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November 5, 2003

Janet H. Shields, MSN, CRNP, Chairperson  
State Board of Nursing  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-5116 (IRRC #2353)  
State Board of Nursing  
CRNP Prescriptive Authority Fees

Dear Chairperson Shields:

Enclosed are the Commission's comments for consideration when you prepare the final version of this regulation. These comments are not a formal approval or disapproval of the regulation. However, they specify the regulation review criteria that have not been met.

The comments will be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
evp  
Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Pedro A. Cortes, Secretary, Department of State

# **Comments of the Independent Regulatory Review Commission**

**on**

## **State Board of Nursing Regulation No. 16A-5116**

### **CRNP Prescriptive Authority Fees**

**November 5, 2003**

We submit for your consideration the following comments that include references to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Nursing (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on October 6, 2003. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. General. – Statutory Authority, Reasonableness, Clarity.**

Board counsel indicated that the fees in this regulation will be applied retroactively back to November 18, 2000. In addition, the Board-generated application form for Certified Registered Nurse Practitioner (CRNP) prescriptive authority also states this intent. We have 2 concerns.

First, there is no mention of the intended retroactive application of these proposed fees in the proposed regulation or its Preamble. The Board must clearly explain its intent to the regulated community and establish a justifiable rationale for retroactive collection of fees.

Second, if the Board intends to retroactively apply these fees upon the regulated community, it must justify its statutory authority to do so.

#### **2. Section 21.253. Fees. – Fiscal Impact, Reasonableness, Clarity.**

There have been numerous comments that the proposed fees are quite costly and unreasonable. We have four related concerns.

First, the Board pointed out that many of the applications received from CRNPs for collaborative agreements for prescriptive authority are voluminous and contain unnecessary information. As a result, Board staff must undergo a more time-consuming review of the application to ensure that the required information is present and accurate.

The Board indicates that it has developed a simplified form for collaborative agreements for prescriptive authority, but this form is only used by a small percentage of applicants. To avoid the review of unnecessary information and to lower the corresponding costs on the regulated community, the Board should consider adding a provision that all applicants must use the Board-generated collaborative agreement form. This would allow the Board to lower the proposed fee.

Second, the proposed regulation is unclear on what circumstances will require the filing of additional collaborative agreements for prescriptive authority. The vagueness of this provision

may cause applicants to submit additional collaborative agreements to the Board when they are not necessary, thus causing the CRNP to pay unnecessary extra fees to the Board.

The Board has indicated that an additional collaborative agreement must be filed only when the **primary** supervising physician changes or another primary supervising physician becomes necessary. The Board should add or amend language in Section 21.285 (relating to collaborative agreements) to clearly indicate when an additional collaborative agreement for prescriptive authority must be filed.

Third, the Board stated that a collaborative agreement may have an unlimited number of substitute physicians and these can be easily added or deleted at any time without cost to the CRNP. Section 21.285(b)(1) should be amended to clearly reflect the Board's procedures for making amendments to collaborative agreements regarding substitute physicians.

Finally, the Board has indicated that it is necessary to review and approve the collaborative agreements to ensure that all of the necessary requirements are met. In cases where the CRNP is only changing the primary supervising physician, the Board should consider reasonable filing alternatives to reduce the financial burden on the regulated community. The fee could be eliminated or a more reasonable, lesser fee could be charged because less information will need to be reviewed on the new submission.