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**INDEPENDENT REGULATORY REVIEW COMMISSION
COMMONWEALTH OF PENNSYLVANIA
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June 9, 2004

Charles D. Hummer, Jr., M.D., Chairman
State Board of Medicine
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-4918 (IRRC #2399)
State Board of Medicine
Disciplinary Process and Procedure

Dear Chairman Hummer:

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. If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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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 Medicine Regulation No. 16A-4918 (IRRC #2399)

Disciplinary Process and Procedure

June 9, 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 Medicine (Board) must respond to these comments when it submits the final-form regulation. The public comment period for this regulation closed on May 10, 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regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.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 16.55. Complaint process. – Clarity.

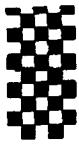
Subsection (a) begins, “A person, firm, corporation or public officer may submit a written complaint...” To clarify its intent, the Board should delete all the terms except for “person,” which is defined in Section 1991 of the Statutory Construction Act (1 Pa.C.S. § 1991). Section 1991 defines “person” to include all types of organizational entities as well as a natural person.

2. Section 16.58. Appeal from the Board decision. – Reasonableness.

This section allows a respondent to appeal a decision by the Board to the Commonwealth Court if “the appeal is based on allegations of certain errors of law under terms and conditions as cover appeals and actions involving State agencies under 2 Pa.C.S. § 702 (relating to appeals).” The House Professional Licensure Committee (House Committee) in its comments described this language as “too limiting and narrow in its scope.”

The House Committee refers to both statutory and constitutional grounds for its concern. The statute (2 Pa.C.S. § 702) referenced by the Board asserts that any person, who is aggrieved by an adjudication of a Commonwealth agency and has a direct interest in the adjudication, has the right to appeal the decision to the court vested with jurisdiction. The right to an appeal is also included in Article V Section 9 of the Pennsylvania Constitution.

We agree that the right of appeal cannot be limited to “allegations of certain errors of law.” Therefore, language that would constrain the right of appeal should be deleted from this section in the final-form regulation. However, we recommend that the regulation reference the Administrative Agency Law (2 Pa. C.S. §§ 701-704).



Facsimile Cover Sheet

Kristine M. Shomper
Administrative Officer

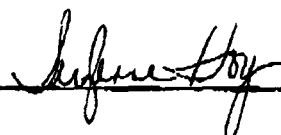


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INDEPENDENT REGULATORY REVIEW COMMISSION
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To: Suzanne Hoy
Agency: Department of State
Licensing Boards and Commissions
Phone: 7-2628
Fax: 7-0251
Date: June 9, 2004
Pages: 3

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Medicine regulation #16A-4918 (IRRC #2399). 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:  **Date:** 6/9/04