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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

June 8, 2005

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

Dear Chairman McGinley:

The House Professional Licensure Committee held a meeting on June 7, 2005, to consider the following:

Regulation 16A-6912 - Proposed rulemaking of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors relating to continuing education. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

1. The committee notes that the proposed regulation would become effective with the 2007 biennial renewal period. The board has provided in all three chapters that it will require "during the preceding biennium" the acquisition of 30 credits of continuing education. This means that during the current biennial renewal period, March 1, 2005 through February 28, 2007, licensees must obtain 30 hours of continuing education or fail to have their licenses renewed. The committee applauds the board for its leadership with respect to having continuing education requirements in place for clinical social workers, marriage and family therapists and professional counselors and thanks the board for its efforts.

However, the committee has a concern. Clinical social workers, marriage and family therapists and professional counselors - - licensees who currently do not have a continuing education component - - may not have received adequate notice of the new requirement and may not have enough time to amass the 30 credits given the time necessary to complete the regulatory review process.

The committee raises the issue of timing because the committee does not want to see an interruption in the delivery of the critically important services provided by clinical social workers, marriage and family therapists and professional counselors.

2. The committee seeks information from the board regarding its decision to allow licensees to amass up to 20 of the 30 credit hours via home study. The committee notes that 20 credits represent two thirds of the requirement, meaning that an overwhelming majority of credits may be amassed without didactic instruction. The committee is concerned that such a proportion with respect to home study is too large.

The committee recognizes the proposal states that home study must have "specific learning objectives which the provider evaluates to assure that learning has taken place." The committee asks the board to provide information regarding how this standard will be implemented in real terms and specific examples of continuing education programs where such evaluation is provided.

Finally, the committee questions how "an objective" can be "evaluated." The committee asks the board whether this provision should be re-written.

3. With respect to all three chapters, the committee notes the board uses the term "marketing the practice" with respect to topics which will not garner continuing education credit. The committee notes

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the language used in the statute is "practice building." The committee recommends the statutory term be substituted for "marketing the practice."

4. The committee notes a drafting error with respect to Section 47.36(a)(9). The committee suggests paragraph (9) be re-written, perhaps as a subsection.
5. The committee notes a drafting error with respect to the phrase, "Services as a teacher (first-time experience only)" found in Section 47.36a(a)(2) and other places in the proposal. The committee recommends that each time this phrase appears that it be re-written in such a way as to remove the parentheses.
6. The committee notes a drafting error with respect to the Section 47.36a(b) and other places which it appears. The committee recommends that the phrase, "A licensee who wishes to obtain clock hours for credit under subsections (1) and (2) of this section..." be re-written. The committee recommends that the board substitute "subsection (a)(1) or (a)(2)" for the words "subsections (1) and (2) of this section."
7. The committee seeks clarification from the board regarding the policy embodied in Section 47.37(a) as well as the other places it appears. The committee notes the board is deleting the phrase, "at a time prescribed and on forms approved by the Board" from that portion of the regulation which speaks to verification of continuing education credits. The committee notes that without such language, the regulation reads, "Applicants for license renewal shall provide a signed statement certifying that the continuing education requirements have been met..."

The committee asks the board regarding its intention with respect to the requirement that a licensee provide a signed certified statement regarding attendance. Specifically, the committee asks the board to provide examples of what type of statements would fulfill the requirement of certification. Further, the committee asks the board if the board can fulfill its policy by asking for the necessary information on the license renewal form or whether such information is currently required on the form.

8. The committee notes a drafting error with respect to Section 48.33. The language of subsection (a) of Section 48.33 states, "Only courses or programs offered by Board approved providers will be accepted for continuing education credit." However, Section 48.37 states that credit will be given on a case-by-case basis for participation in clinical rounds, conferences, and other training. The committee recommends that these two provisions be reconciled, perhaps by adding the phrase, "Except as provided in Section 48.37" to Section 48.33(a). The committee also recommends the board make this change in Chapter 48 as well.
9. The committee notes that Sections 48.40 and 49.40 provide that: (1) an individual applying for licensure for the first time shall be exempt from the 30 hour continuing education requirement, and (2) the board may waive the 30 hour continuing education requirement for reasons of serious illness, military service, or other hardship.

The committee recognizes that the board had such provisions in place in Chapter 47 with respect to continuing education for social workers. The committee does not object to these provisions, as there are sound reasons to have such policies. However, the committee also notes that the enabling act does not grant the board the authority to grant waivers or to delay the implementation of continuing education requirements for first time licensees. Because third parties may one day object to the regulation, the committee suggests the board recommend language to amend the statute to make it clear the board has the authority to implement both of these provisions.

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Regulation 16A-5315 – Proposed rulemaking of the State Board of Osteopathic Medicine relating to deletion of exam fees. The committee voted to take no formal action until final regulations are promulgated.

Regulation 16A-5612 – Proposed rulemaking of the State Real Estate Commission relating to biennial renewal fee increase. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comment:

1. With respect to Section 35.203 Fees, the committee notes a drafting error with respect to the biennial renewal of licenses associated with cemeteries. The committee recommends a comma be placed after "associate broker."

Regulation 16A-4512 – Proposed rulemaking of the State Board of Cosmetology relating to biennial renewal fee increase. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comment:

1. The committee notes that Act 98 of 2002 deleted the requirement that a cosmetology shop be under the direction of a manager. The committee notes that the reference to the biennial renewal fee for a cosmetology shop manager has been deleted in the proposed regulation, specifically Section 7.2 Fees.

The committee notes that the regulation contains other references to a cosmetology shop manager, including the fee for a license for a cosmetology shop manager found in Section 7.2 Fees. Other references to this term are found in Section 7.11 Types of Individual Licenses and Section 7.13 Scope of Manager's License. The committee recommends the board review the regulation and delete the references to the manager's license wherever they appear so there is no conflict between the existing regulation and the proposed regulation dealing with biennial renewal fees.

Regulation 16A-6210 – Proposed rulemaking of the State Board of Nursing Home Administrators relating to biennial renewal fees. The committee voted to take no formal action until final regulations are promulgated.

Regulation 16A-608 – Proposed rulemaking of the State Board of Vehicle Manufacturers, Dealers and Salespersons. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

1. The committee notes that Section 19.3 states that "The provisions of Sections 19.31-19.38 (relating to protest proceedings) supplement the general rules." The committee recommends that, to remove any ambiguity that the new rules apply to disciplinary proceedings or other proceedings before the board, language be added to make it clear the new rules apply solely to protest proceedings filed pursuant to Section 13.27, and 8(b) of the act.
2. The committee recognizes that the language of Part II allows an agency to promulgate rules inconsistent with the rules of Part II. The committee notes there are procedural rules in the amendment which are different from the rules in Part II. The committee asks the board to ensure that the proposed procedural rules comport with the requirements of the Due Process Clause of the U.S. Constitution and the Pennsylvania Constitution, and that the right to be heard and the right to receive notice be preserved in the proposed rules.

Regulation 16A-616 – Proposed rulemaking of the State Board of Landscape Architects relating to general revisions. The committee voted to take no formal action until final regulations are promulgated. The committee submits the following comments:

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1. The board states in the preamble to the proposed regulation that the board believes that original documents should be submitted to the board. Consequently, a change was made to Section 15.14, Retention of Records, which eliminates the applicant's option of submitting copies to the board. The board deleted this language: "Photocopies of original documents may be submitted as documentary evidence if notarized as true copies." The committee recognizes that under statutory construction principles the board's deleting such language would be construed as the board's intent to require the applicant to submit original documents. The committee is concerned, however, that applicants will not be able to discern the intent of the board from the language of Section 15.14. The committee recommends that the board state clearly that the applicant must submit original documents.
2. The committee notes that Section 6(b) of the act requires an applicant to "be of good moral character..." The committee questions the board's decision to remove the language from the regulation which requires that those submitting letters of recommendation on behalf of an applicant address the applicant's moral character. Further, the committee asks the board how, if the requirement regarding references is removed, the board will know that the applicant meets the statutory requirement for a license with respect to "good moral character."
3. The committee asks the board to provide information as to why the board chose to delete the language of Section 15.33(d). The subsection states, "Renewal of a license will not be granted unless the requirement is fulfilled," indicating that a licensee must obtain a seal.
4. The committee seeks clarification from the board regarding its decision to delete Section 15.36(d). That provision states the following: "A landscape architect shall sign documents which arise out of the rendering of professional services. If the landscape architect practices in association with others, his name shall appear with the name of the association on documents not signed by him." The committee asks the board whether this language should be maintained.

Further, with respect to Section 15.36, the committee asks the board to give its reasoning for deleting the language of (c)(3) and asks the board whether that provision should be maintained. That language requires a licensee to notify the board of changes of ownership of a business and to seek the board's approval before practicing.

5. The committee seeks information from the board regarding its decision to delete Section 15.37 Public Information. The committee asks the board's intention with respect to the change, namely whether the board intends to cease providing information regarding the names of licensees, information regarding whether an individual is in good standing, or information regarding test results, or whether all such requests for information will have to be made via formal, written request pursuant to the Right-to-Know Law. Further, the committee asks the board if the effect of deleting the reference to the provision of test results means the board will no longer provide such information to applicants and other states' licensing boards and, if so, where they will be able to obtain test results if the board stops providing that information.
6. The committee seeks clarification from the board regarding whether the policy choice embodied in Section 15.72(b) conflicts with Section 9.1(b) of the act.
7. With respect to Section 15.79, Reporting of hours spent in continuing education, the committee asks the board to provide information regarding the type of proof acceptable to the board in terms of attendance. The committee notes the board deleted the phrase, "on Board-provided forms..." The committee asks the board to clarify how, without further amendment to that section, the board will be able to sufficiently verify attendance.

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8. With respect to Section 15.23 Practice by out-of-State landscape architects, the committee notes the board's intent to remove the requirement that such firms obtain board approval before practicing. The board has deleted the phrase, "obtain approval from the Board..." The committee notes that a landscape architect licensed in another jurisdiction will still have to submit proof of address, as well as licensure. Since the board has removed the requirement regarding board approval, the committee asks the board where would out-of-state firms send the proof required by the remaining language of Section 15.23. The committee also if the board should retain the policy choice that out-of-state firms seek board approval before practicing.

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

Sincerely,

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

Thomas P. Gannon
Chairman
House Professional Licensure Committee

cc: The Honorable Pedro A. Cortes, Secretary of the Commonwealth
Department of State
The Honorable Kenneth A. Rapp, Deputy Secretary
Regulatory Programs, Department of State
The Honorable Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
The Honorable Peter V. Marks, Sr., Deputy Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, Chief Counsel
Department of State
Ruth Dunnewold, Senior Deputy Chief Counsel
Department of State
Cynthia K. Montgomery, Regulatory Counsel
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Richard G. Stauffer, Chairman
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Edwin K. Galbreath, Jr., Chairman
PA State Board of Vehicle Manufacturers, Dealers and Salespersons
Barry Ramper, II, NHFA, Chairman
PA State Board of Nursing Home Administrators
Beverly R. Brookes, Chairman
PA State Real Estate Commission
Oliver C. Bullock, D.O., Chairman
PA State Board of Osteopathic Medicine
Susan Rineer, Chairman
PA State Board of Cosmetology
Ronald E. Hays, Chairperson
PA State Board of Social Workers, Marriage & Family Therapists & Professional Counselors