

# Comments of the Independent Regulatory Review Commission



## State Board of Medicine #16A-4941 (IRRC #3287)

### Child Abuse Reporting Requirements

March 31, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the January 30, 2021 *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 Medicine (Board) to respond to all comments received from us or any other source.

#### **1. Possible conflict with statute and regulations; Protection of the public health, safety and welfare; and Implementation.**

##### *Board regulated practitioners and Mandated reporters*

The Preamble explains that Chapter 18 (relating to the State Board of Medicine--Practitioners other than Medical Doctors) is being amended to provide appropriate cross-references to the mandatory training and continuing education requirements for nurse midwives, acupuncturists, practitioners of Oriental medicine, physician assistants, respiratory therapists, athletic trainers, behavior specialists, perfusionists, genetic counselors, prosthetists, orthotists, pedorthists, and orthotic fitters.

The list of practitioners and their corresponding subchapters identified in the Preamble summary are derived from the Board's proposed definition of "*Board-regulated practitioner*." The Board does not include in the Preamble's description of the amendments or the actual updates "auxiliary personnel performing radiologic procedures on the premises of a medical doctor." (auxiliary personnel)

On April 12, 2018, the State Board of Medicine issued a special notice that the State Boards of Chiropractic, Dentistry, Medicine, Osteopathic Medicine and Podiatry are no longer registering auxiliary personnel or otherwise issuing documents authorizing auxiliary personnel to apply ionizing radiation in the offices of licensees. Auxiliary personnel that wish to perform radiologic procedures are required to pass an exam approved by the relevant Board, or obtain certification through an accrediting or credentialing organization.

Chapter 18 (relating to State Board of Medicine--Practitioners other than Medical Doctors) Subchapter E (relating to Performance of Radiologic Procedures by Auxiliary Personnel), which provides for the examination and certification in Radiography, Radiation Therapy Technology and Nuclear Medicine Technology is not part of the proposed regulation.

Section 6311(a)(12) of the Child Protective Services Law (CPSL)(23 Pa.C.S. §§ 6301-6387) requires an individual supervised or managed by a person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State, who has direct contact with children in the course of employment, to make a report of suspected child abuse, if the person has reasonable cause to suspect that a child is a victim of child abuse. 23 Pa.C.S. § 6311(a) (12) Auxiliary personnel work under the direct supervision of a medical doctor. 49 Pa. Code § 18.202 (relating to Auxiliary personnel performing radiologic procedures)

The proposed regulation adds and defines the term "*Mandated reporter*" to mean a person who is required under 23 Pa.C.S. § 6311 (relating to persons required to report suspected child abuse) to make a report of suspected child abuse. The term includes all Board-regulated practitioners. Section 6383(b)(3) of the CPSL requires each licensing board with jurisdiction over professional licensees identified as mandated reporters to require all persons applying for a license or certification or applying for renewal of a license or certification to provide documentation that they have complied with the training and continuing education requirements mandated by Act 31 of 2014. 23 Pa.C.S. § 6383(b)(3)

The Board does not explain in the Preamble or RAF why this subchapter has been omitted from the updates that are necessary to make the Board's regulations consistent with Act 31 of 2014. How does the Board verify that auxiliary personnel are completing the required training in the recognition of the signs of child abuse and reporting?

We ask the Board to amend Chapter 18 (relating to State Board of Medicine--Practitioners other than Medical Doctors) Subchapter E (relating to Performance of Radiologic Procedures by Auxiliary Personnel) in a future rulemaking to include the appropriate cross-references to the required CPSL training in child abuse recognition and reporting for auxiliary personnel or explain why it is unnecessary to do so.

## **2. Implementation.**

Section 6383 (b)(3)(ii) of the CPSL requires all persons applying for renewal of a license or certificate to submit documentation acceptable to the Board of the completion of at least 2 hours of approved continuing education "per licensure cycle." We have three questions regarding the Board's interpretation of "per licensure cycle" as it pertains to exemptions. The first question relates to Board-regulated practitioners that are exempt from completing the continuing education requirements during the initial biennial renewal period in which the license is issued. Does this exemption for first-time licensees include the continuing education mandated in Act 31 of 2014?

Second, how will the Board implement the requirements of Section 6383(b)(3)(ii) of the CPSL for Board-regulated practitioners that hold more than one license or certification (i.e. nurse-midwife, acupuncturist and practitioner of Oriental medicine)? If an individual is required to have licensure as a prerequisite for another level of certification or licensure would the CPSL training credits earned for the initial license or certification satisfy the requirements for the second, if the training was completed within the same biennial renewal period? It is unclear in Section 16.108(c) whether a Board-regulated practitioner with more than one level of certification or license would need to apply for an exemption or will the credit for the training be applied automatically to both.

Third, the Board explains in the Preamble that "if a licensee happened to be a foster parent and was required to complete the training under Section 6383(c) there would be no need to repeat the training as a condition of licensure or license renewal." Under Section 6383(c)(3) of the CPSL, foster parents must receive three hours of training within 90 days of hire or approval as a foster parent and three hours of training every five years thereafter. In order for an applicant or licensee to be granted an exemption under Section 16.108(c), must the training have been completed within a certain time period to satisfy the CPSL requirements? The Board should describe in the final-form regulation's Preamble and Annex how it will implement the exemptions discussed in the above paragraphs.

**Chapter 16. State Board of Medicine- General Provisions**  
**Subchapter B. General License, Certification and Registration Provisions**

**3. Section 16.18. Volunteer license. – Clarity.**

Section 16.18(c)(3) requires an applicant for a volunteer license to “provide verification” of having completed 3 hours of the mandated reporter training. Section 16.108(b) (relating to Child abuse recognition and reporting- mandatory training requirement) states that the Board will not renew a license unless the Bureau has received an electronic report from an approved course provider documenting attendance/participation by the licensee in an approved course or the licensee has obtained an exemption.

Does the verification process work differently for volunteer license applicants? If it is not to work differently, the Board should place the requirement in Section 16.18(b) along the following manner:

“(b) *License*. A volunteer license may be issued to a Board-regulated practitioner of the Board **for whom the Board has received verification that the applicant has received 3 hours of approved training in child abuse recognition and reporting in accordance with Section 16.108(a) (relating to child abuse recognition and reporting – mandatory training requirement and** who documents to the satisfaction of the Board

that the applicant will practice without personal remuneration in approved clinics and meets one of the following:

- (1) Holds a currently renewed, active, unrestricted license, registration or certificate in this Commonwealth and retires from active practice at the time the applicant applies for a volunteer license.
- (2) Retires from active practice in this Commonwealth in possession of an unrestricted license which was allowed to lapse by not renewing it”  
49 Pa Code § 16.18(b)

**4. Section 16.19. Continuing medical education. – Clarity.**

This section is amended to incorporate the required mandatory training in child abuse recognition and reporting as part of the continuing education requirements for medical doctors. This proposal, however, does not address the “at least 3 hours of approved child abuse recognition and reporting training” for medical doctor licensees required under Section 6383 (b)(3)(i) of the CPSL.

We ask the Board to amend Chapter 17 (relating to the State Board of Medicine--Medical Doctors) in a future rulemaking to include the appropriate cross-references to the mandatory training requirements for medical doctor licensees or explain why it is unnecessary to do so.

**Subchapter G. Minimum Standards of Practice- Child Abuse Reporting**

**5. Section 16.101. Definitions. – Clarity; Compliance with the RRA and IRRC regulations; and Possible conflict with statute and regulations.**

*“Board-regulated practitioner”*

The term Board-regulated practitioner is defined in Section 16.1 (relating to definitions) as “A medical doctor, midwife, physician assistant, drugless therapist, athletic trainer, acupuncturist, practitioner of Oriental medicine, perfusionist or an applicant for a license or certificate that the Board may issue.” This definition applies to Chapters 16 (relating to State Board of Medicine--General provisions), 17 (relating to State Board of Medicine--Medical doctors) and 18 (relating to State Board of Medicine - Practitioners other than medical doctors) unless the context clearly indicates otherwise.

The Board should make the definition of *“Board-regulated practitioner”* consistent throughout Chapter 16 (relating to State Board of Medicine--General provisions) in the final-form regulation or explain why it is not feasible. It should also submit a revised *Description of the proposed amendments* that includes the term *“Board-regulated practitioner.”*

*“Person responsible for the child’s welfare”*

A variation of the term appears in the definition of *“Perpetrator.”* The Board should revise the language in the definition of *“Perpetrator”* to be consistent with the term *“Person responsible for the child’s welfare.”*

*“Recent act or failure to act”*

In the text of the definition, the “of” in the phrase “An act of failure to act” should be changed to an “or” to read “An act or failure to act.”

**6. Section 16.102. Suspected child abuse - mandated reporting requirements. – Clarity; and Protection of the public, health and welfare.**

*Subsection (a)*

This subsection tracks, for the most part, the statutory requirements of Section 6311(b)(1)(i)-(iv)(relating to Basis to report) of the CPSL. Sections 6311(b)(2) and (3) of the CPSL, which are not carried over in the Board’s proposal, state that:

“. . . (2) Nothing in this section shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this section shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.”  
23 Pa.C.S. § 6311(b)(2) and (3)

Sections 6311(b) (2) and (3) make clear the mandated reporter’s responsibility to act and to make a report of suspected child abuse even if certain information is unknown. The statutory provisions, if added, would also make this section consistent with the requirements for written or electronic reports in Section 16.102(d). The Board should incorporate these provisions in the final-form rulemaking or explain why it is unnecessary to do so and how not including them in the final version of the rulemaking protects the public health, safety and welfare.

**7. Section 16.103. Photographs, medical tests and X-rays of child subject to report. – Possible conflict with statutes and regulations.**

The Preamble explains that this section is in accordance with Section 6314 of the CPSL. Section 6314 of the CPSL also provides that medical summaries or reports of the photographs, X-rays and medical tests “shall be made available to law enforcement officials in the course of investigating cases pursuant to section 6340(a)(9) or (10) (relating to release of information in confidential reports).”

Section 16.103 is referenced in Section 16.105 (relating to Immunity from liability) which provides a Board-regulated practitioner who acts in good faith in making a report of suspected child abuse, a referral to general protective services, cooperates in or consults with an investigation, testifies in a proceeding or engages in any action authorized under 23 Pa.C.S. §§ 6314-6317 immunity from civil and criminal liability that might otherwise result by reason of the practitioner's actions. To be consistent with the CPSL and Section 16.105 (relating to immunity from liability), the Board should amend this Section to include the statutory provision relating to the availability of reports, summaries and medical tests to law enforcement officials or explain why it is not needed.

**8. Section 16.108. Child abuse recognition and reporting- mandatory training requirement. – Implementation procedures.**

*Subsection (a)*

Subsection (a) requires an individual applying for an initial license to the Board to complete at least three hours of training in child abuse recognition and reporting requirements. This subsection does not address documentation and reporting of completion of training as required under 23 Pa.C.S. § 6383(b)(3)(i) (relating to Education and training). We ask the Board to revise this subsection to include the implementation procedures for submitting proof of training.

*Subsection (c)*

Under subsection (c)(3), an applicant or licensee may apply for an exemption from subsection (a) or (b) by submitting documentation demonstrating that the individual “should not be subject to the training or continuing education requirement.” A request for exemption is “considered on a case-by-case basis.” The standards for documentation and evaluation are vague. We ask the Board to explain the standards for sufficient documentation and the evaluation process for reviewing a request for exemption.

The Board should clarify that exemptions granted under this subsection are applicable only for the biennial renewal period for which the exemption is requested. A description of how the applicant or licensee will be notified if their request for exemption is granted or denied should be included in the Preamble and Annex to the final-form regulation.

**9. Section 16.109. Child abuse recognition and reporting- course approval process. – Clarity and lack of ambiguity.**

*Subsection (c)*

This subsection states that the Bureau will notify the applicant in writing upon approval of the course and will post a list of approved courses on the Bureau's website. "Applicant" as used in

this subsection would appear to mean an individual, entity or organization applying for approval to provide mandated reporter training. In Section 16.108 the term "applicant" refers to a person applying for initial certification or licensure. The Board should clarify this subsection with regards to the use of "applicant."

**Chapter 18. State Board of Medicine--Practitioners other than Medical Doctors**  
**Subchapter J. Perfusionists**

**10. Section 18.603. Application for perfusionist license. – Clarity.**

*Subsection (a)*

The Board should amend this subsection to include the phrase “or cause to be submitted” similar to proposed Section 18.523(a)(1) since the verification of taking the mandated child abuse recognition and reporter training will be submitted electronically by the course provider.

**11. Miscellaneous Clarity.**

In RAF #7, the Board should update the statutory citation for the CPSL to read “Child Protective Services Law (CPSL) (23 Pa.C.S. §§ 6301-6387).”