



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN C. BUSH, VICE CHAIRMAN  
DANIEL F. CLARK, ESQ.  
ARTHUR COCODRILLI  
MURRAY UFFBERG, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATTE, CHIEF COUNSEL

**INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
333 MARKET STREET  
14TH FLOOR  
HARRISBURG, PA 17101**

[irrc@irrc.state.pa.us](mailto:irrc@irrc.state.pa.us)  
<http://www.irrc.state.pa.us>  
**(717) 783-5417**  
**Fax (717) 783-2664**

March 3, 2004

Alex M. Seigel, J.D., Ph.D., Chairman  
State Board of Psychology  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-6314 (IRRC #2378)  
State Board of Psychology  
Notice Requirements

Dear Chairman Seigel:

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  
sfh

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 A. Cortes, Secretary, Department of State

# Comments of the Independent Regulatory Review Commission

on

## State Board of Psychology Regulation No. 16A-6314

### Notice Requirements

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 Psychology (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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

#### **1. Section 41.91. Reporting of crimes and disciplinary actions. – Consistency with the statute; Need; Reasonableness; Clarity.**

##### *Subsection (a)*

This Subsection states the following: “A licensee shall notify the Board of having been convicted of, or having pleaded guilty or nolo contendere to, a felony or misdemeanor, within 30 days of the conviction, verdict or plea.” We have three concerns with this Subsection.

First, it requires the reporting of all misdemeanors, not just “those committed in the practice of psychology.” (The Professional Psychologists Practice Act (Act), 63 P.S. § 1208(a)(6)). A commentator is concerned that this would mandate the reporting of all misdemeanors, including “where the misdemeanor evidences that the licensee is unable to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals or any other material.”

Three health-related boards require their licensees to report misdemeanors related to their specific practice. The State Board of Chiropractic and the State Board of Medicine require notification of “a misdemeanor offense relating to a health care practice or profession.” (49 Pa. Code §5.18(a)(3) and §16.16(a)(3), respectively). The State Board of Optometry requires notification of a “misdemeanor relating to or arising out of the practice of optometry.” (49 Pa. Code §23.65(a)(1)). In addition, the State Board of Osteopathic Medicine requires notification of a broader array of crimes that include, “a felony, crime of moral turpitude or crime related to the practice of osteopathic medicine.” (49 Pa. Code §25.271(a)(3)). Why is the Board imposing a higher reporting standard on their licensees than other health-related boards require of their licensees?

Second, the regulation is not consistent with the Act. The regulation requires reporting when the licensee has been “convicted of, or having pleaded guilty or nolo contendere to, a felony or misdemeanor....” The Act includes broader provisions in 63 P.S. § 1208(a)(6) which defines the term “convicted” to include “a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere or receiving probation without verdict, disposition in lieu of trial or an accelerated Rehabilitative Disposition in the disposition of felony charges.” The specific language in the Act should be used in the regulation. Alternatively, the regulation should use the statutory term “convicted” and reference the Act.

Third, this Subsection requires licensees to notify the Board “within 30 days of the conviction, verdict or plea.” We recommend that this provision be amended to include the phrase “or on the biennial renewal application, whichever is sooner.” This would allow the Board to receive more timely notice of convictions, verdicts or pleas. It would also make it consistent with Subsection (b), which contains a similar provision.

*Subsection (b)*

This Subsection states the following:

A licensee shall notify the Board of disciplinary action in the nature of a final order taken against the licensee by the licensing authority of another state, territory or provincial board of psychology within 30 days of receiving notice of the disciplinary action, or on the biennial renewal application, whichever is sooner.

We have two concerns.

First, the Act (63 P.S. § 1208.1), states that licensees must notify the Board of any disciplinary action taken in any other state, territory or country within 90 days. We recommend that the 30-day time frame included in this Subsection be amended to be consistent with the Act.

Second, this Subsection uses the phrase “state, territory or provincial board of psychology” to describe other potential licensing authorities. The Act (63 P.S. 1208 and 1208.1) uses the phrase “state, territory or country.” Why has the Board decided to use the term “provincial board of psychology” instead of “country”?

**2. Section 41.92. Notice of active suspension or revocation. – Protection of the public health, safety and welfare; Reasonableness; Implementation procedures; Clarity.**

Under this Section, a licensee whose license has been suspended or revoked is required to return the license to the Board. The licensee is also required to notify all current clients/patients of the disciplinary action in writing within 30 days of receiving notice of the disciplinary action. The written notice must include the nature of the violation, the sanction imposed, the effective date and length of the sanction and a statement that the licensee will assist patients in transferring records and obtaining alternative profession services. We have three questions.

First, would licensees who voluntarily surrender their licenses be required to abide by the provisions of this Section? If so, we recommend that the final-form regulation be amended to reflect this requirement.

Second, this Section requires licensees that have been suspended or have had their licenses revoked to assist patients with transferring records and obtaining alternative professional services. If a licensee has committed a felony, such as rape, and has their license revoked, we question the reasonableness of requiring the licensee to make referrals. The final-form regulation should explain how the health, safety and welfare of the patient would be protected in this situation. An alternative to this requirement would be to limit patient referrals to instances where the Board orders the licensee to assist with referrals.

Third, would licensed psychologists employed by a school be required to comply with this regulation? If so, would they be required to notify all of the students who are patients or just the school administrators of the suspension or revocation?