

## Comments of the Independent Regulatory Review Commission



### State Board of Occupational Therapy Education and Licensure Regulation #16A-6711 (IRRC #3134)

#### General Revisions

April 20, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the February 20, 2016 *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 Occupational Therapy Education and Licensure (Board) to respond to all comments received from us or any other source.

#### **1. Section 42.13. Application for licensure. Section 42.14. Foreign-educated applicants. Section 42.15. Application for temporary license. – Clarity.**

Sections 42.13 (b)(3), 42.14 (c)(3) and 42.15 (d)(3) all provide a means of proof of insurance that an applicant can include their own certification that they will be covered under an employer's professional liability policy upon commencement of employment. The Occupational Therapy Practice Act (Act) includes the following proviso:

“the applicant certifies that the applicant will be covered by an employer against professional liability in required amounts upon the commencement of employment as an occupational therapist, **provided that the applicant does not practice occupational therapy prior to the commencement of such employment.**” 63 P.S. 1508(5)(iv)(B)  
[Emphasis added.]

This statutory language makes clear a licensee's legal obligation to obtain and maintain professional liability insurance. The Board should include this important phrase in the final regulation. The Board should also explain its rationale to issue a regular license to an applicant rather than issue a provisional license that is conditioned upon submission of appropriate proof of insurance.

#### **2. Section 42.16. Biennial renewal; inactive status; failure to renew. – Implementation procedures; Reasonableness.**

Subsection (c) states that in order for licensees to retain the right to engage in practice, they must renew their license biennially. Under Paragraph (1) of this subsection, an occupational therapist must certify maintenance of the required professional liability insurance coverage. The Act

requires that within 30 days after the issuance of a license or within 30 days after the commencement of employment, the occupational therapist must submit to the Board the certificate of insurance or a copy of the policy declaration page. *See* 63 P.S. 1508 (5)(v). Since the Board is not requiring proof of insurance, it should at least require that some basic information be included in the renewal application (i.e., insurance company name, policy number etc.).

### **3. Section 42.53. Continued competency requirements. – Implementation procedures; Reasonableness.**

Act 138 of 2012 amended the Occupational Therapy Practice Act (63 P.S. 1501 – 1519) to require continued competency for occupational therapy assistants. *See* 63 P.S. 1515(a). The Board is implementing this statutory requirement by imposing existing continued competency regulations that it established via regulation for occupational therapists on occupational therapy assistants. Occupational therapists and occupational therapy assistants have different educational and training requirements and different scopes of practice. How did the Board determine that it is reasonable to apply the same standards for continued competency to both licensees? The House Professional Licensure Committee expresses a similar concern given occupational therapy assistants may only practice under the supervision of an occupational therapist. We ask the Board to explain their rationale for this regulatory requirement in the Preamble to the final-form rulemaking.

Under Subsection (a), occupational therapy assistants will be required to complete a minimum of 24 contact hours in each biennial period, beginning with the July 1, 2015 – June 30, 2017 period. Since this rulemaking will not be finalized until later this year or sometime after that, we question how this provision will be implemented. A review of the Board’s website and the various notices and forms posted to it do not indicate that completion of continued competency will be required for renewal of an occupational therapy assistant license. Has the Board notified occupational therapy assistants of the new continued competency requirements? Will occupational therapy assistants be able to complete the 24 contact hours of continued competency in a timely fashion? In the Preamble to the final-form rulemaking, we ask the Board to explain how this provision will be implemented.

### **4. General.**

#### *Time frame*

We ask the Board to provide a detailed response explaining what issues led to the delay in promulgating the regulation and what alternatives were considered to resolve those issues.