

**INDEPENDENT REGULATORY REVIEW COMMISSION
DISAPPROVAL ORDER**

Commissioners Voting:

Public Meeting Held April 18, 2024

George D. Bedwick, Chairman
John F. Mizner, Esq., Vice Chairman
John J. Soroko, Esq.
Dennis A. Watson, Esq.

Order Issued May 21, 2024
Regulation No. 16A-66 (#3361)
Bureau of Professional and Occupational Affairs
Consideration of Criminal Convictions

On November 4, 2022, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Bureau of Professional and Occupational Affairs (Bureau). This rulemaking amends 49 Pa. Code Chapter 43b. The proposed regulation was published in the November 19, 2022 *Pennsylvania Bulletin* with a 30-day public comment period. The final-form regulation was submitted to the Commission on March 15, 2024.

This final-form regulation includes a proposed schedule of criminal convictions directly related to each of the 29 professional and occupational licensing boards and commissions as required under 63 Pa.C.S. § 3117 (relating to list of criminal offenses). The Bureau was required to develop such a schedule as directed by Act 53 of 2020.

If an applicant for a license has a past conviction for a crime that is on the directly-related schedule of crimes, it creates a rebuttable presumption that the applicant is unfit for licensure. Additionally, under the final-form regulation, if the past conviction is for a crime that is not on the directly-related schedule, the rebuttable presumption does not apply but each Board still retains the power to deny licensure.

The initial schedule of criminal offenses developed by the Bureau and contained in the proposed version of this rulemaking was the subject of extensive comments from the regulated community, members of the General Assembly, and this Commission. Among the comments voiced were concerns that the schedule of convictions developed by the Bureau was overinclusive in that certain offenses on the schedule may not directly relate to the professions in which applicants may seek to practice and was contrary to the intent of the General Assembly. In developing the final-form version of the regulation, the Bureau conducted a review of the schedule of criminal offenses in the proposed regulation and, in response to comments from the legislature and public, it revised the schedule of each licensing board in the final-form regulation.

The Commission appreciates the Bureau's efforts to update the schedule of directly-related criminal convictions and the progress made in that regard. However, we have also expressed concerns that in some instances, offenses with direct bearing on the conduct, services, and practices of various occupations and professions have been removed from the schedule of convictions in the final-form regulation. In the view of the Commission, the removal of these provisions lacks clarity, and is neither reasonable nor sufficient to adequately protect the public health, safety, and welfare – criteria which we are obligated to consider under Pennsylvania's Regulatory Review Act. 71 P.S. §§ 745.5b(b), (b)(2), (b)(3)(ii) and (b)(3)(iv).

The schedule of criminal offenses is meant to delineate specific crimes directly relevant to the candidacy of individuals for licensure in occupations and professions where those individuals would directly and personally impact the lives of the citizens of this Commonwealth. At the public meeting held on April 18, 2024, there was extended discussion by members of the Commission about various crimes which the Bureau proposed deleting from the schedule of criminal offenses and we raised concerns regarding the impact of such changes.

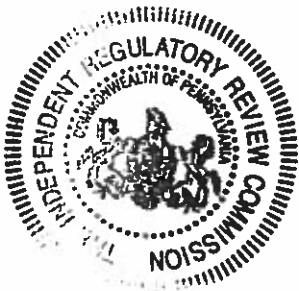
As a result of such concerns, the Commission determined that the final-form regulation is not in the public interest. Consequently, we ask the Bureau to review the final-form regulation and evaluate which convictions directly relate to candidacy under each of the 29 boards and commissions with the benefit of the concerns and objections raised at the Commission's meeting. We also ask for the Bureau to explain in further detail how the removal of convictions is reasonable and protects the public health, safety, and welfare. The Bureau can also improve the clarity of this rulemaking by further detailing the licensure process and expanding on its authority to deny licensure for past convictions for crimes not appearing on the directly-related schedule of criminal convictions.

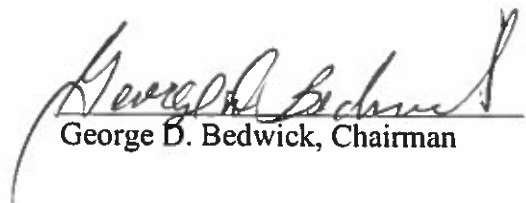
We appreciate the tremendous efforts of the General Assembly and the Bureau to eliminate barriers to employment for those seeking occupational and professional licenses in the Commonwealth. It is not the role of the Commission to micromanage the schedule of offenses; however, safeguarding public health and safety is an integral part of this process, as is a determination that these rules comply with Pennsylvania law and are in the public interest under the Regulatory Review Act.

While the promulgation of this regulation is consistent with the statutory authority of the Bureau and the intention of the General Assembly under Act 53 of 2020, after considering the criteria of the Regulatory Review Act relating to protection of the public health, safety, and welfare, reasonableness, and clarity, we find promulgation of this regulation is not in the public interest.

BY ORDER OF THE COMMISSION:

This regulation is disapproved.




George B. Bedwick, Chairman