

**INDEPENDENT REGULATORY REVIEW COMMISSION  
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, October 20, 2016  
14<sup>th</sup> Floor Conference Room  
333 Market Street

**I. CALL OF THE MEETING**

The October 20, 2016 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:04 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present:      George D. Bedwick, Chairman  
   W. Russell Faber  
   Murray Ufberg, Esq.  
   Dennis A. Watson, Esq.

Telephone:                      John F. Mizner, Esq., Vice Chairman

**II. APPROVAL OF THE SEPTEMBER 15, 2016 PUBLIC MEETING MINUTES**

Chairman Bedwick asked for a motion for approval of the September 15, 2016 public meeting minutes, as submitted. Commissioner Watson made the motion and Commissioner Ufberg seconded, and the motion passed 5-0.

**III. NEW BUSINESS**

**A.      DEEMED APPROVED**

**1. No. 3118 Pennsylvania Gaming Control Board #125-196: Saigon 5 Card; Table Game Rules of Play**

**2. No. 3143 Pennsylvania Gaming Control Board #125-198: 21 Baccarat; Table Game Rules of Play**

**3. No. 3070 State Board of Examiners of Nursing Home Administrators #16A-6217: Notice Requirements**

**B.      ACTION ITEMS**

**1. No. 3069 Bureau of Professional and Occupational Affairs #16A-723; Schedule of Civil Penalties – Massage Therapists**

James Smith, Regulatory Analyst, explained the regulation addresses penalties for violations of State Board of Massage Therapy regulations relating to massage therapy. He said

approximately 7,800 massage therapists are licensed in Pennsylvania. Mr. Smith reported there were no public comments on the final regulation, but one was submitted by a massage therapist in support of the regulation at the proposed stage.

Cynthia Montgomery, Regulatory Counsel, Department of State, and Ariel O'Malley, Counsel, State Board of Massage Therapy, were present to answer any questions.

Commissioner Ufberg said it is a well-stated regulation and needs to be adopted, but asked about the predicate for the regulation. Ms. Montgomery explained that Act 48 of 1993 gave the Bureau of Professional and Occupational Affairs (BPOA) the authority to promulgate the schedule of civil penalties on behalf of the state boards and they have been used since 1996 to streamline the disciplinary process for minor or simple violations instead of going through the alternative "relatively onerous" process. This process allows a citation to be issued for a violation, much like a ticket issued by a police officer. She confirmed there is an opportunity to admit the violation or ask for a hearing.

Commissioner Ufberg pointed out a ticket from a police officer comes from being observed doing something wrong, and asked who is observing in this case and how the facts are known. Ms. Montgomery explained BPOA learns of the violations in a variety of ways, including receipt of a complaint which would be followed up by an investigation. She noted investigators have a mobile system to verify licensure. Commissioner Ufberg asked if BPOA has a proactive method for determining if a massage therapist is licensed or completed the required education. If not, he suggested, the regulation should address how BPOA can determine on its own whether someone is practicing without a license or proper education. Ms. Montgomery replied practicing wholly without a license is difficult to determine, but said generally all licensees have an affirmative duty to renew and are notified at that time. She said that BPOA, at the time of renewal of a lapsed license, knew the massage therapist practiced without a license because they were honest about it. In those cases, the massage therapist would receive a citation instead of going through the much more expensive alternative process. The maximum citation is \$1,000 whereas the other process maxes at \$10,000. Commissioner Ufberg was satisfied, but urged BPOA to be proactive instead of "waiting for something bad to happen." Ms. Montgomery noted BPOA Commissioner Ian Harlow is working on leveraging technology to make the licensure system work better by creating a dashboard for licensees and a module for self-reporting of education credits or child abuse training, among other items. She offered to provide a demonstration to the Commission at a later date.

Chairman Bedwick noted that the civil penalty statute was passed close to 20 years ago and asked if BPOA has considered looking to amend the level of penalty permitted in statute. Ms. Montgomery confirmed it has been considered, but no such proposal has gone anywhere. She noted the formal penalties were increased to \$10,000 a few years ago. Ms. Montgomery said that BPOA felt that in the past the penalties had been "fairly low."

Commissioner Faber made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

**2. No. 3114 Pennsylvania Gaming Control Board #125-192: Heads-Up Hold 'Em and High Card Flush; Table Game Rules of Play**

Scott Schalles, Regulatory Analyst, explained the regulation adds two new table games and outlines the rules and related provisions. He said no comments were received on the final regulation and the House and Senate standing committees deemed the regulation approved.

Susan Yocum, Senior Chief Counsel, Pennsylvania Gaming Control Board (PGCB), was present to answer any questions. She explained one public comment suggested amending dealing procedures slightly for Heads-Up Hold 'Em and PGCB agreed with that and made the change in the final regulation. Another suggestion was made for High Card Flush to broaden the range of payout percentages and PGCB made changes toward that suggestion, as well.

Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0.

**3. No. 3124 Pennsylvania Gaming Control Board #125-195: Three Card Prime; Table Game Rules of Play**

Corinne Brandt, Regulatory Analyst, explained the regulation adds a new table game Three Card Prime. She said no public comments were received and the House and Senate standing committees deemed the regulation approved.

Ms. Yocum explained the manufacturer submitted an additional payout table after the proposed regulation was submitted and those changes were included in the final regulation.

Chairman Bedwick made a motion for approval. Commissioner Faber seconded, and the motion passed 5-0.

**4. No. 3145 State Board of Private Licensed Schools #6-334: Fees**

Ms. Brandt explained that the regulation increases various fees and makes adjustments to the fee schedule to ensure the largest schools carry more of the burden of funding the State Board of Private Licensed Schools' operations. She noted that the Pennsylvania Association of Private School Administrators expressed general support at the proposed stage. Ms. Brandt said the House and Senate standing committees deemed the regulation approved.

Patricia Landis, Division Chief, State Board of Private Licensed Schools, and Ernest Helling, Assistant Chief Counsel, Department of Education, were present to answer any questions.

Ms. Landis, noted that this will be the first increase in fees since 2002 and said the State Board of Private Licensed Schools is mandated to cover all of its operating costs through fees. The 2002 fee increase was intended to last ten years, she noted, but it was able to extend that for four more years, and now the significant increase is necessary.

Commissioner Ufberg asked, given the size of the increase, was any thought given to periodic increases going forward. He indicated this would be less burdensome than the larger increase. Ms. Landis confirmed that issue has been recognized. She said the fee increase is “very significant” for larger schools, but “very gentle” for the “mom and pop schools.” Ms. Landis noted the State Board of Private Licensed Schools is engaged in an effort to completely rewrite its regulations and is seeking to establish an incremental increase.

Commissioner Faber agreed with Commissioner Ufberg’s idea and suggested that the State Board of Private Licensed Schools should consider tying increases to the Consumer Price Index.

Commissioner Watson made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

#### **5. No. 3147 Department of Health #10-197: School Immunizations**

Michelle Elliott, Regulatory Analyst, explained the regulation seeks to ensure children attending schools are adequately protected against vaccine preventable illnesses.

Mr. Smith said public comment on the final regulation included support from the Pennsylvania Association of School Nurses and Practitioners and the remaining comments were in opposition, including from the Pennsylvania Coalition for Informed Consent, Home School Legal Defense Association, and a number of individuals. He referenced embargoed comments that expressed concerns similar to those expressed by other groups before the blackout period. Mr. Smith said the primary concerns were that the provisional period is too short, there were concerns with parental verification of chicken pox which he said may be a misunderstanding, and there were concerns regarding reporting on paper versus electronically. He said the House and Senate standing committees have deemed the regulation to be approved.

Before receiving comments, Chairman Bedwick reminded those present that the role of the Commission is not to determine whether policy is good or bad.

Lawrence Clark, Policy Director, Yvette M. Kostelac, Deputy Chief Counsel, and Dr. Loren Robinson, Deputy Secretary for Health Promotion and Disease Prevention, Department of Health (Department), were present to answer any questions.

Mr. Clark explained the changes meet existing standards, increase outreach and communication, and increase Department oversight. He emphasized the regulation does not change any of the current exemptions available to parents. Mr. Clark reviewed the changes of the regulation and alignment with national recommendations. Regarding changes for record checks by school nurses, Mr. Clark confirmed school nurses do not find this change burdensome and support the regulation. He said the Department intends to publish the regulation in March 2017, giving parents and schools plenty of time to prepare for the new school year. He also discussed a vaccination program available for those who are uninsured or underinsured. Mr. Clark concluded stating that the changes are necessary to protect the health of Pennsylvanians.

Commissioner Watson asked what the paper filing requirements are under the regulation. Ms. Kostelac explained there appears to be confusion regarding home schoolers and noted their comments were not received during the comment period on the proposed regulation so the Department was unable to clarify this in the final regulation submittal. She said the school will be reporting to the Department and nothing has changed for people that are homeschooling. Ms. Kostelac said the regulation seeks to encourage schools to report electronically and noted the Department is prepared to add language to the preamble to clarify. Ms. Kostelac also noted the Department gets aggregate information, not names, and indicated the Department provides cards to be filled out and returned to the school. She said the regulation does not specify how homeschoolers report to the school.

Commissioner Watson then asked if the regulations apply to extracurricular activities. Mr. Clark confirmed it applies to all activities.

Commissioner Watson requested an overview of what occurs when there is a determination of an outbreak and the incurring of expenses. Dr. Robinson noted the particulars depend on the disease, but explained those exposed would need to be isolated and a massive education campaign would be undertaken. In a classroom, she continued, notification would be made to parents regarding the event and the steps that need to be taken. She also discussed other steps that would be taken to protect and educate people in the school and healthcare settings. Dr. Robinson added that under some circumstances additional steps would be taken such as interviews, explaining the staff time that would be needed for contact tracing. She confirmed it would be Department staff and said the more infectious the disease, the more time would be needed.

Commissioner Faber asked why the change to five days was made. Mr. Clark said it follows trends in other states, explaining 14 states have five days or fewer and other states are trending downward. Commissioner Faber asked if the school administrator can preclude a student from attending if not vaccinated in those five days and if there is flexibility for extenuating circumstances. Mr. Clark confirmed both of these, noting a medical certificate is available for any child provided they have at least the first dose. Ms. Kostelac added that if a vaccine is medically contraindicated the student could get a medical waiver. She also noted emergency circumstances like transfer from another state would be taken into consideration in the waver processes.

Regarding homeschooling, Commissioner Faber asked if it is correct that a homeschooling parent only has to report to the school on paper. This was confirmed.

Commissioner Ufberg discussed the question of the philosophical objection and asked about the parameters for what that means and if it would be allowed regardless of the rationality. Mr. Clark confirmed they could have any objection and confirmed those exemptions are not changed, and would need to be changed legislatively. Ms. Kostelac suggested schools would need to speak with their solicitors for guidance and confirmed parents would need to provide the objection to be part of the medical record.

Chairman Bedwick noted comments regarding the vaccination requirement prior to entering 12th grade related to cost and asked for comment. Mr. Clark explained the Affordable Care Act (ACA) covered all these vaccines under preventable health measures at no cost, but noted a grandfathering provision for some healthcare plans. However, he reiterated, state health centers provide the vaccine for free for underinsured or uninsured individuals.

Morgan Plant, Government Relations Consultant, Pennsylvania Association of School Nurses and Practitioners, noted their support for the regulation. Regarding the five-day time period, she reiterated the nurses' unanimous support because the regulation includes adequate flexibility. Further, she said doing this up front means less work on the back end because people will be compliant. Acknowledging the change from one of the longest periods to the shortest, Ms. Plant commented people push the timeframe whatever it is and indicated the shorter period underscores the importance.

Alison Mullins, Co-Director, Pennsylvania Coalition of Informed Consent spoke in opposition to the regulation, pointed out the five-day provisional period was protested by two-thirds of those who commented and objected to the Department's rationale of "herd immunity" because in some cases it increases risk. Ms. Mullins also noted the poor efficacy of the T-Dap and pointed out tetanus is not communicable. She called for more compelling data before making the mandate. Ms. Mullins was delighted the current exemptions are not changed, but noted two pieces of legislation introduced to make changes. Further, she said the legislature has not authorized the use of the Advisory Committee on Immunization Practices (ACIP) for making a list of required immunizations. She urged caution in the use of outside groups and cited problems identified with ACIP. Lastly, Ms. Mullins argued that parents, as stakeholders, were not involved in the creation of the regulation and said thus it does not meet the legislative intent, and she argued that the Department did not make a compelling case for the changes.

Commissioner Watson asked for a position on reducing the compliance period to five days. Ms. Mullins said reducing the time is very drastic and not necessary. She said all surrounding states have longer periods, with an average of 58 days. Commissioner Watson also asked, if the regulations are rejected, if the existing requirements will be eliminated. Ms. Mullins replied the current regulations would still be valid; she objected to increasing the vaccine mandates.

Ms. Mullins also noted the launch of an online petition last night with strong participation rates.

Commissioner Ufberg pointed out Ms. Mullins' members' comments are in objection to vaccine mandates and for the ability to make decisions for oneself. He asked if he is reading their requests properly. Ms. Mullins responded the vaccines are available to everyone who would like to have them and if the regulations are not accepted they will remain available. She cited the history of religious freedom and bodily integrity in Pennsylvania and America and noted the availability of a compensation program for injuries from vaccines. Ms. Mullins emphasized her organization does not have a position for or against vaccines and believes it should be the decision of individual families. Commissioner Ufberg acknowledged individual

rights but also noted the greater good beyond individual health issues. Ms. Mullins cautioned on the extremes of the greater good argument.

Break at 11:19 a.m. and returned at 11:27 a.m.

Responding to the comments, Mr. Clark confirmed the Department did consider Ms. Mullins' comments. Regarding surrounding states, he said all but one have 30 days or less and noted West Virginia has changed a number of its vaccines in recent years to 30 days or less. Mr. Clark said Pennsylvania would be an outlier with 240 days. Regarding comments on ACIP and pediatric associations, he noted the vaccines were included in the ACA and included by Congress as a part of a preventative health plan. He also reiterated the coverage available for underinsured or uninsured. Last year, he said, 2.2 percent of all students entering kindergarten had an exemption. Lastly, regarding legislation in the General Assembly, Mr. Clark said the regulations are addressing the current statute and the Department has no capability of guessing the intent or actions of the legislature. He said the Department has the right to evaluate the program should the legislature make changes, and will do so.

Regarding vaccinations themselves, Dr. Robinson emphasized the importance of herd immunity but said it varies by vaccine. She said there have been outbreaks when herd immunity has been achieved, but said those are usually clusters of individuals who weren't vaccinated. Dr. Robinson spoke about those populations who cannot receive vaccines and said others receiving vaccines protect those children. Regarding pertussis, she explained the goal to prevent disease in school-aged children but agreed they are developed enough to overcome the illness, however, newborns are not and need protections.

Commissioner Watson repeated his question as to the effect of rejecting the regulations on the current requirements. Ms. Kostelac confirmed the existing requirements will remain in place. Commissioner Watson noted comments that separate vaccines are not available in the United States but questioned if they are in other places. Dr. Robinson confirmed single tetanus or pertussis doses are available in other countries, but they are bundled in the United States.

Chairman Bedwick referenced materials on the 12th grade vaccination and asked if vaccines are required for college admission. Mr. Clark confirmed that is a statutory requirement for college students. Dr. Robinson confirmed anyone enrolled in college has to have the meningitis vaccine.

Chairman Bedwick disclosed he worked with Mr. Clark in the legislature for several years but said it will not affect his ability to be impartial. His co-commissioners did not object.

Offering a motion for approval, Commissioner Watson stated the regulation is within the scope of the Department's authority and is within the scope of community health. He stated the explanation has been reasonable for the change to five days and acknowledged it is a drastic change but opined parents can comply and are anticipating the change. With respect to the pertussis booster in sixth grade and seventh grade, he said the explanation for the public health need is well-based. Further, regarding meningitis he said the fact that the legislature believes it is reasonable to require for college is a rational explanation for its inclusion.

Chairman Bedwick commented that the Commission's role is to approve or disapprove in total.

Commissioner Faber seconded, and the motion passed 5-0.

#### **IV. OTHER BUSINESS**

##### **Approval of Vouchers**

Commissioner Faber made motions to approve vouchers and expenses for the period August 19, 2016 through September 15, 2016. Commissioner Ufberg seconded, and the motions passed 5-0.

#### **V. DATE AND PLACE OF SUBSEQUENT MEETING**

Chairman Bedwick announced the next public meeting is scheduled for Thursday, November 17, 2016, at 10:00 a.m. in the 14<sup>th</sup> Floor Conference Room, 333 Market Street, Harrisburg.

#### **VI. EXECUTIVE SESSION ANNOUNCEMENTS**

Chairman Bedwick announced that no executive session would be held.

#### **VII. ADJOURNMENT**

Chairman Bedwick announced the meeting adjourned at 11:41 a.m.