

## Comments of the Independent Regulatory Review Commission



### State Board of Osteopathic Medicine Regulation #16A-5321 (IRRC #2941)

#### Physician Assistants and Respiratory Therapists

July 11, 2012

We submit for your consideration the following comments on the proposed rulemaking published in the May 12, 2012 *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 Osteopathic Medicine (Board) to respond to all comments received from us or any other source.

#### **1. Consistency with the statute; Implementation procedures.**

This proposed regulation implements changes made by Act 56 of 2004 and Act 46 of 2008 (Act 46) to the Osteopathic Medical Practice Act (Act). State Board of Medicine Proposed Regulation #16A-4930 seeks to implement identical changes made by Act 45 of 2008 to the Medical Practice Act of 1985. The “Note” section of the Act includes the following language from Act 46: “the State Board of Osteopathic Medicine and the State Board of Medicine shall jointly promulgate regulations ...” We ask the Board to explain how filing two separate regulations from each individual board is consistent with conditions imposed by Act 46.

#### **LICENSURE OF PHYSICIAN ASSISTANTS AND REGISTRATION OF SUPERVISING PHYSICIANS**

#### **2. Section 25.163. – Approval and effect of licensure and biennial renewal of physician assistants and registration of supervising physicians. – Implementation procedures; Clarity.**

This section establishes the process for approval and biennial renewal of licensure for physician assistants. We raise two issues.

First, Subsection (c) requires physician assistants to maintain national certification by “completing current recertification mechanisms available to the profession and recognized by the Board.” The final-form regulation should identify the recertification mechanisms recognized by the Board. Alternatively, the final-form regulation should identify how a physician assistant can access this information.

Second, Subsection (c) explains the types of national certifications recognized by the Board. The Board should clarify where it will publish recognition of an organization’s certification of physician assistants.

## **SUBCHAPTER K. RESPIRATORY THERAPISTS**

### **3. Section 25.506. – Temporary permits. – Need; Clarity.**

#### *Subsection (a)*

This subsection lists the criteria that must be satisfied for an applicant to receive a temporary permit. Subsection (a)(3) states that a temporary permit is issued to an applicant “who is recognized as a **credentialed respiratory therapist . . .**” (Emphasis added.) Would a “credentialed” respiratory therapist already have a license to practice? If so, what would be the need for these applicants to obtain a temporary permit? The Board should clarify this issue.

#### *Subsection (b)*

The House Professional Licensure Committee suggests that the existing reference to “CRTT” in Subsection (b) be replaced with “credentialing examination” since “CRTT” has been deleted in other provisions of the proposed regulation. We agree and recommend the Board replace this term in the final-form regulation.

### **4. Section 25.507. – Criteria for licensure as a respiratory therapist. – Implementation procedures; Clarity.**

This section establishes the criteria necessary for licensure as a respiratory therapist. Subsection (1)(i) requires applicants to pass the “credentialing examination” approved by the National Board for Respiratory Care (NBRC). The PA Society for Respiratory Care, Inc. recommends that the term “credentialing examination” be replaced with “entry level credentialing examination” to identify the specific examination required by NBRC. We agree that this term is broad and recommend the Board clarify the specific examination necessary for licensure as a respiratory therapist.

### **5. Section 25.509a. – Requirement of continuing education. – Fiscal impact; Reasonableness; Clarity.**

#### *Subsection (a)*

In accordance with Act 46, Subsection (a) increases the minimum hours of continuing education an applicant for license renewal or reactivation is required to complete from 20 to 30 hours within each two year licensure period. *See* 63 P.S. § 271.10b(f)(2). However, the Regulatory Analysis Form (RAF) provided by the Board states that this regulation will impose no additional costs on the regulated community. (RAF #14.) It is unclear how additional costs will not occur as a result of this increase to the continuing education requirements. We ask the Board to quantify this potential cost increase in the RAF submitted with the final-form regulation.

Additionally, existing language in Subsection (a)(1) prohibits respiratory therapists from obtaining more than 10 hours of continuing education credit through various forms of “non-traditional education.” According to the Preamble, the Board considered adjusting this limitation, but instead chose to leave the limitation as is in the proposed regulation. However, similar language was deleted from State Board of Medicine Proposed Regulation #16A-4930. *See* 49 Pa. Code § 18.309a(a)(3). The Board should explain the reason for this inconsistency.

#### **6. Section 25.509b. – Approved educational programs. – Clarity.**

This section describes the methods by which respiratory therapists can apply academic coursework to their continuing education credits. Subsection (c) describes the courses that cannot be used for continuing education credit, including “practice building.” This term is vague, and we recommend the final-form regulation include a definition for this term.

#### **7. Miscellaneous clarity issues.**

##### *Order of the Preamble*

The Preamble explains the proposed amendments to the provisions concerning respiratory therapists first and then explains the amendments to the provisions concerning physician assistants. In the regulation, however, the sections concerning physician assistants occur before the sections on respiratory therapists. To improve clarity, we recommend that the Preamble follow the order of the provisions contained in the final-form regulation.

##### *References to the Act and Purdon 's citations*

Many sections of this regulation reference both a particular section of the Act and the corresponding Purdon's citation. For example, Subsection 25.164(a) references "section 10(g.3) of the act (63 P.S § 271.10(g.3))." Other sections of this regulation only reference a particular section of the Act. For consistency, the Board should add the appropriate Purdon's citations to the following sections of the final-form regulation:

- § 25.164(c)
- § 25.164(d)
- § 25.201(a)
- § 25.505(b)