

# RULE REVIEW

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## Department of Health

### ASSESSMENT OF PUBLIC COMMENT

The following regulation was published the New York State Register in January 2014 for a five year review.

Amendment of Section 1000.1 of Title 10 - Physician Board Certification Entities

Statutory Authority:

Public Health Law Section 2995(1)(b)

Description of the regulation:

The NYS Physician Profile, as codified in Public Health Law 2995-a authorizes the collection by the Commissioner of Health and publication of individual profiles of “licensees subject to the authority of the office of professional medical conduct”. Currently, the Physician Profile collects and publishes profiles on physicians, which includes but is not limited to information on medical schools attended, names of hospitals where the physician has privileges, graduate medical education, criminal convictions and any action taken on a physician’s license. The Department’s authority to promulgate regulations implementing the public health law requirements related to the profile is set forth in Public Health law 2995 (1)(b). Regulations governing Physician Profiles are contained in Part 1000 of Title 10 of the New York Codes, Rules and Regulations (NYCRR). 10 NYCRR Part 1000 sets forth requirements concerning reporting on criminal convictions, malpractice awards, judgments and settlements, and collection of profile information. Comments were invited regarding an initial determination, pursuant to State Administrative Procedure Act § 207(4), that 10 NYCRR Part 1000 should continue without modification.

Comments were received from physicians and others, most of whom identified themselves as members of the American Association of Physician Specialists and/or as certified by the American Board of Physician Specialists (ABPS).

The commenters requested that 10 NYCRR § 1000.1 (a) be modified to add the ABPS to the current list of certifying Boards listed on the Physician Profile, upon one or more of the following bases:

1. Most of the commenters stated that denying ABPS physicians the ability to post as “Board Certified” on the Physician Profile “would further increase the shortage of physicians in NYS, posing greater dangers to patient safety and care.”

2. Most of the commenters stated that the ABPS is “recognized” by the Centers for Medicare and Medicaid Services, the Veterans Health Administration, the United States Armed Forces under the GI Bill, and in a Florida statute regulating advertising, by physicians, directly to the public.

3. Several of the commenters stated that they are negatively impacted by their inability to list their ABPS specialty certification in the Board certification field on the Physician Profile.

10 NYCRR § 1000.1 (a) defines “board certification” as a specialty or subspecialty in which a physician is certified by the American Board of Medical Specialties (ABMS), American Osteopathic Association (AOA), or Royal College of Physicians and Surgeons of

Canada (RCPS). The regulation was based, at least in part, on the identified organizations’ requirement that a physician successfully complete a specialty-specific residency as an indicator of greater qualification compared to those who undertake a practice-track to specialization, and certification by these organizations is widely accepted by the medical community.

With respect to comment (1), that maintaining the current definition of “board certification” will lead to a shortage of physicians and endanger patients, the Department does not find this comment persuasive. This regulation addresses only whether physicians who have met certain qualifications may post on the Physician Profile that he or she is “Board Certified.” The physician will still be included on the Physician Profile which is available to the public. In addition, as set forth in response to comment (3) (see below), the physician has the opportunity to state that he or she is certified by the ABPS in other areas of the profile.

With respect to comment (2), although ABPS is recognized by other governmental agencies in different contexts, this alone does not provide a basis on which to modify this regulation. The purpose of this aspect of the Physician Profile is to inform the public regarding one particular credential. Recognition of ABPS certification as “Board Certification” by the other cited governmental agencies may have been for one or more reasons, appropriate in those other contexts (billing, staffing, direct-to-public advertising), but of little relevance to the purposes served by Physician Profiling. As set forth above, the identified organizations’ require that a physician successfully complete a specialty-specific residency over and above practice-track to specialization. ABPS certification is markedly different in that ABPS certification is bestowed on physicians who are practicing emergency medicine without having completed a specialty-specific residency training program but whom have been certified by ABPS based on practice experience.

With respect to comment (3), although several of the commenters stated that they are negatively impacted by their inability to list their ABPS specialty certification in the Board certification field on the Physician Profile, there are three other Profile fields in which practice specialties and/or affiliations with specialty organizations may be listed and available to the public: 1) Field of Medicine 2) Professional Memberships and 3) Personal statement. The Department concludes that these options provide ample opportunity for physicians certified by the ABPS to enter their certification in the Physician Profile.

For these reasons, the Department has determined that the regulations should continue without revision.

