

Comments of the Independent Regulatory Review Commission



State Board of Nursing Regulation #16A-5143 (IRRC #3362)

Licensure by Endorsement and Reactivation

February 8, 2023

We submit for your consideration the following comments on the proposed rulemaking published in the December 10, 2022 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b). Section 5.1(a) of the Regulatory Review Act (71 P.S. § 745.5a(a)) directs the State Board of Nursing (Board) to respond to all comments received from us or any other source.

1. Whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.

This rulemaking implements Act 41 of 2019. Act 41 required licensing boards and commissions under the Pennsylvania Department of State’s Bureau of Professional and Occupational affairs to promulgate regulations to consider applicants licensed in other jurisdictions for licensure in this Commonwealth. Act 41 specified, “Final regulations shall be promulgated by each licensing board and commission within 18 months of the effective date of this section.” Accordingly, all board and commissions subject to the legislative mandate of Act 41 should have published final regulations by February 28, 2021.

Given the specific directive noted above, we urge the Board to return a final-form version of this rulemaking to this Commission, the Senate Consumer Affairs and Professional Licensure Committee and the House Professional Licensure Committee as quickly as possible for review, consideration, and final publication as a regulation.

2. Section 21.1102. Licensure by endorsement under 63 Pa.C.S. § 3111.

Subsection (a)(1)(i) requires an applicant to submit a copy of the current law and regulations along with scope of practice requirements in the jurisdiction that issued a license, certificate, registration, or permit. Act 41 of 2019 does not explicitly state this requirement. Since laws and regulations are readily available to the public and the Board via the internet, what is the need for this provision? In addition, a person seeking licensure by endorsement might not provide the most accurate or up-to-date law or statute. We recommend that the Board be responsible for obtaining the documentation to ensure it is the correct law or statute.

Paragraph (a)(2) of this section requires demonstration of competency by practice in two of the past five years in a “substantially equivalent jurisdiction or jurisdictions.” The hourly requirement is 1,800 hours per year for at least two of the five years. What standard determines whether a jurisdiction is substantially equivalent? This provision, too, seems to place an additional burden on the applicant and/or the Board to prove equivalency since the experience

does not have to be in the jurisdiction that the applicant is using for endorsement and also can be in multiple jurisdictions. Has the Board considered, at least for the jurisdictions in the United States, creating and publishing an annual determination of those jurisdictions which have laws and regulations substantially equivalent to Pennsylvania? We ask the Board to explain how these provisions in the final regulation balance protection of the public health, safety, and welfare with the burden and cost to applicants and the Board.

In addition, we question the need for Subsection (a)(2)(i) because the hourly requirement of this provision will always be satisfied under Subsection (a)(2)(ii). The hourly requirement for this provision is 3,600 hours during the five years immediately preceding the filing of an application with the Board.

Subsection (a)(4) states that an applicant must not have any discipline by the jurisdiction that issued the license, certificate, registration, or permit. We ask the Board to clarify this provision by specifying the types of discipline (i.e., formal discipline or complaint) and the timeframe when such discipline occurred.

3. Section 21.1103. Provision endorsement license.

Subsection (b)(1) would give the Board authority to issue a provisional license for less than a year. Under what circumstances would the Board need to exercise this authority? We ask the Board to clarify this provision in the final-form regulation.

Subsection (d) states that the Board will not issue subsequent provisional licenses after the provisional license expires. Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. What is the rationale for limiting provisional licenses in this manner?

4. Compliance with provisions of the RRA or the regulations of the commission in promulgating the regulation.

As noted above, Section 21.1102(a)(1)(i), an applicant seeking licensure by endorsement shall provide, among other things, a copy of the current applicable law, regulation, or other rule governing licensure, certification, registration, or permit requirements and scope of practice in the jurisdiction that issued the applicant's license, certificate, registration, or permit. Under Section 21.1102 (a)(1)(ii), if the applicable law, regulation, or rule is in a language other than English, the document must be translated, at the applicant's expense, by a professional translation service and verified to be complete and accurate. The Board's response to RAF Question 19 does not provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule. Also, in response to RAF Questions 17, 19, and 23 regarding the financial impact on or cost to the applicant, the Board does not address the cost of a Criminal History Records Check. We ask the Board, when it submits the final version of this rulemaking, to provide an updated RAF that estimates the costs associated with translation and a Criminal History Records Check.