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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

CHAIRMAN
PROFESSIONAL LICENSURE COMMITTEE

May 5, 2006

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

ORIGINAL: 2528

INDEPENDENT REGULATORY
REVIEW COMMISSION

2006 MAY -8 AM 9:50

RECEIVED

Dear Chairman McGinley:

The House Professional Licensure Committee held a meeting on May 2, 2006, to consider the following:

Regulation 16A-5412 – Final rulemaking of the State Board of Pharmacy relating to drug therapy and injectable medications, biologicals and immunizations. The committee voted to approve the regulation.

Regulation 16A-4513 – Proposed rulemaking of the State Board of Cosmetology relating to removal of the term “manager.” The committee voted to take no formal action until final regulations are promulgated.

Regulation 16A-4511 – Proposed rulemaking of the State Board of Cosmetology relating to accreditation on the part of cosmetology schools. The committee voted to take no formal action and to submit the following comment:

- (1) It is the committee’s understanding that the board’s intention is to apply the general rule regarding acquiring accreditation within five years of initial licensure notwithstanding a change of ownership, location or name. The committee asks the board to explain its policy in the case of a cosmetology school which is purchased four years after initial licensure and the accreditation process has not been started by the prior owner or has not been completed by the prior owner.

Regulation 16A-4915 – Proposed joint rulemaking of the State Board of Medicine and State Board of Osteopathic Medicine relating to athletic trainers. The committee voted to take no formal action and to submit the following comments:

- (1) Section 16.61, paragraph (18), makes it unprofessional conduct for a “board regulated practitioner” to fail to complete reports needed for reimbursement by an insurance company. Since the regulation is changing the term “physician” to “board related practitioner,” the committee asks the board whether the term “medical expenses” should be modified to include expenses that result from treatment of the “healing arts.”
- (2) The committee seeks clarification from the board regarding the policy stated in Section 18.503 Certification. The general rule in subsection (a) states that a person may not use the title of athletic trainer or perform athletic training services unless certified by the board. The

exception in subsection (b) is worded in such a way as to allow a physician or any other person licensed by the board to call himself an athletic trainer, as well as to permit a student studying athletic training to call himself an athletic trainer. The committee recommends the board re-write this section to make its policy clear.

Similarly, the committee notes the State Board of Osteopathic Medicine has a similar provision in Section 25.703 Certification Requirement. The committee asks the board the same question.

- (3) The committee asks the board for an explanation of §18.507 Temporary Certification. The committee notes the enabling act speaks to temporary certification. Section 51.1(b) of the Medical Practice Act of 1985. However, that provision is limited to those individuals holding certificates issued by the State Board of Physical Therapy under Act 110 of 1975. The committee further asks whether it is creating another type of temporary certificate under Section 51.1(d)(2) of the enabling act. If so, the committee seeks an explanation of the effect of this provision.

The committee asks the same question of the State Board of Osteopathic Medicine regarding Section 25.707.

- (4) The committee observes that §18.505(2) and Section 25.705(2) refer to the abbreviation for certified athletic trainer as "(ATC®)." The committee asks whether this is a typographical error and, if so, recommends removing the registered trademark symbol from the abbreviation.
- (5) Section 18.509(a)(3) appears to provide that the physically active person have a medical exam prior to being treated. In the case of a physically active person being referred by a podiatrist or dentist the committee asks whether the medical exam should also be reviewed by the dentist or podiatrist.
- (6) The committee observes a typographical error in §25.704(a)(4), and notes that this language should read, "Documentation of practice as an athletic trainer, if licensed or certified in any other jurisdiction. . ."
- (7) The committee notes that Section §25.709 and Section 18.509 permit a podiatrist or dentist to issue a "standing written prescription" or "protocol." With respect to a "protocol," both enabling acts only mention a physician. The statutes are silent with respect to "standing written prescription." The committee asks whether another part of each enabling act authorizes podiatrists and dentists to issue a "protocol" and also seeks information from the board regarding the manner in which a "standing written prescription" and "protocol" will work.

The committee notes that the definition of "protocol" in the regulations is confined to a physician. At minimum, there is an internal inconsistency with respect to both regulations. Further, if a dentist or a podiatrist is authorized to issue a "standing written prescription" or "protocol," the committee asks whether the board should add language requiring the dentist or the podiatrist to review the medical exam of each person before they may be treated.

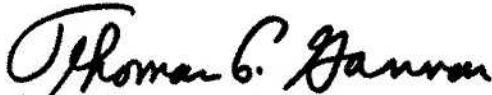
- (8) The committee notes that both boards are setting an age limit of 20 for athletic trainers. The committee seeks an explanation from both boards regarding the rationale for this policy choice. The committee notes the enabling acts do not mention an age requirement.
- (9) The committee asks for clarification from both boards regarding the education requirements for certification. The committee notes that Section 18.505 and Section 25.705 require either graduation from an approved education program or certification from BOC. Are all athletic trainers required to attend and graduate from an educational program? What are the requirements of certification with respect to BOC?
- (10) The committee notes the regulations contain inconsistencies with respect to language. If it is the boards' intention to have the regulations mirror each other in terminology and policy, the committee asks both boards to review the following:
- (a) With respect to the definition of "direction," the medical regulations say, "supervision over the actions of a certified athletic trainer via referral" and the osteopathic medical regulations say, "supervision over the actions of a certified athletic trainer by means of referral."
 - (b) With respect to the definition of "written protocol," the medical regulations say, "which identifies and is signed by the supervising physician and the certified athletic trainer, and describes. . ." and the osteopathic medical regulations say, "which identifies and is signed by the supervising physician and the certified athletic trainer, describes. . ." with the word "and" omitted.
 - (c) With respect to §18.503(c) and §25.703(c), the committee observes that the medical regulations do not acknowledge former certificate holders, whereas the osteopathic medical regulations acknowledge former certificate holders.
 - (d) With respect to §18.507 and §25.707, the committee observes that the osteopathic medical regulations add that the temporary certificate "may not be renewed."
 - (e) With respect to §18.508(e)(3) and §25.708(b)(3), the committee observes that the osteopathic medical regulations require 4 years, whereas the medical regulations only require 2 years.
 - (f) With respect to §18.509(c) and §25.709(c), the committee observes that in the medical regulations, the responsibility, or onus, is on the "athletic trainer to obtain the standing written prescription or protocol" and the osteopathic medical regulations place the responsibility, or onus, on the "supervising physician, dentist or podiatrist to provide the standing written prescription or protocol."
 - (g) With respect to §18.508(d) and §25.708(a), the committee observes that the medical regulations provide for a \$5 penalty fee and the osteopathic medical regulations do not.

Regulation 16A-5716 - Proposed rulemaking of the State Board of Veterinary Medicine relating to certified veterinary technician specialists. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

- (1) The committee asks the board for specific information regarding what other acts would qualify in terms of a certified veterinary technician making a false, deceptive or misleading statement or claim. The committee notes that the corresponding section in the regulation, as it applies to veterinarians, deals with advertising. The committee asks this question in order to determine the scope of the rule as it applies to certified veterinary technicians.
- (2) The committee notes that the board stated this regulation is needed as a precursor to other regulations which the board is planning to issue regarding the scope of practice of certified veterinary technicians who are also specialists. The committee seeks detailed information from the board regarding the time table for this regulation, as well as an overview of its contents.

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

Sincerely,



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
Barbara Adams, General Counsel to the Governor
David J. DeVries, Executive Deputy General Counsel
Peter V. Marks, Sr., Executive Deputy General Counsel
Albert H. Masland, Chief Counsel
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PA State Board of Medicine
Brian V. Harpster, V.M.D., Chairman
PA State Board of Veterinary Medicine

Michael J. Romano, R.Ph., Chairman
PA State Board of Pharmacy
Oliver C. Bullock, D.O, Chairman
PA State Board of Osteopaths
Susan Rineer, Chairman
PA State Board of Cosmetology