

STATEMENT OF CONSIDERATION  
Relating to 201 KAR 46:040

General Government Cabinet  
Board of Medical Imaging and Radiation Therapy  
(Amended After Comments)

I. The public hearing on 201 KAR 46:040 was held on May 27, 2015 at 9:00 a.m. at the Office of the Board of Medical Imaging and Radiation Therapy.

II. The following persons stated comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Cyndi Gibbs	Kentucky Society of Radiologic Technologists
Ellis Blanton	Educator
Dewey Crawford	Commissioner, CMCC
Pam Colburn	Baptist Health Louisville/Lagrange, Director of Radiology

The following persons submitted written comments:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Anna Hamilton	St. Catharine College
Dawn McNeil	St. Catharine College
Ellis Blanton	St. Catharine College
Paul Hutson	Southeast Kentucky Community & Technical College
Dewey Crawford	Commissioner, CMCC
Terri Hannon	Director of Radiology Services, Our Lady of Bellefonte Hospital
Doyle Decker	Radiography Program Coordinator, Somerset Community & Technical College
Tony Honeycutt	Provost, Somerset Community & Technical College
Nancy Powell	Dean of Health Sciences, Somerset Community & Technical College
Donald Givens	Director of Radiology, Muhlenberg Community Hospital
Michael Tutor	Director Diagnostic Imaging & Oncology Program, Baptist Health Paducah
Sarajane Doty	Professor
Homer Terry	Program Coordinator/Professor, HCTC/SKCTC Regional Radiography

Astor Halcomb  
Timothy Whitaker  
Kay Burke

Professor of Radiography, HCTC/SKCTC  
Professor of Radiography, HCTC/SKCTC  
Team Leader Women's Imaging Dept. Baptist  
Health Louisville  
Senator, KY Senate, Senate Majority Whip  
Kentucky Board of Nursing

Jimmy Higdon  
Pamela Hagan

III. The following people from the promulgating administrative body responded to the commenter:

Name and Title

Sheryl Abercrombie, Board Chairperson  
Vanessa Breeding, Executive Director  
Carol Scherbak, Regulations Committee  
Cynthia Knapp, Regulations Committee  
Andrea Cornuelle, Regulations Committee

IV: Summary of Comments and Responses

(1) Subject Matter: Feels board is moving away from statute.

(a) Dewey Crawford

Comment: Feels board is moving away from applicability requirements in the regulations and not following the statute by fully accepting JRCERT as its programmatic accreditation and use that fully, which also provides for a means if a school loses accreditation.

(b) Response: The board has not made substantive changes with regards to applicability or eligibility since the regulations were previously revised and adopted in 2007. The board has no legislative authority over educational programs.

(2) Subject Matter: Programmatic Accreditation

(a) Dewey Crawford and Ellis Blanton

Written comments were received from Ellis Blanton, Dawn McNeil, Anna Hamilton, Kay Burke and Paul Hutson

Comment: Incorporate into regulation a teach-out plan to allow students to get a license if programmatic accreditation is lost.

(b) Response: The board does not regulate the educational programs. The teach-out plan is between the accredited institution program and the accrediting organization, and any agreement thereto should be between the program and accrediting organization. The board will determine whether an applicant is eligible for licensure if the institutional program is accredited at the applicant's date of graduation.

(3) Subject Matter: Section 3 (6) Verification of graduation from a program accredited by the Joint Review Committee on Education in Radiologic Technology or the Joint Review Committee on Educational Programs in Nuclear Medicine.

(a) Cyndi Gibbs, Ellis Blanton and Pam Colburn

Written comments were received from Homer Terry, Timothy Whitaker, Astor Halcomb, Donald Givens, Ellis Blanton, Michael Tutor, Doyle Decker, Tony Honeycutt, Nancy Powell, Dewey Crawford, Paul Hutson, Anna Hamilton and Kay Burke

Comment: Too restrictive for persons who have a national certification but have not graduated from an accredited program.

(b) Response: Since 2007, the regulations governing the licensure of operators of procedures utilizing radiation for either medical imaging or radiation therapy required an applicant to have graduated from a Joint Review on Education in Radiologic Technology (JRCERT). The board's accreditation requirement is no different than other medical professions within the state. Below is a list of some of the other Kentucky medical professions that require programmatic accreditation for licensure.

Board of Pharmacy  
Board of Dentistry  
Board of Speech Language Pathology and Audiology  
Board of Physical Therapy  
Board of Social Work  
Board of Podiatry  
Board of Respiratory Care  
Board of Licensure for Massage Therapy

(4) Subject Matter: Supervision of licensees

(a) Written comments from Pamela Hagan, Kentucky Board of Nursing

Comment: These proposed amendments appear to prohibit Advanced Practice Registered Nurses (APRN) from supervising KBMIRT's licensees in the performance of their scope of practice.

(b) Response: The Kentucky Board of Medical Imaging and Radiation Therapy has reviewed the inquiry concerning whether an Advanced Practice Registered Nurse (APRN) may supervise licensees in the performance of fluoroscopy. The board has heard the comment and declines this comment due to the following:

(i) The board's statute identifies a licensed practitioner or a licensed practitioner of the healing arts to mean a person licensed in Kentucky to practice medicine, osteopathy, dentistry, chiropractic, podiatry or veterinary medicine. As the Kentucky Board of Nursing has confirmed an APRN is licensed to practice nursing rather than practice medicine. Therefore, an APRN does not meet the definition of a licensed practitioner or a licensed practitioner of the healing arts as defined in statute KRS 311B.020(8).

(ii) An APRN supervising a medical imaging technologist would be in violation of the Practice Standards for a medical imaging technologist which only allows the technologist to perform fluoroscopy for non-interpretive fluoroscopy procedures. If the board accepted this comment the board would be sanctioning technologists to work outside their practice standards.

(iii) The board has been unable to obtain from the Board of Nursing or any of the APRN educational programs any documentation that an APRN has been educationally prepared and certified clinically competent in the use of fluoroscopy. Therefore, the board is unable to accept the proposed change to allow APRN's to supervise medical imaging professionals due to a

conflict with the ARRT Rules of Ethics #5: Performing procedures which the individual is not competent to perform through appropriate training and/or education or experience unless assisted or personally supervised by someone who is competent through (training, education or experience).

(iv) If accepted the board would be legislating a violation of ARRT Rules of Ethics #6: Engaging in unprofessional conduct, including but not limited to: (i) a departure from or failure to conform to applicable federal, state, or local governmental rules regarding radiologic technology practice of scope of practice; or, if no such rule exists, to the minimal standards of acceptable and prevailing radiologic practice.

(v) The ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures, Resolution 44 (revised 2013) defines qualifications and responsibilities of other ancillary personnel. "Other ancillary personnel who are qualified and duly licensed or certified under applicable state law may, under supervision of a radiologist or other qualified physician, perform fluoroscopic examinations or fluoroscopically guided imaging procedures. Supervision by a radiologist or other qualified physician must be direct or personal, and must comply with local, state, and federal regulations." We are incorporating by reference ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures (revised 2013 resolution 44).

(vi) According to the ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures, Resolution 44 (revised 2013), "The American College of Radiology approves of the practice of certified and/or licensed radiologic technologists performing fluoroscopy in a facility or department as a positioning or localizing procedure only, and then only if monitored by a supervising physician who is personally and immediately available. There must be a written policy or process for the positioning or localizing procedure that is approved by the medical director of the facility or department/service and that includes written authority or policies and processes for designating radiologic technologists who may perform such procedures. (ACR Resolution 26, revised 2007, Resolution 12-m)."

(5) Subject Matter: Programmatic Accreditation vs. Regional Accreditation

(a) Written comments were received from Homer Terry, Astor Halcomb, Timothy Whitaker, Sarajane Doty, Michael Tutor, Ellis Blanton, Dewey Crawford, Paul Hutson, Kay Burke, Dawn McNeil, Anna Hamilton, Doyle Decker, Tony Honeycutt, Nancy Powell, Donald Givens, and Terri Hannon

Comment: Regional accreditation and national certification should satisfactorily meet the licensure requirements.

(b) Response: The Board of Medical Imaging and Radiation Therapy decline the comment. Of the national organizations approved by the board within statute KRS 311B.020 (1) only the Joint Review on Education in Radiologic Technology (JRCERT) and the Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT) evaluate and approve educational programs. The JRCERT is the only agency recognized by the United States Department of Education (USDE) and the Council for Higher Education Accreditation (CHEA), for the accreditation of traditional and distance delivery educational programs in radiography, radiation therapy, magnetic resonance, and medical dosimetry. The Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT) is the only programmatic accrediting agency recognized to accredit nuclear medicine technologist educational programs

offered through traditional and distance education formats in the United States and its territories. The JRCNMT holds recognition from the Council for Higher Education Accreditation (CHEA). The ARRT does not approve or evaluate educational programs in Radiography, Radiation Therapy or Nuclear Medicine. A comparative analysis of programmatic versus regional accreditation is provided in the table below:

Program Accreditation vs. Regional Accreditation		
Area	Program	Regional
Accreditation Process	Focuses on Program Integrity, Resources, Curriculum, Health and Safety, Assessment	Focuses on institutional system and processes.
Site Visit Team	Includes two discipline specific peer reviewers.	Consists of President, Financial assessment, and Student Services representative
Accreditation Cycle	Maximum eight years with mandatory four year interim report required.	Maximum ten year with no interim report required.
Curricula	Adheres to the ASRT curricula standards.	Credit and content hours, No content evaluation.
Faculty	Credentialed and experienced in discipline	Appropriate degree. Random sampling
Facilities, Equipment, and Supplies	Program- specific resources	Appropriate for learning but nor required to be directed at any specific program level.
Fiscal and Administrative Budget	Program-specific budget	Overall college budget/reserves
Student Support Services	Maintained and evaluated	Residential life, counseling
Recruiting and Admissions	Appropriate and comprehensive clinical placement.	Reviewed in conjunction with Student Support Services.
Student Achievement	Monitor ARRT results, job placement rates, student learning outcomes	Evidence of general educational assessment plans, does not review program outcomes.
Student Complaints	Follow-up on all program specific complaints of non-compliance with JRCERT standards	Policy in place.

The national certification examinations only measure the didactic knowledge of a potential licensee. Neither test provides any measure of a potential licensee's ability to apply that knowledge

in a clinical setting. The clinical oversight for the training of potential licensees that is provided by the JRCERT and JRCNMT as part of their accreditation standards with the educational facilities is the only mechanism to ensure that a potential licensee is able to correctly apply their didactic training before a license would be issued and the only way for the board to confirm that a potential licensee can apply the fundamental elements of performance in a safe and effective manner.

According to Barbara Burnham from JRCERT, in response to comments made regarding individuals educated in military programs:

The JRCERT has been accrediting military programs as follows:

- i. U.S. Army Medical Dept. Center School Department of Clinical Support Services, Fort Sam Houston, TX – November 29, 1964 to October 10, 1985; October 11, 1989 to present
- ii. School of Health Care Sciences/USAF, SHEPPARD AFB, TX – March 9, 1968
- iii. Naval School of Health Sciences, Portsmouth, VA – September 26, 1966
- iv. Naval School of Health Sciences, San Diego, CA – March 9, 1968

The USAF and naval programs transferred their programs to Fort Sam Houston and formed the Medical Education and Training Campus (METC) and was approved by the Board at April 2011 meeting.

Also, Veterans Affairs (VA) facilities will not hire anyone that has NOT graduated from a JRCERT accredited program, even if they passed the national certification examination and hold a current state license.

Lastly, it should be noted that while JRCERT/JRCNMT accreditation is voluntary it is a requirement for licensure in other states as well as Kentucky. This regulation does not preclude students from attending or graduating from a non-accredited program nor sitting for a national certification examination.

State	Include Programmatic Accreditation of programs	NO	In Draft Rules	No licensing law
Alabama				X
Alaska				X
Arizona	unknown			
Arkansas	X			
California		X		
Colorado				X
Connecticut		X		
Delaware	X			
Florida		X		
Georgia				X
Hawaii		X		
Idaho				X

Illinois		X		
Indiana		X		
Iowa		X		
Kansas		X		
Kentucky	X			
Louisiana	X			
Maine		X		
Maryland		X		
Massachusetts	X			
Michigan		X		
Minnesota		X		
Mississippi		X		
Missouri				X
Montana		X		
Nebraska		X		
Nevada				X
New Hampshire				X
New Jersey	X			
New Mexico			X	
New York	unknown			
North Carolina				X
North Dakota				
Ohio		X		
Oklahoma				X
Oregon		X		
Pennsylvania		X		
Rhode Island		X		
South Carolina		X		
South Dakota				X
Tennessee		X		
Texas		X		
Utah		X		
Vermont		X		
Virginia		X		
Washington		X		
West Virginia	X			
Wisconsin		X		
Wyoming		X		
	10 (includes 2 unknown)	28	2	10

(6)Subject Matter: Eligibility Requirements  
(a)Written comment was received from Donald Givens

Comment: The measure by the board to graduate from a JRCERT/JRCNMT accredited program is inconsistent with the American Registry of Radiologic Technologists (ARRT) and Nuclear Medicine Technologist Certification Board (NMTCB) board requirements.

(b) Response: The ARRT and NMTCB set minimal requirements to qualify for the national examinations. However, the board, the states listed below and the Veterans Administration have established higher standards to better protect the health and welfare of the public.

State	Include Programmatic Accreditation of programs	NO	In Draft Rules	No licensing law
Alabama				X
Alaska				X
Arizona	unknown			
Arkansas	X			
California		X		
Colorado				X
Connecticut		X		
Delaware	X			
Florida		X		
Georgia				X
Hawaii		X		
Idaho				X
Illinois		X		
Indiana		X		
Iowa		X		
Kansas		X		
Kentucky	X			
Louisiana	X			
Maine		X		
Maryland		X		
Massachusetts	X			
Michigan		X		
Minnesota		X		
Mississippi		X		
Missouri				X
Montana		X		
Nebraska		X		
Nevada				X
New Hampshire				X
New Jersey	X			
New Mexico			X	
New York	unknown			
North Carolina				X
North Dakota				

Ohio		X		
Oklahoma				X
Oregon		X		
Pennsylvania		X		
Rhode Island		X		
South Carolina		X		
South Dakota				X
Tennessee		X		
Texas		X		
Utah		X		
Vermont		X		
Virginia		X		
Washington		X		
West Virginia	X			
Wisconsin		X		
Wyoming		x		
	10 (includes 2 unknown)	28	2	10

The national certification examinations only measure the didactic knowledge of a potential licensee. Neither test provides any measure of a potential licensee's ability to apply that knowledge in a clinical setting. The clinical oversight for the training of potential licensees that is provided by the JRCERT and JRCNMT as part of their accreditation standards with the educational facilities is the only mechanism to ensure that a potential licensee is able to correctly apply their didactic training in the clinical setting before a license would be issued and the only way for the board to confirm that a potential licensee can apply the fundamental elements of performance in a safe and effective manner.

(7) Subject Matter: Programmatic Accreditation Requirement for License

(a) Written comment was received from Dewey Crawford

Comment: Approximately one year ago the board began denying state license to ARRT and Certified Nuclear Medicine Technologists (CNMT) who did not graduate from an accredited educational program. They based this on a definition in statutes not previously in regulation. This revision brings that action forward in to the administrative regulations for the first time.

(b) Response: KRS Chapter 13B, 201 KAR 46:030, recodified from 907 KAR 105:030, and 201 KAR 46:040, recodified from 907 KAR 105:040, have required an applicant for licensure to have graduated from a JRCERT/JRCNMT accredited program. This requirement has been in place since 2007.

201 KAR 46:030 Section 2 (13) Maintain accreditation by the Joint Review Committee on Education in Radiologic Technology (JRCERT) an approved programmatic accrediting body for educational programs leading to general licensure and permit site inspections by the board's representative; and

201 KAR 46:040 Section 3. Eligibility for a General License. No person shall be eligible for a general license as an operator of a source of radiation for human diagnostic radiologic or therapeutic purposes unless the person has:

- (i) Satisfactorily completed a course of study in radiography, nuclear medicine technology, radiation therapy, or radiologist assistant approved by the board as described in 201 KAR 46:030; and
- (ii) Satisfactorily passed an examination approved by the cabinet as prescribed in 201 KAR 46:020, Section 3.

(8) Subject Matter: Section 3. Hiring of Qualified Individuals

(a) Pamela Colburn

Comment: It is difficult to find qualified individuals, and if we limit people coming into the state who've practiced for many years and who held an ARRT license, if we prohibit them from practicing their profession in the state, that's not fair to those individuals, and it does make it more difficult for us to staff medical facilities.

(b) Response: The board does not prohibit out-of-state qualified applicants from applying or being approved for licensure in Kentucky. Applications are primarily denied because an applicant is not a graduate of an accredited program. The commentator did not provide the board with any information to support her comment of an inability to obtain qualified individuals. The board declines to amend its regulation, and maintains its requirements that an applicant be a registrant of the ARRT and a graduate from an accredited educational program. These requirements ensure the safety of the citizens of the Commonwealth of Kentucky.

(9) Subject Matter: Programmatic Accreditation requirement

(a) Cindy Gibbs

Comment: Non-accredited programs are as good as accredited programs.

(b) Response: The JRCERT and JRCNMT establish standards the minimum standards for an educational program that has been recognized by Kentucky since 2007. The minimum standards ensure that students receive the appropriate education to enter the workforce. The minimum standards require the monitoring of the clinical application of didactic content, ensuring that future licensed applicants are able to translate learning into a hands-on clinical competency. Therefore, it is only through the requirement that a potential licensee graduate from a nationally recognized accredited program that the board can ensure the proper training has been received.

## V. Summary of Action Taken by Promulgating Agency

The Board of Medical Imaging and Radiation Therapy reviewed the comments and, as a result, is amending the administrative regulation as follows:

**Page 2**  
**Section 1**  
**Line 7**

After “licensed practitioner of the healing arts” insert:

as specified in the ACR-AAPM Technical Standard For The Management Of The Use Of Radiation In Fluoroscopic Procedures, revised 2013 (Resolution 44) and incorporated by reference.

**Page 9**

**Section 14(1)(d)**

**Line 23**

After “created 2009’ delete

“and”.

**Page 10**

**Section 14(1)(e)**

**Line 1**

After “revised June 19, 2011” insert

“; and”

After the amended text on line 12 above insert:

(f) ACR-AAPM Technical Standard For Management Of The Use Of Radiation In Fluoroscopic Procedures, revised 2013.