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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE,
MAJORITY CHAIRMAN
LIQUOR CONTROL
FIREFIGHTERS' CAUCUS,
COCHAIRMAN EMERITUS

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October 6, 1999

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley:

This is to advise you that the House Professional Licensure Committee met on Tuesday, October 5, 1999, and submits the following comments pertaining to the regulations considered by the Committee:

The Committee voted to take no formal action until final-form regulations are promulgated on **Regulation 16-20**. However, the Committee submits the following comments:

1. In the schedule of civil penalties for pharmacists and pharmacies, a \$250 penalty is imposed for violations of 49 Pa. Code 27.15(b) for both "uncleanliness" as well as "pharmacy not in good repair." However, it is actually subparagraph (a) of Sec. 27.15 that requires the pharmacy and equipment to be in a "clean and orderly condition and in good repair." Subsection (b) requires that a pharmacy comply with health and sanitation statutes. The Committee suggests that the penalties for violations of the individual subparagraphs of Sec. 27.15 be set forth in the same manner as provided in that section.
2. The civil penalty for practicing on a lapsed license is not uniform among the various licensing boards. The Committee requests an explanation as to why the boards would assess different penalties for the same offense.

The Committee voted to take no formal action until final-form regulations are promulgated on **Regulation 16A-567**. However, the Committee submits the following comments:

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1. The Committee is in agreement with comments submitted by the Pennsylvania Association of Realtors (PAR) regarding disclosure of information. The second paragraph of the form as currently written does not fully satisfy the requirement of Section 608(2) of the act which states "A statement informing sellers and buyers of their option to have an agency relationship with a broker..." This paragraph should suggest to consumers that although it may be appropriate to disclose information once a business relationship has been established in writing, the establishment of a business relationship does not in and of itself justify a consumer disclosing confidential information. It is the nature of the business relationship that will determine whether it is advisable for the consumer to disclose information. The Committee joins PAR in suggesting the following language:

"Before you disclose any information to a licensee, be advised that unless you select an agency relationship by signing a written agreement providing for such a relationship, the licensee is **NOT REPRESENTING YOU**. A business relationship of any kind will **NOT** be presumed but must be established between the consumer and the licensee."

2. The Committee is in agreement with comments submitted by PAR regarding the acknowledgment section of the form. The section should contain space under the consumer signature section for the printed name, address and phone number of the consumer. The Committee believes this will enable more accurate documentation for licensees and consumers.

The Committee voted to take no formal action until final-form regulations are promulgated on **Regulation 16A-556**. However, the Committee submits the following comments:

The Committee is opposed to proposed Section 11.82 in that the dates set forth for peer review in that section are in conflict with the statutory language of and legislative intent behind Act 140 of 1996. In reviewing the plain language of Act 140, as well as a number of documents which explained the provisions of the act prior to its passage, the Committee finds that the legislative intent was for May 1, 2000, to be the starting date for the peer review program, and not the deadline for peer review compliance. Section 8.9(1)(2) of the act clearly provides as follows:

"This section shall not become applicable to firms and no firm shall be required to undergo a peer review under this section **until** May 1, 2000, except that this section shall not become applicable **until** May 1, 2004, to

a firm that has not accepted or performed any audit engagements during the period May 1, 1998, through April 30, 2004.”

The Board states that its interpretation of the act is consistent with the position of the Pennsylvania Institute of Certified Public Accountant (PICPA), which the Board identifies as the organization which spurred the introduction of this legislation. However, the Committee has reviewed a letter dated April 4, 1996, authored by William Clark, Esq., an attorney who assisted in drafting the legislation. The letter purports to explain certain provisions of House Bill 1782, which was eventually passed as Act 140. The letter clearly states that “Firms that perform audits will be required to participate in the peer review program **beginning** May 1, 2000. Firms that perform reviews, but do not perform audits, will be required to participate in the peer review program **beginning** May 2004.”

Additionally, the Committee has reviewed an analysis of House Bill 1782, prepared by Charles E. McDonald, Esq., who was at the time the Executive Director of the House Professional Licensure Committee. The analysis was prepared for the purpose of informing members of the House of the provisions and legal ramifications of the bill prior to a vote on the measure. The analysis states that “The bill was amended in committee to change the requirement that firms which perform audits will be required to participate in the peer review program **beginning** May 1, 2000. Firms which perform reviews, but do not perform audits, will be required to participate in the peer review program **beginning** May 1, 2004.”

The Board states that the deadlines for peer review compliance have been well publicized by the PICPA. The Committee questions the Board’s reliance on the PICPA for the dissemination of this information to licensees. The Committee notes that the first time the Board notified licensees of its interpretation of the deadlines for peer review compliance was in its Winter 1998/99 newsletter. It is further noted that the Committee then advised the Board by letter dated March 23, 1999, of the Committee’s position on this issue.

Finally, Section 8.9c of the act provides that “The Board shall adopt regulations establishing guidelines for peer reviews...” Act 140 was enacted in 1996, yet the Board did not publish proposed rulemaking on this subject until August 21, 1999. In the interim, licensees had no guidance as to who would be approved by the Board as peer review organizations. As of that date, there were less than nine

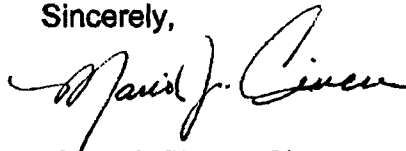


John R. McGinley, Jr., Chairman
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months left for licensees to comply with peer review in accordance with the deadline proposed by the Board. There will be even less time for compliance by the time final regulations are in place, if in fact they are in place by the time of the Board's proposed deadline.

Please feel free to contact my office if any questions should arise.

Sincerely,



Mario J. Civera, Chairman
House Professional Licensure Committee

MJC/sms
Enclosures

cc: Dorothy Childress, Commissioner
Bureau of Professional and Occupational Affairs
Rita Halverson, Chairperson
State Real Estate Commission
Thomas J. Baumgartner, CPA, Chairman
State Board of Accountancy
Hon. Kim H. Pizzingrilli, Secretary of the Commonwealth
Department of State

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Regulation 16A-20

Bureau of Professional and Occupational Affairs

PROPOSAL: Regulation 16A-20 amends 49 PA Code, Chapter 43b, regulations of the Bureau of Professional and Occupational Affairs. The amendments finalize the schedule of civil penalties which the Bureau was authorized to adopt pursuant to Act 48 of 1993.

The proposed Rulemaking was published in the Pennsylvania Bulletin on August 21, 1999. The Professional Licensure Committee has until October 12, 1999, to submit comments on the regulation.

ANALYSIS: Pursuant to Sec. 5(a) of the act of June 2, 1993 (P.L. 345, No. 48), (63 P.S. Sec. 2205(a)), the Commissioner of the BPOA, after consultation with the licensing boards and commissions within the BPOA, is authorized to adopt a schedule of civil penalties for (1) operating without a current and valid license, registration, certificate or permit and (2) violating a licensing board or commission act or regulation relating to the conduct or operation of a business or facility licensed by a licensing board or commission.

The Bureau states that since the implementation of Act 48 Civil Penalties, sanctions imposed for relatively minor violations have been entered more quickly than it would have taken to resolve these cases under regular disciplinary procedures. The proposed additions are meant to finalize the schedule of civil penalties. The additional penalties are applicable to violations of the statutes and regulations of the following licensing boards: Accountancy, Architects, Auctioneers, Professional Engineers, Land surveyors and Geologists, Dentists and Pharmacists. The full text of the proposed schedule is set forth in Annex A of the Bureau's proposed rulemaking package.

RECOMMENDATIONS: It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated. However, the Committee submits the following comments:

- (1) In the schedule of civil penalties for pharmacists and pharmacies, a \$250 penalty is imposed for violations of 49 Pa. Code 27.15(b) for both "uncleanliness" as well as "pharmacy not in good repair." However, it is actually subparagraph (a) of Sec. 27.15 that requires the pharmacy and equipment to be in a "clean and orderly condition and in good repair." Subsection (b) requires that a pharmacy comply with health and sanitation statutes. The Committee suggests that the penalties for violations of the individual subparagraphs of Sec. 27.15 be set forth in the same manner as provided in that section.
- (2) The civil penalty for practicing on a lapsed license is not uniform among the various licensing boards. The Committee requests an explanation as to why the boards would assess different penalties for the same offense.

House of Representatives
Professional Licensure Committee
September 30, 1999