

# Comments of the Independent Regulatory Review Commission



## State Board of Chiropractic Regulation #16A-4312 (IRRC #3197)

### Chiropractic Specialties

April 25, 2018

We submit for your consideration the following comments on the proposed rulemaking published in the February 24, 2018 *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 Chiropractic (Board) to respond to all comments received from us or any other source.

#### **1. Scope of Practice. – Consistency with statute; Protection of the public health, safety and welfare.**

This regulation addresses advertising of specialties. In the Preamble, the Board states:

The Board is aware that a chiropractor might obtain a "certification" that does not truly reflect genuine advanced knowledge, training or skill, but instead is rather easily obtained. Unfortunately, the public, not knowing what certifications are meaningful, may be confused or deceived by the advertising of these credentials . . . . Because § 5.31(c)(5) already specifically addresses the advertising of chiropractic specialties, it appears appropriate to amend that provision to create a brighter line rule in the advertising of professional credentials.

This proposed regulation deletes the definition of "Chiropractic specialty" and amends a subparagraph on professional advertising requirements. However, the Board's regulation does not comprehensively address practice relating to specialty certifications that do not meet the existing definition of "Chiropractic specialty."

The Chiropractic Practice Act (Act) establishes that it is a violation for a chiropractor to hold "himself out as a specialist unless he possesses a post graduate certification in that specialty." Violations relating to specialties are serious offenses that potentially result in revocation of a license, fines and imprisonment. See 63 P.S. §§ 625.506(a)(17) and 625.702(12). Relating to specialties, the Act does not define the key terms "specialist," "specialty" or "post graduate certification." Under 63 P.S. § 625.302(3) of the Act, the Board has the power and duty "to promulgate, adopt and enforce in the manner provided by law, the rules and regulations necessary to carry out this Act." We believe it is in the best interests of the public, licensed chiropractors and the Board to establish in regulation what the terms "specialist," "specialty" and "post graduate certification" mean and to clearly establish when a violation of the Act occurs.

The Act and the Board's regulation are much more prescriptive and clear relating to adjunctive procedures and certification. The Act defines "adjunctive procedures" at 63 P.S. § 625.102 and addresses certification to use them at 63 P.S. § 625.304, including requirements to pass an examination on the use of adjunctive procedures and to complete 100 hours of study in the use of adjunctive procedures, as approved by the Board. Under its existing regulation in 49 Pa. Code Chapter 5, the Board specifies certification to use adjunctive procedures (§ 5.14) and includes on the list of unprofessional conduct practicing or advertising adjunctive procedures without a certificate to use adjunctive procedures issued by the Board (§ 5.81(1)(xiv)). Shouldn't the practice of a specialty warrant similar provisions in regulation?

Upon review of the Act and the proposed regulation, we question how the regulation adequately protects the public from a chiropractor practicing a specialty based on attaining what the Board considers to be invalid training to qualify as a specialist. The Act specifies serious penalties for practicing a specialty without proper certification, but we believe delegates authority to the Board to establish in regulation the details of a proper certification to carry out the Act. Therefore, the Board's regulation should establish what a specialty is, how a chiropractor can qualify as a specialist and what constitutes a violation in practice and professional advertising.

Given that these subject areas were not included in the proposed regulation, and therefore there was no opportunity for public comment on these issues, we recommend that the Board withdraw this regulation. We further recommend that the Board draft a new proposed regulation in consultation with the regulated community that comprehensively addresses specialty practices, patient safety and advertising.

If the Board does not withdraw the regulation, we submit the following comments on the proposed regulation.

## **2. Existing specialty certifications. – Economic impact; Reasonableness.**

In the Regulatory Analysis Form (RAF), the Board repeatedly states it does not expect this rulemaking will have any financial, economic or social impact. However, the regulation limits specialties to those endorsed by the American Board of Chiropractic Specialties (ABCS). Public commentators said they hold valid specialty certifications that were earned from organizations other than ABCS and meet the same criteria as ABCS. The proposed regulation would exclude them from advertising their specialties. Therefore, we question how the regulation would not impact these individuals and why this impact was not included in the RAF responses.

## **3. Section 5.1. Definitions. – Consistency with statute; Need; Clarity.**

The Board proposes to delete the definition of "Chiropractic specialty." The Preamble explains that this definition is unnecessary. We disagree for two reasons. First, the term "specialty" is used several times in the statute, but is not defined in the statute. See 63 P.S. §§ 625.506(a)(17) and 625.702(12). Therefore, the Board should establish in regulation its interpretation of this term. Second, since this term is used in existing Subsection 5.31(a), deleting the term from the definitions would make Subsection 5.31(a) unclear. We recommend maintaining this term in the regulation, with amendments as needed to address the issues raised by commentators as noted below.

#### **4. Section 5.31. Professional advertising. – Economic impact; Reasonableness.**

Paragraph (c)(5) is proposed to be amended to rely on “certification or diplomate status in that specialty from a board recognized by the American Board of Chiropractic Specialties.” In the Preamble, the Board lists numerous specialties recognized by ABCS. The Board further explains that these specialty boards require passing a certification examination after a full-time residency of at least three years or a part-time residency of more than 300 hours of education and clinical practice.

We received ten public comments that were submitted during the public comment period either representing chiropractic associations or individual chiropractors. All of these comments oppose limiting advertisement of specialties to those recognized by ABCS. Generally, these comments outline many other certifications and diplomate programs they believe should qualify for specialty certification. Several are concerned that certifications earned in the past would be negated by the proposed regulation. The Pennsylvania Chiropractic Association (PCA) does not support the proposed regulation and believes it will confuse the public. The International Chiropractors Association (ICA) does not support the proposed regulation and objects to the “arbitrary and unwarranted exclusion” of ICA certifications. Both PCA and ICA recommend that the Board draft and submit a revised proposed regulation.

While the Board provided details of the numerous certifications available under ABCS, it did not explain why it chose to only accept ABCS certifications or why other certifications should be excluded. The public commentators state there are other certifications that are equivalent and should be acceptable. We are concerned that the regulation, as written, would impose a hardship on chiropractors who may currently hold valid specialty certifications. We recommend that the Board meet with the commentators to gain a better understanding of their existing specialty certifications, as well as programs other than ABCS that offer valid specialty certifications. We also recommend that the Board work with the regulated community to draft and submit a revised proposed regulation that addresses the issues raised by commentators.