

Comments of the Independent Regulatory Review Commission



State Board of Physical Therapy Regulation #16A-6515 (IRRC #3084)

Continuing Education Enforcement

January 14, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the November 15, 2014 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the State Board of Physical Therapy (Board) to respond to all comments received from us or any other source.

Statutory authority; Conforms to the intention of the General Assembly in enactment of the statute; Determining whether the regulation is in the public interest; Protection of the public health, safety and welfare; Need for the regulation; Clarity, feasibility and reasonableness.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

Section 1303(a) of the Physical Therapy Practice Act (Act) states, “The [B]oard may adopt rules and regulations **not inconsistent with law** as it may deem necessary for the performance of its duties and the proper administration of this law.” [Emphasis added.] 63 P.S. § 1303(a).

Relating to physical therapists, Section 1307.2 of the Act states,

For each license renewal, a licensee **shall complete within the immediately preceding two-year period** at least 30 hours of continuing physical therapy education as approved by the [B]oard. The licensee **shall provide the [B]oard with evidence** of the completion of the continuing education. [Emphasis added.]

63 P.S. § 1307.2.

Relating to physical therapist assistants, Section 1309.1(j) of the Act states,

For each certificate renewal, a certificate holder **shall complete within the immediately preceding two-year period** at least 30 hours of continuing physical therapy education as approved by the [B]oard The certificate holder **shall provide the [B]oard with evidence** of the completion of the continuing education. [Emphasis added.]

63 P.S. § 1309.1(j).

Under proposed Sections 40.67(f) and 40.192(f), the Board allows licensed physical therapists and certified physical therapists, respectively, to continue to practice for six months following the issuance of a citation for failure to complete the required amount of continuing education. In the Act, the General Assembly explicitly requires the continuing physical therapy education to be completed within the preceding two-year period. What is the Board's specific statutory authority for allowing a licensee who has not met the requirement of Section 1307.2 of the Act or a certificate holder who has not met the requirement of Section 1309.1(j) of the Act to continue to practice for six months? The Board should explain in the Preamble and RAF of the final-form regulation how allowing a licensee or certificate holder who has not met the continuing education requirements in the Act to continue to practice is "not inconsistent with law" and conforms to the intent of the General Assembly.

Following issuance of a citation under Section 43b.25, proposed Sections 40.67(f) and 40.192(f) would require the licensee or certified physical therapist assistant to provide "proof" of the entire required amount of continuing education in Subsection (b), respectively. What constitutes "proof"? The Board should clarify how the regulated community will satisfy this requirement and what will be acceptable to the Board as evidence of completion of the continuing education.

Additionally, we note that existing Sections 40.67(b)(3) and 40.192(b)(3) require the Board to audit licensees and certified physical therapist assistants, respectively, to verify continuing education compliance. We have concerns that the Board will rely on this approach in verifying the proof submitted in response to proposed Sections 40.67(f) and 40.192(f). The use of random audits could potentially allow non-compliant licensees and certified physical therapist assistants to provide patient services for an indeterminate length of time. The Board should explain and clarify how the Board will verify proof of the continuing education requirements under proposed Sections 40.67(f) and 40.192(f), and how this verification process will protect the public health, safety and welfare.

In response to RAF #15, the Board states that "the summary process under Act 48 would be a much more efficient manner of handling violations than the formal disciplinary process, as long as licensees promptly make up any deficiencies in continuing education within [six] months." How did the Board determine that six months is a reasonable and feasible amount of time for the regulated community to make up continuing education deficiencies? The Board states that the proposed regulation would be more efficient if licensees act promptly, but how will the Board ensure that the regulated community promptly makes up deficiencies? The Board should address these concerns, and explain how the public health, safety and welfare are protected by the proposed regulation, including in situations where a licensee or certified physical therapist assistant does not act promptly and takes the full six months.

Finally, proposed Sections 40.67(f) states, “Within 6 months . . . the licensee shall make up the deficiency and provide proof of the entire required amount of continuing education in subsection (b).” Likewise, Section 40.192(f) states, “Within 6 months . . . the physical therapist assistant shall make up the deficiency and shall provide proof of the entire required amount of continuing education in subsection (b).” Subsection (b) in each case relates to reporting completion of continuing education. Since the Board is addressing deficiencies in each of the proposed sections and is asking for proof of the “required amount” of continuing education, does the Board mean to reference Subsection (a) relating to contact hour requirements?