

Regulatory Analysis Form		This space for use by IRRC 2002 MAY 22 AM 10: 59 REVIEW COMMISSION
(1) Agency Department of State, Bureau of Professional and Occupational Affairs, State Board of Osteopathic Medicine		IRRC Number: 2274
(2) I.D. Number (Governor's Office Use) 16A-5311		
(3) Short Title Biennial Renewal Fees		
(4) PA Code Cite 49 Pa. Code § 25.231	(5) Agency Contacts & Telephone Numbers Primary Contact: Gerald S. Smith, Senior Counsel in Charge Department of State 717-783-7200 Secondary Contact: Joyce McKeever, Deputy Chief Counsel 717-783-7200	
(6) Type of Rulemaking (check one) <input type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input checked="" type="checkbox"/> Final Order, Proposed Rulemaking Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation increases the biennial renewal fee for physicians. The new fee is needed because the current fee, established in 1996, no longer reflects the cost of sustaining the Board's operations with increased duties assigned under Act 13 of 2002, the Act of March 20, 2002, known as the Medical Care Availability and Reduction of Error Act (Mcare Act).		
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The regulatory amendments are adopted under Section 13.1 of the Osteopathic Medical Practice Act (Act), Act of October 5, 1978, P.L. 1109, <u>as amended</u> , 63 P.S. §271.13a.		

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(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Yes. The Board is required by statute to adopt regulations setting fees as specified in Section 13.1 of the Act (63 P.S. §271.13a).

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

The Board is required by section 13.1 of the Act (63 P.S. §271.13a) to set fees to raise sufficient revenue to meet expenditures. Increased expenditures are necessary for the Board to fulfill statutory mandates created by the Mcare Act. Based upon the fiscal note attached to this regulation it is anticipated that without raising fees the Board will realize a deficit in excess of \$1.18 million dollars in fiscal year 2003-2004 which will increase to over \$1.66 million dollars in fiscal year 2004-2005, and exceed \$3.03 million dollars in fiscal year 2005-2006.

(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.

Nonregulation would adversely impact the fiscal integrity of the Board.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

Recipients of osteopathic medical services in the Commonwealth will benefit by having adequate funding for the Board to regulate the profession to insure that the appropriate standards of professional competence and integrity are maintained.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

The licensing population will bear the cost of the increased fee.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

All licensees seeking biennial renewal will be required to comply with this regulation. The Board's osteopathic medical doctor licensing population is approximately 6587.

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

In developing and drafting the regulation, the Board considered the fee as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

The Board estimates that 6587 licensees will renew their licenses. Total aggregate additional cost for the regulated community for a biennial period is approximately \$1,976,100. No legal, accounting or consulting procedures will be implicated in complying with the regulatory amendments.

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(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Local governments will not be affected by the regulation.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The Board will not incur an increase in administrative costs by implementing the regulation. Indeed, the regulatory amendments will permit the Board to recoup the costs of renewing licenses.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY 7/1/01	FY +1 7/1/02	FY +2 7/1/03	FY +3 7/1/04	FY +4 7/1/05	FY +5 7/1/06
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	0	1,976,100	0	1,976,100	0	1,976,100
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(20a) Explain how the cost estimates listed above were derived.

The cost estimates are based upon the following number of persons who will avail themselves of the specified services over a fiscal year (one-half biennium) period multiplied by the savings or additional costs to the applicant for services:

Biennial renewal

$$6587 \text{ renewals} \times \$300.00 = \$1,976,100$$

Regulatory Analysis Form

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 FY 98-99	FY -2 FY 99-00	FY -1 FY 00-01	Current FY FY 01-02
	\$432,492.28	\$405,527.84	\$560,818.70	\$632,000.00 Budgeted

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

The amendments to the existing regulations are mandated by section 13.1 of the Act (63 P.S. §271.31a) so that Board revenues meet Board expenditures.

(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

No nonregulatory alternatives were considered. See Question 21.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

No alternative regulatory schemes were considered. See Question 21.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

There are no federal licensure standards.

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

This regulation does not put Pennsylvania licensees at a competitive disadvantage with other states. The following is a comparison of the fees charged in neighboring states and states of comparable size:

Maryland	\$400
Ohio	\$250
New York	\$600
New Jersey	\$250
Delaware	\$170
Florida	\$555
California	\$400

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will have no effect on other regulations of the Board or other state agencies.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

The Board reviews regulatory proposals at regularly scheduled bi-monthly public meetings. However, in light of the statutory mandate, the Board has not scheduled public hearings or informational meetings regarding this regulation.

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(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

No changes to reporting, record keeping, or other paperwork are required by this regulation.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The regulation will be effective upon publication as final rulemaking in the *Pennsylvania Bulletin*.

(31) Provide the schedule for continual review of the regulation.

The Board reviews its revenues and costs of its programs on a fiscal year and biennial basis.

FEE REPORT FORM

Agency: State - BPOA

Date: 4/16/2002

Contact: David Williams

Phone No. 783-7194

Fee Title, Rate and Estimated Collections:

Biennial Renewal Fee-Osteopathic Physician/Osteopathic Physician and Surgeon \$440.00
Estimated Biennial Revenue: \$2,898,200 (6,587 licenses x \$440.00)

Fee Description:

The fee will be charged to every applicant for license renewal.

Fee Objective:

The fee should defray a substantial portion of the State Board of Osteopathic Medicine's administrative overhead, specifically the difference between the Board's total biennial expenditures and its total biennial revenues from non-renewal sources.

Fee-Related Activities and Costs:

<u>Projected balance carried forward on 7/01/02:</u>	<u>320,515.94</u>
Estimated general revenue (not included in amount shown below):	7,720.00
Estimated renewal revenue for OS/DO @ above rates:	2,898,280.00
Total revenue available:	3,226,515.94
Estimated expenses for FY0203:	1,171,605.00
<u>Projected ending balance 6/30/03:</u>	<u>2,054,910.94</u>
Total estimated revenue for FY03/04:	132,000.00
Estimated expenses for FY03/04:	1,386,000.00
<u>Projected ending balance 6/30/04:</u>	<u>800,910.94</u>

Analysis, Comment, and Recommendation:


It is recommended that a fee of \$440.00 be established for biennial renewal of Osteopathic Physician/Osteopathic Physician and Surgeon licenses.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE**

DATE: April 17, 2002

SUBJECT: Final Rulemaking Proposed Omitted
State Board of Osteopathic Medicine
Renewal Fees 16A-5311

TO: Steven V. Turner, Deputy General Counsel
Office of General Counsel

FROM:  Gerald S. Smith, Senior Counsel-in-Charge
Department of State

Accompanying this memorandum is a final rulemaking package for the State Board of Osteopathic Medicine relating to biennial renewal fees.

The rulemaking increases the biennial renewal from \$140.00 to \$440.00. The increase is necessary for the board revenues to meet expenditures in light of the increased expenditures required of the Board to meet the statutory mandates established by Act 13 of 2002, the Act of March 20, 2002, known as the Medical Care Availability and Reduction of Error Act (Mcare Act).

There should be no significant legal or policy issues presented by the rulemaking.

I certify that I have reviewed the proposed rulemaking and that the contents are correct to the best of my knowledge, information and belief. Should you have any questions, please feel free to contact me.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED
2002 JULY 22 AM 10:59
LEGISLATIVE HISTORY
REVIEW COMMISSION

2274

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

BY: _____
(DEPUTY ATTORNEY GENERAL)

State Board of Osteopathic Medicine
(AGENCY)

John V. Carr

DOCUMENT/FISCAL NOTE NO. 16A-5311

DATE OF APPROVAL

DATE OF ADOPTION: _____

BY: *Daniel D. Dowd, Jr.*
Daniel D. Dowd, Jr. D.O.

DATE OF APPROVAL
5/1/02
(Deputy General Counsel
(Chief Counsel,
Independent Agency
Strike inapplicable
title)

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

- [] Check if applicable
Copy not approved.
Objections attached.
- [] Check if applicable. No Attorney
General approval or
objection within 30 day
after submission.

FINAL RULING/PROPOSED/OMITTED
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OSTEOPATHIC MEDICINE
49 PA. CODE, CHAPTER 25
BIENNIAL RENEWAL FEES

The State Board of Osteopathic Medicine (Board) amends 49 Pa. Code § 25.231 (relating to fees), by increasing the biennial renewal fee for physicians as set forth in Annex A.

A. Effective Date

The amendment will be effective upon publication in the Pennsylvania Bulletin. The new fee will take effect for the biennial renewal period November 2002 - October 2004.

B. Statutory Authority

Section 13.1 of the Osteopathic Medical Practice Act (Act) (63 P.S. §271.13a).

C. Background and Purpose

Section 13.1(a) of the Act (63 P.S. § 271.13a(a)) requires the Board to increase fees by regulation if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures over a two-year period. The Board raises virtually all its revenue through fees. The biennial license renewal fee is the most substantial revenue-generating fee of the fees charged by the Board. If the Board anticipates that its revenue will not meet its expenditures, the Board must increase its revenue. The Board last increased its biennial renewal fees on November 1, 1996.

The Act mandates that the Board protect the public by adopting rules and regulations that govern the practice of medicine. In addition, the Board is generally mandated to promote public health, safety and welfare, which are accomplished through Board initiatives and coordination with other agencies and departments in the Commonwealth.

Act 13 of 2002, the Act of March 20, 2002, known as the Medical Care Availability and Reduction of Error Act (Mcare Act), amended the Osteopathic Medical Practice Act in several significant ways that will increase the operational costs of the Board. The additional duties assigned to the Board include the obligation to commence investigations within four years of receipt of notice of: a complaint with regard to a medical professional liability action that is filed against the physician; information regarding disciplinary action taken against the physician by a health care licensing authority of another state; information regarding sentencing of the physician for an offense as provided in section 15 of the Act (63 P.S. §271.15); or information regarding an arrest of the physician for any of the following offenses in this Commonwealth or another state: 18 Pa.C.S. Ch. 25 (relating to criminal homicide); 18 Pa.C.S. § 2702 (relating to aggravated assault); 18 Pa.C.S. Ch. 31 (relating to sexual offenses); or a violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act. Importantly, the Board will have authority to initiate disciplinary action against a physician for a single act of negligence. Currently the Board's authority is limited to multiple acts of negligence or a single act of gross negligence.

During the year 2000 the Bureau of Professional and Occupational Affairs (BPOA) received 1,046 complaints against physicians. During the consideration of the Mcare Act the Insurance Federation of Pennsylvania estimated that approximately 7,000 Medical Malpractice civil complaints were filed in 2001. Enforcement of the

notification requirements is expected to generate additional cases. Accordingly, the Board anticipates a substantial increase in complaints filed against physicians under the Mcare Act provisions.

Consequently the Board will require additional resources to fulfill its additional obligations under the Act as amended. During the development of the Mcare Act the legislature was aware additional Board resources were necessary to implement the requirements under the Act. These resources include staff, equipment, space, supplies, furniture, and support resources such as contracts for expert witnesses. These additional resources will be needed in the Board's Administrative Office, the Bureau of Enforcement and Investigations, the Complaints Office, the Legal Office, and the Office of Hearing Examiner. The additional operational resources and complement necessary to implement the Mcare Act are estimated to result in \$5,379,031 in increased costs per year between the State Board of Medicine and the State Board of Osteopathic Medicine.

At its May 8, 2002, Board meeting, the Board reviewed a summary of its revenues and expenses. The summary, prepared by the BPOA Revenue Office and the Bureau of Finance and Operations, shows that in order for the Board to support its pro rata portion of the increase, the Board must raise the biennial renewal fee to meet or exceed projected expenditures and thereby comply with Section 13.1 of the Act, 63 P.S. § 271.13a.

FINANCIAL STATUS	ACTUAL FY 00-01	PROJECTED FY 01-02	PROJECTED FY 02-03	PROJECTED FY 03-04	PROJECTED FY 04-05	PROJECTED FY 05-06
BEGINNING BALANCE:	366,411.48	752,043.78	320,515.94	98,910.94	(1,175,089.06)	(1,660,089.06)
REVENUE:	946,451.00	112,000.00	950,000.00	112,000.00	950,000.00	112,000.00
PRIOR YR. RETURNED FUNDS:	0.00	88,472.16	0.00	0.00	0.00	0.00
TOTAL REVENUE:	1,312,862.48	952,515.94	1,270,515.94	210,910.94	(225,089.06)	(1,548,089.06)
EXPENSES:	560,818.70	632,000.00	1,171,605.00	1,386,000.00	1,469,000.00	1,485,000.00
REMAINING BALANCE:	752,043.78	320,515.94	98,910.94	(1,175,089.06)	(1,660,089.06)	(3,033,089.06)

As the foregoing indicates, a significant deficit of \$1.17 million is projected by the end of fiscal year 2003-2004. Without the fee increase the deficit grows to over \$1.66 million by the end of fiscal year 2004-2005, and over \$3.03 million by the end of fiscal year 2005-2006. This deficit is compounded and more critical since this Board fiscally stands on its own and is not contained within the Professional Licensure Augmentation Account (PLAA).

The biennial renewal period for the Board begins November 2002. In order to meet the requirements of the Act and the Mcare Act fees must be raised for this period. Accordingly, the Board finds that pursuant to Section 204(3) of the Commonwealth Documents Law (45 P.S. § 1204(3)) good cause exists to adopt the new fee and that publication as proposed rulemaking in this circumstance is impractical and contrary to the public interest as identified by the legislature in the Mcare Act.

D. Description of Proposed Amendments

The following table outlines the affected fee and change:

<u>Application</u>	<u>Current Fee</u>	<u>New Fee</u>
Biennial renewal fee	\$140.00	\$440.00

E. Compliance with Executive Order 1996-1

In compliance with the requirements of Executive Order 1996-1 (February 6, 1996), in drafting and promulgating the regulation, the Board considered the regulation as both required by law and the least restrictive means of covering the costs of services required to be performed by the Board.

F. Fiscal Impact and Paperwork Requirements

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

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

G. Sunset Date

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

H. Regulatory Review

Pursuant to section 5.1(c) of the Regulatory Review Act (71 P.S. § 745.5a(c)), the Board submitted a copy of the regulation with proposed rulemaking omitted on May 22, 2002 to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). On the same date, the regulation 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(d) and (e) of the Regulatory Review Act (71 P.S. § 745.5a(d) and (e)), the regulation was (deemed) approved by HPLC on _____, 2002 and (deemed) approved by SCP/PLC on _____, 2002. IRRC met on _____, 2002 and the regulation was (deemed) approved.

I. Additional Information

Interested persons are invited to submit inquiries regarding this rulemaking to Gina Bittner, Board Administrator, State Board of Osteopathic Medicine, Post Office Box 2649, Harrisburg, Pennsylvania 17105-2649, (gbittner@state.pa.us).

J. Findings and Order

The State Board of Osteopathic Medicine finds:

1. That public notice of its intention to amend its regulations as adopted in this Order pursuant to the procedures specified in Sections 201 and 202 of the Commonwealth Documents Law (CDL) (45 P.S. §§1201 and 1202) has been omitted pursuant to the authority contained in Section 204(3) of the CDL (45 P.S. § 1204(3)), because the Board has, for good cause, found that the procedures specified in Sections 201 and 202 of the CDL are, in this circumstance, impractical and contrary to the public interest as identified by the legislature in the Mcare Act because the Board must increase revenues immediately in order to meet the obligations imposed on it by the Mcare Act.

2. That the amendment of the regulations of the Board in the manner provided in this Order is necessary and appropriate for the administration of its authorizing statute.

Accordingly, the Board, acting under its authorizing statute, orders:

- A. Regulations of the Board are hereby amended at 49 Pa. Code § 25.231, as set forth in Annex A.
- B. The Chairman of the Board shall submit this Order and attached Annex A to the Office of General Counsel and the Office of Attorney General for approval as to form and legality as required by law.
- C. The Chairman of the Board shall certify this Order and attached Annex A and deposit the same with the Legislative Reference Bureau as required by law.
- D. This Order shall become effective immediately upon publication in the Pennsylvania Bulletin.

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 F. FEES

§25.231. Schedule of fees.

An applicant for a license, certificate, registration or service shall pay the following fees at the time of application:

* * *

Biennial renewal—physicians~~[\$140]~~ \$440

* * *



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF OSTEOPATHIC MEDICINE

Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-4858

May 22, 2002

The Honorable John R. McGinley, Jr., Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Final Regulation with Notice of Proposed Rulemaking Omitted
State Board of Osteopathic Medicine
16A-5311: Biennial Renewal Fees

Dear Chairman McGinley:

Enclosed is a copy of a final regulation with notice of proposed rulemaking omitted of the State Board of Osteopathic Medicine pertaining to biennial renewal fees.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of this regulation.

Sincerely,

A handwritten signature in black ink that reads "Daniel D. Dowd, Jr., D.O." in a cursive script.

Daniel D. Dowd, Jr., D.O., Chairperson
State Board of Osteopathic Medicine

DDD/ALN/dws

Enclosure

cc: David M. Williams, Acting Commissioner
Bureau of Professional and Occupational Affairs
John T. Henderson, Jr., Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Philip Zarone, Regulatory Counsel
Department of State
Gerald S. Smith, Senior Counsel in Charge
Department of State
Amy L. Nelson, Counsel
State Board of Osteopathic Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-5311
SUBJECT: State Board of Osteopathic Medicine - Renewal Fees
AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

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 REGULATORY REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
5-22-02	<i>Lou A. Clark</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
5/22/02	<i>Lanny J. Weaver</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
5-22-02	<i>Elaine Payne</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
5-22-02	<i>Pam Lubold</i>	ATTORNEY GENERAL
		LEGISLATIVE REFERENCE BUREAU