

Comments of the Independent Regulatory Review Commission



State Board of Dentistry Regulation #16A-4626 (IRRC #3198)

Child Abuse Reporting Requirements

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 (Act) (71 P.S. § 745.5b). Section 5.1(a) of the Act (71 P.S. § 745.5a(a)) directs the State Board of Dentistry (Board) to respond to all comments received from us or any other source.

1. Section 33.1. Definitions. – Clarity and lack of ambiguity.

Perpetrator

The term *perpetrator* is being deleted because the Board says it is no longer used in the regulations. However, the term *perpetrator* is part of the proposed definition of *serious physical neglect* as taken directly from the Child Protective Services Law (CPSL). The Board should either keep the defined term *perpetrator* in the final regulation or revise the definition of *serious physical neglect* not to include the use of perpetrator.

Child abuse

The Board is amending the definition of *child abuse* to comport with amendments made to the CPSL. However, we note that the proposed definition varies from the CPSL. Specifically, Section 6303(b.1)(8)(ii) of the CPSL states, “unreasonably restraining or confining a child, based on consideration of the method, location or the duration of the restraint or confinement” whereas the equivalent definition in Clause (viii)(B) only states “unreasonably restraining or confining a child.” 23 Pa.C.S. § 6303(b.1)(8). Similarly, the phrase “provided that the violation is being investigated by law enforcement” was not carried over from Section 6303(b.1)(8)(vi) of the CPSL to Clause (viii)(F) in the proposed regulation. Additionally, we note that Section 6303(b.1)(8)(vii)(D) of the CPSL is not included at all in the proposed regulation. In response to Regulatory Analysis Form Question #10, the Board states that the regulation is needed because “licensees will further benefit from regulations that are consistent with the CPSL, as amended, to avoid confusion as to their responsibilities in this area.” Since the Board is amending the regulation for consistency with the CPSL, we ask the Board to explain why these portions of the CPSL aren’t carried over in the final regulation. Additionally, where the Board is amending the

final regulation to comport with the CPSL, the Board should ensure that the final regulation is consistent with the CPSL.

2. Section 33.401. Credit-hour requirements. – Conforms to the intention of the General Assembly.

Subsection (h) requires all licensees and certificateholders to complete two of the required hours of continuing education in approved courses on child abuse recognition and reporting as set forth in Section 33.256 (relating to child abuse recognition and reporting—mandatory training requirement). Section 122(j) of The Dental Law (Law) states that the Board shall have the powers and duties “to suspend or revoke the license or certificate of such persons as fail, refuse or neglect to renew biennially, comply with the requirements of subsection (j.2), or pay the appropriate fee.” 63 P.S. § 122(j). Section 122(j.2)(2) addresses credit hours requirements that “shall be satisfactorily completed in accordance with board regulations as a precedent to biennial renewal of a license or certification” In other words, the Law requires completion of the required hours of continuing education in approved courses on child abuse recognition and reporting before a license or certificate can be renewed.

Our concern is that the proposed regulation does not provide direct notice that if the continuing education requirement for child abuse recognition and reporting is not met, a license or certificate cannot be renewed. Direct and clear notice in the wording of the regulation will benefit both the Board and regulated community in obtaining compliance. Clear notice can also avoid the expense of the Board taking action against a licensee or certificateholder and the potential loss of income for the licensee. Therefore, while the intent and actions of the Board may be not to renew, we recommend that clear notice be provided in the final regulation that the Board will not renew a license or certificate if the licensee or certificateholder fails to complete the continuing education required by the Law.