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June 26, 2014

The Honorable Jane Nelson, Chair  
The Honorable Four Price, Vice Chair  
Texas Sunset Advisory Commission  
P.O. Box 13066  
Austin, TX 78711

Dear Chair Nelson, Vice Chair Price, and members of Texas Sunset Advisory Commission:

We have reviewed the recent Staff Report on the Texas Department of State Health Services (DSHS). We are concerned that some of the issues raised are based on a relatively simplistic analysis that does not accurately reflect the current state of medical practice and the relationship between professional credentialing and the health and safety of the citizens of Texas.

We are currently in an environment in which medical enterprises, both public and private, are being pressured to reduce costs in a drastic manner. This is resulting in massive consolidation, with large companies swallowing up small practices and those smaller enterprises are facing tough decisions regarding their survival. At the same time, there are increasing governmental and third-party payer pressures on the medical community to improve efficiencies in patient management, enhance quality of care and adopt practices to ensure improved patient safety.

Because of the success of modern radiological technologies, Texans currently receive far more medical radiation than they ever have before. In this regard, we are particularly concerned with the report's recommendation to restructure the DSHS in a manner that would include the termination of the Texas Board of Licensure for Professional Medical Physicists and the Medical Radiologic Technologist Certification Program

The report relies on several metrics of the DSHS regulatory programs. The first is that deregulation of professional credentialing would have little impact on the health and safety of the citizens of Texas. The second is that, outside of Texas' regulatory practice, health care professionals already operate in a highly regulated environment. The report also asserts that voluntary private sector accreditation and certification programs are equivalent to regulatory requirements for credentialing. Finally, the report takes the questionable position that the efficacy of a regulatory program is mainly determined by the amount of regulatory activity it generates.

We would like to explain our concerns with each of these positions and present important additional details that may be helpful for your deliberations on this report.

1. The statement in the report that, “deregulation would have little impact on health and safety”, has little merit.

Texas medical facilities have been world leaders in adopting and developing radiation therapy and imaging technologies since the early decades of the 20<sup>th</sup> century. The complex modern technologies, used for radiological treatment and noninvasive diagnosis, have led to unprecedented rates of cures but when safety rules and protocols for the administration of radiation treatment are violated, the injury and harm can be deadly. The Food and Drug Administration keeps records of very serious injuries caused by mistreatments with radiation emitting equipment. In early 2010 The New York times documented the adverse patient outcomes that can occur when complex radiation delivery procedures are not administered properly. Government regulations for licensure and accreditation of health care professionals have been proven highly effective in mitigating these events.

The State of Texas requires licensed medical physicists to provide annual performance testing of radiation-emitting treatment and imaging equipment to certify that regulatory standards are met. In radiation oncology, licensed medical physicists are the only professionals allowed to perform calculations that guarantee that cancerous tissue receive the proper amount of radiation while normal tissues are spared. Without licensure of these medical physicists, such procedures could be performed by individuals with inadequate training and experience. A recent study by the University of California at San Francisco showed that radiation exposure from medical imaging has doubled in the US since 1980. While this is perfectly legal due to increased medical benefits, in Texas licensed medical physicists ensure that imaging procedures can be diagnostically effective with minimal radiation exposure. As public awareness and concern about radiation risk grows it seems imprudent to remove the radiation safeguards that professional licensure in Texas currently provide.

2. The report’s statement that the medical physicist licensure program is a, “profession that operates in a highly regulated environment” is inaccurate.

It is true that the functionality of radiation equipment used in medical applications is regulated by Texas and the FDA with regard to exposure capabilities. It is not true that those who employ this equipment form medical procedures such as radiation imaging, nuclear medicine or radiation therapy are broadly regulated by any other government entities. At best, a patchwork of laws and regulations currently exist. For example, the Mammography Quality Standards Act (MQSA) regulates the practice of breast imaging, but does not include procedures performed on other body parts. In 2009 a series of errors in radiation therapy caused the Veterans Administration to be fined a led to the requirement that all VA radiation oncology departments become accredited and that all medical physicists working in those departments be professionally certified. In Texas, professional licenses ensure that individuals performing these procedures are qualified and can be held accountable for providing services that meet regulatory compliance and standards of practice.

3. The position that medical physicists and radiologic technologists “have ‘regulation’ provided by another body or through private sector accreditation” is flawed.

There is no comprehensive duplication of professional liability for medical physicists or radiologic technologists in another regulatory body. Furthermore, professional certification and facility accreditation do not fully meet the equivalent standards for all licensed

professionals. Although very useful and beneficial, accreditation programs do not cover all the types of medical imaging or radiation therapy services. For a good number of radiology practices and cancer clinics, accreditation is voluntary. Without licensed medical physicists and certified radiologic technologists, professionals practicing in Texas would not be required to meet either initial training standards or continuing education requirements and would risk falling behind in their understanding of ever-advancing, more complex equipment and procedures.

4. The rationale that licensure of medical physicists and certification of radiologic technologists “generate little regulatory activity” confuses success for failure.

Few violations of these programs occur precisely because when licensure and certification are in place unqualified individuals do not assume the responsibilities of medical physicists and radiologic technologists. Furthermore, under the auspices of the DSHS programs, credentialed health care professionals are required to pursue continuing education in order to maintain their licensure. The enabling legislation for these programs was written and is being enforced to protect citizens from individuals with little or no knowledge of radiation equipment who would provide medical services in a dangerous manner. Before licensure, anyone with minimal understanding of ionizing radiation could claim to be a medical physicist. Before the technologist certification program, untrained nurses were routinely asked to perform imaging procedures in order to save costs.

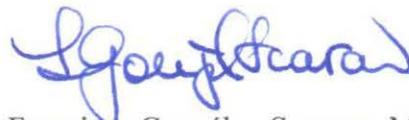
Medical physicists and radiologic technologists are essential for medical efficacy and patient safety in diagnostic imaging, nuclear medicine and radiation therapy. Government regulated professional credentialing programs ensure that well qualified individuals provide these services. Furthermore, those being regulated by these programs are amongst their most vocal advocates and willingly support these programs’ administration through their payment of fees.

This institution would like to further discuss with you the importance of medical physicist licensure and radiological technologist certification and why they should remain in place. Please do not hesitate to contact us if you have questions or would like additional information.

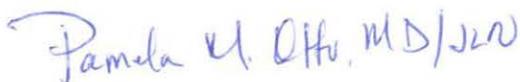
Sincerely,



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