

Comments of the Independent Regulatory Review Commission



State Board of Medicine Regulation #16A-16A-4958 (IRRC #3351)

Licensure by Endorsement

October 12, 2022

We submit for your consideration the following comments on the proposed rulemaking published in the August 13, 2022 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (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 Medicine (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) submitted the following comments on the proposed regulation:

Section 16.12b(a)(2) — This section 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 applies it to the Board Counsel.

Section 16.12b(a)(5) — This section 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 (i.e. formal discipline or complaint) and the timeframe when such discipline occurred.

Section 16.12c(b)(1) — This section would give the Board authority to issue a provisional license for less than a year. It is unclear under what circumstances the Board would need to exercise this authority. The Committee asks for clarification.

Section 16.12c(d) — This section states that the Board will not issue subsequent provisional licenses after the provisional license expires. We believe this section is unintentionally vague. Further, Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. The Committee believes this section should be amended to correct the unintended harm of limiting provisional licenses and would further suggest incorporating a time frame to re-apply.

Under the RRA, the comments, objections, or recommendations of a Committee is one of the criteria the Commission must consider when determining if a regulation is in the public interest. When this proposed regulation is delivered as a final-form regulation to this 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. Economic or fiscal impacts; Compliance with provisions of the RRA or the regulations of the commission in promulgating the regulation.

Under Section 16.12b(a)(2), 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 16.12b(a)(2)(i), 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 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 or professional liability insurance. 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, Criminal History Records Check and professional liability insurance requirements specified in §16.12b.

3. Section 16.12b. Licensure by endorsement under 63 Pa. C.S. § 3111. – Need; Protection of the public health safety and welfare; Implementation procedures and Clarity.

Subsection (a)

Subparagraph (a)(3)(i) requires demonstration of competency by practice in two of the past five years in a "substantially equivalent jurisdiction or jurisdictions." What standard determines whether a jurisdiction is substantially equivalent? Further, this provision 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 against the burden and cost to applicants and the Board.

Subsection (b)

Section 16.12b(8) an applicant must have applied for a license, certification, registration or permit in accordance with this chapter in the manner and format prescribed by the Board.

Numerous commentators have expressed their support for the inclusion of naturopathic doctors in this proposed regulation. However, we note that the regulation implementing the Naturopathic Doctor Registration Act (NDRA) (63 P.S. §§ 272.101– 272.301) (IRRC# 3324) is not yet finalized and the inclusion of naturopathic doctors in this regulation would be premature. Therefore, we ask the Board to ensure that the NDRA regulation be finalized before this regulation is delivered in final form.