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*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

April 17, 2003

Original: 2323

COMMITTEES

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

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

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on April 15, 2003.

The Committee voted to approve Regulation 16A-529, State Board of Optometry; and Regulation 16A-7013, State Board of Certified Real Estate Appraisers.

The Committee voted to take no formal action on Regulation 16A-417, State Architects Licensure Board, until final form regulations are promulgated.

The Committee voted to take no formal action on Regulation 16A-528, State Board of Optometry, until final form regulations are promulgated, however, the Committee submits the following comments:

1. In promulgating the proposed definitions for Sec. 23.1, the Board references Sec. 3(a)(2.1) of the Optometric Practice and Licensure Act which gives the Board the authority "to determine, in accordance with optometric education, training, professional competence and skill, the means and methods for the examination, diagnosis and treatment of conditions of the visual system. However, the means and methods proposed by the Board make no reference to the appropriate optometric education, training, professional competence and skill required to perform these services, but would authorize any licensee of the Board to perform these services, regardless of his or her level of education and training. At least some of the services listed by the Board would appear to be "cutting edge," and although perhaps within the expertise of more recently educated and trained licensees, but perhaps not within the expertise of licensees who received their education prior to the time these services have come to be employed within the optometric field. Additionally, the Committee notes that at a public hearing held on July 12, 2001, to review the draft version of the regulations, there was considerable testimony to the effect that many of the listed services were not appropriate for optometric practice. The Committee requests a detailed explanation of the training of optometrists in order to perform the 14 services listed in the proposed regulations, as well as an explanation as to how long each service has been part of optometric practice. Additionally, the Committee requests information as to the extent

these services are considered to be within the scope of optometric practice in other states.

2. Proposed Sec. 23.1(3) would appear to authorize optometric offices as facilities in which anesthesia may be administered.
3. Proposed Sec. 23.1(8) would appear to limit low vision rehabilitation exclusively to the practice of optometry. The Committee fears this would have a negative impact on unlicensed individuals who are appropriately engaged in the practice of low vision rehabilitation.
4. The Committee notes the comments submitted by the Pennsylvania Medical Society (PMS) regarding proposed Sec. 23.1(6). PMS recommends that the use of lasers be limited to diagnostic imaging purposes.
5. The Committee notes the comments of the PMS regarding proposed Sec. 23.1(9). PMS recommends that the section be deleted or at least modified to include only diagnostic and non-surgical treatment of the lacrimal system.
6. The Committee notes the comments submitted by the PMS regarding proposed Sec. 23.1(14). The Committee questions why the practice of optometry should include all levels of evaluation and management services, and not just those levels of evaluation and management services pertaining to the visual system.

In addition, the Committee voted to take no formal action on Regulation 16A-605, State Board of Vehicle Manufacturers, Dealers and Salespersons, until final form regulations are promulgated, however, the Committee submits the following comments:

1. The Committee questions the placement of the proposed regulation in the "General Provisions" section of the Board's regulations. The Committee suggests that since the subject matter of the proposed regulation involves dealerships, the "Dealership License" section would be more appropriate.
2. The Committee questions the Board's authority to promulgate proposed Sec. 19.5c. The display of a single vehicle constitutes advertising, an activity that is included in the definition of "buying, selling or exchanging" set forth in the Board of Vehicles Act. Except for limited circumstances set forth in the Act, the selling of a vehicle must occur on the dealer's business premises. Does the Board have the authority to create an exemption for one-vehicle displays?
3. The Committee suggests that should the Board have the authority to promulgate Sec. 19.5c, then it should include a provision to require the dealer to place a sign at the display location, indicating that the vehicle is for display only, that transactions or sales discussions cannot occur at the site, and referring the public to the relevant dealer.

Finally, the Committee voted to take no formal action on Regulation 16A-659, State Board of Physical Therapy, until final form regulations are promulgated, however, the Committee submits the following comments:

1. Sec. 40.11 would be amended to require applicants for licensure by examination, within 6 months of the effective date of the regulation, to have graduated from a physical therapy program accredited by CAPTE. The Board indicates that some physical therapy programs in Pennsylvania are in the process of obtaining CAPTE accreditation. Accordingly, is a 6-month grandfathering period a sufficient amount of time for applicants currently enrolled in programs that have not yet received CAPTE accreditation?

2. Regarding proposed Sec. 40.51(b), the Committee questions whether the Board has the authority to identify the "transdermal administration of drugs" as properly within the scope of physical therapy practice. Additionally, the section would require any unused medications to be disposed of by the physical therapist or returned to the patient. In that case, why is there a reference to the proper storage of drugs?
3. The Board indicates that it considered but decided not to include language prohibiting the delegation of "wound care" to physical therapy assistants. The Committee questions whether the Board considers wound care to be a properly delegable service to be performed by physical therapy assistants. The Committee requests a detailed explanation as to the education and training of physical therapy assistants, and particularly as it pertains to physical therapy assistant qualifications to provide wound care.
4. The Committee questions why the work "district" was deleted from Sec. 40.16(a)(1) when the District of Columbia is referred to in that section.
5. Regarding Sec. 40.11(2), is the requirement of 120 semester hours a requirement of CAPTE, and if so, are all Pennsylvania physical therapy educational programs awarding a 120-semester hour degree? Additionally, should this section not refer to "applicants" rather than "physical therapists?"
6. Are the services listed in proposed Sec. 40.53(e) duplicative of some of the services listed in current Sec. 40.53(a)?

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: Steven J. Reto, O.D., Chairperson  
State Board of Optometry  
George D. Sinclair, Chairman  
State Board of Certified Real Estate Appraisers  
Ann Shepard Houston, RA, President  
State Architects Licensure Board  
Edward J. Cernic, Jr., Chairperson  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
James J. Irrgang, Chairperson  
State Board of Physical Therapy  
The Honorable Pedro A. Cortes  
Acting Secretary of the Commonwealth

REGULATION 16A-528  
STATE BOARD OF OPTOMETRY

**Regulation 16A-528**

Original: 2323

**State Board of Optometry**

**PROPOSAL:** Regulation 16A-528 amends 49 PA Code, Chapter 23, regulations of the State Board of Optometry. The amendments make general revisions to the Board's regulations necessitated by the passage of Act 130 of 1996.

The proposed Rulemaking was published in the Pennsylvania Bulletin on March 1, 2003.

**ANALYSIS:** Sec. 3(a)(2.1) of Act 130 gave the Board the responsibility to "determine, in accordance with optometric education, training, professional competence and skill, the means and methods for the examination, diagnosis and treatment of conditions of the visual system." The Board proposes to add a definition for these means and methods, which may be employed by licensed optometrists. The definition lists 14 specific practices and procedures which include the use of any computerized or automatic refracting device; anterior and posterior segment photography; the use of lasers for diagnostic purposes; low vision rehabilitation; and the administration and prescription of legend and nonlegend drugs for those optometrists who are therapeutically certified.

The Board proposes to amend Section 23.33, regarding Practice, to conform to current practice in the field of optometry. The amendment would clarify that an optometrist must practice in a room used exclusively for the practice of optometry only when practicing in his or her office. Other venues that would be permissible for optometry practice licensed health care facilities, including in-patient and out-patient hospitals and emergency rooms, nursing homes and long term care facilities, or any facility with the need for optometric services. Optometrists would also be authorized to provide visual screenings at any location, public or private, within the Commonwealth.

Sec. 23.34 would be amended to clarify that optometrists may incorporate with other health care professionals in addition to those specifically referenced, if authorized by the laws of the Commonwealth pertaining to incorporation. Secs. 23.34 and 23.35 would be amended to delete the requirement that licensees obtain Board approval of fictitious name registrations and articles of incorporation prior to filing same with the Corporation Bureau. Sec. 23.42, pertaining to Equipment, would be amended to require an optometry office be sufficiently equipped to conduct a "basic" rather than a "complete" optometrical examination.

Language would be added to Sec. 23.64, pertaining to Professional Conduct, permit an optometrist to terminate the optometric care of a patient who, in the professional opinion of the optometrist, is not adhering to appropriate regimens of care and follow-up. Written notice must be given to the patient and medical records made available.

Sec. 23.71, pertaining to Patient Records, would be amended to add pharmaceutical agents used or prescribed by an optometrist to the list of professional services that must be maintained in a patient's records. Currently, a patient's request for a contact lens prescription may be complied with at the discretion of the optometrist. Sec. 23.71c would be amended to require optometrists who comply with a request to determine all requirements for a satisfactory fit of a contact lens prior to providing a contact lens prescription, and to consider all contact lenses used in determining the contact lens prescription to be diagnostic lenses.

Sec. 23.72, pertaining to Prescriptions, would be added to the Board's regulations, setting forth all the information, which must be included in any prescription issued by an optometrist. Additionally, the section lists specific information that must appear in prescriptions for contact lenses, spectacles, and pharmaceuticals. Prescriptions for contact lenses would have an expiration date of not more than one year.

**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 promulgating the proposed definitions for Sec. 23.1, the Board references Sec. 3(a)(2.1) of the Optometric Practice and Licensure Act which gives the Board the authority "to determine, in accordance with optometric education, training, professional competence and skill, the means and methods for the examination, diagnosis and treatment of conditions of the visual system. However, the means and methods proposed by the Board make no reference to the appropriate optometric education, training, professional competence and skill required to perform these services, but would authorize any licensee of the Board to perform these services, regardless of his or her level of education and training. At least some of the services listed by the Board would appear to be "cutting edge," and although perhaps within the expertise of more recently educated and trained licensees, but perhaps not within the expertise of licensees who received their education prior to the time these services have come to be employed within the optometric field. Additionally, the Committee notes that at a public hearing held on July 12, 2001 to review the draft version of the regulations, there was considerable testimony to the effect that many of the listed services were not appropriate for optometric practice. The Committee requests a detailed explanation of the training of optometrists in order to perform the 14 services listed in the proposed regulations, as well as an explanation as to how long each service has been part of optometric practice. Additionally, the Committee requests information as to the extent these services are considered to be within the scope of optometric practice in other states.
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House of Representatives  
Professional Licensure Committee  
April 1, 2003