

House Professional Licensure Committee
Public Hearing on HB 1545, PN 2001
February 27, 2018
1:00 p.m.
Room G-50 – Irvis Building
Written Testimony of Peter Speaks, Deputy Secretary for Regulatory Programs
Pennsylvania Department of State

Thank you, Chairman Mustio, Minority Chairman Readshaw and members of the Professional Licensure Committee for allowing the Department of State to submit written comments for the record on HB 1545, PN 2001, which would establish the State Board of Medical Imaging and Radiation Therapy. The Department, through its Bureau of Professional Occupations and Affairs (“Bureau”) administers and enforces practice requirements for the professional licensure of 29 professional boards and commissions, effectively regulating roughly 255 different license classifications, and one million licensees. The Pennsylvania State Board of Medicine is responsible for oversight of 93,276 active licensees across 36 different licensee classes, and issued 11,577 new licenses in 2017.

I. Department of State Position Statement Regarding HB 1545 PN 2001

When determining whether to support licensure for either a new board, or within an existing board, the Department must consider: 1) whether licensure will support the health, safety and well-being of its’ citizens; 2) the cost of regulating the profession; 3) the effect on the availability of practitioners of the profession; 4) the need for minimum standards and continuing education; and 5) whether less burdensome alternatives to licensure exist.

Upon review of Representative Cutler’s proposed legislation, the Administration and the Department of State oppose the bill as drafted. While the Department supports the underlying concept of this bill – protection of the public safety, health and well-being – there are substantive and procedural issues with this bill that would need to be addressed to make it uniform and consistent with the legislative intent and administrative scheme of the twenty-nine other practice acts.

Most notably, the composition and operation of this Board, as drafted, is so inconsistent with every other health licensing board that it would substantially frustrate the Department’s ability to administrate and oversee its operation. Per this bill, Board members need not be confirmed by the Senate, which is uncharacteristic of any other professional licensing board or commission. Further, the lack of administrative representation from both the Departments of Health and State, and the Attorney General’s Office make this Board the sole outlier from all existing health-related Boards. Coupled with the proposed provisions that would grant the Board authority to issue advisory opinions, and discriminately determine licensing requirements based on regional differences, this legislation not only raises serious Departmental concerns but also larger policy concerns over its vulnerability to increased Federal antitrust scrutiny.

A. Requirements Under HB 1545, PN 2001

HB 1545 PN 2001 establishes the Medical Imaging and Radiation Therapy Board of Examiners, comprised of professionals in a variety of medical imaging fields, to establish scope of practice, set requirements for licensure, and to develop standards to improve medical imaging and radiation therapy procedures. The legislation also outlines the requirements for various classes of medical imaging licenses, including fluoroscopy, diagnostic sonography, radiation therapy, and radiologist assistant. Additionally, the bill requires the board to establish standards for medical imaging and radiation therapy educational programs, establish, by regulation, the necessary fees for administration of the provisions of the act and adopt such regulations as necessary to establish its disciplinary authority relating to licensees' conduct.

B. Departmental Concerns and Suggested Amendments for HB 1545, PN 2001

This bill amends Title 63 - Professions and Occupations (State Licensed) - of the Pennsylvania Consolidated Statutes, making it the first such practice act to be placed in the consolidated statutes, rather than by publication in the unofficial Purdon's Pennsylvania Statutes.

The bill will require the creation of a new board with associated licensing board staff, additional prosecution and counsel resources, and potentially additional facility needs to accommodate any additional staff. At present, it is unclear precisely what the licensee population of this Board is expected to be. According to the Department of Labor and Industry's Center for Workforce Information & Analysis, based on 2014 statistics, there are 9,860 radiologic technicians/technologists, 2,440 diagnostic medical sonographers, 1,370 MRI technologists, 1,025 nuclear medicine technologists, and 770 radiation therapists working in Pennsylvania (or a total of 15,465 potential licensees.) Based on the descriptions of these professions, it appears that they would need to be licensed under this bill, and there may be other, yet-unidentified professions.

The Department estimates a total operating cost of \$231,580 for the initial biennial period of licensure, given the population estimates above. The total Departmental position costs would total \$1,441,588 when factoring in personnel costs. These include \$766,762 for nine new positions (1 attorney and legal assistant, 4 Professional conduct investigators, 1 administrative officer and 2 clerk typists), while redirecting approximately \$82,731 for two existing positions (1 attorney prosecutor, 1 legal assistant) and the related benefits costs for each position. These costs assume the estimated total of licensees is accurate, however it would be premature to presume they would not increase exponentially upon the inclusion of any additional classifications.

As stated earlier, there are numerous provisions of this bill that are inconsistent with precedent found in the other professions. None of the other practice acts have been placed in the consolidated statutes. All other licensing acts are only available via the session laws and by publication in the unofficial Pennsylvania Statues, which is a publication of a private organization (West Publishing Company). Placing only one licensing act in the consolidated statues instead of moving all licensing laws in a single and unified manner will confusion and often incorrect citation.

It is also unclear whether the intent is for the proposed board to be a part of the Bureau of Professional and Occupational Affairs (BPOA) or simply receive services from BPOA. Among the areas which call the Board's inclusion in the BPOA into question is that, the Commissioner of Professional and Occupational Affairs is not made a member of the Board (section 4103(a); the act directs the BPOA to provide services to the Board (section 4103(g); and the Board is required to enter into written agreements with the BPOA to act as the Board's agent (section 4103(k)(5)). These are inconsistent with current administrative functions.

Under the proposed legislation, there would be no regulation of individuals performing radiographic procedures for the Medical and Osteopathic Medicine Boards while the Board was being constituted. The bill immediately repeals the already existing laws regarding registration of auxiliary personnel performing radiographic procedures.

The implementation date of the Act is January 1, 2019. This is a bill that has not been proposed before. It is not a realistic timeframe to create an entirely new board, staff it, promulgate regulations, and prepare to issue licenses. A more realistic implementation date would be 2022, allowing sufficient time to publish, review and promulgate regulations in a transparent manner.

Additionally, there are several inconsistencies in definitions, procedural requirements and administrative duties that contravene long-held and recognized Department functions. For example, the composition of the proposed board is not consistent with other boards: the proposed board would be composed solely of members appointed and serving at the pleasure of the governor; other BPOA boards have members appointed by the governor and confirmed with advice and consent of the Senate; all of the BPOA boards have the Commissioner of Professional and Occupational Affairs (or the Secretary of the Commonwealth) as a member, yet neither is made a member of this board; many health-related boards have as a member the Secretary of Health. Here, the Secretary of the Health is not a member of this Board; and many boards have a member that represents the Office of Attorney General. No such member is provided for in this bill.

The legislation sets the term limit as 3 years – most BPOA boards have 4- year term limits.

The legislation authorizes payment of "per diem compensation at the rate authorized by the Commonwealth." All other boards' non-*ex-officio* members are paid a per diem by a rate specified in the respective acts – generally \$60 per day.

The Board is only required to hold 1 annual and in-person meeting under the provisions of this bill; however, members forfeit their seats if they don't "attend" 3 meetings in 18 months. This appears inconsistent. It is recommended that the attendance be altered to match most other licensing boards – failure to attend 3 consecutive meetings.

The board can meet by telephone or other electronic communications; however, action may only be taken by affirmative vote of the majority of those present – this too appears to be inconsistent. It would give a single member who personally appears for a meeting the ability to veto the affirmative vote of the other eight (8) members who participate by telephone.

The bill would permit the Board to change the licensing requirements for persons in areas that the board deems as being too remote to have enough qualified licensees. This is Commonwealth license. Therefore, the requirements must be uniform throughout. (To

prevent, for example, an applicant from “venue shopping” for a less stringent county to set up a mailing address, while practicing elsewhere.

Finally, the Board would be authorized to issue interpretations of its act. This would be the only board in the BPOA authorized to issue advisory opinions. This would cause immense confusion for some practitioners since a physician assistant could obtain an interpretation about a radiologic procedure standard of care from the proposed board but the State Board of Medicine would be prohibited from providing any guidance about follow-up care. (See *Morrison v. Com. State Bd. of Medicine*, 618 A.2d 1098 (Pa. Cmwlth. 1992) and *Avis Rent-A-Car Systems v. Department of State*, 548 A.2d 402 (Pa. Cmwlth. 1998)).

Thank you for allowing us to provide these comments for your review. Please let the Department know if you have any additional questions or concerns.