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**INDEPENDENT REGULATORY REVIEW COMMISSION  
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March 3, 2004

Thomas R. Czarnecki, D.O., Chairperson  
State Board of Osteopathic Medicine  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-5312 (IRRC #2376)  
State Board of Osteopathic Medicine  
Delegation of Medical Services

Dear Chairperson Czarnecki:

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  
wbg  
Enclosure

cc: 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 Thomas P. Gannon, Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Pedro Cortes, Secretary, Department of State

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

**on**

## **State Board of Osteopathic Medicine Regulation No. 16A-5312**

### **Delegation of Medical Services**

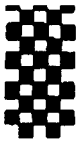
**March 3, 2004**

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 Osteopathic Medicine (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on February 2, 2004. 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **Section 25.217. Delegation. - Reasonableness; Consistency with the statute; Clarity.**

Subsection (a)(5) requires that the nature and delegation of the medical service be explained to the patient. This subsection permits the explanation to be oral and given by "someone other than the osteopathic physician." This is inconsistent with Section 3 of the Osteopathic Medical Practice Act which indicates that delegated services are to be "rendered under the supervision, direction or control of a licensed physician" (63 P.S. § 271.3). If the services are "rendered under the supervision, direction or control" of a physician, then the proposed regulation should specify the physician's role in the explanation given to the patient.

An example of an approach that places responsibility on the physician is the regulation recently adopted by the State Board of Medicine. The corresponding provision in the regulations of the State Board of Medicine at 49 Pa. Code § 18.402(a)(5) (relating to physician delegation) states the explanation will be given by "the physician or the physician's designee." This language is more precise than the proposed regulation because it identifies the physician's involvement in the explanation given to the patient. Therefore, the Board should amend Subsection (a)(5) to require that "the osteopathic physician or the osteopathic physician's designee" give the explanation.



### Facsimile Cover Sheet

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**To:** Suzanne Hoy  
**Agency:** Department of State  
Licensing Boards and Commissions  
**Phone:** 7-2628  
**Fax:** 7-0251  
**Date:** March 3, 2004  
**Pages:** 3

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of Osteopathic Medicine regulation #16A-5312 (IRRC #2376). Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

**Accepted by:** Suzanne J. Hoy **Date:** 3/3/04