal for osteopathic physicians.

(1) At least 20 credit hours shall be completed in AOA category 1 [ AOA ] approved courses. At least 10 credit hours shall be completed in approved courses in the area of patient safety and risk management. Approved courses in the area of patient safety and risk management may include topics such as improving medical records and recordkeeping, reducing medical errors, professional conduct and ethics, improving communications, preventative medicine and healthcare quality improvement. The [ remainder ] remaining 75 credit hours shall be completed in any [ courses approved by either the AOA or ACCME ] approved courses. Credit will not be granted for courses in office management or practice building.

(2) [ A licensee ] Physicians shall retain official documentation of attendance for 2 years after renewal, and shall certify completed courses on a form provided by the Board for that purpose, to be filed with the biennial renewal form. Official documentation proving attendance shall be produced, upon Board demand, pursuant to random audits of reported credit hours. **Electronic submission of documentation is permissible to prove compliance with this subsection.** Noncompliance may result in disciplinary proceedings under section 15(a)(6) of the act (63 P. S. § 271.15(a)(6)).

(3) [ A retired or inactive licensee is not required to comply with this requirement, if the licensee offers no service requiring a medical license and files an Affidavit of Non-Practice with the renewal form. ] The following exemptions apply for certain physicians:

(i) A physician applying for licensure in this Commonwealth for the first time shall be exempt from the continuing medical education requirement for the biennial renewal period following initial licensure.

(ii) A physician holding a current temporary training license shall be exempt from the continuing medical education requirement.

(iii) A retired physician who provides care only to immediate family members shall be exempt from the continuing medical education requirement.

(iv) A physician who is on inactive status shall be exempt from the continuing medical education requirement, except that a physician who is seeking to reinstate an inactive or lapsed license shall show proof of compliance with the continuing education requirement for the preceding biennium.

(4) [ A licensee who has been on inactive status shall have completed 100 credit hours of continuing medical education in the 2-year period immediately prior to reactivation. For the renewal cycle immediately subsequent to reactivation, the licensee shall complete 12.5 credit hours for each full calendar quarter in which his license is active. ] A physician suspended for disciplinary reasons is not exempt from the requirements of this section.

(5) [ The Board may grant a hardship waiver only under extraordinary circumstances when it finds that good cause has been shown and that the public's safety and welfare will not be jeopardized by the granting of the waiver. ] Waiver of the requirements may be permitted, as follows:

(i) The Board may grant a hardship waiver of all or a part of the continuing medical education requirement in cases of serious illness, military service or other good cause provided that the public's safety and welfare will not be jeopardized by the granting of the waiver.

(ii) Requests for waiver shall be made in writing, with appropriate documentation, and shall include a description of circumstances sufficient to show why compliance is impossible.

(iii) Waiver requests will be evaluated by the Board on a case-by-case basis. The Board will send written notification of its approval or denial of a waiver request.

[ (6) A licensee suspended for disciplinary reasons is not exempt from the requirements in this section.

(7) A licensee graduating from an approved osteopathic medical college is exempt from the requirements in this section for the renewal cycle immediately subsequent to the receipt of an original license.

(8) A licensee holding a current temporary training license is exempt from the requirements in this section.

**(9) For the renewal cycle immediately subsequent to licensure, a licensee licensed by reciprocal endorsement shall complete 12.5 credit hours for each full calendar quarter in which the licensee has been licensed. ]**

[Pa.B. Doc. No. 04-177. Filed for public inspection January 30, 2004, 9:00 a.m.]

## STATE BOARD OF PODIATRY

[49 PA. CODE CH. 29]  
Sexual Misconduct

The State Board of Podiatry (Board) proposes to amend § 29.1 (relating to definitions) and to add § 29.21a (relating to sexual misconduct) to read as set forth in Annex A.

*Effective Date*

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

*Statutory Authority*

Under sections 15 and 16(3) of the Podiatry Practice Act (act) (63 P. S. §§ 42.15 and 42.16(3)), the Board has authority to establish standards of professional conduct for licensed podiatrists.

*Background and Purpose*

It should be axiomatic that it is unprofessional conduct for a podiatrist to engage in sexual contact with patients. Past decisions of the Board and the American Podiatric Medical Association guidelines denounce sexual contact between podiatrist and patient. However, complaints have been filed by consumers who have been harmed by podiatrists who engage in that unprofessional conduct.

*Description of Proposed Rulemaking*

The proposed rulemaking amends § 29.1 to define the terms "sexual behavior" and "sexual exploitation" and adds § 29.21a to make it clear that sexual misconduct is unprofessional conduct.

The purpose of the proposed rulemaking is to better protect patients by providing guidance to the profession and the public as to prohibited sexual conduct between podiatrists and patients. The proposed rulemaking prohibits any sexual contact between a podiatrist and a current patient.

Prohibited "sexual behavior," defined in § 29.1, is any sexual conduct that has no diagnostic or therapeutic purpose, including words, actions or any combination thereof which are, or are intended to be, sexual in nature or which may be construed by a reasonable person as sexual in nature.

The proposed rulemaking further prohibits sexual exploitation by a podiatrist of a current patient. "Sexual exploitation" is defined in § 29.1 as sexual behavior with a current patient that uses trust, knowledge, emotions or influence derived from the professional relationship.

The proposed rulemaking provides that licensed podiatrists who engage in prohibited sexual conduct with 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 licensed podiatrists who have engaged in sexual misconduct.

The proposed rulemaking also provides that patient consent would 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 sexual behavior as an equal when trust, knowledge, emotions or influence derived from the professional relationship are used.

*Fiscal Impact and Paperwork Requirements*

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

*Sunset Date*

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

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on January 20, 2004, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Professional Licensure Committee and the Senate Consumer Protection and Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment*

Interested persons are invited to submit written comments, recommendations or objections regarding the proposed rulemaking to Roberta L. Silver, Counsel, State Board of Podiatry, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days of publication of this proposed rulemaking.

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

**Fiscal Note:** 16A-448. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 49. PROFESSIONAL AND VOCATIONAL  
STANDARDS**

**PART I. DEPARTMENT OF STATE**

**Subpart A. PROFESSIONAL AND OCCUPATIONAL  
AFFAIRS**

**CHAPTER 29. STATE BOARD OF PODIATRY  
GENERAL PROVISIONS**

**§ 29.1. Definitions.**

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

\* \* \* \* \*

**Sexual behavior**—Any sexual conduct with a current patient during the course of a professional relationship, evaluation, treatment, procedure or other service to the patient, regardless of the setting in which the professional service is provided, including words, actions, or any combination thereof, which are nondiagnostic or nontherapeutic, and are intended to be sexual in nature, or which may be construed by a reasonable person as sexual in nature.

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

**STANDARDS OF ETHICAL PRACTICE**

**§ 29.21a. Sexual misconduct.**

Under section 16(a)(3) of the act (63 P. S. § 42.16(a)(3)), the Board may refuse to grant and may suspend or revoke or cancel a license or a

registration for gross immorality or misconduct in carrying on the profession of podiatry.

(1) Gross immorality or misconduct includes sexual misconduct by a podiatrist as follows:

(i) Sexual behavior by a podiatrist with a current patient constitutes unprofessional conduct, is prohibited, and subjects the podiatrist to disciplinary action under section 16(a)(3) of the act.

(ii) Sexual exploitation by a podiatrist of a current patient constitutes unprofessional conduct, is prohibited, and subjects the podiatrist to disciplinary action under section 16(a)(3) of the act.

(2) A podiatrist 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 action.

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

[Pa.B. Doc. No. 04-178. Filed for public inspection January 30, 2004, 9:00 a.m.]

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