

Comments of the Independent Regulatory Review Commission



State Board of Optometry Regulation #16A-5218 (IRRC #3314)

License by Endorsement

November 17, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the September 18, 2021 *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 Optometry (Board) to respond to all comments received from us or any other source.

1. Comments, objections or recommendations of a committee.

The House Professional Licensure Committee (Committee) has submitted comments to this Commission and the Board identifying numerous issues related to the following provisions:

- Section 23.27 a(a)(1)(i) requires an applicant to submit a copy of the current law and regulations along with the 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 and the committee recommends changes that remove this responsibility from the applicants and apply it to the Board.
- Section 23.27 a(a)(4) states that an applicant must not have any discipline by the jurisdiction that issued the license, certificate, registration or permit. The Committee recommends clarifying this section to specify the types of discipline and time frame when such discipline occurred.
- Section 23.27b(b)(1) would give the Board the authority to issue a provisional license for less than a year. The Committee asserts that it is unclear under what circumstances the Board would need to exercise this authority. The Committee asks why the Board would issue a license for less than a year as it is not addressed in Act 41 of 2019.
- Section 23.27b(c) stipulates that a provisional license expires upon denial of full licensure or failure to comply with terms of the provisional licence. The Committee suggests this section also include the expiration date of the provisional license upon issuance of the license.

- Section 23.27(b)(d) states that the Board will not issue subsequent provisional licenses after the provisional licenses expire. The Committee believes that this section is vague. Further Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. The Committee recommends that this section be amended to correct the “unintended harm” of limiting provisional licenses and further suggests incorporating a time frame to re-apply.

Under the RRA, the comments, objections or recommendations of a Committee is one of the criteria this Commission must consider when determining if a regulation is in the public interest. When this proposal is delivered as a final-form regulation to the Commission and the Committees for review, the issues raised by the Committee, and the Board’s response to those issues, will be one of the criteria used by this Commission to determine if the regulation is in the public interest.

2. Compliance with the RRA.

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)). The information contained in the Regulatory Analysis Form (RAF) is not sufficient to allow this Commission to determine if the regulation is in the public interest.

Section 23.27a(a)(1)(ii) requires an applicable law, regulation or rule that is in a language other than English to be translated, at the applicant’s expense, by a professional translation service and verified to be accurate. The Board’s response to Regulatory Analysis Form #19 does not provide a specific estimate of the costs to the regulated community for translation of an applicable law, regulation or rule.

RAF #14 requires the promulgating agency to describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups in the development and drafting of the regulation. It also requires the agency to list the specific persons and/or groups that were involved. The Board’s response states that it sent an exposure draft to “stakeholders and interested parties” in February 2020. We ask the Board, when it submits the final version of this rulemaking, to provide an updated RAF that includes an estimate of the costs associated with translation and a list of specific persons and/or groups involved in the development and drafting of the proposal.

3. Miscellaneous. -- Clarity.

We recommend the title of Chapter 23 (relating to license by reciprocity and interstate certification) be amended to reflect the proposed content pertaining to licensure by endorsement.