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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

April 17, 2003

COMMITTEES

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.

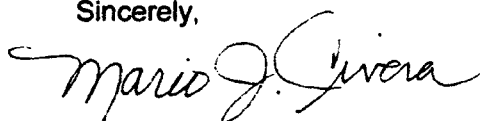
Finally, the Committee voted to take no formal action on Regulation 16A-659, State Board of Physical Therapy, until final form regulations are promulgated, however, the Committee submits the following comments:

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-605

State Board of Vehicle Manufacturers, Dealers and Salespersons

PROPOSAL: Regulation 16A-605 amends 49 PA Code, Chapter 19, regulations of the State Board of Vehicle Manufacturers, Dealers and Salespersons. The amendment adds new Section 19.5, Branch Lots, setting forth the criteria under which a dealer may maintain an unlicensed location for the storage of vehicles, and under which a single vehicle may be displayed at an unlicensed location.

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

ANALYSIS: Pursuant to Sec. 5(e)(1)(ii) of the Board of Vehicles Act, (P.L. 306, No. 84), a dealer's branch lot "shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles." The Board's proposed Sec. 19.5(b) sets forth 8 conditions that must be complied with if a lot or location is to be considered a storage facility and thereby exempt from licensure. These conditions include the requirement that the lot is used solely for the storage of vehicles; that the lot is identified by a sign reading for "storage only;" no salespersons are present other than is necessary to repair, recondition, inspect or move any of the vehicles; the public is not permitted access to any of the vehicles; and no sign is present at the lot to indicate that any vehicles at the lot are available for sale at any other location.

Proposed Sec. 19.5c sets forth 7 conditions that must be met to permit a dealer to display a single vehicle (automobile, light truck or motorcycle only) at a location other than the dealer's premises or licensed branch lot. These conditions include the requirement that the placement is by a vehicle dealer licensed in this Commonwealth; that no more than one vehicle is placed at the location; that there is no sales office at the location; and that the vehicle is locked or otherwise not capable of being entered or operated by potential customers.

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 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.

House of Representatives
Professional Licensure Committee
April 2, 2003