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REGULATORY
REVIEW COMMISSION

October 6, 2004

John R. McGinley, Jr., Chairman
Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Dear Chairman McGinley:

The Professional Licensure Committee held a meeting on October 5, 2004, to consider the following:

Regulation 16A5413 – Proposed rulemaking of the State Board of Pharmacy pertaining to deletion of exam fees. The committee voted to take no formal action until the final regulation is promulgated.

Regulation 16A-447 – Proposed Rulemaking of the State Board of Podiatry pertaining to professional liability insurance. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comment:

1. Section 711(i) provides that a governmental entity and its employees must comply with provisions of the MCARE Act. Specifically, Section 711(i) states:
Governmental entities. – A governmental entity may satisfy its obligations under this chapter, as well as the obligations of its employees to the extent of their employment, by either purchasing medical professional liability insurance or assuming an obligation as a self-insurer, and paying the assessments under this chapter. Section 711(i) of the MCARE Act.

The term "government" is defined in Section 702 of the MCARE Act as, "The Government of the United States, any state, any political subdivision of a state, any instrumentality of one or more states or any agency, subdivision or department of such government, including any corporation or other association organized by a government for the execution of a government program and subject to control by a government or any corporation or agency established under an interstate compact or international treaty." Section 702 of the MCARE Act.

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Further, Section 711(j) lists those participating health care providers that are exempt from the statutorily imposed duty of acquiring professional medical liability insurance or providing self insurance as provided in Chapter 7 of the MCARE Act:

- (1) A physician who exclusively practices the specialty of forensic pathology.
- (2) A participating health care provider who is member of Pennsylvania military forces while in performance of the member's duty in the Pennsylvania military forces under orders.
- (3) A retired licensed participating health care provider who provides care only to the provider or the provider's immediate family members.

Given that a fair reading of the MCARE Act would lead one to believe that the act does, in fact, apply to governmental entities, the committee requests that the board confirm that its statement of the law regarding MCARE not applying to federal employees, found in Section 29.52 of the proposed regulation, is correct. (The text of the proposed regulation states, "Section 29.52(b) Licensees practicing solely as Federal employees are not required to participate in the professional liability insurance program, nor are they required to comply with the provisions of the MCARE Act.")

If, in its review, the board finds that licensees employed by the federal government, despite the wording of the MCARE Act, do not have to comply with the MCARE Act's provisions, the committee asks whether the board may want to re-write Section 29.52(b) so that, if the federal government changes its policy, licensees employed by the federal government may comply with the MCARE Act.

Regulation 16A-5119 – Proposed rulemaking of the State Board of Nursing pertaining to board approval of educational programs for certified registered nurse practitioners. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee notes a typographical error in Section 21.370(a)(2). A period is needed at the end of subparagraphs (iii) and (iv).

Regulation 16A-6313 – Proposed rulemaking of the State Board of Psychology pertaining to educational requirements. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

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1. The committee seeks clarification regarding the effective date with respect to current students currently enrolled in programs. The committee is concerned that since the effective date enumerated in Section 41.31(b)(4) is not a date certain, as in the existing regulation, that some students will not be aware the rules have changed. The committee recommends this language be re-written so it is clear when the proposed regulation will be effective and, further, that the board takes steps to ensure that those students currently enrolled have sufficient time to complete the requirements which were in effect at the time in which they enrolled.
2. The committee seeks clarification from the board that the board has communicated clearly the need to obtain these credentials to each college or university administration which does not presently have them and the consequences of failing to obtain them.
3. It is the committee's understanding that the board itself will continue to evaluate foreign credentials by comparing foreign education with the definitions of "doctoral degree in psychology" and "doctoral degree related to psychology" found in Section 41.1. The committee recommends the sentence found in Section 41.31(b)(2) be amended to indicate that the board will make a determination regarding the applicant's compliance separate and apart from the evaluation of the foreign education evaluator.
4. The committee seeks clarification regarding the language found in the definition section with respect to ASPPB designation. It is the committee's understanding that the words "Joint Designation Committee of the Association of State and Provincial Psychology Boards (ASPPB)" is incomplete. The committee asks whether the words "National Register" or some other phrase needs to be added and encourages the board to contact officials at the ASPBB/National Register in order to determine the proper language.
5. The committee asks that the board reassure the committee regarding the status of Chestnut Hill College and Gannon University and asks the board to favorably note the progress of Chestnut Hill College and Gannon University with respect to completing the accreditation/designation process.
6. While Pennsylvania schools may be in compliance, a committee member expressed concern regarding colleges and universities outside of Pennsylvania. The committee asks that a reasonable grandfathering period be included with respect to the effective

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date of the proposed regulation, as it will take time for universities and colleges to complete the accreditation/designation process.

Regulation 16A-5121 – Proposed rulemaking of the State Board of Nursing pertaining to temporary practice permits. The committee voted to take no formal action until the final form regulation is promulgated. The committee submits the following comments:

1. Since the proposed regulations uses terms of arts such as “graduate registered nurse,” “Form 1,” “Form 2,” and “graduate practical nurse,” the committee recommends that definitions for these terms be supplied.
2. The committee believes that Section 21.7(a) of the regulation applies to those who graduate from a board-approved program for registered nurses. The committee asks whether it would be clearer for the board to state in subsection (a) that the following provisions apply to an individual who has graduated from a board-approved educational program. If the regulation is drafted that way, it is clear that all of the following paragraphs apply to a graduate of a board-approved program.
3. The committee asks whether it would be clearer to state the rule that temporary practice permits are only good for one year, expire if the applicant fails the licensing exam and can only be extended for illness or extreme hardship and to state that in one paragraph. Currently, these provisions are separated from one another, being found in paragraph (1) and paragraph (3) of Section 21.7(a).
4. Paragraph (4) of Section 21.7(a) provides that “in no case will the Board grant an extension to an individual who fails to meet the requirements of Section 21.7(a)(2) and 21.7(a)(3).” It is the committee’s understanding that the board will waive the deadlines of 60 days and 90 days if the nurse cannot meet those deadlines due to illness or other hardship. The committee therefore asks whether paragraph (4) should be re-written to make that exception clear.
5. The committee believes that Section 21.7(b) applies to those individuals holding a current license to practice as a registered nurse in another state, territory or possession of the United States or Canada. The committee asks whether it would be clearer for the board to state in subsection (b) that the following provisions apply to an individual who currently holds a license to practice as a registered nurse in another state, territory or possession of the United States or Canada. If the regulation is drafted that way, it is clear that all of the following paragraphs apply to those individuals.

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6. The committee notes that Section 21.7(b) is not clear with respect to the rules regarding temporary practice permits. The committee recommends that Section 21.7(b) state clearly: (1) how long the temporary permit will last, (2) that, as Section 3.1 of the Professional Nursing Law directs, if the nurse has to take the examination and fails, the temporary practice permit automatically expires, and (3) that an extension will only be provided in case of illness or extreme hardship.
7. Section 21.7(b)(7) provides that, "In no case will the Board grant an extension to an individual who fails to meet the requirements of Section 21.7(2)-(5)." It is the committee's understanding that the board will waive the deadlines in case of illness or extreme hardship. The committee therefore asks whether paragraph (7) should be re-written to make that exception clear. The committee also asks if the citation should read "Section 21.7(2)-(6)." If the board does not include paragraph (6), the 60 day deadline cannot be waived in case of illness or hardship.
8. The committee notes a typographical error in paragraph (7) of Section 21.7(b). The committee believes the citation should be "Section 21.7(b)(2)-(5)," instead of "Section 21.7(2)-(5)."
9. The committee questions whether the provisions found in Section 21.149 of the proposed regulation conflict with Section 21.154 of the existing regulations. Accordingly, the committee requests that those two sections be reviewed and any adjustments made to make sure they do not conflict with one another.
10. The committee notes the citation used in Section 21.149, that of Section 21.5 relating to fees, is incorrect. The correct citation is Section 21.147.
11. As with comments 2 and 5 above, the committee asks whether it would be better for subsection (a) of Section 21.149 to state that the following provisions apply to a graduate practical nurse (and similarly for subsection (b) with respect to a currently licensed practical nurse). That way, it is clear that all of the following paragraphs apply.
12. The committee notes that Section 21.149(a) does not state that temporary practice permits may only be extended due to illness or extreme hardship, as the proposed regulation provides for registered nurses. Is it the board's intention to have two different standards, one for registered nurses and the other for practical nurses? Is the standard the one found in Section 21.154? In order to avoid a challenge based upon

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equal protection grounds, the committee recommends the same standard exist for registered nurses and practical nurses. Further, the committee recommends that the Section 21.149 state clearly the rules for temporary practice permits, including that the permit may only be extended for reasons of illness or extreme hardship, and that those rules be found in one paragraph.

13. Paragraph (4) of Section 21.149(a) states that, "In no case will the Board grant an extension to an individual who fails to meet the requirements of Sections 21.149(a)(2) and 21.149(a)(3)." It is the committee's understanding that the board will waive the 90 day and 60 day deadlines for illness or extreme hardship. The committee therefore asks whether paragraph 4 should be re-written to make that exception clear. Similarly, the committee asks the same question regarding paragraph 7 of Section 21.149(b), with respect to that paragraph should be re-written to make the exception clear.

14. The committee notes a drafting error with respect to subsection (b) of Section 21.149. Subsection (b) states, "The Board will grant a temporary practice permit for a currently-licensed practical nurse." The plain meaning of this language is mandatory, meaning the board would have no discretion to refuse to issue the license. The committee recommends that that language be changed so that the board will decide whether to grant a license based upon the factors listed in the proposed regulation.

Regulation 16A-691 – Proposed rulemaking of the State Board of Social Workers, Marriage and Family Therapists and Professional Counselors pertaining to sexual misconduct. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

1. The committee recommends that the regulation state that engaging in sexual conduct that is prohibited by the proposed regulation is unprofessional conduct and will subject the licensee to disciplinary proceedings.
2. The committee notes that each time the definition of "client/patient" appears in the proposed regulation the term "person" is used. The committee recommends the term "individual" be substituted, unless the board intends the regulation to apply to corporations, partnerships and other business entities.

The committee also notes that in the same definition, this language appears:

In the case of individuals with legal guardians, including minors and legally incapacitated adults, the legal guardian shall be the client/patient for decision

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making purposes. The minor, legally incapacitated adult or other person actually receiving the service shall be the client/patient for issues specifically reserved to the individual, such as confidential communications in a therapeutic relationship and issues directly affecting the physical or emotional safety of the individual, such as sexual or other exploitative dual relationships.

The committee seeks clarification as to the board's policy regarding who is the client/patient and under what circumstances they are the client/patient. The committee is concerned that this language is confusing and unclear and, as such, offers little guidance to licensees regarding the type of conduct prohibited. Further, it is not clear what kinds of decisions a guardian can make. The committee seeks clarification regarding what kind of decisions the legal guardian can make for a minor or an incapacitated adult. The committee asks whether such language will allow a parent or guardian to consent to prohibited conduct where the person receiving the services is a minor child.

The committee also asks for a clarification of the term "other exploitive dual relationships" found in the definition of "client/patient."

3. With respect to the definition of "immediate family member," the committee recommends that the board review and perhaps borrow some language from the definition of "family or household members" found in the Protection From Abuse Act, 23 PaCS 6102.
4. The committee notes with approval the provisions regarding sexual impropriety and sexual violation, as well as the duty to protect a patient's dignity and right to privacy, found in the regulations of the State Board of Nursing. The committee recommends that the board add language which states that licensees have a duty to safeguard the client/patient's dignity and privacy with respect to sexual matters and also recommends that the board add language to the definition of "sexual intimacies" so that it includes some of the prohibitions contained in the regulations of the State Board of Nursing with respect to inappropriate touching and inappropriate sexual comments.
5. The committee notes the definition of "sexual intimacies" specifically mentions one prohibited sexual act, that of sexual intercourse. The committee asks whether the board should add language so that other acts are specifically prohibited, such as

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involuntary deviate sexual intercourse, aggravated indecent assault, and indecent assault, to give some examples.

6. The committee notes the definition of "sexual intimacies" allows a licensee to accept a date from a client/patient. The committee recommends that language be added so that a licensee cannot accept or solicit a date from a client/patient.

Further, in that definition, the committee notes the term "exposure" is used. Does the board intent to refer to "indecent exposure?" The committee also notes that part of the definition is in parentheses. The committee recommends that the parentheses be removed.

7. The committee questions whether the language regarding sexual intimacies between a licensee and a former client/patient or immediate family member is violative of the Due Process Clause of the U.S. Constitution. As an example, Section 48.24(a) reads, "Sexual intimacies between a marriage and family therapist and a former client/patient, or an immediate family member of a former client/patient are prohibited for at least 7 years following the termination of the professional relationship, and **then only under limited circumstances.**" (Emphasis added.)

The committee questions whether this language puts licensees on sufficient notice as to what conduct is prohibited, as required by the Due Process Clause. The committee recommends that the board consider using language which states the general rule that sexual conduct is prohibited for seven years and, that after seven years, sexual conduct violates the regulations if certain conditions are present. As an example, the general rule could read, "Sexual intimacies between a licensee and a former client/patient or an immediate family member of a former client/patient are prohibited for seven years following the termination of the professional relationship." Another subsection would list the circumstances under which sexual intimacies would amount to unprofessional conduct following the seven year period.

8. The committee notes that language regarding sexual intimacies with a former client/patient or an immediate family member of a former client/patient, found at Section 48.24(b) for example, contains no legal standard for the board to apply with respect to initiating disciplinary action. Because there is no legal standard, the committee is concerned this provision violates the Due Process Clause of the U.S. Constitution. The committee recommends the board add language regarding the legal standard which the board will apply. For example, the board could state that after seven years, a licensee may engage in sexual conduct which is not

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exploitative. With respect to the board's deciding whether the conduct was exploitative, the board shall consider the following factors.

Further, it is the committee's understanding that the board believes the language set forth in Section 48.25(c) is a legal standard to impose disciplinary action. It is the committee's understanding, however, that that language is not a legal standard but a burden of proof.

With respect to the burden of proof listed in Section 48.25(c), the committee asks the board to confirm that shifting the burden of proof to the licensee in a disciplinary proceeding comports with the requirements of the Due Process Clause. Although the committee understands that proceedings before the board are not criminal in nature, the committee seeks confirmation from the board that placing this burden on the licensee is constitutional. Further, it is the committee's understanding that in some cases, pursuant to statute, the burden may be placed on the licensee. Hence, the committee is seeking clarification regarding this point of law.

If, in Section 48.25(c), it is the board's intention to create an affirmative defense that the conduct was not exploitative in nature based on certain factors, the board may want to review and borrow language from the regulations of the State Board of Nursing regarding affirmative defenses, as Section 21.4a(c) is a good example of such language.

9. The committee recommends the words "may not be a defense" in the language relating to disciplinary proceedings, by way of example Section 48.25(a), be changed to "shall not be a defense."
10. The committee notes the language found in all of the sections regarding disciplinary proceedings, by way of example, Section 48.25(c), is problematic in that it undercuts the prohibitions against sexual intercourse and other sexual intimacies found in Sections 48.22 through 48.26(a). The language reads, "In a disciplinary proceeding brought under Sections 48.22-48.24, the marriage and family therapist shall have the burden of proving that there has been no exploitation of the client/patient in light of the relevant factors enumerated under Section 48.24(b)(1)-(7)."

It is the committee's understanding that it is the board's intention to prohibit certain sexual conduct for all of the licensees through bright line rules: there is to be no sexual contact between a current client and a licensee, there is to be no sexual contact for seven years between a client and a licensee, and licensees cannot treat those with

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whom they have had sexual contact. The committee believes this is the proper policy as sexual conduct in these situations is per se exploitative.

However, the proposed regulation does not effectuate this intent. Since the language in Section 48.25(c), for example, applies to all of the bright line rules: (1) intimacies being prohibited between licensees and current client/patients or licensees and an immediate family member (Section 48.22 Prohibited conduct); (2) licensees not accepting individuals as clients if they have had sexual contact (Section 48.23 Former sexual partners as clients/patients), and licensees being prohibited from engaging sexual conduct for seven years (Section 48.24(a) Sexual intimacies with a former/client or an immediate family member of a former client/patient), subsection (c) of Section 48.25 undercuts these rules. By way of example, under this language, a licensee could engage in sexual intercourse with a client/patient if it was not exploitative. Hence, the committee recommends that this language not apply to the general rules applying to licensees regarding prohibited conduct, former sexual partners as clients/patients, and sexual intimacies with a former/client or an immediate family member.

Regulation 16A-5610 – Proposed rulemaking of the State Real Estate Commission regarding reciprocal licenses. The committee voted to take no formal action. The committee submits the following comments:

1. The committee notes the board's intention to delete the mandatory continuing education requirements contained in Section 35.384 Qualifying courses; required and elective topics. Currently, brokers are required to take a minimum of three hours of instruction in fair housing laws and a minimum of two hours of instruction in the Real Estate Licensing and Registration Act and the regulations governing real estate practice.

The committee believes that in order to fulfill the goals of continuing education, which are set forth in Section 35.381 Purposes and goals - - that of ensuring the public is protected from incompetent practices and maintaining competency of licensees - - the law found in Section 35.384 regarding required courses must remain as it is.

Further, the committee notes that Regulation 16A-5610 Reciprocity is being promulgated pursuant to Act 58 of 2003, which deals with the issuance of reciprocal licenses. The committee seeks clarification from the board regarding the relationship

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between deleting the educational requirement regarding fair housing laws and Pennsylvania law and the issuance of reciprocal licenses.

2. The committee seeks clarification regarding the need for the words, "unless otherwise specified," which are found in many of the definitions of the proposed regulations. For example, the definition of "broker" is defined as "an individual or entity holding either a standard or reciprocal license, **unless otherwise specified**, that, for another and for a fee, commission or other valuable consideration, does..."

It is the committee's understanding that licensees will either hold a standard or a reciprocal license. The committee seeks clarification from the board regarding the need for the phrase, "unless otherwise specified," and recommends that if the board decides it is superfluous, the board delete the phrase.

3. The committee seeks clarification regarding the definition of "broker of record." The board proposes to delete language regarding the individual broker responsible for the transaction of a partnership or association with respect to a limited broker's license. The committee seeks clarification from the board as to the reason for deleting this language.
4. The committee recommends the phrase "other than a branch office" be included in the definition of "main office." The definition would read, "the fixed location of the broker or cemetery broker in this Commonwealth or another state, other than the branch office, devoted to the transaction of real estate business." The committee also recommends that language be added to the definitions of "main office" and "branch office" to further distinguish the two.
5. The committee notes the definition of "reciprocal license" reads, "A license issued to an individual or entity whose principal place of business for the provision of real estate services is outside this Commonwealth and who holds a current license to provide real estate services **from a state that has executed a reciprocal agreement with the Commission.** (Emphasis added.)

It is the committee's understanding that reciprocal licenses may be issued to those individuals living in states outside of Pennsylvania whose home state does not enter into an agreement with Pennsylvania. Section 602(e) of the Real Estate Licensing and Registration Act provides that the commission may require additional educational requirements for an individual residing in a state which has not signed an agreement.

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However, the type of license issued is a reciprocal license. The committee recommends this definition be changed.

6. The committee notes the definition of "standard license," ("A license issued to an individual or entity who has fulfilled the education/experience and examination requirements of this act"), could also apply to an individual holding a reciprocal license. For example, if an individual from a state outside of Pennsylvania seeks a reciprocal license but his home state has not signed an agreement, he will meet the definition of "standard license." The committee recommends this definition be changed so that it only applies to non-reciprocal license holders.
7. The committee notes that the language regarding the qualifications of licensees seeking reciprocal licenses is contradictory. By way of example, Section 35.222(b)(1) states that in order for a broker to obtain a reciprocal license, he must possess a broker's license issued by another state that agrees to issue a license to a standard Pennsylvania licensee without further requirement. The paragraph further states, "Where an applicant applies from a state which would require a standard Pennsylvania licensee to complete additional education, experience or examination requirements, the applicant shall complete additional requirements."

The committee notes there are two circumstances under which an out-of-state resident may obtain a reciprocal license. The first is if the individual's home state executes an agreement. The second is if the home state does not execute an agreement. If there is no agreement, then additional requirements will apply. The committee recommends this section, for example, be re-written so that this policy is clearly reflected.

8. The committee notes that those individuals seeking reciprocal licenses will not have to supply the license number and the date of issuance. The committee seeks clarification from the board that the certification which the home state will provide contains this information. If it does not, the committee recommends the board ask for this information.
9. The committee seeks an explanation from the board regarding the policy reflected in Section 35.244 Supervision and operation of office. The proposed regulation would allow a main office or a branch office in Pennsylvania to be under the supervision of an individual holding a reciprocal license. The committee seeks an explanation from the board as to this policy. Additionally, the board questions whether an office in Pennsylvania should be permitted to be supervised by an individual who does not hold a standard license.

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10. The committee recommends the 90 day notification period with respect to conversion to a standard license, found at Section 35.255(c), be changed to 30 days.
11. The committee notes that paragraph (b) of Section 35.271, Examination for broker's license, is not clear. The committee seeks an explanation of the board's policy with respect to this subsection, particularly as it relates to counting experience. Further, it is not clear whether the board intends to delete paragraph 6 of subsection (b), as there are brackets within brackets. Additionally, subsection (b) appears twice in this section. The committee recommends this section be re-drafted.
12. The committee notes a drafting error in Section 35.272. The language of subsection (c) reads, "A licensee who is converting **that** license..." (Emphasis added.) The committee recommends this be re-drafted to make it clear the type of license specified. Similarly, the same language, ("that license") appears in Section 35.274. The committee recommends that subsection (b) read, "A reciprocal licensee who is converting a reciprocal license to a standard license..."
13. The committee notes a drafting error in Section 35.275. The committee notes that (a)(4) does not exist in current regulation. Further, the committee questions whether the proposed subsection (b) should be subsection (c). The committee recommends the section be re-drafted.
14. The committee seeks an explanation regarding the board's policy reflected in the proposed change to Section 35.325(b). The committee seeks an explanation as to the board's policy in this subsection, as well as the consequences of eliminating the language regarding "employing broker" and the language which makes this subsection apply to a partnership, association or corporation.
15. The committee recommends that timely office inspections occur with respect to holders of reciprocal licenses who convert their licenses to standard licenses. Specifically, the committee recommends that an office inspection take place as soon as is practicable after the holder of a reciprocal license gives notice of his intent to convert his license to a standard license pursuant to Section 35.255(c).

Regulation 16A-4917 – Proposed rulemaking of the State Board of Medicine relating to graduates of unaccredited medical schools. The committee voted to take no formal action until the final regulation is promulgated. The committee submits the following comments:

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1. The committee is concerned first and foremost with the health and safety of Pennsylvania's citizens, many of whom will be treated in hospitals and other health care settings by graduates of unaccredited medical schools. While the committee recognizes that there are many qualified graduates serving Pennsylvania patients, the committee notes that each has undergone the scrutiny required by the Medical Practice Act of 1985 and the regulations regarding hours of instruction and clinical rotations.

The committee is deeply concerned that if the board deletes the educational requirements currently in law, the health and safety of Pennsylvania citizens could be jeopardized.

Therefore, the committee objects to the proposed changes the board seeks to make to Section 17.1 License Without Restriction and Section 17.5 Graduate License, and strongly recommends that the board make no changes to the existing language of Section 17.1 and Section 17.5.

According to board counsel, the board's position is that the ECFMG does the same work as the board with respect to verification of education and clinical rotations. The committee staff could not confirm this with the ECFMG staff.

2. Putting aside the safety and health concerns for a moment and dealing with the legal ones, the committee is concerned that Section 17.1 and Section 17.5 of the proposed regulation conflicts with the statutory mandate of the Medical Practice Act of 1985. Specifically, Section 29(c) of the Medical Practice Act requires that the board set educational requirements for graduates of foreign medical schools.

The following provision delineates the duty imposed upon the board to set the educational qualifications of graduates of foreign medical schools seeking to practice medicine in Pennsylvania:

No license without restriction may be issued to a graduate of an unaccredited medical college unless the applicant has completed successfully, as a resident, three years of approved graduate medical training, **educational requirements prescribed by the board** and certification by the Educational Council for Foreign Medical Graduates, or its successors. (Emphasis added.) Section 29(c) of the Medical Practice Act of 1985.

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Similarly, Section 22(b) of the Medical Practice Act of 1985 requires an individual seeking a license to practice medicine to complete educational requirements prescribed by the board:

The board shall not issue a license or certificate to an applicant unless the applicant establishes with evidence, verified by an affidavit or affirmation of the applicant, that the applicant is of legal age, is of good moral character and is not addicted to the intemperate use of alcohol or the habitual use of narcotics or other habit-forming drugs and **that the applicant has completed the educational requirements prescribed by the board** and otherwise satisfies the qualifications for license or certificate contained in or authorized by this act. (Emphasis added.) Section 22(b) of the Medical Practice Act of 1985.

For obvious safety reasons, the committee is concerned that the ECFMG does not verify attendance, evaluate course work, require a certain amount of time in clinical rotations, or otherwise make a determination regarding whether the foreign graduate has obtained an education equivalent to an education obtained in the United States.

Even assuming that the ECFMG did, in fact, conduct the same work the board must conduct pursuant to the Medical Practice Act of 1985 and existing regulations regarding the evaluation of credentials of foreign graduates, the committee questions whether the board may lawfully delegate the board's duty to a private entity.

3. The committee questions whether the board has the authority to delete the educational requirements of 32 months and 4,000 hours of instruction in medical subjects and 72 weeks of clinical rotations, both of which are found in Section 7.1 and Section 7.5. The committee is concerned that the practical effect of adopting the board's proposed changes to Section 7.1 and Section 7.5 is to amend the Medical Practice Act of 1985.

If the board seeks to delete the educational requirements regarding hours of instruction and participation in clinical rotations currently set forth in regulation, the board will have to request that appropriate legislation be introduced.

4. The committee recognizes that under the Medical Practice Act of 1985, the board is given the discretion to set its own standards for licensure by endorsement. However, the committee seeks clarification regarding the board's policy. For example, it is not

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clear whether all foreign doctors applying for a license without restriction must be certified by ECFMG. Further, subsection 17.2(e) refers to "the licensure requirement provided in Section 17.2(c)." As the committee understands it, passage of the USMLE is not required in order to obtain a license by endorsement.

The committee notes that Section 17.2 has been in existence for quite some time and some of the language properly belonged in a preamble and not the regulation itself. Given the difficulty of drafting an amendment to the existing regulation, the committee is asking whether the following draft would more accurately reflect the board's policy and respectfully submits the following for the board's consideration:

Section 17.2 License without restriction – endorsement.

- (a) Graduates of unaccredited medical colleges. - - The Board in its discretion may grant a license without restriction to a graduate of an unaccredited medical college who does not meet the standard licensing requirements set forth in Section 17.1. In making its determination, the board shall consider the criteria established in subsection (b), (c), or (d), and may consider any of these criteria in any manner the board deems appropriate.
- (b) Criteria. - - In determining whether a license shall be issued under subsection (a), the board shall consider whether the graduate has any or all, or a combination of any, of the following qualifications:
 - (1) a significant history of practicing medicine;
 - (2) professional and academic achievement and credentials;
 - (3) certification in a specialty area from an organization recognized by the Board.
- (c) Licensure exam. - - In the event a graduate of an unaccredited medical college has taken a licensing exam acceptable to the board, the Board shall accept the results and may consider such passage when determining whether to issue a license under this section. Additionally, if the exam was not taken in English, but a passing score was secured, the Board will accept the examination results if the graduate also secured a passing score on the Test of English as a Foreign Language.
- (d) Certification by ECFMG - - In the event a graduate of an unaccredited medical college has obtain certification from the ECFMG, the board shall deem it the equivalent of obtaining a passing score on Step 1 and Step 2 of the UCMLE.

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Please feel free to contact my office if any questions should arise.

Sincerely,

A handwritten signature in cursive script that reads "Thomas P. Gannon".

Thomas P. Gannon
Chairman
Professional Licensure

TPG/sjh

cc: Hon. Pedro A. Cortes, Secretary of the Commonwealth
Department of State
Hon. Basil Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Cynthia K. Montgomery, Regulatory Counsel
Department of State
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State Board of Psychology
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