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

June 23, 2010

Kathleen McConnell, D.C., Chair  
State Board of Chiropractic  
2601 North 3rd Street  
Harrisburg, PA 17110

Re: Regulation #16A-4316 (IRRC #2832)  
State Board of Chiropractic  
Assistance of Unlicensed Supportive Personnel

Dear Ms. McConnell:

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](http://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, Majority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Michael P. McGeehan, Majority Chairman, House Professional Licensure Committee  
Honorable Julie Harhart, Minority Chairman, House Professional Licensure Committee  
Honorable Basil L. Merenda, Acting Secretary, Department of State  
Robert A. Mulle, Esq., Office of Attorney General  
Andrew Clark, Esq., Office of General Counsel

## **Comments of the Independent Regulatory Review Commission**



### **State Board of Chiropractic Regulation #16A-4316 (IRRC #2832)**

#### **Assistance of Unlicensed Supportive Personnel**

**June 23, 2010**

We submit for your consideration the following comments on the proposed rulemaking published in the April 24, 2010 *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 Chiropractic (Board) to respond to all comments received from us or any other source.

#### **Section 5.54. Assistance by unlicensed supportive personnel. – Statutory authority; Fiscal impact; Protection of Public health, safety and welfare; Need; Implementation procedures; Clarity.**

##### *Fiscal impact*

This proposed regulation permits unlicensed supportive personnel to perform certain activities supervised by a licensed chiropractor, as authorized by the PA Chiropractic Practice Act (Act). A commentator suggests that implementation of this rulemaking will cause a substantial fiscal burden on the regulated community, due to increased insurance premiums and increased paperwork from claims. The Regulatory Analysis Form that accompanied the proposed rulemaking does not include a detailed fiscal impact analysis of the regulation. We request that the Board include such an analysis with the submittal of the final-form regulation, taking into consideration the cost issues raised.

##### *Subsection (a)*

Subsection (a) defines various terms. We raise three issues.

First, Subsection (a) defines “direct supervision.” However, both the Act and Section 5.54 use the term “direct **on-premises** supervision.” (Emphasis added.) The final-form regulation also should include the phrase “on-premises.”

In addition, the final-form regulation should more clearly define “direct on-premises supervision.” For example, must the chiropractor be in the room with unlicensed personnel or just in the building?

We note that Subsection (f) further explains the term “on-premises” by requiring the chiropractor to be “physically present on the premises and able to intervene whenever necessary.” We recommend that the Board incorporate language from Subsection (f) in the definition of “direct on-premises supervision,” and amend Subsection (f) to use the defined term.

Second, Subsection (a) defines “unlicensed supportive personnel” as a “person...regularly employed....” We agree with the House Professional Licensure Committee (HPLC) that the final-form regulation should replace the term “person” with “individual.”

Finally, what does the Board consider to be a person who is “regularly employed?” The final-form regulation should define this term.

#### *Subsection (b)*

Subsection (b) states that: “[t]he chiropractor is **professionally responsible** for the actions of unlicensed supportive personnel....” (Emphasis added.) Both a public commentator and the HPLC suggest that the phrase “professionally responsible” does not explain what specific duties that phrase would impose on the chiropractor. We agree that this phrase is vague and should be defined.

#### *Subsection (c)(1)*

The Act states that:

“[n]othing in this act shall prohibit a licensed chiropractor from utilizing the assistance of unlicensed supportive personnel...provided that a chiropractor may not delegate any activity or duty to such unlicensed individuals which requires formal education or training in the practice of chiropractic or the knowledge and skill of a licensed chiropractor.” 63 P.S. § 625.601.

Subsection (c)(1) lists activities or duties that a chiropractor may delegate to unlicensed supportive personnel “performing under the chiropractor’s direct on-premises supervision.” Paragraph (c)(1)(vi) allows the delegation of “Instructing and monitoring therapeutic exercises in the office.” Paragraph (c)(1)(xxiv) allows the delegation of “Performing therapeutic exercises and activities to include provision of direct one-on-one contact or constant attendance necessary to achieve the desired therapeutic results of the exercise.”

Commentators have noted that the Act does not explicitly authorize chiropractors to perform therapeutic exercises. They further assert that specialized training and education is required to administer therapeutic exercises and there is no assurance that chiropractors have the necessary training and education to prescribe therapeutic exercises or to supervise the delegation of these exercises.

It is unclear what is encompassed by the term “therapeutic exercises” because the term is not defined in the regulation. What do these exercises entail? Are chiropractors formally educated and trained in the performance of these exercises, and if so, do they constitute the practice of chiropractic?

Commentators also have questioned whether other activities listed in this subsection fall under the scope of practice of a chiropractor, such as assisting in applying a cast, brace appliance or orthotic; performing range of motion testing and muscle testing; and performing extremity measurements and postural screening. We note that under the Act, chiropractors are not permitted to delegate activities or duties that require “formal education or training in the practice of chiropractic....”

Consequently, we request the Board further explain its statutory authority for permitting delegation of all the activities, duties and procedures listed in Subsection (c)(1). Additionally, if the Board retains the provisions related to therapeutic exercises, it needs to define “therapeutic exercises” and explain the qualifications of the chiropractor to delegate and supervise these exercises.

#### *Subsection (c)(2)*

Subsection (c)(2) permits a licensed chiropractor to delegate various adjunctive procedures, activities and duties to unlicensed supportive personnel. The Act defines adjunctive procedures as “physical measures such as mechanical stimulation, heat, cold, light, air, water, electricity, sound, massage and mobilization.” § 625.102. Commentators suggest that Subsection (c)(2) exceeds the Board’s statutory authority since the Act requires chiropractic training and education to perform adjunctive procedures, and any procedures requiring chiropractic training and education cannot be delegated. Consistent with our comment on Subsection (c)(1), the Board needs to explain its statutory authority for permitting chiropractors to delegate each activity, duty and procedure listed in Subsection (c)(2) to unlicensed supportive personnel.

Subsection (c)(2)(vi) refers to “therapeutic” laser therapy and Subsection (c)(2)(vii) refers to “other therapeutic modalities classifiable as adjunctive procedures.” The definition of “adjunctive procedures” in the Act does not reference therapeutic activities or modalities. The Board should specify its

statutory authority for including provisions relating “therapeutic” activities or modalities in the regulation. If the Board retains these provisions, it should define “therapeutic modalities.”

#### *Subsection (e)*

This subsection references activities or duties identified in Subsections (b) and (c). Since Subsection (b) lists neither activities nor duties, we assume that the Board intended to include those referenced in Subsections (c) and (d). The final-form regulation should correct this error.

A commentator also notes confusion with the purpose of Subsection (e). The Preamble states that this subsection allows any activity or duty not listed in the regulation to be evaluated in accordance with the Act, however the language contained in Subsection (e) does not reflect this. Therefore, what specific types of activities or duties would be covered by Subsection (e) that would not be covered by Subsections (c) and (d)? Also, the last sentence of Subsection (e) appears to be duplicative of the prohibitions contained in Subsection (d). The Board should clarify the need for including these provisions.

#### *Subsection (g)*

This subsection states that: “[a] chiropractor may not permit an unlicensed supportive person to perform any activity that the supportive person is not qualified by training, education or experience to perform.” How will the Board ensure that unlicensed supportive personnel are adequately trained to carry out their duties? Additionally, the Board should clarify what “qualified training” is.

#### *Subsection (h)*

The HPLC suggests that this subsection is redundant. We agree and recommend that the Board either explain the need or delete it from the final-form regulation.

#### *Miscellaneous clarity*

Subsections (c)(2)(iii),(iv), and (vii) include the phrase “provision of the supervision.” To improve clarity, we recommend the Board delete the phrase “provision of.”

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## Facsimile Cover Sheet



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### INDEPENDENT REGULATORY REVIEW COMMISSION 333 MARKET STREET, 14<sup>TH</sup> 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:** June 23, 2010  
**Pages:** 6

**Comments:** We are submitting the Independent Regulatory Review Commission's comments on the State Board of (Name) regulation #16A-4316 (IRRC #2832). 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:

JLphr Date: 6/23/10

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