



**Pennsylvania  
Psychiatric Society**

The Pennsylvania  
District Branch of the  
American Psychiatric Association

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor  
333 Market Street  
Harrisburg, PA 17101

Dear Mr. Nyce:

I am writing in regard to the Administrative Regulations to the Uniform Firearms Act, ID 17-60, which the Commission is scheduled to review tomorrow.

These regulations have just come to our attention. Unfortunately, in § 33.120 (a) and (b), they are in direct conflict with Title 18, Article G, Chapter 61, Subchapter A, §6105 (c) (4) - "Persons not to possess . . . firearms." Because the proposed regulation is in direct conflict with the law, we respectfully request that the Judiciary Committee disapprove the Administrative Regulation of the Uniform Firearms Act, I.D. # 17-60. As I understand it, disapproval is the only action at this time which would allow the regulation to be re-written to conform to the law and its objectives.

Section 6105 (c) (4) of the law states that people committed under Sections 302, 303, or 304 of the Mental Health Procedures Act are prohibited from possessing firearms. However, in a sentence added by Act 70 of 1998, the paragraph also states that the prohibition against gun ownership applies only to people under Section 302 when "the examining physician has issued a certification that inpatient care was necessary or that the person was committable." It specifically states that the paragraph - and thus the prohibition against gun ownership - does NOT apply under other 302 proceedings - i.e., when the examining physician fails to find the person to be committable and certifies that judgment. Such people, then, are not reportable to the state police.

The proposed regulations, however, in §33.120 (a) and (b), require the examining physician to sign a state police form even when "they determine a lack of severe mental disability" exists. In (b), they also require the county administrators to submit this form to the state police, within 7 days.

This is precisely the group of people exempt from the Uniform Firearms Act. Under Section 302 (b) of the Mental Health Procedures Act, the failure to find severe mental disability and the need for emergency treatment results in the release of the patient, as not committable. It reads as follows:

*"A person taken to a facility shall be examined by a physician within two hours of arrival in order to determine if the person is severely mentally disabled within the meaning of section 301 and in need of immediate treatment. If it is determined that the person is severely mentally disabled and in need of emergency treatment, treatment shall be begun immediately. If the physician does not so find, or if at any time it appears there is no longer a need for immediate treatment, the person shall be discharged and returned to such place as he may reasonably direct . . ."*

Executive Director  
**Gwen Yackee Lehman**  
777 East Park Drive  
P.O. Box 8820  
Harrisburg, PA  
17105-8820

(800) 422-2900  
(717) 558-7750  
FAX (717) 558-7845  
E-mail [glehman@pamedsoc.org](mailto:glehman@pamedsoc.org)  
[www.papsych.org](http://www.papsych.org)

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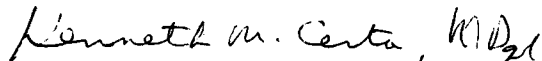
Thus, the regulations require county administrators to collect non-reportable information from physicians – the names of people who are examined but are not involuntarily committed - and then to report that information to the State Police.

Our staff has spoken several times in the last week with a representative of the State Police, who tells us that it is not their intention to collect the names of people who are not subject to the Act under Title 18. Nor do they want to receive information which they are not authorized to retain. As we understand it, their objective is to require a physician's signature certifying lack of severe mental disability when and only when the physician has first certified that such a disability exists; admits the patient for treatment, triggering the reporting requirement; and then discovers that the commitment "should never have taken place." Even this objective seems to be based on a misunderstanding of the factors that trigger a patient's release within the 120 hours before the 302 treatment authorization expires. For example, this occurs when patients who have been appropriately committed have stabilized and can safely be released.

Part of the problem may relate to the fact that the Act, in § 6111.1 (g) (3), is in direct conflict with itself in §6105. (c) (4). Section 6111.1 (g) (3) requires physicians to provide the police with a signed certification of the determination of the lack of severe mental disability following the initial examination under Section 302 (b) of the Mental Health Procedures Act, even though the Act does not prohibit such people from possession of a firearm. It is important to note that 6111.1 (g) (3) relates only to review by the court, and specifically to the expunging of records. Even before Act 70 of 1998 amended 6105 (c) (4) to clarify that patients examined but not committed were not subject to the Act, 6111.1 (g) (3) made no sense. It requires, on its face, the reporting of a person's name to the police, so that a non-existing record pertaining to that person can be expunged. Until the examination in question, there is no commitment to report in the first place; there is no record to expunge if the person is NOT committed.

If the regulations are rewritten, we would be happy to provide our technical expertise as the psychiatrists who actually perform the 302 examinations and certify the need or lack of need for emergency, involuntary treatment. There are important technical and legal questions involved. We suspect that the complexity of mental health procedures, and a lack of familiarity with them, is responsible for the problematic provisions of the current regulations. Rather than approve regulations in direct conflict with the law on which they are based, and which will lead to literally pointless obligations and paperwork by physicians, county administrators, and the state police, we urge you to disapprove of Regulation 17-60 at this time.

Sincerely yours,



Kenneth M. Certa, MD  
Chair, Government Relations Committee  
Vice President, PA Psychiatric Society

cc: Jeremy S. Musher, MD  
Captain Geoffrey B. Miller

govt/Firearms-IRRC