Comments of the Independent Regulatory Review Commission

State Board of Pharmacy Regulation #16A-5419 (IRRC #3163)

Compounding

May 10, 2017

We submit for your consideration the following comments on the proposed rulemaking published in the March 11, 2017 *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 Pharmacy (Board) to respond to all comments received from us or any other source.

1. **Protection of the public health, safety and welfare; Clarity, feasibility and reasonableness of the regulation.**

The Board states in response to Regulatory Analysis Form (RAF) question 15 that all pharmacists who compound drugs will be impacted by the regulation. The Board responds to RAF question 16 that all pharmacies and pharmacists who elect to compound drugs would be required to comply with the provisions of this regulation. We also note that Section 390-8(2) of the Pharmacy Act provides:

> It shall be unlawful for:
>
> (2) Any person not duly licensed as a pharmacist, pursuant to section 3 hereof, to engage in the practice of pharmacy, including the preparing, compounding, dispensing, selling or distributing at retail to any person any drug . . . . Provided, however, **That nothing herein shall be construed to prevent a duly licensed medical practitioner from dispensing, compounding or otherwise giving any drug to his own patients after diagnosis or treatment of said patient, if such compounding, preparing and dispensing is done by said licensee himself** . . . . [Emphasis added.] 63 P.S. § 390-8(2).

However, commenters express concern that the Board states in the Preamble that "**all compounding** shall be done in accordance with the current version of the *United States Pharmacopeia* (USP)." We ask the Board to clarify in the final regulation the effect, if any, of this regulation on licensed medical practitioners other than pharmacists.

Also, the questions on the inspection form attached to the RAF all seem to apply only to sterile compounding. Will there be any changes to the inspection forms related to non-sterile compounding?

2. Protection of the public health, safety and welfare; Clarity and lack of ambiguity; Reasonableness of requirements, implementation procedures and timetables for compliance.

In the Preamble, the Board states that the United States Food and Drug Administration (FDA) requires that compounded drug products conform with USP standards in accordance with Section 503a of the Federal Food, Drug, and Cosmetic Act (21 U.S.C.A. § 353a), regarding pharmacy compounding. Because the FDA requires that pharmacies follow USP chapters on compounding, the Board proposes to require compounding by pharmacies in this Commonwealth to comply with the USP.

In reviewing the regulation, we note that:

- The Board states solely that the regulated community must comply with USP chapters in three sections (27.601, 27.610 and 27.614);
- The Board proposes language and/or additional requirements as well as states that the regulated community must comply with USP chapters in six sections (27.603, 27.608, 27.609, 27.611, 27.615 and 27.617); and
- The Board does not reference USP chapters in the remaining *Compounding* and *Bulk Compounding* sections.

While recognizing that the FDA requirement for compliance with USP chapters is currently in effect, we agree with concerns from the regulated community related to the Board's seemingly inconsistent application of and/or reference to USP chapters. For example, commenters ask the Board to remove sections that paraphrase existing USP chapters and to remove sections which appear in USP chapters in greater detail. Commenters also ask the Board to directly reference USP chapters to avoid conflicting requirements in the future.

In sections where the Board expands upon or restates USP chapters, how will the Board ensure that Pennsylvania regulations do not conflict with FDA requirements going forward? We ask the Board to ensure that the final-form regulation is consistent with FDA requirements, and to explain in the Preamble of the final regulation how the Board will ensure consistency with FDA requirements going forward.

3. Determining whether the regulation is in the public interest.

The House Professional Licensure Committee (Committee) raises concerns related to Section 27.12(d)(2)(vii) (relating to practice of pharmacy and delegation of duties) that additional information may be necessary to clearly identify what pharmacy technicians may do and/or what they are prohibited from doing when assisting in the compounding of drug products.

The Committee also raises concerns as to whether the label information required in Section 27.620 (relating to label information required) would include all of the information currently found on the label of a non-compounded prescription medication.

We will review the Board's response to these concerns in our determination of whether the final regulation is in the public interest.

4. **Section 27.603. Bulk drug substances. – Nonregulatory language; Protection of the public health, safety and welfare.**

A commenter states that the Board is adopting FDA *Pharmacy Compounding of Human Drug Products Under Section 503a of the Federal Food, Drug, and Cosmetic Act Guidance* (FDA Guidance) concerning bulk drug substances, but the Board is providing for an exception for bulk drug substances that are not subject to a monograph. Subsection (2)(iii) allows for bulk drug substances that "peer-reviewed medical literature supports and, in the professional judgment of the pharmacist and prescriber, demonstrates the safety and effectiveness of the bulk drug substances." We have concerns that this exception is not regulatory language and does not set a binding norm. A regulation has the full force and effect of law and this provision does not establish a standard that could be predicted by the regulated community. Also, we have concerns that FDA Guidance does not allow for this exception. We ask the Board to ensure that the final-form regulation sets clear compliance standards, and explain how this provision is consistent with FDA Guidance and adequately protects the public health, safety and welfare.

5. **Section 27.604. Dispensing compounded drugs.**
   Section 27.605. Resale of compounded drug products. – Clarity, feasibility and reasonableness of the regulation; Reasonableness of requirements, implementation procedures and timetables for compliance.

Section 27.604 identifies a "specific patient" while Section 27.605 uses "individual patient." Do these terms have unique meanings? We ask the Board to ensure the final-form regulation is consistent and clear for the regulated community.

Additionally, we ask the Board to clarify whether these provisions:

- Prohibit dispensing compounded drugs "for office use;"
- Limit a physician's ability to order and purchase compounded drugs from the compounding pharmacy for the purposes of storing them in the office for future use; and
- Require a patient-specific prescription in order for a pharmacy to be able to send a batch of a compounded drug directly to a physician for administration to that patient.

6. **Section 27.606. Compounding prohibited. – Protection of the public health, safety and welfare; Clarity, feasibility and reasonableness of the regulation.**

Commenters are concerned that Subsection (1) may conflict with a clinical trial where a drug that has been removed from the market is now being used for investigational purposes after approval from an institution's Investigational Review Board. We ask the Board to consider this scenario and explain how the final-form regulation adequately protects the public health, safety and welfare, and is reasonable.

7. **Section 27.608. Protective apparel. – Protection of the public health, safety and welfare; Clarity, feasibility and reasonableness of the regulation.**

This section states that sterile gowning components are necessary "as required by the USP chapter on sterile compounding." A commenter raises concerns that not all gowning components required by USP 797 are sterile. We ask the Board to ensure that the final regulation is clear and reasonable, and adequately protects the public health, safety and welfare.

8. **Section 27.617. Standard operating procedures required. – Nonregulatory language; Clarity and lack of ambiguity; Need for the regulation.**

Subsection (c) states that ". . . Control procedures **must include all of the following, as appropriate**: (1) Capsule weight variation. (2) Adequacy of mixing to ensure uniformity and homogeneity. (3) Clarity, completeness or pH of solutions." [Emphasis added.] Requiring that control procedures "must include all of the following," but only "as appropriate" is contradictory. Further, the term "as appropriate" is vague and does not set a measurable standard. We ask the Board to revise this subsection in the final regulation to ensure that the requirements for compliance are clear for the regulated community.

9. **Section 27.620. Label information required. – Clarity, feasibility and reasonableness of the regulation.**

This section requires compliance with Section 27.18(d), which requires the DEA number of the pharmacy to be included on the container. A commenter states that not all pharmacies possess a DEA license and do not possess nor dispense controlled substances. We ask the Board to consider this scenario and to ensure that the final regulation is reasonable and clear for the regulated community.

10. **Section 27.622. Master formula record.**
Section 27.623. Production record for drugs compounded in bulk quantities. – Clarity and lack of ambiguity.

Commenters note that the Board's use of "formula record" in Section 27.622 and "production record" in Section 27.623 is ambiguous because USP defines two types of records: Master Formulation Record and Compounding Record. We ask the Board to use USP terms in the final regulation for clarity and consistency with USP, or to explain the reasonableness of using terms that differ from USP.

11. **Miscellaneous clarity.**

Commenters state that the term "bulk" seems to refer to Active Pharmaceutical Ingredients, which are raw chemicals used in some nonsterile or nonsterile to sterile compounding. Commenters also note that "bulk" is used to refer to batches, which are routinely prepared in health-system pharmacies from commercially-available sterile FDA-approved products. We ask the Board either to define the term or clarify the applicability of the term within the sections of the regulation in which it is used.