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IRRC

3068

Independent Regulatory Review Commission
State of Pennsylvania

2016 AUG 16 AM 8:50

RE: State Board of Chiropractic Regulation #16A-4323 (IRCC #3068)

August 16, 2016

Dear IRRC:

Thank you for reaching out to me for additional input on the proposed rulemaking of the Pennsylvania State Board of Chiropractic in regard to limiting online learning. I apologize for the last minute filing, but I have been extremely tied up recently and put the finishing touches on these comments just this morning. I have had the chance to review the Filing Documents with the Legislative Reference Bureau that was submitted by the Pennsylvania State Board of Chiropractic referencing 49 Pa. Code 5.79 Distance Education.

There are two issues that I would like to address.

1. The IRCC concern whether the agency has the statutory authority to promulgate the regulation: Whether the regulation is consistent with the intent of the General Assembly: Protection of public health, safety and welfare.

and

2. The reason for this proposed regulatory change by the Pennsylvania State Board of Chiropractic

The IRCC concern whether the agency has the statutory authority to promulgate the regulation: Whether the regulation is consistent with the intent of the General Assembly: Protection of public health, safety and welfare

The IRCC asked the Board what specific language of the Act allows for distance education. We do agree with the Board's reply on their statutory authority as the Board does have rulemaking authority.

There was a comment that "without explicitly saying so, the tenor of these requirements suggests that all continuing education must be in traditional classroom lecture or clinical presentation". We disagree with this comment. There is no such "tenor" and to suggest one is incorrect. Two points should be made in this regard. The language must be read as it exists and that is 24 hours of continuing education. The method of obtaining that continuing education can only be related to the current status of accepted methods of education offered by institutions of higher learning. A reasonable correlation would be to look at the requirements to obtain a degree, such as a BS, MS or even a PhD. Over the past 15 years, there has been a clear and undeniable move by institutions of higher learning whereby one can obtain any of those degrees (and many more) 100% by taking online coursework. Thus, if our institutions of higher learning allow for obtaining a degree by taking 100% online coursework, it is certainly an accepted methodology of education, and thus, should clearly extend to continuing education.

It is commonplace that statutes, rules and regulations are reinterpreted as advances in technology has changed, without requiring a rewrite. Look at the right to privacy that our constitution guarantees. Could our forefathers possibly have envisioned faxes and text messages when they wrote the right to privacy?

Could we assume their “tenor” did not”? Certainly not. However, we clearly reinterpret the right to privacy to include these things without a rewrite.

The ability for Chiropractors in Pennsylvania to use distanced based learning dates back to 2003 in a decision by the State Board of Chiropractic (File Number 03-43-04474, Docket Number 0560-43-03). The premise of that decision was based only on a review by the State Board of Chiropractic’s evaluation of evidenced presented as to whether distanced based learning programs met the requirements as contained in Section 507(c) of the Chiropractic Practice Act and Board Regulation 5.73 Application of approval of Continuing Education Courses. Based on the testimony and documentary evidenced offered, the Board agreed that the courses met the referenced section of the Practice Act and Regulation 5.73.

Thus, Chiropractors in Pennsylvania have been able to meet all of their continuing education requirements by way of distanced based learning **for the past 13 years** [emphasis added]. During that time, there is no evidence offered by the Pennsylvania State Board of Chiropractic, nor does any exists in any other jurisdiction or licensing board, that a professional that obtains all of their continuing education requirements by internet/distance based learning is correlated with a greater amount of disciplinary actions or malpractice complaints. Thus, the public is clearly protected.

To further emphasize this point, if distanced based learning was inferior, would institutions of higher learning offer degrees obtained from students taking courses via distanced based learning? A diploma does not designate that the PhD was earned via online classes versus at live attendance of classes.

The reason for this proposed regulatory change by the Pennsylvania State Board of Chiropractic

As educators, we are concerned with the reason for this proposed regulatory change. Frankly put, the Pennsylvania State Board of Chiropractic does not provide one plausible explanation for such as proposed regulatory change. The proposed rule is neither consistent with current educational standards nor would it further protect the public.

The change is inconsistent with the current state of education as offered by institutions of higher learning as well as by other professions. We have covered the status of institutions of higher learning earlier in this reply but it is important to point out that Medical Doctors can take 100% of their continuing education requirements using distanced based learning in every single state that requires continuing education. They can even obtain the prestigious Physicians Recognition Award (PRA) from the AMA by obtaining all required educational hours by way of distanced based learning. Would the Medical Professional allow all continuing education hours and hours towards the PRA to be obtaining by way of distanced based learning if they did not meet current educational standards as well as adequately protecting the public? Certainly not.

A Rule change for the sake of a rule change that has not education basis or does not provide any evidence of further protecting the public should not be allowed to proceed.

The Board received “a large number of public comments from individual Chiropractors” and “the majority opposed prohibiting and the majority opposed limiting the amount of continuing education that may be earned online”. This should not be of any surprise. The Chiropractic licensee’s simply want to maintain the option of taking courses online the same way they have been allowed to for the past 13 years. Technology has only improved over the past 13 years, so what has changed? It would be like passing a law that one can only use their car 50% of the time and require that the other 50% of the time,

one must ride a horse. That is not meant to be funny, it's simply a reasonable correlation of technological advances.

Summary

We respectfully request that the IRCC reviewed the document we submitted in 2014 at the onset of this proposed rule change as there are many educational standards and support raised as to the efficacy of protection of the public. For reference, we are submitting a copy of that document along with this.

This proposed rule can only be viewed as necessary if there is an educational standard for the change, or, if a rule change would create a standard that would further protect the public. There is no evidence that either of these standards has been met and thus, we ask that the IRRC deny this Proposed Rule Change.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Paul Powers". The signature is fluid and cursive, with a large initial "P" and a long, sweeping underline.

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