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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

May 11, 2004

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

Dear Chairman McGinley:

The Professional Licensure Committee held a meeting on May 11, 2004, to consider the following:

Regulation 16A-4810 – Proposed rulemaking of the State Board of Funeral Directors pertaining to limited license. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comment:

1. The committee notes a drafting error in Section 13.77(d). The proposed regulation states that "The Board will report to the reciprocal state any disciplinary action..." The committee notes that this provision imposes a duty on the board and therefore recommends the word "shall" be substituted for the word "will."

Regulation 16A-418 – Proposed rulemaking of the State Architects Licensure Board pertaining to a definition and fees. The committee voted to take no formal action until the final regulation is promulgated.

Regulation 16A-4918 – Proposed rulemaking of the State Board of Medicine pertaining to disciplinary process and procedure. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee notes that 2 PaCS 702 states that, "Any person aggrieved by an adjudication of a Commonwealth agency who has a direct interest in such adjudication shall have the right to appeal therefrom to the court vested with jurisdiction of such appeals pursuant to Title 42 (relating to judiciary and judicial procedure)," which is an absolute right. The committee notes the right of appeal as set forth in Article V Section 9 of the Pennsylvania Constitution is an absolute right ("There shall be a right of appeal in all cases to a court of record from a court not of record; and there shall also be a right of appeal from a court of record or from an administrative agency to a court of record or to an appellate court, the selection of such as be provided by law..."). Consequently, the committee is concerned that the language found in Section 16.58 of the proposed regulation is too limiting and narrow in its scope. Specifically, the

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committee recommends that the board place a period after the words “Commonwealth Court” or delete the phrase, “if the appeal is based on allegations of certain errors of law under terms and conditions as cover appeals and actions involving State agencies...”

2. The committee recommends that a definition of “public officer” be provided. The term is found in Section 16.55.
3. The committee recommends that the word “motion” be used in proposed Section 16.57, instead of the word “notice.” The word “motion” may be more appropriate in the context of the board reviewing a decision of a hearing examiner sua sponte.

Regulation 16A-4614 – Proposed rulemaking of the State Board of Dentistry pertaining to administration of general anesthesia, deep sedation, conscious sedation and nitrous oxide/oxygen analgesia. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee notes that Chapter 33 contains regulations related to volunteer licenses and the administration of anesthesia. 49 Pa.Code 33.110. The committee seeks clarification that the regulations regarding volunteer licensees comply with the proposed regulations and Act 135 of 2002. As an example, the committee notes that the regulations related to volunteer licensees do not speak to “deep sedation” as a separate category of anesthesia.
2. The committee notes that Act 135 of 2002 imposes certain deadlines on the board. One such deadline is April 1, 2004, regarding the important safety issues of clinical evaluations and office inspections. Specifically, Act 135 of 2002 requires that as of April 1, 2004, all initial applications for permits and initial applications for renewal of permits include office inspection and clinical evaluation.

Act 135 of 2002 was signed into law on November 25, 2002. The committee notes with concern that the proposed regulation was delivered to the committee on March 31, 2004, one day before the statutorily imposed deadline. The committee further notes its concern that, as a consequence, the statutorily imposed deadline concerning these safety measures cannot be implemented as the law directs.

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- Further, the committee requests information from the board as to whether or not the board has provided any notice or any type of information to licensees regarding the office inspections and clinical evaluations.
3. The committee notes the reduction of hours of continuing education for permit holders and seeks the board's rationale for this reduction.
 4. The committee notes the requirement contained in Act 135 of 2002 that assistants be certified in CPR. The committee seeks clarification that Basic Life Support includes CPR.
 5. The committee notes that Act 135 of 2002 permits the board to contract with dental schools, organizations, and individuals in order to perform office inspections and clinical evaluations per Section 11.2(b)(1) of the Dental Law. The committee notes the board is seeking to implement this provision through Section 33.336b of the proposed regulation, which does not mention contracting with any of these entities. Further, the committee has been advised that the board will not contract with these entities. The committee seeks information regarding the board's decision.
 6. The committee requests an explanation from the board as to why the board has not explored the possibilities listed in Section 11.2(b)(1) of Dental Law with respect to who may conduct the office inspections and clinical evaluations.
 7. The committee notes that under Act 135 of 2002, specifically Section 11.2 (b)(5), a non-permit holder must not allow sedation to be administered in his office unless he can certify that the equipment used is in compliance with the safety measures adopted in the act. The committee also notes that Section 33.341(a)(5) of the proposed regulation allows the non-permit holder to verify with the permit holder that the equipment meets the statutory standards regarding safety. The committee seeks clarification regarding the way in which verification will be obtained and recommends the proposed regulation require written verification.
 8. The committee notes that Act 135 of 2002 requires dentists to maintain records of the physical evaluation, as well as records of the medical history and type of anesthesia utilized. The committee notes the proposed regulation is silent with respect to this statutory requirement.

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Further, the committee notes that peer evaluation organizations which perform office inspections and clinical evaluations are not required to maintain records of these events. The committee recommends that a requirement regarding maintaining these records be included in the regulation.

9. The committee recommends that the addresses of organizations listed in Section 33.331 be deleted as those addresses are subject to change.

Regulation 16A-606 – Final rulemaking of the State Board of Vehicle Manufacturers, Dealers and Salespersons relating to emergency vehicles. The committee voted to approve the regulation.

Regulation 16A-426 – Final rulemaking of the State Board of Barber Examiners related to ten chair schools. The committee voted to approve the regulation.

Please feel free to contact my office should any questions arise.

Sincerely,

A handwritten signature in black ink that reads "Thomas P. Gannon".

Thomas P. Gannon
Chairman
Professional Licensure Committee

cc: Hon. Pedro A. Cortes, Secretary of the Commonwealth
Department of State
Joseph A. Fluehr, III, FD, Chairman, PA State Board of Funeral Directors
Ann Shepard Houston, RA, President, PA State Architects Licensure Board
Charles D. Hummer, Jr., M.D., PA State Board of Medicine
Veasey B. Cullen, Jr., D.M.D., Chairman, PA State Board of Dentistry
Edward J. Cernic, Jr., Chairman, State Board of Vehicle Manufacturers
Lee Cameroni, Chairperson, State Board of Barber Examiners