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Via email: RA-STRegulatoryCounsel@pa.gov

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Re: 16A-66 (Consideration of Criminal Convictions)
Comments re: Proposed Regulations Implementing Act 53 of 2020
Occupational Licensing Reform Bill – IRCC No. 3361

On behalf of Philadelphia Lawyers for Social Equity, we write with grave concern for the thousands of Pennsylvanians with criminal records who stand to be affected by the proposed regulations drafted by the Department of State in response to the occupational licensing reform law, Act 53 of 2020.

Act 53 was written and passed with the express intent to help people with criminal records access the licensed professions that had long been withheld from them thanks to overbroad and amorphous legislation that excluded criminal-record holders without individualized consideration. This practice, in effect, resulted in massive disenfranchisement of low-income Pennsylvanians, many of them Black and Brown. Knowing as we do that Black Americans are more likely to be arrested, and once arrested, more likely to be convicted¹, licensing regulations such as those that Act 53 sets out to correct, end up functioning as de facto discrimination.

Without the changes that Act 53 was drafted to make, these injustices will continue. Act 53 required occupational licensing boards to identify crimes which were directly related to the specific profession which they regulate, with convictions for these delineated crimes acting as presumptions of “substantial risk” should the individual be admitted to the profession. In the spirit of the intentions of Act 53, which was to open up these professions to people with unrelated convictions that do not pose a substantial risk but still would have been excluded under previous guidelines, these lists were intended to be narrowly and specifically constructed. Instead, the lists are extensive, overbroad, and unreasonable, and many contain restrictions for convictions that cannot feasibly be considered to be related to the profession in question. For example, a conviction under Chapter 41 for a crime involving forgery or fraudulent practices is listed as posing a substantial risk for several licensing boards, including the boards governing barbers, cosmetologists, occupational therapists, physical therapists, and nurses. While access

¹ The Sentencing Project, “Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System” (Accessed December 5, 2022 <https://www.sentencingproject.org/reports/report-to-the-united-nations-on-racial-disparities-in-the-u-s-criminal-justice-system/>).

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to sensitive information will naturally vary across individual workplaces, none of these professions inherently requires the handling of secure client or business data, making the inclusion of these offenses on the enumerated list overbroad.

Furthermore, the proposed regulations do not include time limits for the presumptions of risk, meaning that no matter how much time has passed in an individual's life, or how much evidence of rehabilitation they can show, they are never allowed to move past the presumption. Despite substantial research showing that people largely age out of crime, and that after time individuals with criminal records are no more likely to reoffend than individuals without criminal records², the proposed regulations will allow the enumerated offenses to operate as lifetime barriers to these professions.

Additionally, one of the strongest predictors of recidivism is poverty³, which for many will only be exacerbated by the implementation of these poorly calculated regulations. As written, the proposed regulations stand to most severely impact the most vulnerable Pennsylvanians, citizens of our state who live at or below the poverty line, many of whom have long been shut out of stable, well-paying jobs with benefits, often for decades or more because of their criminal records. Our organization has long represented individuals with criminal records who live with crippling financial instability, often as a direct result of the inability to secure stable employment due to a (sometimes, decades-old) criminal record.

One of the most damaging aspects of the proposed regulations intensifies the impact of poverty on people seeking licensing from a state board: the inability to know whether or not they will be permitted to join the profession despite their criminal convictions. The regulations purport to allow potential licensees to argue their fitness for the career at a hearing that can be granted only after application, after their training is complete. People who live with no financial safety net, whose entire income is calculated towards survival and maintenance, cannot afford to spend years and years and thousands of dollars training for a profession that might not admit them after their substantial investment of time and money is already gone.

Occupational licensing reform was intended to make Pennsylvania stronger as a whole: individuals with criminals records, but also all of the thousands of people who will benefit from their services. In these

² United States Sentencing Commission, "The Effects of Aging on Recidivism Among Federal Offenders," (Accessed December 5, 2022, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf).

³Prison Policy Initiative, "Prisons of Poverty: Uncovering the Pre-incarceration Incomes of the Imprisoned," (Accessed December 6, 2022 <https://www.prisonpolicy.org/reports/income.html>).



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years post-pandemic, with a worker shortage across dozens of industries but perhaps none so critically as the health care industry, we need licensing reform that will do what Act 53 intended: open up licensed professions to people with criminal records that do not pose a risk to the public or the profession. The regulations, as proposed, fail. They do not provide for narrowly tailored lists of offenses that are related to the profession; they do not take into consideration rehabilitation or length of time since conviction; and they do not provide a reasonably clear expectation of the ability to be licensed to a given profession for potential applicants. For these reasons, they do not serve the aims of Act 53, and they do not serve Pennsylvanians.

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People Change, Criminal Records Should Too!

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