

# Comments of the Independent Regulatory Review Commission



## Department of Transportation Regulation #18-465 (IRRC #3096)

### Physical and Mental Criteria Including Vision Standards Relating to the Licensing of Drivers

July 8, 2015

We submit for your consideration the following comments on the proposed rulemaking published in the May 9, 2015 *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 Department of Transportation (Department) to respond to all comments received from us or any other source.

#### 1. Persons authorized to diagnose and treat disorders and disabilities. – Consistency with statute; Economic impact

The persons authorized to diagnose and treat disorders and disabilities are set forth in several provisions in Chapter 15 *Licensing of Drivers* of the statute, including:

- 75 Pa.C.S. § 1508.1(a) *Physical examinations*, which states:

**Authorization to conduct examinations.--The department shall promulgate regulations to authorize specific classes of licensed practitioners of the healing arts, to include, but not be limited to, physicians, chiropractors, physician assistants and certified registered nurse practitioners, to conduct examinations required for the issuance of a driver's license and a school bus driver endorsement. (Emphasis added.)**

- 75 Pa.C.S. § 1518(b), *Reports by health care personnel*, which states:

**All physicians, podiatrists, chiropractors, physician assistants, certified registered nurse practitioners and other persons authorized to diagnose or treat disorders and disabilities defined by the Medical Advisory Board shall report to the department, in writing, the full name, date of birth and address of every person over 15 years of age diagnosed as having any specified disorder or disability within ten days. (Emphasis added.)**

- 75 Pa.C.S. § 1519(a) *Determination of incompetency*, which states:

The department, having cause to believe that a licensed driver or applicant may not be physically **or mentally qualified** to be licensed, may require the applicant or driver to undergo one or more of the examinations authorized under this subchapter in order to determine the competency of the person to drive. The department may require the person to be examined by a **physician, a certified registered nurse practitioner, a physician assistant or a licensed psychologist** . . . . Vision qualifications may be determined by an optometrist or ophthalmologist. (Emphasis added.)

The physical and mental criteria to be used in evaluation of a driver are found under the duties of the Medical Advisory Board in 75 Pa.C.S. § 1517(b), which states:

The board may advise the department and review regulations proposed by the department concerning physical and mental criteria including vision standards relating to the licensing of drivers under the provisions of this chapter.

The Pennsylvania Coalition of Nurse Practitioners (PCNP) commented in opposition to the proposed regulation and respectfully requests amendments. PCNP explains that the existing regulation (Sections 83.2, 83.5(a) and 83.5(b)), as well as the amended language at Paragraph 83.5(b)(5), include a Certified Registered Nurse Practitioner (CRNP) as a “health care provider” that is qualified in the diagnosis and treatment of the physical and mental criteria established in the regulation. However, for unexplained reasons, proposed Subsection 83.5(c) would limit a subsequent assessment of cognitive or emotional functioning to “a psychiatrist, neurologist or licensed psychologist.” This would exclude all other defined “health care providers,” including CRNPs, from making this assessment. PCNP respectfully requests that the regulation be amended to be consistent with the statute and other regulations by including CRNPs in Subsection 83.5(c)

We agree that the statute specifically directs that CRNPs, as well as “other persons authorized to diagnose or treat disorders and disabilities” can perform the diagnosis. We further agree that the Department has not provided a reason for not including all health care providers from making the assessment in Subsection 83.5(c). How can a class of health care provider, specifically designated by statute to diagnose a condition that could disqualify a driver, not be qualified to subsequently assess that same driver with the same condition for driving ability?

To be consistent with the statute, we recommend that Subsection 83.5(c) be amended to include the health care providers established in statute. If the Department does not amend the regulation to include all qualified health care providers, it should explain how the regulation is consistent with the statute and how the cost of an assessment by a psychiatrist, neurologist or licensed psychologist is justifiable. The Department should also amend the Regulatory Analysis Form to reflect these costs imposed by the regulation.

## **2. Timetable for review and compliance.**

Regulatory Analysis Form Question 29 asks for a schedule for review of the regulation, including the dates such as when compliance with the final-form regulation will be required.

The response shows dates in 2014 which obviously have expired. We ask the Department to review and amend these dates for the final-form regulation submittal.

### **3. Section 83.2. Definitions. – Need; Clarity.**

#### *Dementia*

The second and third sentences of this definition describe the early stages and progressive nature of dementia. We do not believe these sentences are needed to understand what the Department considers to be dementia. Therefore, we recommend deleting them.

#### *Mental or emotional disorder*

As written, this definition relies on the description and definition in the “current *Diagnostic and Statistical Manual of Mental Disorders*, including its introduction or International Classification of Diseases.” If that is the standard that defines mental or emotional disorder, we recommend deleting the rest of the definition because it may conflict with a future change in the manual.

If the Department maintains this language, it should review the definition’s phrasing for need and clarity. We recommend deleting the word “important” because it is not clear what distinction the word implies in the consideration of a symptom and what it would exclude from the definition of mental or emotional disorder. In the context of the health care provider’s recommendation specified in Paragraph 83.5(b)(5), why is the last sentence of the definition needed that states “Some mental disorders cause poor judgment . . . that might affect driving performance”?

#### *Neurologist and Psychiatrist*

Both of these definitions include a licensed physician who is “Board-eligible.” We have three concerns relating to how “Board-eligible” is consistent with the statute and is clear.

First, 75 Pa.C.S. § 1519(a) states a person who “may not be physically or mentally qualified to be licensed” may be required to be examined by “a physician, a certified registered nurse practitioner, a physician assistant or a licensed psychologist” and for vision examination by “an optometrist or ophthalmologist.” There is no mention of “Board-eligible” in this provision of the statute for these professions. The Department should explain how including the phrase “Board-eligible” in the regulation is consistent with the statute.

Second, it is not clear what specific standard or minimum training the phrase “Board-eligible” includes. Other definitions in Section 83.2 of health care professions (CRNP, Chiropractor, Licensed Optometrist and Psychologist) state or imply a person must be licensed and not just eligible to be licensed. Why are Board-eligible neurologists and psychiatrists included in the definitions and what training must they meet to be Board-eligible?

Finally, these definitions use the term “Board.” The definitions should state more specifically which board the Department accepts for the certifications.

## *Psychologist*

This term is defined as “a person licensed as a psychologist.” We recommend adding that the person is licensed as a psychologist by the State Board of Psychology, similar to the existing definitions of “licensed optometrist” and “licensed physician.”

### **4. Section 83.5. Other physical and mental standards. – Clarity.**

#### *Discretion of the health care provider*

Subsection (b) states,

“An individual who has any of the following conditions will not be qualified to drive if, **in the opinion of the [health care] provider** the condition is **likely** to impair the ability to control and safely operate a motor vehicle: . . . .” (Emphases added.)

Subsection (b) implies the health care provider has discretion and exercises judgment in determining whether a person can drive safely. However, as written, Subparagraph (b)(5)(i) contradicts that discretion by stating “An individual **will** be disqualified” for certain conditions. (Emphasis added.) We recommend that the Department review this language to make these provisions consistent with each other.

#### *Stages of Alzheimer’s disease*

Paragraph (a)(5) sets a general disqualification when an individual is diagnosed with Stage 5, 6 or 7 Alzheimer’s disease or dementia. Clause (b)(5)(i)(D) disqualifies at a different stage for an individual with signs of Stage 3 or greater. If this is the Department’s intent, it should explain the difference between the provisions and consider amending Clause (b)(5)(i)(D) to just Stages 3 or 4. If not, the Department should reconcile these provisions.

### **5. Miscellaneous Clarity**

- Chapter 83 uses the defined term “health care provider” in Paragraph 83.5(b)(5), as well as the undefined term “provider” in Subsection 83.5(b). For clarity, we recommend that the Department review Chapter 83 and make amendments to consistently use the defined term “health care provider” throughout Chapter 83.
- In Section 83.2 the term “dementia” is defined and includes a reference to the “Alzheimer Association.” Should this be the Alzheimer’s Association?
- In Subsection 83.5(c), the phrase “licensed psychologist” is used. Since the definition of psychologist states they must be licensed, it is redundant to use the word “licensed” in Subsection 83.5(c).