

# Comments of the Independent Regulatory Review Commission



## State Board of Examiners in Speech-Language Pathology and Audiology Regulation #16A-6808 (IRRC #3374)

### Licensure by Endorsement

July 26, 2023

We submit for your consideration the following comments on the proposed rulemaking published in the May 27, 2023 *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 RRA (71 P.S. § 745.5a(a)) directs the State Board of Examiners in Speech-Language Pathology and Audiology (Board) to respond to all comments received from us or any other source.

#### **1. Whether the regulation conforms to the intention of the General Assembly in the enactment of the statute upon which the regulation is based.**

This rulemaking implements Act 41 of 2019 (Act 41). Act 41 requires licensing boards and commissions under the Pennsylvania Department of State's Bureau of Professional and Occupational Affairs to promulgate regulations to consider applicants licensed in other jurisdictions for licensure in this Commonwealth. Act 41 states, "Final regulations shall be promulgated by each licensing board and commission within 18 months of the effective date of this section." Accordingly, all boards and commissions subject to the legislative mandate of Act 41 should have published final regulations by February 28, 2021.

Given the specific directive noted above, we urge the Board to return a final-form version of this rulemaking to this Commission, the Senate Consumer Affairs and Professional Licensure Committee, and the House Professional Licensure Committee as quickly as possible for review, consideration, and final publication as a regulation.

#### **2. Section 45.25. Licensure by endorsement. – Economic or fiscal impacts; Protection of the public health, safety, and welfare; Clarity; Need.**

Subparagraph (a)(1)(i) requires an applicant to submit 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 a license, certificate, registration, or permit. Act 41 does not explicitly state this requirement. Since laws and regulations are readily available to the public and the Board via the internet, what is the need for this provision? In addition, how will the Board know if the law, regulation, or rule is current? We ask the Board to move this burden from the applicant to the Board, or to explain why the person seeking licensure by

endorsement should provide this documentation. We further ask the Board to explain how it will ensure the documentation is current.

Subparagraph (a)(2)(i) provides for showing 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? This provision, too, 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 with the burden and economic or fiscal impacts to applicants and the Board.

Paragraph (a)(4) states that an applicant must not have been disciplined by the jurisdiction that issued the license, certificate, registration, or permit. Is this provision intended to apply to the entire span of the applicant’s licensure? We ask the Board to clarify this provision by specifying the types of discipline (i.e., formal discipline or complaint) and stating whether there is a limiting timeframe.

Subsection (b) states that an applicant may be required to appear before the Board for a personal interview. The Pennsylvania Speech-Language Hearing Association requests clarification regarding the personal interview process. We ask the Board to clarify in the preamble of the final-form regulation when personal interviews would be required, the nature of the interviews, and who would conduct the interviews.

### **3. Section 45.26. Provisional endorsement license. – Clarity; Need.**

Paragraph (b)(1) would give the Board authority to issue a provisional license for less than one year. Under what circumstances would the Board need to exercise this authority? We ask the Board to clarify this provision in the final-form regulation.

Subsection (d) states that the Board will not issue a subsequent provisional license after the provisional license expires. Act 41 of 2019 does not specifically state that the Board shall only issue one provisional license. We ask the Board to explain the need for limiting provisional licenses in this manner.

### **4. Compliance with the RRA; Economic or fiscal impacts.**

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 RAF is not sufficient to allow this Commission to determine if the regulation is in the public interest.

We ask the Board to amend RAF Question 8, which asks for specific statutory authority for the regulation. The Board states that section 5 of the Speech-Language Pathologists and Audiologists Licensure Act provides its specific statutory authority; however, the Board generally cites 63 P.S. §§ 1701—1719. We ask the Board to replace this citation with the specific statutory citation.

As noted above, under Section 45.25(a)(1)(i) 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 45.25(a)(1)(ii), 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. Additionally, RAF Question 22b states that applicants must also provide a recent Criminal History Records Check from the state police, or other state or agency or other appropriate agency of a territory or country that is the official repository for criminal history record information for every state in which they have lived, worked, or completed professional training/studies for the past five years. The Board's responses to RAF Questions 17, 19, and 23 regarding the financial impact on or cost to the applicant do not address these various expenses. We ask the Board, when it submits the final version of this rulemaking, to provide an updated RAF that estimates all of the costs associated with licensure by endorsement.