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Independent Regulatory Review Commission

Cynthia K. Montgomery, Deputy Chief Counsel
Department of State
P.O. Box 69423
Harrisburg, PA 17106-9523
Via email: RA-STRegulatoryCounsel@pa.gov

December 15, 2022

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

Dear Ms. Montgomery:

The undersigned organizations work together on issues affecting people with criminal convictions, including pardons and reentry. We were heartened by the enactment of Act 53 of 2020, more commonly known as "occupational licensing reform," which offered the prospect of reduced barriers to employment in many licensed professions for people with records. We are writing because we have some concerns about the regulations that have been proposed by the Department of State to implement the law. **We are concerned that the proposed regulations would not accomplish the intent of Act 53, and would instead make it unnecessarily difficult for people with criminal records to obtain professional or occupational licenses.**

Act 53 was an attempt to address the fact that too many Pennsylvanians were being excluded from the licensed professions on the basis of criminal records, even when their convictions were not meaningful evidence that they posed any present-day risk to clients, coworkers or the public. Too many of our fellow citizens who deserve second chances were being denied access to many professions for which they were fully qualified. Because so many well-paying jobs in Pennsylvania require a professional or occupational license, this exclusion made it significantly harder for these workers to earn a living wage – thus directly undermining the bipartisan push of recent years to facilitate prisoner reentry.

Pennsylvania law had previously said, among other things, that applicants could be denied licensure on the basis of any felony conviction, even if it had no connection to the profession and regardless of how long ago the crime took place. The boards regularly cited this law as justification to deny, revoke or suspend licenses – for instance, denying barber applicants the right to cut hair because they had once sold drugs. The most important aspect of Act 53 was that applicants (at least, for the professional and occupations administered by the Bureau of Professional and Occupational Affairs ["BPOA"]) should be presumed unfit only for convictions that are **directly related** to the practice of the profession or occupation for which they are seeking a license.

It is very important that the list of 'directly related' professions be strictly limited to only those offenses which are clearly and unmistakably related, in a direct and immediate way, to the applicant's ability to perform the work of the profession competently and safely. Act 53 does give BPOA boards and commissions the ability to review other convictions that are not on the 'directly related' list, and to deny or revoke licensure when the facts of a particular case show a genuine relation to the profession – but, critically, these other convictions will not create an automatic presumption of unfitness. The presumption that gets applied, due to inclusion on the list of 'directly related' offenses, will likely be very difficult to overcome – it will place a very substantial burden on applicants with convictions for listed offenses, and will likely discourage many would-be professionals from even beginning the work of training for a profession in the first place.

The "directly related" lists that have been proposed by BPOA, however, have not been kept within the strict limits that Act 53 was supposed to ensure. To take one example, the Board of Nursing has listed as "directly related" 92 separate individual offenses, going beyond those crimes of violence/sex/drug trafficking which the General Assembly already included in Act 53 as automatically relevant to all BPOA lists. Barber applicants, many of whom have trained to practice barbering at taxpayer expense while they were incarcerated, would be still be presumed unfit for having once sold drugs; they would also be presumed unfit on the basis of a DUI, despite driving having no role in the work of barbering. Indeed, many of the boards include low-level drug offenses on their lists, without any serious argument that such offenses are directly related to these professions.

In addition to including far too many offenses that are not truly related to the respective professions, none of the lists include time limits on how long an offense is "directly related." This would mean that the burden of the presumption of unfitness would continue to apply permanently to anyone who ever in their lives was convicted a listed offense, regardless of how much time has passed. The entire premise of the Second Chance movement – the bipartisan move to reduce endless barriers to employment for the formerly convicted, of which Act 53 is a part – is that a past conviction must not permanently brand a worker as a suspect, second-class citizen. People change, and grow, and as criminological research confirms, people who remain arrest-free for a number of years are no more likely to commit a new crime than any member of the general public – which is to say, a conviction in their past loses any relationship to their

fitness for a job. Act 53 was supposed to eliminate the burden of an indefinite barrier to licensure, not perpetuate it.

We submit that the Department, BPOA, and the boards and commissions need to substantially revise the "directly related" lists, so that they include much more limited lists of offenses, and limits on the time that any offense will continue to be viewed as directly related.

Respectfully submitted,

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Anna E. Hollis, Executive Director, Amachi Pittsburgh
Su Ming Yeh, Executive Director, Pennsylvania Institutional Law Project
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