

**INDEPENDENT REGULATORY REVIEW COMMISSION
PUBLIC MEETING MINUTES**

10:00 A.M.

Thursday, May 28, 2015
14th Floor Conference Room
333 Market Street

I. CALL OF THE MEETING

The May 28, 2015 public meeting of the Independent Regulatory Review Commission (Commission) was called to order by Vice Chairman Bedwick at 10:04 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg, PA.

Commissioners Present: George D. Bedwick, Vice Chairman
 W. Russell Faber
 Murray Ufberg, Esq.
 Dennis A. Watson, Esq.

Telephone: John F. Mizner, Esq., Chairman

II. APPROVAL OF THE APRIL 16, 2015 PUBLIC MEETING MINUTES

Vice Chairman Bedwick asked for a motion for approval of the April 16, 2015 public meeting minutes, as submitted. Commissioner Watson made the motion and Commissioner Faber seconded, and the motion passed 5-0.

III. NEW BUSINESS

A. DEEMED APPROVED

1. No. 3051 Bureau of Professional and Occupational Affairs #16A-5212: Schedule of Civil Penalties – Optometrists

B. ACTION ITEMS

1. No. 3086 Pennsylvania Liquor Control Board #54-81: Economic Development Licenses

Scott Schalles, Regulatory Analyst, stated the rulemaking establishes criteria to be used by the Pennsylvania Liquor Control Board (LCB) when determining if an applicant for an economic development license has exhausted all reasonable means for obtaining a suitable license within a county. He continued that the Pennsylvania State Association of Township Supervisors submitted comments on the rulemaking, and both the House Liquor Control Committee and the Senate Law and Justice Committee deemed the regulation to be approved.

Rodrigo Diaz, Executive Deputy Chief Counsel, and Norina Blynn, Assistant Counsel, LCB, were present to answer any questions.

Mr. Diaz thanked the staff, and said the regulation “speaks for itself.” Vice Chairman Bedwick asked if the applications, which are processed quarterly, are processed based on when the application is received, or on a comparative basis. Mr. Diaz said the applications are processed on a comparative basis. He continued that separate hearings are held to discuss why an applicant should receive a license. Vice Chairman Bedwick recommended amending the regulation in the future to clarify the process.

Commissioner Watson asked if the list of approved licenses is readily available. Mr. Diaz said the list is available on the LCB website.

Vice Chairman Bedwick made a motion for approval. Commissioner Watson seconded, and the motion passed 5-0.

2. No. 3015 Department of Agriculture #2-159: Preferential Assessment of Farmland and Forest Land under the Clean and Green Act

Mr. Schalles stated the final regulation implements statutory changes made to the Pennsylvania Farmland and Forest Land Assessment Act of 1974, commonly referred to as the Clean and Green Act, over the last ten years. He noted the final regulation also adds language to assist in the administration of the Clean and Green Program. Mr. Schalles said no public comment regarding the final regulation was received. He continued that a letter was received from eight Republican members of the House Agriculture and Rural Affairs Committee urging the Commission to approve the final regulation and suggesting adding one more example that reflects that any pasture, regardless of whether the animals on it are bred and/or sold, is eligible for agricultural use.

Douglas Wolfgang, Director, Bureau of Farmland Preservation, Hannah Smith-Brubaker, Deputy Secretary, and Dwight Smith, Assistant Counsel, Department of Agriculture, were present to answer any questions.

Chairman Mizner made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

3. No. 3046 State Board of Nursing #16A-5126: Continuing Education; Reporting of Crimes and Discipline

Corinne Brandt, Regulatory Analyst, stated the rulemaking amends the current continuing education regulations for registered nurses (RNs) and modifies the timeline by which RNs, licensed practical nurses and licensed dietitians - nutritionists must notify the State Board of Nursing of criminal and disciplinary actions. Ms. Brandt noted there were no public comments received, and the Standing Committees deemed the regulation to be approved.

Shannon Sprow, Executive Deputy Chief Counsel, Cynthia Montgomery, Regulatory Counsel, Department of State, and Judith Pachter Schulder, Board Counsel, State Board of Nursing (Board), were present to answer any questions.

Ms. Sprow provided opening statements on behalf of Ian Harlow, Acting Commissioner, Bureau of Professional and Occupational Affairs. She read, "Overall, Bureau-wide, we found that 89 percent of those individuals randomly selected for audit were determined to be in compliance, and only 11 percent were referred to the Professional Compliance Office (PCO) for potential disciplinary action." Ms. Sprow continued, "For the State Board of Nursing, whose final regulation is before you for consideration today, the compliance rate was 93 percent, while only seven percent were referred to the legal office." She stated, "Every licensee has an equal chance of being selected for audit, and our statistics indicate that almost 90 percent of them are, in fact, complying." Ms. Sprow explained, "Of those individuals referred to PCO, 69 percent are either subsequently found to be in compliance or are given the opportunity to remedy minor deficiencies and come into compliance. Those that come into compliance ultimately receive a warning letter, but no formal disciplinary action. The remaining 31 percent receive disciplinary action either because their violation is significant or they fail to come into compliance." She added that approximately 13 percent also receive discipline for falsifying renewal applications. "Although our numbers indicate that nearly 90 percent of our licensees are complying with the continuing education requirements, we are still looking for ways to improve our process," she continued. "We have already moved in that direction with a pilot program which had been implemented in regard to the mandatory two hours of continuing education in child abuse recognition and reporting that was enacted by the General Assembly in Act 31 of 2014." She explained, "This system is already in place for the 16 boards that are impacted by the Act 31 requirements, and we are working to implement such a system on a larger scale for all continuing education for all 22 licensing boards and commissions that have these requirements."

Vice Chairman Bedwick expressed his concern with the system described, contending it seemed to run contrary to the wording in the regulation. Vice Chairman Bedwick referenced section 21.131(h)(1), which he said states that "failure to complete the 30 hours will subject a registered nurse to discipline under 13(b) of the act (63 P.S. § 223(b)) in accordance with the civil penalty." He continued that a suspension could come into play only if it is a second violation, or if the licensee refuses to cooperate in the audit. Ms. Schulder stated, "Under the current citation schedule, for a first violation, if you do not complete more than ten credits, that's \$250, 11 to 20 is \$500, 21 to 30 is \$1,000, and the second offense is an automatic order to show cause." She continued that the citation schedule complies with the language that is in the regulation and the second or subsequent is what will lead to the order to show cause discipline. She said the citation system is used for first time offenses. Vice Chairman Bedwick said the opening statement indicated that if no credits, or little to no credits, were completed, that it would lead to suspension. Ms. Schulder explained that charge is for the fraud or deceit in the practice of nursing, which is separate from continuing education.

Commissioner Ufberg said the description of the audit in the opening statements seemed to address the issue of continuing education for those who are in compliance and those who are not. He expressed his interest related to the notice for crimes and disciplinary actions taken in another state. Commissioner Ufberg asked if there is any information on how many issues of

noncompliance have occurred in the past. Ms. Schulder said she did not have the related statistics, but would provide them to the Commission if needed. She said that on the Board's most recent agenda there were two cases that involved failure to report. Ms. Schulder said if a licensee is involved with a failure to report there are additional disciplinary actions taken.

Commissioner Ufberg expressed his curiosity about why the Board decided there is a 90-day period to comply versus a 30-day period. Ms. Schulder said the 90-day compliance period is in the current statute. Commissioner Ufberg recommended addressing the compliance period with the Department of State legislative liaison. Ms. Montgomery noted SB 538, currently pending in the House, would require all licensees for all 29 boards to report all crimes and disciplinary actions within 30 days.

Vice Chairman Bedwick expressed his concern with statutory issues related to how reporting pending disciplinary action is handled. Ms. Schulder said there are requirements on renewal applications for all the boards. She said pending language was added for criminal convictions, but not for reciprocal convictions. Ms. Montgomery noted that SB 538 does require the reporting of arrests and convictions.

Commissioner Faber asked if there is a breakdown of the number of licensees that were found in compliance and how many were given the opportunity to remedy minor deficiencies. Ms. Sprow said she would look to see if those statistics are readily available.

Referencing the opening statement, Commissioner Faber asked if 3.5 percent of everything that is filed goes on to face more significant actions, and if the 3.5 percent is consistent across all 29 boards. Ms. Sprow said the statistics were not broken down by Board. Ms. Schulder noted that once an audit moves into the legal realm there is usually a high rate of compliance.

Vice Chairman Bedwick asked if the system in place actually incentivizes someone to lie, as "rolling the dice" on risking an audit is weighed against telling the truth about not having enough credits. Ms. Schulder said the Board found 93 percent of the licensees audited to be in compliance. She expressed her belief that the licensees are not lying.

Vice Chairman Bedwick made a motion for approval. Commissioner Ufberg seconded, and the motion passed 5-0.

4. No. 3033 Pennsylvania Public Utility Commission #57-296: Motor Carrier Vehicle List and Vehicle Age Requirements

Michelle Elliott, Regulatory Analyst, stated the regulation eliminates the vehicle list requirements for taxis and limousines; eliminates a waiver exception related to operating a taxi or limousine beyond the limitations set in regulation; replaces vehicle age limitations for taxis and limousines; and incentivizes the use of alternative fuel vehicles. The regulation was previously disapproved. The Public Utility Commission (PUC) submitted a revised final-form rulemaking. She said there are no remaining issues with the regulation.

Ken Stark, Assistant Counsel, and Robert Bingaman, Supervisor, Bureau of Technical Utility Services, PUC, were present to answer questions.

Commissioner Faber thanked the PUC for addressing the concerns previously expressed regarding the regulation. Chairman Mizner echoed Commissioner Faber's comment.

Commissioner Faber made a motion for approval. Vice Chairman Bedwick seconded, and the motion passed 5-0.

IV. OTHER BUSINESS

Approval of Vouchers

Commissioner Faber made motions to approve vouchers and expenses for the period December 12, 2014 through April 16, 2015. Commissioner Watson seconded, and the motions passed 5-0.

V. DATE AND PLACE OF SUBSEQUENT MEETING

Vice Chairman Bedwick announced the next public meeting is scheduled for Thursday, June 18, 2015, at 10:00 a.m. in the 14th Floor Conference Room, 333 Market Street, Harrisburg.

VI. EXECUTIVE SESSION ANNOUNCEMENTS

Vice Chairman Bedwick announced that no executive session would be held.

VII. ADJOURNMENT

Vice Chairman Bedwick announced the meeting adjourned at 10:40 a.m.