

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, July 13, 2023
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The July 13, 2023 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Chairman Bedwick at 10:04 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Chairman
 John F. Mizner, Esq., Vice Chairman
 Dennis A. Watson, Esq.

Telephone: John J. Soroko, Esq.
 Murray Ufberg, Esq.

II. APPROVAL OF THE MAY 18, 2023 PUBLIC MEETING MINUTES

Chairman Bedwick asked for a motion for approval of the May 18, 2023 public meeting minutes, as submitted. Vice Chairman Mizner made the motion and Commissioner Watson seconded, and the motion passed 5-0.

III. EMBARGOED MAIL

The commissioners took time to review embargoed mail.

IV. NEW BUSINESS

A. DEEMED APPROVED

- 1. No. 3346 Department of Health #10-236: Certified Lifeguards**
- 2. No. 3353 Department of Conservation and Natural Resources #7B-10: Conservation of Pennsylvania Native Wild Plants**

B. ACTION ITEMS

Chairman Bedwick announced that since the next two regulations are identical, they would be considered by the Commission together.

1. **No. 3314 State Board of Optometry #16A-5218: Licensure by Endorsement**
2. **No. 3331 State Board of Occupational Therapy Education and Licensure #16A-5713: Licensure by Endorsement**

Michelle Elliott and Corinne Brandt, Regulatory Analysts, were present for the regulations on behalf of the Commission. Ms. Brandt explained how the regulations set forth the criteria for eligibility for licensure by endorsement, including the specific methods required for an applicant to demonstrate competency as well as the requirements for granting a provisional endorsement license. She added that the Commission did not receive public comment on the regulations and that the standing committees in the legislature deemed the regulations approved.

Shawn Jayman, Board Counsel, State Board of Optometry, Shana M. Walter, Board Counsel, State Board of Occupational Therapy Education and Licensure, Marc J. Farrell, Regulatory Counsel, and Cynthia K. Montgomery, Deputy Chief Counsel, Office of Chief Counsel, Department of State, were present to answer any questions.

Although Chairman Bedwick shared that he would vote to approve the regulation, he raised concern with the statutes associated with the regulation. He also noted that the Commission received comments from the House Professional Licensure Committee asking why individuals applying for licensure by endorsement are required to provide both the law and regulations of their state of origin. He questioned how the information provided by applicants would be verified. Ms. Walter replied that her board utilizes national and state certification data to verify applicants. She added the provisions of Act 41 allow state boards to check an applicant's accreditations.

Chairman Bedwick said that he was asking how the law associated with the proposed regulations would allow for verification. Ms. Walter responded that her board looked to national and state associations because they typically have a "significant amount of experience with foreign applicants," and their information may be accessed to help with the verification process. Mr. Jayman suggested that boards might not know where to begin with an applicant coming from a location with different laws and regulations, so the "default" is to require applicants to provide the information.

Chairman Bedwick clarified that his question relates to other states. He stated that since other states' laws can be found through search engines or an online law database, it seems to be an "unnecessary step" to have the applicant gather the information. Mr. Jayman responded that "it shouldn't be much of a burden" for the applicants to collect the required information. Chairman Bedwick suggested it is "double work" since the information is pulled by the Board regardless. He underscored how state boards have certain discretion under Act 41. He outlined how, under state law, applicants for licensure by endorsement from Pennsylvania who commit an

infraction are refused a license but for applicants from outside the Commonwealth, it would be up to a board's discretion whether or not to issue a license.

Chairman Bedwick inquired whether there were any application cases that provided the relevant state board with discretion on initial issuance from Pennsylvanian applicants. Ms. Walter claimed state law currently offers boards "some discretion" to determine an applicant's guilt regarding personal conduct. If an applicant's personal conduct is harmful to the public, she continued, the board may take steps to address the conduct. She added the regulations are augmented by current state law.

Chairman Bedwick relayed the House Committee's observation that the regulations allow for provisional licenses to be good for up to one year. He added that the Committee questioned why every license is not given up to a year. He explained the state wants to get individuals licenses as fast as possible, though he suggested avoiding employing qualified but unlicensed professionals for an entire year when they could have received their certification in a shorter time. He contended that licenses should be given as quickly as possible. He raised concern with the potential for out-of-state, underqualified professionals with provisional licenses working in the Commonwealth over an in-state professional who may have better qualifications.

Commissioner Watson asked whether verification would be undertaken by a state board's counsel rather than a non-legal staff member. Both Ms. Walter and Mr. Jayman replied in the affirmative.

Commissioner Watson made a motion for approval for regulation No. 3314. Vice Chairman Mizner seconded, and the motion passed 5-0.

Chairman Bedwick made a motion for approval for regulation No. 3331. Vice Chairman Mizner seconded, and the motion passed 5-0.

3. No. 3332 State Board of Medicine #16A-4956: Acupuncturists and Practitioners of Oriental Medicine

Ms. Brandt outlined how the regulation updates and clarifies existing regulations, addresses changes to the options for demonstrating English language proficiency and incorporates amendments to the Acupuncture Licensure Act relating to liability insurance and circumstances when diagnosis of a condition by a physician, dentist or podiatrist must occur. She added that the Commission did not receive public comment on the regulation and that the standing committees in the legislature deemed the regulation approved.

Dana M. Wucinski, Board Counsel, State Board of Medicine (SBM), and Ms. Montgomery were present to answer any questions.

Ms. Wucinski detailed how the regulation incorporates amendments to the application checklist to ensure the checklist is complete and that terminology is consistent with regulatory language. She added the regulation expands the authority of the SBM, provides authorization for the SBM to approve an examination by a successor organization, specifies all acceptable sources

for the Test of English as a Foreign Language (TOEFL), and provides the SBM with the authority to approve an examination deemed to be equivalent to the TOEFL.

Commissioner Soroko made a motion for approval. Vice Chairman Mizner seconded, and the motion passed 5-0.

4. No. 3340 PA Gaming Control Board #125-240: Private Testing and Certification Facilities

Ms. Brandt stated the regulation provides standards and requirements for the registration of private testing and certification facilities as registered gaming service providers in the Commonwealth.

Chairman Ufberg commented that he would recuse himself from the regulation like other Pennsylvania Gaming Control Board regulations in the past.

Robert Wood, Assistant Chief Counsel, and Chad Zimmerman, Deputy Chief Counsel, PA Gaming Control Board, were present to answer any questions.

Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 4-0, with Commissioner Ufberg recusing.

V. OTHER BUSINESS

1. Health Care Benefits Agreement

Commissioner Watson made a motion to memorialize the Commission's health care benefit relationship with the Senate. Vice Chairman Mizner seconded, and the motion passed 5-0.

2. Approval of Vouchers

Vice Chairman Mizner made a motion to approve vouchers and expenses for the period April 21, 2023 through May 18, 2023. Commissioner Watson seconded, and the motion passed 5-0.

VI. DATE AND PLACE OF SUBSEQUENT MEETING

Chairman Bedwick announced the next public meeting is scheduled for Thursday, August 17, 2023, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VII. EXECUTIVE SESSION ANNOUNCEMENTS

Chairman Bedwick announced that no executive session would be held.

VIII. ADJOURNMENT

Chairman Bedwick adjourned the meeting at 10:32 am.