

Comments of the Independent Regulatory Review Commission



Bureau of Professional and Occupational Affairs Regulation #16A-60 (IRRC #3220)

Expungement; Fees

January 9, 2019

We submit for your consideration the following comments on the proposed rulemaking published in the November 10, 2018 *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 Bureau of Professional and Occupational Affairs (Bureau) to respond to all comments received from us or any other source.

1. Section 43b.101. Definitions. -- Statutory authority and whether the regulation conforms to the intention of the General Assembly and Clarity.

“Expunge or expungement”

The Bureau defines “expunge or expungement” as the “Removal of a disciplinary record from a licensee’s record accomplished by (1) permanently sealing the affected record from public access; (2) deeming the proceedings to which the affected record refers as not having occurred; and (3) except with respect to any subsequent application for expungement, affording the affected party the right to represent that **no disciplinary record exists regarding the matter.**” (Emphasis added)

Act 6 defines “*expunge or expungement*” as the “Removal of a disciplinary record, accomplished by:

- (1) Permanently sealing the affected record from public access;
- (2) Deeming the proceedings to which the affected record refers as not having occurred;
and
- (3) Except with respect to any subsequent application for expungement, affording the affected party the right to represent **that no record exists regarding the subject matter of the affected record.**” (Emphasis added)

The Bureau proposes to exclude the phrase “of the affected record” from the definition of “expunge or expungement.” The Bureau should explain in the Preamble to the final-form regulation how the definition is consistent with the statute and why the phrase regarding the affected record is unnecessary.

2. Section 43b.103. Application for expungement. – Statutory authority and whether the regulation conforms to the intention of the General Assembly.

Under this section, a licensee may apply for expungement in accordance with the subchapter “**in the manner prescribed by the Commissioner.**” (Emphasis added) In the Preamble to the proposed rulemaking, the Bureau explains that it anticipates that licensees will apply for expungement through the Bureau’s online PA Licensing System (PALS) which contains all records associated with a license, registration, certificate or permit, including all disciplinary records.

Act 6 of 2018 states that:

“The Commissioner of the Professional and Occupational Affairs shall expunge the disciplinary record of a licensee, registrant, certificate holder or permit holder if the imposition of discipline was for a violation involving failure to complete continuing education requirements or practicing for six months or less on a lapsed license, registration, certificate or permit, subject to the following:

- (i) The licensee, registrant, certificate holder or permit holder must **make written application** to the commissioner for expungement not earlier than four years from the final disposition of the disciplinary record”
[Emphasis added]

The Bureau should explain how permitting licensees to apply through the Bureau’s online licensing system and allowing the Commissioner to prescribe the manner in which a licensee may apply for expungement is consistent with the statute that explicitly requires a licensee, registrant or permit holder to make written application to the commissioner for expungement of certain disciplinary records.