

Comments of the Independent Regulatory Review Commission



State Board of Podiatry Regulation #16A-4417 (IRRC #3257)

Continuing Education

July 29, 2020

We submit for your consideration the following comments on the proposed rulemaking published in the May 30, 2020 *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 Podiatry (Board) to respond to all comments received from us or any other source.

1. Section 29.61. Requirements for biennial renewal and eligibility to conduct educational conferences. – Protection of the public health, safety and welfare; Need for the regulation.

In Subsection (a), the Board proposes to lower the continuing education requirement from 50 to 45 hours. In Paragraph (a)(4), the Board proposes to eliminate the ten-hour limit and permit an unlimited number of distance learning continuing education hours. The Board states in response to question #18 of the Regulatory Analysis Form (RAF) that it has determined that 45 continuing education hours is adequate to assure the public's health, safety and welfare, and that with recent innovations in course delivery online, the elimination of the ten-hour restriction on distance learning will not adversely affect the quality of the continuing education taken by podiatrists overall.

The Pennsylvania Podiatric Medical Association (PPMA) submits comments strongly opposing these proposed changes, primarily citing an agreement established by the stakeholders involved in the creation of Act 13 of 2002, the Medical Care Availability and Reduction of Error (MCARE) Act (40 P.S. § 1303.101, et seq). PPMA explains that reducing the number of required continuing education hours for licensed podiatrists runs counter to the MCARE agreement because podiatrists participate in the MCARE Fund, meaning that annually the amount of each judgment and settlement reached in all claims against doctors of podiatric medicine, medical doctors, osteopathic medical doctors and hospitals are aggregated and assessed to each licensee in the form of the MCARE Assessment. Commenters assert that podiatric physicians cannot be perceived to have less stringent continuing education requirements than other medical professions with medical and surgical privileges, and emphasize that podiatrists have fought to establish parity with fellow medical and osteopathic medical doctors. While the Board responds to RAF question #10 (which asks why the regulation is needed) that the regulation is inspired by the Governor's initiative to reduce barriers to licensure

and unnecessary burdens on licensees, PPMA asserts that it does not see the current regulatory requirements as a barrier or burden. Further, PPMA states that there is no factual basis upon which to reduce the required continuing education hours, and cites several reasons for objecting to unlimited distance learning hours, such as the value of face-to-face interaction and discussions.

We ask the Board to explain in the Preamble and RAF of the final-form regulation how the total number of required continuing education hours and the maximum number of hours permitted to be obtained through distance learning protects the public health, safety and welfare.

As noted above, Section 29.61 currently allows that a maximum of ten hours may be in approved courses and programs that involve the use of the Internet or the reading of professional journals or magazine articles. In restructuring this section, the Board proposes in Paragraph (a)(3) to retain the ten-hour limit for continuing education obtained by reading professional journals. PPMA states that this proposed change further diminishes the quality of continuing education since the term “professional journals” is not defined, nor is there any method through which to indicate any enhancement of the licensee’s knowledge or proficiency. We ask the Board to define this term in the final-form regulation and explain how this method of continuing education protects public health, safety and welfare.

2. Section 29.68. Continuing education exemptions. – Statutory authority.

Proposed Subsection (e) states that a podiatrist who has never been licensed previously in any jurisdiction is exempt from the continuing education requirements set forth in Section 29.61(a) (relating to requirements for biennial renewal and eligibility to conduct educational conferences) for the first renewal period immediately following licensure in this Commonwealth. However, Section 42.9a of the Podiatry Practice Act states that any individual applying for an initial registration under this act shall be exempted from the requirement of attending an educational conference during the **calendar year** in which he makes application for his license, provided he has graduated from an accredited school of podiatric medicine and surgery during that calendar year. 63 P.S. § 42.9a. Because the statute only permits a continuing education exemption for new registrants during the calendar year in which the person applies for licensure, what is the Board’s statutory authority for exempting an individual for the first renewal period, which could exceed a calendar year?

3. Miscellaneous clarity.

PPMA notes that the reference to the American Podiatry Association in Section 29.68(d) (relating to continuing education exemptions) is outdated. We ask the Board to amend the name of the body which approves the Podiatric Residency Program in the final-form regulation.