



COMMUNITY LEGAL SERVICES
OF PHILADELPHIA



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Cynthia K. Montgomery, Deputy Chief Counsel
Department of State, Primary Contact
Via email: cymontgome@pa.gov

**No. 3361, Bureau of Professional and Occupational
Affairs #16A-66 (Consideration of Criminal
Convictions)(Final-Form Rulemaking)**

Dear Ms. Montgomery:

Community Legal Services, Inc. (CLS) has worked hard to make access to the licensed professions a reality for people with criminal records, because so many of them are part of our client base. We were among the primary advocates for the bill that became Act 53 of 2020, commonly known as the occupational license reform bill. Unfortunately, we were dismayed that the regulations originally proposed by the Bureau of Professional and Occupational Affairs (BPOA) and its boards and commissions were contrary to the intent of Act 53 to reform occupational licensing. We write now to express our appreciation for BPOA's revised approach to the final rulemaking package and our strong support for the redrafted regulations.

In its revisions, BPOA adopted an evidence-based approach to the identification of the “directly related” offenses to which a presumption of unfitness attaches that had been missing in the proposed package.

- First, the agency's methodology was very similar to that outlined in the declaration of our industrial-occupational psychologist, Dr. Toni Locklear. It identified key responsibilities for the licensed occupations through the U.S. Department of Labor's O*Net Online database. Then it determined whether a particular offense relates to all licensees engaged in the occupation, as well as whether the offense bears a meaningful relationship to the necessary duties. Attachment A to Regulatory Analysis Form, pages 1-2.
- Second, BPOA reviewed the “voluminous” research on recidivism, noting that the risk of reoffending for a former offender falls below the risk for the general population after 3-4 years without reoffending for drug and property offenses. *Id.* at 2.

BPOA also acknowledged and adhered to the intent of the law as explained in a letter submitted by the four prime sponsors of the legislation, which expressed that the “directly related” lists

were largely overbroad and that the lifetime presumption of unfitness was inconsistent with the intent of the law. Finally, it acknowledged the many public comments criticizing the lists.

The results of the agency's more rigorous analysis has led to final regulations that are far more consistent with the legislative intent of Act 53. First, the "directly related" lists are sharply curtailed from those originally proposed and indeed bear an actual relationship to the professions.

For example, Section 43b.451 contains the schedule of criminal convictions deemed directly related to the practice of veterinary medicine. As for other occupations, crimes of violence and drug trafficking offenses are directly related for specified periods of time and circumstances under regulations of general applicability as required by Act 53. See Section 43b.404(c)-(d). However, many other unrelated offenses, such as theft and generic drug offenses, have been removed from the board's list. Remaining on the board's list are clearly directly related offenses, such as neglect of, cruelty to, and other abuse of animals. Note that Act 53 does permit the boards and commissions to consider offenses not on the directly related lists on an individual case basis.

Second, the regulations create a five-year time limit on the rebuttable presumption of relatedness. As noted, this time limit is supported by the recidivism research and the legislators' comments about the legislative intent of Act 53. The regulations now treat a conviction as directly related only during the period when empirical evidence demonstrates that it truly does bear some relationship to the profession to which the applicant seeks to be admitted.

We support the final-form rulemaking for Act 53 and commend BPOA and the boards and commissions for their revisions.

Very truly yours,

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