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September 9, 2016

VIA ELECTRONIC MAIL AND REGULAR MAIL

George D. Bedwick, Chairman
Pennsylvania Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

2016 SEP - 09 3:55

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IRRC

Re: Regulation #16A-4943: Prosthetists, Orthotists, Pedorthists and Orthotic Fitters
IRRC Number 3062
Comments on Behalf of the Pennsylvania Orthotic and Prosthetic Society

Dear Chairman Bedwick:

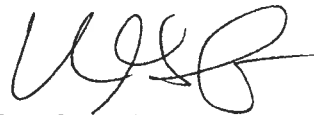
On behalf of the Pennsylvania Orthotic and Prosthetic Society ("POPS"), we submit the attached public comments regarding the above-referenced final form regulation that will be reviewed by the Independent Regulatory Review Commission ("IRRC") during the public meeting scheduled on September 15, 2016.

POPS previously submitted comments and has been actively engaged in constructive conversations with stakeholders throughout this regulatory process. We sincerely appreciate the cooperation and courteous consideration of POPS comments by the State Board of Medicine, Board Counsel, and all other stakeholders throughout the regulatory process which has led to consideration of this final regulation, and respectfully offer the attached comments in furtherance of this process in an effort to ensure the adoption of consistent and reasonable regulations that reflect the purposes of Act 90 of 2012 and Act 104 of 2014.

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POPS appreciates the opportunity to review and comment on this final regulation before IRRC, and thank you for your consideration of the attached comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'JV III', with a long horizontal flourish extending to the right.

Jonathan Vipond, III
Kenneth J. Serafin

JV/jls
Attachment

cc: The Honorable Robert Tomlinson, Chair, Senate Consumer Protection and Professional Licensure Committee
The Honorable Julie Harhart, Chair, House Professional Licensure Committee
David Sumner, Executive Director, IRRC
Peter Kovach, Board Counsel, State Board of Medicine
Wesley Rish, Board Counsel, State Board of Medicine
Eileen Levis, Pennsylvania Orthotic and Prosthetic Society
Randy Stevens, Pennsylvania Orthotic and Prosthetic Society

Pennsylvania Orthotic and Prosthetic Society
3535 High Point Blvd., Suite 200
Bethlehem, PA 18017

September 9, 2016

Further Comments and Objections Submitted to the Independent Regulatory Review Commission for Consideration at its September 15, 2016 Meeting

Reg. No. 16A-4943—Prosthetists, Orthotists, Pedorthists and Orthotic Fitters

I. Introduction:

The Pennsylvania Orthotic and Prosthetic Society (“POPS”) has previously commented extensively to the Pennsylvania State Board of Medicine (“Board”) as to the draft final rulemaking for the licensure and regulation of prosthetists, orthotists, pedorthists and orthotic fitters (“Reg. No. 16A-4943”), specifically regarding these regulatory amendments. POPS through its engaged counsel worked productively and cooperatively with Board counsel earlier this year as to suggesting and discussing modified language for many provisions in these final regulations both from a substantive perspective as to conformity with the requirements of Act 104 of 2014 and Act 90 of 2012 but also in terms of practical clarity and application to the licensed practice of prosthetics, orthotics and pedorthics and the supervision and direction of non-licensed personnel. POPS acknowledges and appreciates the modifications and improvements to the final regulations which were timely submitted to the Legislative Reference Bureau and thus to the Independent Regulatory Review Commission (“IRRC”) on August 3, 2016 following the required reviews by the Office of General Counsel and the Attorney General.

As stated in the Pennsylvania Bulletin notice dated Saturday, September 19, 2015, 45 Pa. B. 5682, POPS submitted to the Board comments on the proposed rulemaking at 44 Pa.B. 4364. IRRC published Notice in the Pennsylvania Bulletin on Saturday, August 20, 2016 at 46 Pa.B. 5168 that it received Reg. No. 16A-4943 on August 3, 2016 and will consider this final

regulation at its September 15, 2016 public meeting. These comments reference only two significant areas of concern to POPS wherein POPS asserts that the regulations do not reflect the statutory direction of Act 90 or Act 104.

The IRRC earlier raised questions as to the scope, intent and specific language in Section 18.831 as to a “temporary practice permit” for a pedorthist. The revised regulations address some of those concerns as outlined in the preamble but do not address the latitude provided by Act 90 in terms of additional credentialing bodies to NCOPE as approved or determined by the Board and as contemplated by Act 90. Act 90 explicitly provides for credentialing by other bodies as outlined in 63 P.S. §422.13e(a):

a) Licensure qualifications.--To qualify for licensure to practice prosthetics, orthotics, **pedorthics** or orthotic fitting, an applicant shall:

(1) Be of good moral character.

(2) Possess the following education:

...

(iii) For pedorthists, a successfully completed board-approved, entry-level pedorthic education program and a minimum of 1,000 hours of supervised patient fitting experience.

...

(3) Have fulfilled all educational and training required for certification and received certification by a prosthetic, orthotic, pedorthic and orthotic fitting **credentialing organization recognized by ICE, accredited by NCCA and approved by the board.**

(4) Pass all examinations that are required for certification by a prosthetic, orthotic, pedorthic or orthotic fitting **credentialing organization recognized by ICE, accredited by NCCA and approved by the board.**

... [Emphasis ours]

Section 18.831(b) (2) should thus be modified to read and reflect the requirement for such additional Board determinations as to “ approved pedorthic precertification programs as follows:

§ 18.831. Temporary Practice Permit.

(b) The Board may issue a temporary practice permit to an applicant who:

(1) Is of good moral character.

(2) Has successfully completed an NCOPE- APPROVED PEDORTHIC precertification education program or its equivalent as determined by the Board.

The same change should be reflected at Section 18.862 (a)(1) and (2) because the language in Act 90 at 63 P.S. §422.13e.a(3) refers to “education and training” which includes “continuing education. These two subsections should read as follows:

§ 18.862. Continuing education.

(a) *Credit hour requirements.* A licensed prosthetist, orthotist, pedorthist or orthotic fitter shall satisfy the following continuing education credit hour requirements:

(1) As a condition for biennial renewal, a prosthetist shall complete at least 24 hours of ABC-approved or BOC-approved continuing education, or approved by another credentialing

organization whose certification program is recognized by ICE, accredited by NCCA and approved by the Board, applicable to the practice of prosthetics and an orthotist shall complete at least 24 hours of continuing education, or approved by another credentialing organization whose certification program is recognized by ICE, accredited by NCCA and approved by the Board, applicable to the practice of orthotics.

(2) As a condition for biennial renewal, a pedorthist shall complete at least 13 hours of ABC-approved or BOC-approved continuing education, or approved by another credentialing organization whose certification program is recognized by ICE, accredited by NCCA and approved by the Board, applicable to the practice of pedorthics and an orthotic fitter shall complete at least 13 hours of continuing education applicable to the practice of orthotic fitting.

The other POPS concern focuses on the perhaps unintended but none the less imprecise use of the requirement to “hold certification” as to reflecting the explicit provisions of Act 90 at 63 P.S. §422.13e.f which do not require the ongoing holding of such certification:

(f) License without examination.--Within three years after the effective date of this section, the board shall grant an individual a prosthetic, orthotic, pedorthotic or orthotic fitter license if the individual complies on or before March 31, 2015, with subsection (a)(1), (5), (6), (7) and (8) and:

(1) For a prosthetic or orthotic license, holds a national certification as a prosthetist or an orthotist issued by a national organization approved by the board.

(2) For a pedorthic or orthotic fitter license, holds a national certification as a pedorthist or orthotic fitter issued by a national organization approved by the board.

(3) For an orthotic fitter license only, has been dispensing over-the-counter prostheses, orthoses or pedorthic devices for two years immediately prior to the effective date of this paragraph² under the supervision of a nationally certified pedorthist or be employed by an entity accredited by an accredited organization under the Center for Medicare and Medicaid Services. [Emphasis ours]

The provisions of Act 90 contemplated the “grandfathering” of certain professionals covered by the act by allowing them to be licensed without examination if they otherwise qualified as to certain other national certification not included in 63 P.S. §422.13e.a(4) in terms of examination:

4) Pass all examinations that are required for certification by a prosthetic, orthotic, pedorthic or orthotic fitting credentialing organization recognized by ICE, accredited by NCCA and approved by the board.

Such grandfathered individuals do not “hold current certification” but had the requisite alternative certification at the time of licensure. Such exception needs to be added:

§ 18.833. Pedorthist license.

(a) An applicant for a license to practice as a pedorthist shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(p) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as a pedorthist to an applicant who:

...

(4) Holds current certification AS A PEDORTHIST from the ABC, the BOC OR ANOTHER PEDORTHIST CREDENTIALING ORGANIZATION WHOSE PROGRAM IS RECOGNIZED BY ICE, ACCREDITED BY NCCA AND APPROVED BY THE BOARD, except for pedorthists who qualified for licensure under Section 63 P.S. 422.13e.(f) (Licensure without examination) prior to March 31, 2015.

§ 18.843. Orthotic fitter license.

(a) An applicant for a license to practice as an orthotic fitter shall submit, on forms made available by the Board, a completed application for licensure, including the necessary supporting documents, and pay the application fee in § 16.13(q) (relating to licensure, certification, examination and registration fees).

(b) The Board may issue a license to practice as an orthotic fitter to an applicant who:

...

(4) Holds current certification AS AN ORTHOTIC FITTER from ~~the~~ ABC, the BOC OR ANOTHER ORTHOTIC FITTER CREDENTIALING ORGANIZATION WHOSE PROGRAM IS RECOGNIZED BY ICE, ACCREDITED BY NCCA AND APPROVED BY THE BOARD except for orthotic fitters who qualified for licensure under Section 63 P.S. 422.13e.(f) (Licensure without examination) prior to March 31, 2015.

POPS notes further that the references to “credentialing organization whose certification program is recognized by ICE, accredited by NCCA and approved by the Board” are now consistent throughout the regulations.

With these modifications, POPS supports these final regulations and expresses its appreciation to the Board, its staff and counsel and to the IRRC.