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House of Representatives

Commonwealth of Pennsylvania
 Harrisburg

December 19, 2022

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 Majority Chair
 Independent Regulatory
 Review Commission

Children and Youth
 Consumer
 Rules
 Policy, Deputy Chair

PHEAA Board Member
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Cynthia K. Montgomery, Deputy Chief Counsel
 Department of State
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 Via email: RA-STRegulatoryCounsel@pa.gov

Re: Regulatory Package 16A-66 (Consideration of Criminal Convictions)

Dear Ms. Montgomery:

We were the prime sponsors of SB 637 and HB 1477, the legislation that ultimately was enacted as Act 53 of 2020, more commonly known as “occupational licensing reform.” We are writing to raise concerns about the regulatory package that has been proposed by the Department of State to implement the law, as we believe that the Department and its boards and commissions have misconstrued the intent of Act 53.

We are Republicans and Democrats from both chambers of the General Assembly. We spearheaded reform of occupational licensure because of our view that too many Pennsylvanians who do not present risk were being excluded from the licensed professions. The overbroad exclusions of prior law were bad for both workers and business. Occupational licensing reform was important enough to us and our colleagues that we passed Act 53 in June 2020, even while the pandemic otherwise dominated the General Assembly’s work.

Act 53 was drafted and amended with the objective of offering a pathway to licensure for those with criminal convictions who have paid their debt to society. The legislation we passed was structured in such a way as to require licensing boards and commissions to consider prior criminal convictions of an applicant for licensure in a fair, consistent, and common-sense manner. As you are undoubtedly aware, under the prior laws of this Commonwealth, many individuals who had paid their debt to society were being hampered in their attempts to reenter the workforce by licensing boards and commissions that were denying licenses on the sole basis of old convictions that, in many instances, no reasonable person could argue were related or connected to the

profession for which licensure was sought. Denying reformed convicted persons the prospect of meaningful employment does little to protect the safety and wellbeing of society. In fact, the denial of such opportunities could contribute to these individuals choosing to reoffend.

The general theme of Act 53 was that applicants can be presumed unfit only for convictions that are *directly related* to the practice of the profession in which they seek to practice. The boards and commissions that operate under the umbrella of the Bureau of Professional and Occupational Affairs (BPOA) were charged with determining what offenses are “directly related” to their practice areas.

But the lists of “directly related” offenses proposed by the licensing boards and commissions are overly broad and are in direct contrast to the spirit of this legislation and the intentions of its makers. For example, the Barber Board’s list includes convictions for the possession of a controlled substance with the intent to deliver and felony DUI. Unequivocally, these offenses were not what the General Assembly envisioned as being “directly related” to the profession of barbering when approving this language. Indeed, it compels one to suspend all logic and sense to understand the reasoning underlying the inclusion of these offenses, knowing that such convictions result in the presumption that the applicant poses a “substantial risk” if licensed.

Even under prior statutes, our courts held that the Barber License Law did not provide for the denial of licensure as a result of criminal convictions unrelated to the practice of barbering. In *Fulton v. Bureau of Professional and Occupational Affairs*,¹ the court noted that the Barber License Law required applicants to be at least 16 years of age, have at least an eighth-grade education, have a specified amount of barber training and experience, and pass the applicable barber examinations. The law did not require applicants to demonstrate that they are of good moral character and did not permit the denial of licensure based on prior criminal convictions. Significantly, the court noted that the Department of Corrections has established a barber program for inmates to allow inmates to learn the vocational skill of barbering and obtain a license to practice that vocation. In sum, absent evidence that a person’s criminal conviction “has some effect on [his] work as a barber or use of his barber license[,]” a board could not deny that person a license.

In other examples, the Board of Nursing has listed as “directly related” 92 separate offenses beyond violent, sexual, and drug trafficking offenses. Many of the boards include garden variety drug offenses on their lists, seemingly for only a general feeling that drugs are bad.

Moreover, none of the lists contain time limits on how long an offense is “directly related.” As a result, anyone who ever in their lives was convicted of a listed offense is presumed unfit, no matter how many years have passed. These lifetime bans look remarkably similar to the prior law that we replaced with Act 53, which permitted exclusion of people with felony convictions for their

¹ 169 A.3d 718 (Pa. Cmwlth. 2017).

entire lives. A regulatory package that creates lists of lifetime bans is not consistent with the intent of Act 53, which was to open the licensed professions to people with criminal records if they are fit to do the work and do not pose a heightened risk.

The regulatory package frequently discusses "transparency" as if it were the goal that drove Act 53. While transparency was certainly a goal of the legislation, the primary objectives, as we have said, were to open the professions more widely to rehabilitated people with old and unrelated criminal records and to provide relief to businesses struggling to find qualified workers.

We urge the Department to thoroughly review and revise with the boards and commissions the "directly related" lists before resubmission of the package to the Independent Regulatory Review Commission, based upon the intent of the law.

Sincerely,



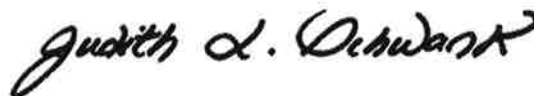
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cc: Michelle L. Elliott, Regulatory Analyst
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