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*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

COMMITTEES

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

ORIGINAL: 2212

October 24, 2001

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

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on October 23, 2001, and voted to approve Regulation 16A-644, State Board of Auctioneer Examiners; Regulation 16A-674, State Board of Occupational Therapy Education and Licensure; and Regulation 16A-5711, State Board of Veterinary Medicine.

The Committee voted to take no formal action on Regulation 16A-639, State Board of Psychology.

In addition, the Committee voted to take no formal action on Regulation 16A-4912, State Board of Medicine, until final form regulations are promulgated. However, the Committee submits the following comments:

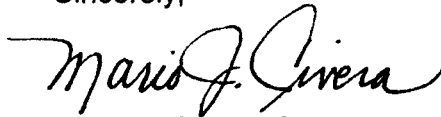
1. The Committee requests clarification as to which non-physician health care providers the proposed regulations are directed. In explaining the provisions of proposed sections 18.401(a)(3) and (4), the Board states that a medical doctor can determine if a delegee is competent to perform a delegated procedure by determining whether or not the delegee is licensed or certified. If a health care provider is licensed or certified to perform a procedure, why would a delegation by a physician to perform the procedure be necessary?
2. The Committee requests clarification of proposed Sec. 18.401(a)(6). Who is responsible for explaining a delegation of services to a patient? Should the patient's consent or objection to the delegation be written?

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3. The Committee requests clarification of proposed Sec. 18.401(b). Specifically, what kinds of medical services do not require medical education and training as opposed to those that do require medical education and training?
4. The Committee questions the necessity of including Sec. 18.401(f) in the proposed regulations. Under what circumstances would regulations of the Board prohibit another licensed or certified health care provider from practicing within the scope of that license or certificate?
5. Pursuant to Sec. 17c of the Act, a medical doctor is responsible for all medical services delegated to a health care practitioner or technician. Accordingly, the Committee recommends that proposed Sec. 18.401(a)(7) be amended to read: "The medical doctor assumes the responsibility for the delegated medical services, including performance of the service, and is available to the delegatee as is appropriate based upon the difficulty of the procedure, the skill of the delegatee and risk level to the particular patient."

If you have any questions, please feel free to contact me.

Sincerely,



Mario J. Civera, Chairman  
House Professional Licensure Committee

MJC/sms  
Enclosures

cc: Charles D. Hummer, Jr., MD, Chairperson  
State Board of Medicine  
Brian V. Harpster, V.M.D., Chairperson  
State Board of Veterinary Medicine  
Alex M. Siegel, J.D., Ph.D., Chairman  
State Board of Psychology  
Ralph M. Stewart, Chairperson  
State Board of Auctioneer Examiners  
Melanie A. Wennick, Chairperson  
State Board of Occupational Therapy  
Education and Licensure  
Honorable Kim H. Pizzingrilli, Secretary of the Commonwealth  
Department of State

## **Regulation 16A-4912**

### **State Board of Medicine**

**PROPOSAL:** Regulation 16A-4912 amends 49 PA Code, Chapter 18, regulations of the State Board of Medicine. The amendment sets forth the basic criteria pursuant to which a medical doctor may delegate the performance of medical services to non-physicians.

The proposed Rulemaking was published in the Pennsylvania Bulletin on September 8, 2001. The Professional Licensure Committee has until October 29, 2001 to submit comments on the regulation.

**ANALYSIS:** Pursuant to Sec. 17(b) of the Medical Practice Act, 63 P.S. Sec. 422.17(b), the Board is authorized to promulgate regulations which establish the criteria pursuant to which a medical doctor may delegate the performance of medical services, preclude a medical doctor from delegating the performance of certain types of medical services or otherwise limit the ability of a medical doctor to delegate medical services.

New Section 18.401 would be added to the Board's regulations to establish the criteria for medical delegation. Secs. 18.401(a)(1) through (7) sets forth all of the conditions which must be met for a proper delegation. A delegation must be consistent with the standards of acceptable medical practice embraced by the medical doctor community in the Commonwealth; the delegation cannot be prohibited by the statutes or regulations regulating the other health care practitioner; the delegatee has documented education and training to perform the medical service being delegated; the medical doctor has determined that the delegatee is competent to perform the medical service; the medical doctor has determined that the delegation does not create an undue risk to the patient; the nature of the delegated service has been explained to the patient and the patient does not object to the delegation; and the medical doctor assumes the responsibility for evaluating and monitoring the performance of the service and is available as appropriate.

The proposed regulation would prohibit the delegation of a medical service that the medical doctor is not qualified or competent to perform. A medical service may not be delegated if performance of the service requires medical doctor education and training or if recognition of the complications or risks associated with the service requires medical education or training. The medical doctor would continue to be responsible for the medical services delegated. Doctors would be permitted to approve a standing protocol delegating medical acts to another health care provider who encounters a medical emergency that requires medical services for stabilization until the doctor is available to attend to the patient.

Section 18.401(f) clarifies that the proposed regulation does not prohibit a health care provider who is licensed or certified by a Commonwealth agency from practicing within the scope of that license or certificate or as otherwise authorized by law. Specific examples cited in the proposal

include certified registered nurse anesthetists, certified registered nurse practitioners and physician assistants.

**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) The Committee requests clarification as to which non-physician health care providers the proposed regulations are directed. In explaining the provisions of proposed sections 18.401(a)(3) and (4), the Board states that a medical doctor can determine if a delegee is competent to perform a delegated procedure by determining whether or not the delegee is licensed or certified. If a health care provider is licensed or certified to perform a procedure, why would a delegation by a physician to perform the procedure be necessary?
- (2) The Committee requests clarification of proposed Sec. 18.401(a)(6). Who is responsible for explaining a delegation of services to a patient? Should the patient's consent or objection to the delegation be written?
- (3) The Committee requests clarification of proposed Sec. 18.401(b). Specifically, what kinds of medical services do not require medical education and training as opposed to those that do require medical education and training?
- (4) The Committee questions the necessity of including Sec. 18.401(f) in the proposed regulations. Under what circumstances would regulations of the Board prohibit another licensed or certified health care provider from practicing within the scope of that license or certificate?
- (5) Pursuant to Sec. 17c of the Act, a medical doctor is responsible for all medical services delegated to a health care practitioner or technician. Accordingly, the Committee recommends that proposed Sec. 18.401(a)(7) be amended to read: "The medical doctor assumes the responsibility for the delegated medical services, including performance of the service, and is available to the delegatee as is appropriate based upon the difficulty of the procedure, the skill of the delegatee and risk level to the particular patient."

House of Representatives  
Professional Licensure Committee  
October 15, 2001