

## **Title 12 Recodification Project**

### **Stakeholder Meeting to Discuss Revisions of Health Care Common Provisions Proposals**

**September 12, 2018**

**10:00 a.m.**

**HCR 0109**

#### **Persons present:**

Christy Chase, Office of Legislative Legal Services (OLLS)

Thomas Morris, OLLS

Jessica Wigent, OLLS

Karen McGovern, Dept. of Regulatory Agencies (DORA), Division of Professions and Occupations (DPO)

Betsy Murray, Physical Therapy Association

Steve Conklin, National Society of Professional Engineers

Katherine Garcia, Peer Assistance Services

Christy Chase and Tom Morris reviewed the work of the Title 12 Recodification Project and explained the purpose of the meeting: To discuss and obtain feedback on OLLS' draft and redraft proposals to consolidate duplicative provisions contained in the laws in Title 12 governing professions and occupations regulated by DPO, as well as to relocate provisions governing health care professions and occupations from Title 24 to Title 12.

#### **Review of Proposed Common Provisions**

The general structure for each of the common provisions discussed at the meeting is to first state the generally-applicable provision of law and then list the exceptions for the practice acts that are not governed by that provision. For redraft proposals, new changes appear in double-underlined type.

A working table of contents was posted online, for stakeholders and for staff to begin to make purposeful and meaningful cross-references in the common provisions. The title has been reorganized so that business professions and health care professions are grouped together (as opposed to their current organization, a group of business professions, a group of health care professions, and then another group of business professions). Space between articles has been purposefully included to allow for the inclusion of future professions and occupations without having to use article numbers with decimal points.

Staff will provide cross-reference tables to stakeholders and will include these as appendices attached to the bill, to ensure that legislators, stakeholders, and the general public can see clearly where provisions have been relocated or moved to a common provision.

The group discussed, as they have in the past, about whether certain provisions should remain in the individual practice acts rather than moving to a common provisions section, noting that, for example, because penalties for unauthorized practice are critical for every profession and occupation, those provisions may need to remain in each practice act. While the Unauthorized Practice Common Provision has been finalized, *for now*, the discussion will continue in future meetings where staff will meet with stakeholders representing every practice act. Christy and Tom reiterated that the goal of the Title 12 project is to make the statutes as user-friendly as possible, while also streamlining duplicative provisions.

Betsy Murray pointed out the use of "physical therapy" in the common provisions to include both physical therapists and physical therapist assistants may be confusing; the group agreed that the individual professions should be listed out, and that the change should also be made to references to "occupational therapy".

#### Discussion of Redraft Proposals of General Common Provisions for Professions and Occupations

##### *Disciplinary Authority Redraft Proposal*

The main changes in this redraft include:

- Making internal references more specific;
- Separating out as exceptions, as was discussed in the previous meeting, those practice acts that do not explicitly include a "refusal to renew" provision (see subsection (1)(d)(II) of the proposal);
- Specifically listing, as was discussed in the previous meeting, those practice acts that explicitly indicate that when a licensee, registrant, or certificate holder surrenders the license, certification, or registration in lieu of discipline, a specific and discrete waiting period applies; and
- The previously approved disposition of fines proposal was relocated to a subsection within this provision.

The group approved of the language in the redraft proposal.

##### *Disciplinary Procedures Redraft Proposal*

The changes in this redraft include:

- Excepting nontransplant tissue banks from the subpoena provision, as the regulator's subpoena powers are specifically limited to hearings and not investigations; and
- Adding language in subsection (3) of the proposal to the appointment of administrative law judges, which reads that if otherwise specified in a specific practice, a regulator may also "employ" an administrative law judge or hearing officer.

The group approved of the language in the redraft proposal.

## Discussion of Draft Proposals of Common Provisions for Health Care Professions and Occupations

### *Mental and Physical Examination and Confidential Agreement Draft Proposal*

Tom Morris explained that he had initially combined the two provisions into one common provision proposal because, from at least a preliminary conclusion, they were related and that the required exam is often part of a confidential agreement. However, Tom ultimately decided to present the two concepts in discreet proposals, one on regulator-ordered mental and physical examinations and one on confidential agreements to limit practice. The group discussed whether there were duplicative requirements in each section, including that the "regulator may require in writing that the licensee, certificate holder, or registrant submit to an examination to evaluate", and whether they might be combined. However, the decision was made to leave the provision in each section.

Tom also explained that some practice acts reference consenting to the exam and others use both consent and waiver; however, one implies the other, and the only exceptions regarding consent to and waiver of the mental and physical examination section are those practice acts that do not have a provision at all.

The group discussed an issue with the draft proposal: Currently, the mental and physical examination language and confidential agreement language are combined in the optometry practice act. While they are listed as exceptions to the confidential agreement statute in the draft proposal, the group agreed that they should be removed, as it's not accurate to say that they do not have a duty to notify a regulator of a physical illness, physical condition, or a behavioral or mental health disorder. Also, hearing aid providers will be added as an exception to both sections as their regulator has no statutory authority to order an examination.

The group also discussed restructuring the exceptions in the Confidential Agreement provision to make the language clearer.

There was a lengthy discussion among those present concerning the language used in subsection (1)(a) of the Mental and Physical Examination Common Provision, specifically

concerning why a licensee, certificate holder, or registrant might be unable to practice the profession with reasonable skill and safety. Some practice acts use the language "physical condition" instead of "physical illness"; others don't list *why* a person might be unable to practice. Tom is going to look more closely into each practice act and the grounds to require an examination, and whether the differences are so many that it may difficult to craft a common provision.

With regard to whether the two topics should be combined into a single proposal, the group agreed that the Physical and Mental Examination and Confidential Agreement sections are sufficiently independent and should remain separated into two common provisions in the redraft.

#### *NPATCH Relocation Draft Proposal*

For the past two sessions, the bulk of the Title 12 Recodification Project has involved moving provisions out of Title 12 that didn't belong. However, in this last phase, a number of provisions will be moved *into* Title 12. The NPATCH provision is currently in Title 24, even though it applies to physicians and advanced practice nurses. It will be moved into Title 12 as a common provision for the health care professions and occupations. The only changes to the statutory language involve updating internal references.

#### *Michael Skolnik Medical Transparency Act of 2010 Relocation Draft Proposal*

This provision will be moved from Title 24 to Title 12 as it is broadly applicable to health care professionals.

#### *Solicitation of Accident Victims Relocation Draft Proposal*

The current statute applies to health care practitioners licensed under articles 29.5 to 43 in Title 12. The group agreed that this was probably an incorrect set of articles, as the statute was enacted in 1997, and practice acts that likely were still meant to be governed by this provision currently have article numbers that don't fit within that range.

The group also discussed that there was some confusion in the language of this provision – whether the requirement in subsection (1) that a "health care practitioner licensed under articles 29.5 to 43" can't solicit for "professional employment concerning a personal injury" less than 30 days after the incident. The question the group considered was whether "licensed" meant something specifically different than "registered". Does a licensed health care provider not include a registered psychotherapist, for instance? The redraft will restructure the provision to apply to only those professions that are licensed, so that the group can continue the discussion at the next meeting.

### *Health Care Work Force Data Collection Relocation Draft Proposal*

This is yet another provision being moved from Title 24 to Title 12, as it applies to persons regulated by the division of professions and occupations. There was a question about the following: "Neither an executive department nor a board is responsible for verifying the data or disciplining a health care professional for noncompliance with this section." What, exactly, does the reference "executive department" mean? And how might the word "board" interact/conflict with the new common provision definition of "board" for Title 12? The redraft will attempt to make clear that these are discrete references, and the group will discuss the changes at the next meeting.

### *Mammography Report Relocation Draft Proposal*

The draft proposal is a straight relocation of the provision from one section of Title 12 to a common provision.

### *Health Care Prescriber Boards Relocation Draft Proposal*

The draft proposal is a straight relocation of the provision from Title 24 to a common provision in Title 12.

Christy asked the group whether these provisions should be in any specific order; the group agreed that there wasn't any reason to order the provisions a specific way.

### *Next Meeting*

The next meeting is scheduled for Thursday, September 20<sup>th</sup> at 1:30 p.m. in HCR 0109 and will cover:

- Revisions to the proposals discussed at this meeting;
- Outstanding common provisions relating to renewals, reinstatements, and fees; transmissions from regulators; and the relocation of article 36.5 of Title 12 regarding professional review committees; and
- A new draft proposal to reorganize the real estate division and the division of conservation easement statutes.