

# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

(1) Agency:

**Department of State, Bureau of Professional and Occupational Affairs, State Board of Chiropractic**

(2) Agency Number:

Identification Number: **16A-4318**

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IRRC Number: **2792-**

(3) Short Title:

**Continuing education violations**

(4) PA Code Cite:

**49 Pa. Code § 5.77**

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**  
**(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us**

Secondary Contact: **Cynthia K. Montgomery, Regulatory Counsel, Department of State**  
**(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; cymontgome@state.pa.us**

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Chiropractic**

**(717)783-7155; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-chiro@state.pa.us**

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Omitted Regulation
- ☐ Emergency Certification Regulation;
  - ☐ Certification by the Governor
  - ☐ Certification by the Attorney General

## Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

**This rulemaking amends the regulations of the State Board of Chiropractic to provide that a licensee who has not completed the required amount of continuing education is subject to imposition of a civil penalty via an Act 48 citation and is required to make up the deficiency within 6 months or be subject to formal disciplinary action.**

(9) Include a schedule for review of the regulation including:

- |   |                            |
|---|----------------------------|
| A. The date by which the agency must receive public comments:                               | <b>October 26, 2009</b>    |
| B. The date or dates on which public meetings or hearings will be held:                     | <b>N/A</b>                 |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <b>By 9/1/2011 renewal</b> |
| D. The expected effective date of the final-form regulation:                                | <b>Upon publication</b>    |
| E. The date by which compliance with the final-form regulation will be required:            | <b>Upon publication</b>    |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <b>N/A</b>                 |

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

**The Board continually reviews the efficacy of its regulations, as part of its annual review process pursuant to Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the third Thursday of each odd-numbered month. More information can be found on the Board's website ([www.dos.state.pa.us/chiro](http://www.dos.state.pa.us/chiro)).**

## **SECTION II: STATEMENT OF NEED**

(11) State the statutory authority for the regulation. Include specific statutory citation.

**The rulemaking is adopted under sections 302(3), 506(a) and 507 of the Chiropractic Practice Act (act) (63 P.S. §§ 625.302(3), 625.506(a) and 625.507).**

## Regulatory Analysis Form

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

**The rulemaking is not mandated by any Federal or State law or court order.**

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

**Each licensed chiropractor is required to complete at least 24 hours of approved continuing education during each renewal period. Under the Board's current regulations, A licensee who fails to comply is subject to formal disciplinary action, which may include both a civil penalty and the possibility of suspension of the license. Almost always, the sanction is a civil penalty proportionate to the extent of deficiency and a requirement to make up the deficient continuing education. This rulemaking takes advantage of the streamlined procedures available under Act 48 to reach the same result as in a formal action. By utilizing the Act 48 citation system for these violations, the Board, the Bureau and the affected licensees will benefit from the reduced cost of prosecuting through these more streamlined procedures.**

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

**This rulemaking is not based upon any scientific data, studies, or references.**

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

**The Board has not identified any group of individuals or entities that will be adversely affected by the rulemaking.**

(16) 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.

**The rulemaking will apply to all licensees of the Board, but it is only applicable to those licensees who either fail to timely complete the required amount of mandatory continuing education. There are approximately 4,150 chiropractors in this Commonwealth, with active licenses.**

## Regulatory Analysis Form

### **SECTION III: COST AND IMPACT ANALYSIS**

(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. Explain how the dollar estimates were derived.

**There are no costs to members of the regulated community associated with compliance with the rulemaking. The Board and the Bureau and those few members of the regulated community who are charged with failing to complete the required amount of continuing education will enjoy a savings as a result of compliance with this proposed rulemaking, as a result of the summary Act 48 citation process rather than full formal disciplinary action.**

(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. Explain how the dollar estimates were derived.

**There are no costs or savings to local governments associated with compliance with the rulemaking.**

(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. Explain how the dollar estimates were derived.

**There are no costs or savings to state government associated with implementation of the rulemaking.**

(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.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>
Regulated Community						
Local Government						
State Government						
<b>Total Savings</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>	<b>N/A</b>
<b>COSTS:</b>						
Regulated Community						
Local Government						

## Regulatory Analysis Form

State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Program	FY -3 2007-08	FY -2 2008-09	FY -1 2009-10	Current FY 2010-11
Pa. State Board of Chiropractic	\$397,552	\$538,000	\$565,000	\$593,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

**No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any cost.**

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

**The Board did not solicit input for an exposure draft. The Board discussed the proposed rulemaking in public session during the Board's meetings in May and November, 2007. The Board discussed the final rulemaking in public session during the Board's meetings in January and May, 2010, and again at its meeting in November, 2010, following IRRC disapproval.**

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

**No alternative regulatory schemes were considered.**

(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 regulations.

**The rulemaking does not overlap or conflict with any federal requirements.**

## Regulatory Analysis Form

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

**Each state surrounding Pennsylvania requires its licensed chiropractors to meet minimum continuing education requirements each renewal period. The regulation will not put Pennsylvania at a competitive disadvantage with other states.**

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

**This rulemaking would have no effect on other regulations of the Board or other state agencies.**

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

**The rulemaking will not change any existing reporting, recordkeeping or other paperwork requirements.**

(28) 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 determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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Copy below is hereby approved as to  
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Copy below is hereby certified to be a true and correct  
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Executive or Independent  
Agencies.

BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Chiropractic

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 16A-4318

DATE OF APPROVAL

NOV 23 2010

DATE OF APPROVAL

(Deputy General Counsel  
(Chief Counsel,  
Independent Agency  
(Strike inapplicable title)

BY:

DATE OF ADOPTION:

Joseph T. Grice, DC

TITLE: Vice-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 RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CHIROPRACTIC

49 Pa. Code § 5.77(d)  
Continuing Education Violations



The State Board of Chiropractic (Board) amends § 5.77 (relating to failure to meet continuing education requirements) by adding subsection (d), to read as set forth in Annex A.

#### Description and Need for the Rulemaking

Section 507(a) of the Chiropractic Practice Act (act) (63 P.S. § 625.507(a)) requires each licensee to complete at least 24 hours of continuing education during each biennial renewal period. Under section 506(a)(13) of the act (63 P.S. § 625.506(a)(13)), the Board may take disciplinary action against a licensee who fails to perform any statutory obligation placed upon a licensed chiropractor. Section 703 of the act (63 P.S. § 625.703) authorizes the Board to levy a civil penalty of up to \$1,000 on a licensee who violates any provision of the act. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board proposed to utilize the more streamlined procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P.S. § 2205(a)), wherein the Commissioner of Professional and Occupational Affairs, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs, may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards.

The Board proposed permitting a licensee to renew despite not having completed the required amount of continuing education. However, the licensee would be required to pay a civil penalty by citation as set forth in § 43b.22 (related to schedule of civil penalties – chiropractors) and to make up the deficient hours of continuing education and to provide proof to the Board within 6 months of the beginning of the renewal cycle. A licensee who does not do so will be subject to discipline under section 506(a)(9) of the act (63 P.S. § 625.506(a)), which authorizes the Board to discipline a licensee for violating a regulation of the Board. Second and subsequent violations of failing to complete all required continuing education will be subject to formal action.

#### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 39 Pa.B. 2210 (May 2, 2009) with a 30-day public comment period. The Board received no written comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

In developing this rulemaking, the Board envisioned a scheme of enforcement by which a licensee who did not complete the required amount of continuing education would be able to renew the license, but would have to pay a civil penalty under an Act 48 schedule based upon the amount of deficiency and to make up the entire deficiency within 6 months. It was intended that all professional licensing boards within the Bureau of Professional and Occupational Affairs that require continuing education would use a similar enforcement scheme. However, due to



subsequently-raised concerns about statutory authority to renew the license of one who acknowledges not having completed the required amount of continuing education, the Board ultimately has abandoned this scheme. Instead, completion of the required amount of continuing education will remain a condition of renewal, and a licensee who acknowledges not having completed the required amount of continuing education will not be renewed. Those licensees who are discovered, such as through the post-renewal random audit, to have failed to complete the required amount of continuing education will be subject to imposition of a proportionate civil penalty via a citation and will be required to make up the deficiency. However, because it will take time to complete the post-renewal audit process, the time limitation by which the deficiency must be cured will not be determined by the renewal date, but by the date disciplinary action is initiated by the issuance of a citation. Because continuing education is required to maintain competence, the failure to complete continuing education is not a violation if the licensee no longer practices until the continuing education deficiency is cured. Therefore, the Board has also provided in § 5.77(d) that a licensee who permits the license to expire and then ceases practice until completing the required amount of continuing education and then reactivates the license upon a demonstration that the deficiency has been cured should not be subject to disciplinary action for failing to initially complete the required amount of continuing education. A licensee who did not renew and continued to practice, despite having failed to complete the required continuing education, would be subject to disciplinary action both for failing to complete continuing education (under this subsection) and for practicing while the license was lapsed (under § 5.17(g) (relating to biennial registration; unregistered and inactive status; failure to renew; address of record)).

The HPLC first requested an explanation for the jeopardy of a licensee who has not completed continuing education having to certify on the biennial renewal form that the licensee has complied with the mandatory continuing education requirements. As discussed above, the Board will not renew the license of a licensee who has acknowledged failing to complete the required amount of continuing education. The HPLC also questioned whether a licensee who falsely states on the renewal form that the licensee has completed the continuing education requirement would be disciplined for practicing fraud or deceit in obtaining a license to practice chiropractic. A licensee who makes such a false statement would be discovered through the audit process. A prosecuting attorney would have discretion to bring formal disciplinary action in deviation from application of the Act 48 schedule due to the licensee's apparent deceitful act, charging both the failure to complete continuing education and obtaining the license by deceit. The Board would determine an appropriate sanction, possibly including a reprimand or suspension as well as a civil penalty, for any violation that is proved. But, in the exercise of prosecutorial discretion, the prosecuting attorney alternatively could choose only to issue the appropriate citation, such as where the licensee in good faith believed that the licensee had complied with the continuing education requirement.

The HPLC next requested an explanation as to how a licensee would make up a continuing education deficiency after renewing, but must provide proof of attendance at continuing education courses during the previous biennial renewal period. In drafting this provision, it was the Board's intention to refer to the continuing education requirement of the previous biennium, not attendance during the previous biennium. The Board has revised this provision to phrase this more clearly and to explicitly acknowledge that continuing education

may be completed in the current biennium, subject to the limitation of § 5.77(b) that attendance at continuing education to reactivate an unregistered license cannot be applied to the requirement for the current biennium.

Finally, because when published as proposed the Board intended to renew the license of a licensee who had not completed the required amount of continuing education subject to imposition of a civil penalty via citation and the obligation to make up the deficiency within 6 months, the HPLC asked how the Board will monitor the grace period during which a licensee must make up a deficiency in continuing education. As discussed above, the Board has chosen to abandon this method of enforcement. Instead, it will continue the current practice under which a licensee must verify that the licensee has complied with the continuing education requirements. If the licensee does not verify completion, the Board will not renew the license, and without license renewal, there is no grace period to monitor. However, as past audits have demonstrated, some licensees who have verified compliance will not have actually completed the required amount of continuing education. As discussed above, these licensees will be subject to citation and the obligation to cure the deficiency within 6 months of issuance of the citation. Because legal proceedings have begun, the legal office will track cited licensees for submission of proof of completion of the required amount of continuing education.

IRRC shared the concerns expressed by the HPLC as described above. IRRC correctly noted that the only reference to continuing education in § 5.14 (relating to certification to use adjunctive procedures) concerns initial qualification to be certified to use adjunctive procedures, not any ongoing continuing education requirement. Accordingly, the Board has revised § 5.77(d) to omit reference to § 5.14.

#### Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth, its political subdivisions, or the private sector. The rulemaking will impose no additional paperwork requirements upon the Commonwealth, its political subdivisions, or the private sector.

#### Effective Date

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

#### Statutory Authority

This rulemaking is authorized by sections 302(3), 506(a)(9), and 507(a) of the Chiropractic Practice Act (63 P.S. §§ 625.302(3), 625.506(a)(9), and 625.507(a)).

#### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on September 11, 2009, the Board submitted a copy of the notice of proposed rulemaking, published at 39 Pa.B.

5594, to IRRC and the chairpersons of the HPLC and the 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 Board has considered all comments received from the HPLC and IRRC.

On September 3, 2010, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on September 21, 2010, the final-form rulemaking was disapproved by the HPLC. On October 6, 2010, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 7, 2010, and disapproved the final-form rulemaking. As described in its disapproval order, IRRC disapproved the rulemaking because it concluded that the Board does not have statutory authority to renew the license of a licensee who acknowledged failing to complete the required amount of continuing education, as previously intended.

In response to IRRC's disapproval, the Board revised the final-form rulemaking to remove the provisions for renewal despite failure to complete required continuing education, resulting in the final-form rulemaking as discussed above. The Board delivered the revised final-form rulemaking, together with the supporting report required by section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)), to IRRC, the HPLC and the SCP/PLC on November 24, 2010. Under section 7(c.1) of the Regulatory Review Act (71 P.S. § 745.7(c.1)), IRRC met on December 16, 2010, and approved the final-form rulemaking. Under section 7(d) of the Regulatory Review Act (71 P.S. § 745.7(d)), the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC on February \_\_\_, 2011.

#### Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-7200, or by e-mail at [stchiro@state.pa.us](mailto:stchiro@state.pa.us).

#### 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) and 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 amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 39 Pa.B. 5594.

- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Chiropractic Practice Act.

Order

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

- (a) The regulations of the Board at 49 Pa. Code Chapter 5 are amended, by adding § 5.77(d) to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A 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 Annex A 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*.

Kathleen G. McConnell, DC, Chairperson  
State Board of Chiropractic

## Annex A

### TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

#### PART I. DEPARTMENT OF STATE

#### Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

#### CHAPTER 37. STATE BOARD OF CHIROPRACTIC

\* \* \* \* \*

#### Subchapter G. CONTINUING EDUCATION

\* \* \* \* \*

#### § 5.77. Failure to meet continuing education requirements.

\* \* \* \* \*

(d) Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline under § 43b.22 (relating to schedule of civil penalties – chiropractors). Within 6 months after the end of the renewal period during which ISSUANCE OF A CITATION UNDER § 43b.22 FOR FAILING TO COMPLETE the required amount of continuing education was not completed, the licensee shall make up the deficiency and shall provide proof of attendance at continuing education courses as required by NECESSARY TO SATISFY THE REQUIREMENTS OF section 507 of the act (63 P.S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period. THE ADDITIONAL CONTINUING EDUCATION MAY BE COMPLETED DURING THE CURRENT BIENNIAL REGISTRATION PERIOD, SUBJECT TO THE LIMITATION OF SUBSECTION (b). In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months

~~after the beginning of a biennial period in which the licensee renewed without having completed~~  
ISSUANCE OF A CITATION UNDER § 43b.22 FOR FAILING TO COMPLETE the required  
amount of continuing education shall subject the licensee to disciplinary action under section  
506(a)(9) of the act (63 P.S. § 625.506(a)(9)). Failure to complete all of the required amount of  
continuing education within 6 months after the beginning of a biennial period in which the  
licensee renewed without having completed ISSUANCE OF A CITATION UNDER § 43b.22  
FOR FAILING TO COMPLETE the required amount of continuing education shall subject the  
licensee to disciplinary action under section 506(a)(13) of the act. THIS SUBSECTION DOES  
NOT APPLY TO A LICENSEE WHO (1) PERMITTED THE LICENSE TO EXPIRE AT THE  
CONCLUSION OF THE BIENNIAL RENEWAL PERIOD FOR WHICH THE LICENSEE  
DID NOT COMPLETE THE REQUIRED AMOUNT OF CONTINUING EDUCATION AND  
(2) DID NOT PRACTICE THE PROFESSION PRIOR TO REACTIVATING THAT LICENSE  
UNDER § 5.17(j) (RELATING TO BIENNIAL REGISTRATION; UNREGISTERED STATUS  
AND INACTIVE STATUS; FAILURE TO RENEW; ADDRESS OF RECORD) UPON A  
DEMONSTRATION THAT THE LICENSEE SUBSEQUENTLY COMPLETED ALL  
REQUIRED DEFICIENT CONTINUING EDUCATION.

\* \* \* \* \*

\* \* \* \* \*

[ (6) ] (7) Record maintenance. \* \* \*

\* \* \* \* \*

(d) *Lead service line replacement.*

(1) *Initiation of lead service line replacement.* A system that exceeds the lead action level when conducting lead and copper tap monitoring in accordance with § 109.1103(c)(1) or (d)(1) after construction or modification of corrosion control treatment facilities shall initiate lead service line replacement. The first year of lead service line replacement begins [with the next 6-month monitoring period following the action level exceedance] on the first day following the end of the monitoring period in which the action level was exceeded. If monitoring is required annually or less frequently, the end of the monitoring period is September 30 of the calendar year in which sampling occurred. If the Department has designated an alternate monitoring period in writing, the end of the monitoring period is the last day of the designated alternate monitoring period.

\* \* \* \* \*

(5) *Discontinuation of lead service line replacement.* A water supplier may cease replacing lead service lines if the system meets the lead action level during two consecutive 6-month monitoring periods when conducting lead and copper tap monitoring. Thereafter, if the system exceeds the lead action level, the water supplier shall recommence replacing lead service lines in accordance with paragraph [ (2) ] (6).

(6) *Resumption of lead service line replacement.* Water systems that resume a lead service line replacement program shall update their lead service line inventory to include those sites that were previously excluded under paragraph (3). Systems shall divide the updated number of remaining lead service lines by the number of remaining years in the replacement program to determine the number that must be replaced each year. If the system has completed a 15-year lead service line replacement program, the Department will determine a schedule for replacing or retesting lead service lines that were previously tested out under the replacement program (when the system reexceeds the lead action level).

[Pa.B. Doc. No. 09-1782. Filed for public inspection September 25, 2009, 9:00 a.m.]

## STATE BOARD OF CHIROPRACTIC

[ 49 PA. CODE CH. 5 ]

### Continuing Education Violations

The State Board of Chiropractic (Board) proposes to amend its regulations to amend § 5.77(d) (relating to failure to meet continuing education requirements), by adding subsection (d) to read as set forth in Annex A.

#### *Effective Date*

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

#### *Statutory Authority*

The amendment is authorized under sections 302(3), 506(a)(9) and 507(a) of the Chiropractic Practice Act (act) (63 P. S. §§ 625.302(3), 625.506(a)(9) and 625.507(a)).

#### *Background and Need for the Amendment*

Section 507(a) of the act requires each licensee to complete at least 24 hours of continuing education during each biennial renewal period. Under section 506(a)(13) of the act, the Board may take disciplinary action against a licensee who fails to perform any statutory obligation placed upon a licensed chiropractor. Disciplinary actions for failing to complete the continuing education requirement in a timely manner invariably result in the licensee being required to pay a civil penalty proportionate to the amount of deficiency and to make up the deficiency promptly. Accordingly, the Board proposes to utilize the more streamlined procedures under section 5(a) of the act of July 2, 1993 (P. L. 345, No. 48) (Act 48) (63 P. S. § 2205(a)) where in the Commissioner of Professional and Occupational Affairs, after consultation with licensing boards in the Bureau of Professional and Occupational Affairs, may promulgate a schedule of civil penalties for violations of the acts or regulations of these licensing boards.

#### *Description of the Proposed Amendments*

The proposed rulemaking would add subsection (d). Because continuing education is generally required as a condition of renewal, under existing § 5.77(c) a licensee who has not completed the mandatory continuing education may, without any penalty, permit his license to become inactive (and not practice chiropractic in this Commonwealth) until the licensee completes the required amount continuing education. Proposed subsection (d) would permit a licensee who did not complete the required amount of continuing education to renew (and practice), but would also require the licensee to pay an Act 48 civil penalty and make up the deficient credit hours within 6 months. A licensee who does not make up the deficiency timely and provide proof will be subject to formal disciplinary action.

#### *Fiscal Impact and Paperwork Requirements*

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

#### *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 September 11, 2009, 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 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 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, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, P. O. Box 2649, Harrisburg, PA 17105-2649, or by email at [st-chiro@state.pa.us](mailto:st-chiro@state.pa.us), within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Use reference No. 16A-4318 (continuing education violations), when submitting comments.

KATHLEEN G. MCCONNELL, D. C.,  
Chairperson

**Fiscal Note:** 16A-4318. 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 37. STATE BOARD OF CHIROPRACTIC

#### Subchapter G. CONTINUING EDUCATION

#### § 5.77. Failure to meet continuing education requirements.

\* \* \* \* \*

(d) Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline under § 43b.22 (relating to schedule of civil penalties—chiropractors). Within 6 months after the end of the renewal period during which the required amount of continuing education was not completed, the licensee shall make up the deficiency and provide proof of attendance at continuing education courses as required under section 507 of the act (63 P. S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period. In addition to any civil penalty assessed under this subsection, failure to provide the Board with proof of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(9) of the act (63 P. S. § 625.506(a)(9)). Failure to complete all of the required amount of continuing education within 6 months after the beginning of a biennial period in which the licensee renewed without having completed the required amount of continuing education shall subject the licensee to disciplinary action under section 506(a)(13) of the act.

[Pa.B. Doc. No. 09-1783. Filed for public inspection September 25, 2009, 9:00 a.m.]

## STATE BOARD OF DENTISTRY

[49 PA. CODE CH. 33]

### Clinical Examinations

The State Board of Dentistry (Board) proposes to amend § 33.103 (relating to examinations) to read as set forth in Annex A.

#### Effective Date

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

#### Statutory Authority

The proposed rulemaking is authorized under section 3(c), (d), (e) and (o) of the Dental Law (63 P. S. § 122(c), (d), (e) and (o)). Section 3(c) and (d) authorize the Board to license dentists and dental hygienists by examination. Section 3(e) authorizes the Board to provide for the conduct of licensure examinations. Section 3(o) provides the general authority of the Board "to adopt, promulgate and enforce such rules and regulations as may be deemed necessary by the Board."

#### Background and Purpose

Currently, the Board requires that applicants for licensure as a dentist or dental hygienist take and pass the National Board Dental or Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations, Inc. (written examination) and the clinical examination administered by the Northeast Regional Board of Dental Examiners, Inc. (NERB). Over the last few years, the Board has been, and will continue to be involved in the efforts to adopt a National clinical examination, but to date, it has not come to fruition. In the absence of a National clinical examination, the Board has determined that applicants for licensure by examination should be able to take any of the five regional clinical examinations; that is, those examinations administered by NERB, the Southern Regional Testing Agency, Inc. (SRTA), the Western Regional Examining Board (WREB), the Central Regional Dental Testing Service, Inc. (CRDTS), or the Council of Interstate Testing Agencies, Inc. (CITA).

In March of 2009, the Board solicited comments from stakeholders and interested parties regarding the proposal to expand the list of acceptable clinical examinations to include those administered by each of these five regional examining agencies. All of the commentators agreed in theory with the proposal to expand the list of acceptable examinations. However, the Pennsylvania Dental Association (PDA) suggested that the Board consider, instead of listing the five regional testing agencies, defining the criteria by which a clinical examination will be considered valid and reliable. However, the Board believes that, while many of the Board members are experienced dentists and dental hygienists, they are not psychometricians, nor are they trained in education measurement or quantitative psychology. Therefore, the Board is not able to evaluate whether a particular examination is psychometrically sound, valid, reliable or legally defensible. The Board currently relies on NERB to develop and administer an examination that is valid, reliable and legally defensible. The Board will continue to rely on each of the regional testing agencies to defend their examinations if challenged. The Board, however, has reviewed the content of the examinations, and finds them to be sub-

ARTHUR COCCODRILLI, CHAIRMAN  
GEORGE D. BEDWICK, VICE CHAIRMAN  
S. DAVID FINEMAN, ESQ.  
SILVAN B. LUTKEWITTE III  
JOHN F. MIZNER, ESQ.  
KIM KAUFMAN, EXECUTIVE DIRECTOR  
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417  
FAX: (717) 783-2664  
lrrc@lrrc.state.pa.us  
<http://www.lrrc.state.pa.us>

## INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 15, 2010

Kathleen McConnell, D.C., Chair  
State Board of Chiropractic  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-4318 (IRRC #2792)  
State Board of Chiropractic  
Continuing Education Violations

Dear Ms. McConnell:

The Independent Regulatory Review Commission disapproved your regulation on October 7, 2010. Our order is enclosed and will be available on our website at [www.lrrc.state.pa.us](http://www.lrrc.state.pa.us).

Within 40 days of receipt of our order, Section 7(a) of the Regulatory Review Act requires you to select one of the following options: (1) proceed with promulgation under Section 7(b); (2) proceed with promulgation under Section 7(c); or (3) withdraw the regulation. If you do not take any action within this period, the regulation is deemed withdrawn.

If you or your staff have any questions, please contact Kim Kaufman, our Executive Director, at 783-5506.

Sincerely,

  
George D. Bedwick

Acting Chairman

wbg

Enclosure

cc: Honorable Robert M. Tomlinson, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee

Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee

Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee

Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee

Honorable Basil L. Merenda, Acting Secretary, Department of State

**INDEPENDENT REGULATORY REVIEW COMMISSION  
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held October 7, 2010

George D. Bedwick, Acting Chairman  
S. David Fineman, Esq., by Phone  
Silvan B. Lutkewitte, III

Regulation No. 16A-4318 (#2792)  
State Board of Chiropractic  
Continuing Education Violations

On September 11, 2009, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the State Board of Chiropractic (Board). This rulemaking amends 49 Pa. Code § 5.77. The proposed regulation was published in the September 26, 2009 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on September 3, 2010.

This rulemaking is intended to clarify the consequences of failing to comply with the continuing education provisions in the Chiropractic Practice Act (63 P.S. § 625.507(a)) and the Board's regulation (49 Pa. Code § 5.77). Both require a licensee to complete 24 hours of continuing education credits each biennium in order to qualify for license renewal. Under the amendments in this rulemaking, a licensee who has not completed the required amount of continuing education credits may renew, subject to being issued a citation, paying a fine and making up the continuing education credits within six months.

We find no statutory authority allowing the Board to renew a license for an applicant who has not completed the statutorily mandated 24 hours of continuing education during the prior two-year license period. Accordingly, this regulation does not meet the Regulatory Review Act criterion of statutory authority to promulgate the regulation. 71 P.S. § 745.5b.

In our comments issued November 25, 2009, on the proposed regulation, we stated we would review the Board's responses to the issues raised by the House Professional Licensure Committee in our consideration of whether the final-form regulation is in the public interest. The Board responded with an explanation that it would amend its renewal form to provide for the alternative that the licensee did not complete the continuing education, but will make it up in six months. The Board also amended the regulation to provide an exception to the continuing education requirement (not found in the statute) which permits a license to be renewed subject to making up a continuing education deficiency within six months.

The Board's responses indicate that the intent of the amended regulatory language at 49 Pa. Code §§ 5.77(a) and (d), is to allow a renewal of a license when a licensee failed to attend the required 24 hours of mandatory continuing education during the license period. This intent is also expressed in the Board's response to Question 8 of the Regulatory Analysis Form.

Continuing education relating to license renewal is addressed in the Chiropractic Practice Act (Act), which states at 63 P.S. § 625.507(a):

**Requirement for license renewal. — As a condition for the biennial renewal of a license to practice chiropractic, a licensee shall submit to the Board evidence**

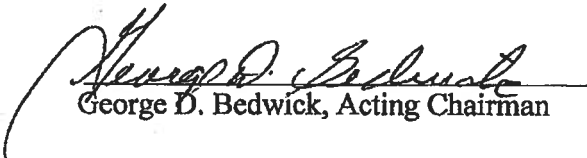
that he has completed at least 24 hours of continuing chiropractic education within the immediately preceding two-year period.... (Emphasis added.)

The only exception to the continuing education mandate in the statute is "in emergency or hardship cases." See 63 P.S. § 625.507(h). When a licensee does not meet this condition, the applicant, "as a condition for the biennial renewal of a license to practice chiropractic," is required to have attended "at least 24 hours of continuing chiropractic education in the immediately preceding two-year period...." 63 P.S. § 625.507(a).

The Commission concludes that this regulation is not consistent with the statutory authority of the Board (63 P.S. § 625.507(a)) and the intention of the General Assembly. Therefore, we find promulgation of this regulation is not in the public interest.

**BY ORDER OF THE COMMISSION:**

This regulation is disapproved.

  
George D. Bedwick, Acting Chairman



**REPORT OF THE STATE BOARD OF CHIROPRACTIC:**  
**RESPONSE TO IRRC'S ORDER DISAPPROVING**  
**FINAL RULEMAKING 16A-4318 (CONTINUING EDUCATION VIOLATIONS)**

On September 3, 2010, the State Board of Chiropractic (Board) delivered final rulemaking 16A-4710 (continuing education) to the Independent Regulatory Review Commission (IRRC), the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC). On September 21, 2010, the HPLC met and approved the final rulemaking, and on October 6, 2010, the SCP/PLC was deemed to have approved the final rulemaking. At its meeting on October 7, 2010, IRRC disapproved the final rulemaking. The Board has determined that it should revise the final rulemaking under section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)) and now submits this report responding to IRRC's disapproval order, as required by section 7(c) of the Regulatory Review Act and 1 Pa. Code § 311.4(3)).

As stated in its disapproval order of October 15, 2010, IRRC disapproved the final rulemaking because it concluded that the rulemaking is not consistent with the Board's statutory authority and therefore not in the public interest, under section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b).

As intended to be amended by this final rulemaking (with the amended material emphasized), § 5.77(a) would provide: "Unless granted a waiver **or as permitted under subsection (d)**, a licensee who fails to satisfy continuing education requirements for a biennial registration period will have his license classified as unregistered and will be prohibited from practicing chiropractic until the licensee satisfies continuing education requirements and renews registration in accordance with § 5.18 (relating to reporting of other licenses, certificates or authorizations to practice, disciplinary sanctions and criminal dispositions). As intended to be added by this final rulemaking, § 5.77(d) would provide: "Unless otherwise excused by the act or this chapter, a licensee who fails to complete the minimum required amount of continuing education during the applicable renewal period is subject to discipline

under § 43b.22 (relating to schedule of civil penalties – chiropractors). Within 6 months after the end of the renewal period during which the required amount of continuing education was not completed, the licensee shall make up the deficiency and shall provide proof of attendance at continuing education courses as necessary to satisfy the requirements of section 507 of the act (63 P.S. § 625.507) and § 5.14 (relating to certification to use adjunctive procedures) for the previous biennial registration period.” As a result, a licensee who has not completed the required amount of continuing education would still have the license renewed, subject to paying the civil penalty levied by citation and making up the deficiency.

IRRC looked to section 507 of the Chiropractic Practice Act (act) (63 P.S. § 625.507), which provides in pertinent part (emphasis provided):

- (a) Requirements for license renewal. – **As a condition for the biennial renewal of a license to practice chiropractic, a licensee shall submit to the board evidence that he has completed at least 24 hours of continuing chiropractic education within the immediately preceding two-year period**, provided that this requirement for continuing chiropractic education shall apply for the first time to the renewal of licenses in 1988.

\* \* \*

- (h) Exceptions. – The board may make exceptions to the continuing education program requirements in emergency or hardship cases on the basis of evidence submitted in proof of an emergency or hardship.

\* \* \*

Because the only exceptions excusing compliance with the requirement of mandatory continuing education in section 507 of the act are for documented emergency or hardship, IRRC concluded that, without obtaining a waiver, a licensee is required to complete mandatory continuing education as a condition of renewal. IRRC therefore determined that the Board does not have statutory authority to promulgate a regulation that would permit the Board to renew the license of a licensee who acknowledges not completing mandatory continuing education. Based upon IRRC’s analysis, the Board has determined that it should revise the rulemaking to abandon this scheme.

Instead of the proposed scheme, in the absence of a waiver, the Board will not renew the license of a licensee who acknowledges not having completed the required amount of continuing education. A licensee who did not complete the required amount of continuing education will be subject to disciplinary action in the form of a civil penalty via citation and will be required to make up the deficiency within 6 months of issuance of that citation. A licensee who fails to make up the deficiency will be subject to formal disciplinary action, which could result in the suspension of the license. Notwithstanding these provisions, a licensee who has not completed the required amount of continuing education may avoid disciplinary action by permitting the license to expire and not practicing the profession until the licensee has completed the required amount of continuing education and has had the license reactivated.

IRRC raised no objection to the final rulemaking other than as stated above.

As discussed above, the Board has revised its rulemaking under section 7(c) of the Regulatory Review Act (71 P.S. § 745.7(c)) and now delivers this revised final rulemaking to IRRC, the HPLC and the SCP/PLC.

Kathleen G. McConnell, DC, Chairperson  
State Board of Chiropractic



**COMMENTATORS LIST**  
**Reg. 16A-4318**

There were no commentators for this regulation.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF CHIROPRACTIC

P.O. Box 2649  
Harrisburg, PA 17105-2649  
(717) 783-7155

November 24, 2010

The Honorable Arthur Coccodrilli, Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harrisstown 2, 333 Market Street  
Harrisburg, PA 17101

Re: Final Regulation  
State Board of Chiropractic  
16A-4318: Continuing Education Violations

Dear Chairman Coccodrilli:

Enclosed are the final rulemaking and the report of the State Board of Chiropractic prepared in accordance with section 7(c) of the Regulatory Review Act, 71 P.S. § 745.7(c), following disapproval of the final form regulation by the Independent Regulatory Review Commission. The Board has revised the final form regulation and resubmits the rulemaking for approval in accordance with the Regulatory Review Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen G. McConnell".

Kathleen G. McConnell, DC, Chairperson  
State Board of Chiropractic

KGM/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Steven V. Turner, Chief Counsel  
Department of State  
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge  
Department of State  
Thomas A. Blackburn, Regulatory Unit Counsel  
Department of State  
Steven Wennberg, Counsel  
State Board of Chiropractic  
State Board of Chiropractic

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

I.D. NUMBER: 16A-4318

SUBJECT: CONTINUING EDUCATION VIOLATIONS

AGENCY: DEPARTMENT OF STATE  
STATE BOARD OF CHIROPRACTIC

**TYPE OF REGULATION**

- Proposed Regulation
- X 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

RECEIVED  
IRRC  
2010 NOV 24 A 10:11

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
11/24/10	<i>Michael P. McGeehan</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
_____	_____	MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
11/24/10	<i>Robert M. Tomlinson</i>	SENATE COMMITTEE ON CONSUMER PROTECTION AND PROFESSIONAL LICENSURE
_____	_____	MAJORITY CHAIRMAN <u>Robert M. Tomlinson</u>
11/24/10	<i>K. Cooper</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

November 23, 2010