

STATEMENT OF CONSIDERATION
Relating to 201 KAR 46:040

General Government Cabinet
Board of Medical Imaging and Radiation Therapy
(Not 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:

The following people sent written comments

| <u>Name and Title</u> | <u>Agency/Organization/Entity/Other</u> |
|-----------------------|---|
| Anna Hamilton | St. Catharine College |
| Dawn McNeil | St. Catharine College |
| Paul Hutson | Southeast Kentucky Community & Technical College |
| Ellis Blanton | St. Catharine 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 | Professor of Radiography, HCTC/SKCTC |
| Timothy Whitaker | Professor of Radiography, HCTC/SKCTC |
| Kay Burke | Team Leader Women's Imaging Dept. Baptist Health Louisville |
| Jimmy Higdon | Senator, KY Senate, Senate Majority Whip |

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

Name and Title

Sheryl Abercrombie, Board Chairperson

Vanessa Breeding, Executive Director

IV: Summary of Comments and Responses

(1) Subject Matter: Feels board is moving away from statute and not following statutes.

(a) Dewey Crawford

Comment: Feels board is moving away from statute and not following statutes.

(b) Response: The board has considered the comment and feels that the board has structured the regulations to be in compliance with statute. There is no statutory authority given to the board to implement the proposed suggestions that the commenter feels are indicative of the board moving away from the statute. The board requires that all medical imaging professionals and radiation therapist be a graduate of an accredited program as specified in 311B 020(10) (15). Since the Joint Review Committee on Education in Radiologic Technology (JRCERT) and the Joint Review Committee on Educational Programs in Nuclear Medicine Technology (JRCNMT) are the only national organizations that accredit educational programs, the board is maintaining consistency with statute.

(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: 311B.010 (1) specifies the Board's authority as follows; "It is the declared policy of the General Assembly of Kentucky that the practice of medical imaging, radiation therapy, and related occupations should be regulated and controlled as provided by this chapter and by the administrative regulations of the board in order to protect and safeguard the health and safety of the citizens of the Commonwealth of Kentucky."

The establishment of a teach-out plan is the responsibility of the sponsoring institution and the accrediting organization. The loss of a program's accreditation typically occurs over multiple years; therefore the educational program has substantial time to take measures to ensure no student would be impacted due to loss of programmatic accreditation. Additionally, a program may appeal any involuntary withdrawal of accreditation which would extend the accreditation status during the appeal. A teach-out plan agreement should be between the educational program and the accrediting organization. The board has no legislative authority for educational programs.

(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, Doyle Decker, Michael Tutor, Tony Honeycutt, Nancy Powell, Dewey Crawford, Paul Hutson, Anna Hamilton, Kay Burke

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

(b)Response: To ensure the safety of the citizens of the commonwealth of Kentucky each applicant must meet the same eligibility requirements. Many other medical professions within the state have requirements for programmatic accreditation and the board does not feel it appropriate to accept a lower standard for the medical imaging professionals and radiation therapists in 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:

1) 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 they cannot provide supervision to medical imaging technologists in the performance of fluoroscopic procedures.

2) 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 scope of practice standards.

3) 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).

4) 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.

5) From the ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures (revised 2013 resolution 44) that 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."

6) According to ACR-AAPM Technical Standard for Management of the Use of Radiation in Fluoroscopic Procedures (revised 2013 resolution 44), "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, Terri Hannon

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

(b)Response: The Board of Medical Imaging and Radiation Therapy declines the comment. Regional accreditation only accredits the institution and not the specific programs within the institution. 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 contact 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 not 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 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 national certification examinations only measure the didactic knowledge of a potential licensee. Neither test provides any measure of a potential licensees' ability to apply that knowledge in a clinical setting. The clinical oversight for the training of potential licensees that is provided by the JCRERT 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:

1. 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
2. School of Health Care Sciences/USAF, SHEPPARD AFB, TX – March 9, 1968
3. Naval School of Health Sciences, Portsmouth, VA – September 26, 1966
4. 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.

An additional item of information is that, like the state of Kentucky, 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 within some states including 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 | ? | | | |
| 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 | ? | | | |
| 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 3?) Waiting for response | 28 | 2 | 10 |

(5)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. The commonwealth of Kentucky in addition to the states identified below, as well as 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 | ? | | | |
| 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 | ? | | | |
| 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 3?) Waiting for response | 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 JCRERT 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.

(6) 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: In addition to the definitions defined in KRS 311B.020 (1) (10) (15) the requirement for a licensee to graduate from a JRCERT/JRCNMT accredited program has been in regulation since the revision by the Cabinet of Health and Family Services (CHFS) regulations in 2007. The regulations listed below were re-codified and transferred from CHFS without substantive change directly to the board in 2013. The Board of Medical Imaging and Radiation Therapy has enforced the regulations since the re-codification.

201 KAR 46:010 Section 1 (10) "General radiation licensee" means a radiographer, a nuclear medicine technologist, a radiation therapist, or a radiologist assistant who has completed an accredited educational program and administers ionizing radiation.

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:

(1) 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

(2) Satisfactorily passed an examination approved by the cabinet as prescribed in 201 KAR 46:020, Section 3.

(7)Subject Matter: Section 3. Verification of graduation from a program accredited by the JRCERT or JRCNMT

(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 has reviewed this comment and based on the employment rates of graduates within the state it does not find the current job market to lack qualified graduates. Thus far in 2015, Kentucky radiography programs have graduated over 200 students who will be seeking employment.

(Insert grad employment data???)

(8)Subject Matter: Programmatic Accreditation requirement

(a) Cindy Gibbs

Comment: "I do believe there are educational programs in MR (Magnetic Resonance) that offer the education that we do which have students that can pass the examination in MR without coming from an accredited program. But I do ask that we not be restricted, that we do not allow people..and I go back to the same regulation...to be prohibitive that don't allow people from outside the state of Kentucky to practice in our...state.."

(b)Response: Although the Board of Medical Imaging and Radiation Therapy does not have legislative authority for MR imaging, the JRCERT and JRCNMT establish defined standards that ensure students are trained to protect the health and safety of the public using established

standards focused at the program level. They monitor 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.