

## Comments of the Independent Regulatory Review Commission



### State Board of Examiners in Speech-Language Pathology and Audiology Regulation #16A-6803 (IRRC #3159)

#### Fees; General Revisions

December 28, 2016

We submit for your consideration the following comments on the proposed rulemaking published in the October 29, 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 Examiners in Speech-Language Pathology and Audiology (Board) to respond to all comments received from us or any other source.

#### **1. Whether the regulation is consistent with the intent of the General Assembly; Fiscal impact.**

The Speech-Language and Hearing Licensure Act was amended by Act 106 of 2014 (Act 106). Act 106 changed the name of the aforementioned Act to the Speech-Language Pathologists and Audiologists Licensure Act (Act). 63 P.S. §§ 1701 – 1719. The 2014 legislation made numerous changes to the Act, including the addition of provisional licenses for speech-language pathologists and audiologists.

This rulemaking will add three fees and increase two fees. The three new fees are necessitated by changes to the Act. The two fee increases are needed because the Board believes a deficit will occur if revenues are not increased. For FYs 2015-2016 and 2016-2017, the Board projects a \$94,000 deficit. The deficit is expected to grow to \$184,000 for FYs 2022-2023 and 2023-2024. The Board states that the new fee structure will allow it to “continue a positive balance for at least 10 years.”

As noted in the Preamble, Section 8(a) of Act (63 P.S. § 1708(a)) “requires the Board to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet expenditures **over a two-year period.**” (Emphasis added.) The Board has provided a fiscal analysis of the additional revenue it expects the new fees and fee increases to produce each year. However, a similar analysis was not provided for expected expenditures for each year. In order for this Commission to determine if the Board is in compliance with Section 8(a) of the Act, we ask the Board to provide a more detailed comparison of expected revenues and expenses for each of the next 10 fiscal years. We are specifically interested in the projected expenses for each year during this time period.

## **2. Section 45.2. Definitions. – Clarity.**

As part of this rulemaking, the Board is adding and amending regulatory definitions to align with the statutory changes made by Act 106. We have three concerns. First, to ascertain the entire meaning of the terms “practice of audiology” and “practice of speech-language pathology,” a person would have to read both the statutory definition and the regulatory definition of those terms. We believe the clarity of the regulation would be improved if the regulatory definitions of these terms were expanded to include the meaningful provisions of the statutory definitions.

Second, the Pennsylvania Speech-Language Hearing Association submitted comments suggesting that references to documents produced by the American Speech-Language Hearing Association (ASHA) found under Clause (i)(A) of the definition of “practice of audiology” and Subparagraph (xi) of the definition of “practice of speech-language pathology” are outdated. They note that ASHA updated the referenced documents after these proposed regulations were adopted by the Board. We agree with PSHA’s suggestion to update the references in the final-form regulation.

Third, Act 106 added a definition for the term “neurophysiologic intraoperative monitoring.” Since this term is used throughout this proposal, we suggest that a regulatory definition be added to this section of the regulation.

## **3. Section 45.12. Licensure application procedures. – Clarity.**

Subsection (a) requires an applicant for licensure to submit the required fees, a completed, signed and dated application and “applicable documentation.” We recommend that the final-form regulation specify what documentation needs to be submitted with the application.

## **4. Section 45.14. Reactivation of licensure status. – Clarity.**

Under Subsection (a), a licensee wishing to reactivate a license must apply for reactivation, pay the registration fee and submit a “verification of nonpractice in this Commonwealth.” What is a “verification of nonpractice”? We ask the Board to clarify in the regulation what this is and how it is to be submitted to the Board.

## **5. Section 45.20. Supervised professional experience. – Clarity.**

The Preamble states that audiology students complete their supervised professional experience during their last year of their doctoral degree programs. This statement implies that this section would not apply to audiologist applicants seeking licensure from the Board. To improve the clarity of the rulemaking, we suggest that the final-form regulation specify that this section only applies to speech-language pathologist applicants seeking licensure from the Board.

## **6. Section 45.22. Foreign-trained applicants. – Reasonableness; Clarity.**

This section is being amended to reflect the different educational requirements for speech-language pathologists and audiologists. The Board is also deleting the requirement that foreign-

trained applicants pass a licensure examination. What is the reason for deleting this requirement? Are the health, safety and welfare of Pennsylvania citizens adequately protected if this provision is deleted from the regulation? We ask the Board to explain its rationale for this deletion in the Preamble to the final-form rulemaking.

**7. Section 45.23. Provisional licenses. – Clarity.**

Under Subsection (d), a speech-language pathologist who was issued a provisional license under Subsection (a)(1)(ii) may seek an extension of the provisional license. The rulemaking does not include a similar provision for audiologists that were issued provisional licenses under Subsection (a)(2)(ii). Would an audiologist with a provisional license issued under Subsection (a)(2)(ii) be eligible to seek an extension of that license? If so, we suggest that Subsection (d) be amended to reflect that fact.

**8. Section 45.103. Unprofessional conduct. – Reasonableness; Implementation procedures; Clarity.**

The Board proposes to add Paragraph (24) to the list of types of conduct it considers to be unprofessional. This paragraph reads as follows: “Failing to utilize universal precautions or proper infection control methods.” The Preamble explains that this language is modeled after the Center for Disease Control’s recommendation for all health care providers as well as standards from other professional organizations. We do not question the need for this provision; however, we believe it lacks clarity. Since unprofessional conduct could lead to fines, suspensions or a revocation of one’s license, we believe the regulated community would benefit from a more precise standard. We ask the Board to include in the final-form regulation a more definitive explanation of what precautions and infection control methods would be acceptable.