

ARTHUR COCCODRILLI, CHAIRMAN
GEORGE D. BEDWICK, VICE CHAIRMAN
S. DAVID FINEMAN, ESQ.
NANCY SABOL FRANTZ, ESQ.
JOHN F. MIZNER, ESQ.
KIM KAUFMAN, EXECUTIVE DIRECTOR
LESLIE A. LEWIS JOHNSON, CHIEF COUNSEL



PHONE: (717) 783-5417
FAX: (717) 783-2664
irrc@irrc.state.pa.us
<http://www.irrc.state.pa.us>

INDEPENDENT REGULATORY REVIEW COMMISSION

333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

July 1, 2009

Karen W. Edelstein, Psy.D., Chair
State Board of Psychology
2601 North 3rd Street
Harrisburg, PA 17110

Re: Regulation #16A-6315 (IRRC #2763)
State Board of Psychology
Qualifications

Dear Ms. Edelstein:

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 regulatory 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 me.

Sincerely,

Kim Kaufman
Executive Director

wbg

Enclosure

cc: Honorable Robert M. Tomlinson, Chair, Senate Consumer Protection and Professional
Licensure Committee
Honorable Lisa M. Boscola, Chair, Senate Consumer Protection and Professional Licensure
Committee
Honorable Michael P. McGeehan, Chair, House Professional Licensure Committee
Honorable William F. Adolph, Jr., Chair, House Professional Licensure Committee
Honorable Pedro A. Cortes, Secretary, Department of State

Comments of the Independent Regulatory Review Commission



State Board of Psychology Regulation #16A-6315 (IRRC #2763)

Qualifications

July 1, 2009

We submit for your consideration the following comments on the proposed rulemaking published in the May 2, 2009 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Psychology (Board) to respond to all comments received from us or any other source.

1. Section 41.1. Definitions. - Reasonableness; Need; Clarity.

Delegated supervisor

The definition includes the term “licensed health professional,” which is undefined. What licensees are included in this term? The term “health professional” is unclear and could include a number of different professions. This term is used in different ways in existing provisions. For example, 49 Pa. Code § 40.53(f) refers to a “physical therapist” or “another health professional.” In a different set of existing regulations at 28 Pa. Code § 1001.2, the term “health professional” is defined as a “physician” or “registered nurse.” In addition, the phrase “who possesses special expertise or skills” is vague and may be unnecessary. How will the Board determine that a delegated supervisor meets the Board’s definition and standards for this position? How will psychology residents know that their “supervised experience” meets the Board’s standards and requirements? The Board should define “licensed health professional” or describe what type of professional can be a “delegated supervisor.” The Board should also clarify “who possesses special expertise or skills” or delete this phrase.

Psychology resident

The language at the end of this definition refers to Section 41.31(b)(4). The proposed regulation changes the numbering of this section to Section 41.31(4). The Board should review this language to ensure that it has the correct reference in the final-form regulation.

2. Section 41.30. Qualifications and documentation necessary for licensure. - Reasonableness; Implementation procedure; Consistency with other statutes and regulations; Clarity.

Subsections (b)(2) and (3) require an applicant for licensure to submit a “criminal background check” and “Child Abuse History Clearance” respectively. We have questions or concerns in three areas.

First, existing regulations and statutes in Pennsylvania refer to a “criminal background check” as a “criminal history record information” or CHRI report. See the Criminal History Record Information Act (18 Pa.C.S.A. §§ 9101-9183), 37 Pa. Code Chapter 195 and 22 Pa. Code Chapter 701. The final-form regulation should use a term which is consistent with the statute and other regulations.

Second, the House Professional Licensure Committee (House Committee) submitted comments dated June 9, 2009, expressing concerns with background checks for out-of-state applicants. For these applicants, Subsection (b)(2) requires that “the background check shall be completed by the applicable law enforcement agency in the jurisdiction where the applicant resides.”

It is unclear if the term “jurisdiction” is intended to refer to a municipal, state or national government. Other existing regulations require out-of-state applicants to obtain criminal record checks from the Federal Bureau of Investigation (FBI). See 22 Pa. Code § 701.11 and 55 Pa. Code § 6000.22. Such a national check may provide a greater safeguard if an applicant moved frequently from state to state.

A national background check may also be required by law for every applicant regardless of residency. The Office of Children, Youth and Families in the Department of Public Welfare (Department) published a bulletin (#3490-08-03) on June 27, 2008, which includes the following statement:

Act 179 of 2006 amended § 6344.2 of the CPSL to state that prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training must obtain background checks as a condition of employment. These individuals, including but not limited to social service workers, psychiatrists, hospital personnel, counselors and therapists, librarians and doctors, will be required as of July 1, 2008 to obtain an FBI criminal history background check along with their PSP [State Police] criminal history background check and Pennsylvania child abuse background check as a condition of initial employment.

www.dpw.state.pa.us/ServicesPrograms/CashAsstEmployment/003673169.aspx?BulletinId=4362 (page 7)

According to 23 Pa.C.S. § 6344.2(a), this new law applies to several types of occupations including “mental health professionals.” The Department’s website includes a link for initiating an application for an FBI criminal history background check at www.pa.cogentid.com/dpw. The Board should review this information and clarify the legal requirements that apply to applicants and licensees.

Third, Subsection (b)(3) requires an applicant to submit “Child Abuse History Clearance completed by the Pennsylvania Department of Public Welfare dated within 6 months of the application.” Information about “Pennsylvania Child Abuse History Clearance Forms” is available at the website for the Department at www.dpw.state.pa.us/servicesprograms/childwelfare/003671038.htm. This site also includes a link for a form to request CHRI report from the State Police. As noted in the Preamble, one may apply for a CHRI report on the internet. In addition to these links and those listed in the Preamble, one may apply for a CHRI report via the website of the Pennsylvania State Police (State Police) at www.psp.state.pa.us, and specifically at www.portal.state.pa.us/portal/server.pt?open=512&objID=4451&&PageID=458621&level=2&css=L2&mode=2. The second link allows a person to apply for a copy of her or his CHRI report online or via a paper form.

Even though the Preamble includes links for online access with the Department and State Police, the regulation is silent on the availability of this information. The final-form regulation should also inform applicants that such information is available on the internet.

3. Section 41.31. Educational qualifications. - Clarity.

The House Committee noted two errors in the text which occurred in the Board’s reorganization of education and examination provisions into two separate sections. In the proposed regulation, Sections 41.31(4) and (5) retain existing language that refers to “subsection (a)(1).” However, the language in the existing Subsection (a)(1) has been moved to Section 41.41(c) by the proposed regulation. Hence, the referrals to Subsection (a)(1) in both Sections 41.31(4) and (5) need to be corrected to refer to Section 41.41(c) in the final-form regulation.

4. Section 41.32. Experience qualifications. - Reasonableness; Need; Duplication; Implementation procedure; Clarity.

Statutory requirement for two years of experience

The first sentence of this section states: “To meet the experience requirements for licensure under section 6 of the act (63 P.S. § 1206), an applicant shall

complete 1 year of acceptable postdoctoral supervised experience.” However, along with the other requirements for licensure, Section 6(a)(2) of the Professional Psychologists Practice Act (63 P.S. § 1206(a)(2)) declares that an applicant must submit “proof satisfactory to the board” that the applicant has the required doctoral degree from an accredited institution and “has not less than two years of supervised experience, at least one of which was obtained subsequent to the granting of the doctoral degree, provided that such experience is acceptable to the board pursuant to criteria established by board regulations.”

In the Preamble, the Board states that it is eliminating the existing provisions for “predoctoral experience” because it is part of the internship governed by the doctoral degree program necessary for graduation. Via an earlier rulemaking (#16A-6313(#2422)) published in the *Pennsylvania Bulletin* at 36 Pa.B. 2680 (June 3, 2006), the Board removed provisions that required it to review specific doctoral education programs or internships. It now considers only whether the program is accredited or designated.

It is unclear how the applicant will satisfy the statutory requirement. Is the possession of a doctoral degree sufficient proof that the applicant already has at least one year of supervised experience? What is the assurance that each doctoral program requires an internship or supervised experience that is at least one year in length to earn the degree? Is proof of one year of postdoctoral supervised experience sufficient to meet the statutory requirement?

Experience requirements for licensure and supervisor qualifications

This section includes experience provisions, some of which were originally in Section 41.31, and provisions for supervisors, which had been the primary focus of Section 41.32. Although separating experience requirements from the education provisions may have produced some additional clarity, combining the experience provisions with the extensive standards and requirements for supervisors is confusing. We suggest that the Board consider separating the experience requirements into a new section while maintaining the supervisor provisions in their own section.

Paragraph (1) Timing.

Subparagraph (1)(iii) requires that 50 percent of the total hours for supervised experience must be obtained via actual practice or work in a treatment or clinical setting. It adds the following:

The remaining required hours may be obtained by teaching in association with an organized psychology program preparing practicing psychologists or a postdoctoral training program, psychological research or any of the above categories.

The Pennsylvania Psychological Association (PPA) expressed concern with the clarity of this language in its comments dated May 28, 2009. It is unclear whether the supervised teaching experience includes work as an instructor in postdoctoral, graduate and undergraduate programs. The language could be read to limit the teaching experience hours to postdoctoral or continuing education programs. In addition, what “categories” are included in the phrase “or any of the above categories”? The Board needs to clarify its intent in the final-form regulation.

The requirement that 50 percent of the total hours be obtained in actual practice, treatment or clinical settings is the same as in the existing regulations. The Pennsylvania Osteopathic Medical Association (POMA) in its letter dated May 19, 2009, suggests that this requirement be increased to 75 percent to ensure the necessary skills for patient care. The Board should review this requirement and explain the basis and justification for its 50 percent requirement.

Paragraph (1)(iv) states that the total postdoctoral experience “must be obtained within 10 calendar years of the application for licensure” and adds that at least half must occur within the most recent five years. POMA expressed concern with this provision since the stated intent of the proposed rulemaking is to allow applicants to take the licensing examination immediately upon graduation and before completing the required year of postdoctoral experience. POMA contends that ten years “is a long time” unless there is an annual continuing education to show that applicants are keeping current in their field. POMA avers that “many changes can occur” over ten years. The Board should explain the basis for the ten-year time period and review the possible need for a process to verify that psychology residents are staying current with new research and information in the field.

Paragraph (3) Supervision.

The House Committee expressed concern with the limitation in Subparagraph (3)(ii) that the primary supervisor could only delegate one hour of supervision per week to a “delegated supervisor.” The Board should review this rule and either explain the need for the limitation, or provide for flexibility in the final-form regulation.

Subparagraph (3)(iii)(D) states that primary and delegated supervisors must “review issues of practice and ethics with the psychology resident.”

Subparagraph (3)(v)(L) repeats the same language in a list entitled “additional responsibilities of primary supervisors.” Is this duplication necessary?

Subparagraph (3)(iv)(E) uses the term “active discipline” in referring to a situation when action is taken by a licensure board concerning a supervisor. This provision states that the supervisor should immediately notify the

psychology resident and assist the resident in finding a new supervisor. The term “active discipline” is undefined, and the House Committee raised several questions regarding this term, as well as the repercussions for the psychology resident and any impact on the number of hours accrued by the resident under the supervisor in fulfilling the experience requirement. The Board should clarify both its intent and this provision in the final-form regulation.

The PPA expressed opposition to the requirement in Subparagraph (3)(v)(A) that primary supervisors hold an active license for at least two years before becoming supervisors. PPA indicates that it knows of “no public policy argument that justifies this additional requirement.” Since such a requirement could reduce the number of supervisors available for residents or trainees, the Board should explain the need and rationale for this rule.

Subparagraphs 3(v)(F) and (v)(G) require that the supervisor observe or review certain activities of the psychology resident “on a regular basis,” and evaluate and apprise the psychology resident “in regularly scheduled supervisory meetings,” respectively. Terms such “regular” or “regularly” are vague. In the final-form regulation, the Board should provide some examples of whether “on a regular basis” and “regularly” means daily, weekly, bi-weekly, monthly or quarterly.

5. Section 41.41. Examinations. - Clarity.

Subsection (c) discusses a situation when an applicant “fails to report for both the first examination and the one subsequent to it.” It is unclear whether this refers to examinations offered on different dates, or to the different portions of the licensure examination as described in Subsection (b): the National Examination for Professional Practice in Psychology, and the Pennsylvania Psychology Law Examination. The intent of Subsection (c) should be clearly set forth in the final-form regulation.

6. General - Clarity.

In the Preamble, the Board states it is removing the prohibition on applicants “taking the licensure examination until after completing their experience.” However, Section 41.11 in the Board’s existing regulations prescribes what an applicant needs to have in order to take the examination. It reads:

To be considered for admission to the examination provided in the act, an applicant shall first file with the Board or its designee:

- (1) A completed, notarized application form and the application fee.
- (2) Official transcripts of graduate work from an accredited college or university.

(3) **Supervisory rating forms validating the applicant's qualifying experience.**

(4) Other forms or materials requested by the Board.

(Emphasis added.)

The applicants are required to submit forms validating their supervised experience, yet they are still being required to complete some experience before taking the examination. The Board should be sure that all of its existing regulations are consistent with the intended goal of this proposed regulation.

Facsimile Cover Sheet



Phone: (717) 783-5417
Fax #: (717) 783-2664
E-mail: irrc@irrc.state.pa.us
Website: www.irrc.state.pa.us

INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

To: Tom Blackburn
Cynthia Montgomery
Agency: Department of State
Licensing Boards and Commissions
Phone: 3-7200
3-3394 (Cynthia Montgomery)
Fax: 7-0251
Date: July 1, 2009
Pages: 9

Comments: We are submitting the Independent Regulatory Review Commission's comments on the State Board of Psychology's regulation #16A-6315- (IRRC #2763). 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: _____

Pat Hippie

Date: _____

7/1/09