

House Professional Licensure Committee
Public Hearing on HB 789, PN 868
April 18, 2018
9:00 a.m.
Room B-31 – Main Capitol
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 789, PN 868, which would amend the Medical Practice Act to provide for anesthesia services in hospitals by specified individuals. The Department, through its Bureau of Professional Occupations and Affairs 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 the 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 789 PN 868

Upon review of the proposed legislation, the Administration and the Department of State oppose the bill as drafted, unless amended. The bill seeks to regulate the provision of anesthesia by certified registered nurse anesthetists, dentists and osteopathic physicians (all of whom may currently administer anesthesia) *in a hospital setting*; via an amendment solely to the Medical Practice Act of 1985, 63 P.S. §§ 422.1 – 422.53, (an act which regulates the practice of medicine by medical doctors in any setting, and which is administered by the State Board of Medicine). To the extent the legislature determines that legislation is required in this area, the more appropriate place to place such provisions would be the Health Care Facilities Act (35 P.S. §§ 448.101 – 448.904b), an act which governs the licensing and operation of hospitals and is administered by the Department of Health.

The co-sponsorship memo attached to this bill notes, “Pennsylvania has an outstanding record of patient safety concerning the administration of anesthesia. In just the last 20 years, the mortality rate of anesthesia related deaths has gone from 1 in 25,000 to 1 in 300,000,” and further represents that the legislation “...will not, in any way, change current law.” However, this bill would alter the nature of the relationship between physicians and certified registered nurse anesthetists in a manner that is inconsistent with the Board of Nursing’s regulations that have been in place for *thirty years*, at 49 Pa. Code § 21.17 (relating to anesthesia services).

A. Requirements Under HB 789, PN 868

The proposed legislation seeks to amend the Medical Practice Act by adding Section 45.1 to provide for anesthesia services in a hospital. It lists the individuals who may provide anesthesia services in hospitals in subsection (a). It allows anesthesia care in a hospital to be

provided by: an anesthesiologist; a qualified physician; a physician enrolled in a residency program in anesthesia or oral surgery; a dentist anesthesiologist; a nurse anesthesiologist authorized by the State Board of Nursing under the supervision of either an anesthesiologist or an operating physician; or a supervised student nurse trainee enrolled in a course approved by the American Association of Nurse Anesthetists. Subsection (b) provides that the legislation shall not affect the provisions of 28 Pa. Code § 123.7 (relating to dental anesthesiologist and nurse anesthesiologist qualifications) and that nothing in this section shall be construed to authorize the State Board of Medicine to regulate nurse anesthesiologists.

B. The Department's Concerns and Recommendations regarding HB 789, PN 868

In that the Medical Practice Act does not regulate anesthesia provided by dentists or certified nurse anesthesiologists, nor does it regulate hospitals, which are regulated by the Department of Health under the Health Care Facilities Act, the provision of subsection (a) is misapplied and should be amended to properly reference the act of July 19, 1979 (P.L. 130, No. 48), known as the Health Care Facilities Act.

Neither the State Board of Medicine, nor the State Board of Osteopathic Medicine, license by specialty, so the Department recommends that subsection (a) be amended to simply state that a qualified physician may administer anesthesia. Also, currently, regulations of the State Board of Nursing at 49 Pa. Code § 21.17 (related to anesthesia) permit nurses who meet certain qualifications (generally, certified registered nurse anesthesiologists) to administer anesthesia under the "overall direction" (rather than supervision) of the chief or director of anesthesia services or the *surgeon* or *dentist* responsible for the patient's care. Therefore, subsection (a) should be further amended to reflect the present regulatory scheme.

Also, while the provision provides for physicians enrolled in a residency program and for student nurse trainees enrolled in a course studying to be a nurse anesthesiologist, there is no mirror provision for a dentist enrolled in a residency program in oral surgery or dental anesthesiology to provide anesthesia in a hospital setting. The Department would recommend an additional enumerated provision in subsection (a) providing for dental residents.

The above-referenced DOH regulations also provide that nurse anesthesiologists (and dentist anesthesiologists) provide anesthesia under "the overall direction" (rather than supervision) of either the director of anesthesia services or the surgeon or obstetrician responsible for the care of the patient. So, although subsection (b) is not intended to affect the provisions of the regulations, it would conflict with them. The bill should be amended to eliminate the supervision requirement and replace it with the "overall direction" to be consistent with existing regulations.

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.