

Occupational License Reform and Criminal Records

Speaker

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Date



Highlights of Act 53 (SB 637)

- Affects only licensees of Bureau of Professional and Occupational Affairs (BPOA) boards
- New analysis by which state boards can consider criminal records, including:
 - Published list of offenses establishing “direct relationship”
 - Nature of offense poses “substantial risk”
 - 11 individual assessment factors to be considered
- Restricted licenses for people who trained while incarcerated (esp. barbers/cosmetologists)
- Limited preliminary determinations possible
- **Codified at 63 Pa. C.S. §§ 3112-3118; effective 12/28/2020.**



Why Occupational Licensing Reform was Needed in PA

- **Overbroad:** the law eliminated people who did not present substantial risk
- **Inconsistent:** too much discretion was invested in the State Boards, who often were laypeople without expertise in criminal record matters
- **Unpredictable:** people could be forced to go through extensive and expensive training without knowing whether they would be excluded; many completely gave up on their dream occupations
- **Racially disparate results:** Blacks and Hispanics are more likely than whites to have criminal records



Occupational Licensing in PA

- 20% of PA workforce has occupational licenses
- BPOA boards license about a million Pennsylvanians (1 in 12 residents)

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Scope of Act 53: Only BPOA Boards

- New law does not apply to workers licensed outside BPOA (teachers, lawyers, security guards, etc.)
- Does not apply to certified nursing assistants, who have certifications instead of licenses through the Board of Nursing
- Does not apply to the schools that train people in the professions licensed by BPOA

Top BPOA Boards (# of Licensees)

- Nursing (312k)
- Medicine (135k)
- Cosmetology (128k)
- Real estate (65k)
- Engineers/surveyors/geologists (53k)
- Pharmacy (43k)



Other Notable Covered Occupations

- Architects
- Accountants
- Barbers
- Dentists
- Massage therapists
- Occupational therapists
- Physical therapists
- Psychologists
- Social workers
- Vehicle dealers and salespersons
- Veterinarians



New Rules Apply to All BPOA Actions (18 Pa CSA § 9124(A.1))

- Refusals to issue or renew a license, certificate, registration, or permit
- Suspensions
- Revocations
- Limitations



Consideration of Criminal Records: Out with the Old (§§ 3113(A),(A.1))

- No longer permits lifetime disqualifications for all felonies -- 18 P.S. § 9124(c) no longer applies to BPOA boards.
- Overrules practice acts for each profession on consideration of criminal records.
- Eliminates concepts of "good moral character, "crimes of moral turpitude," and "ethical or honest practice" as related to criminal records.



BPOA Must Publish List of Disqualifying Criminal Offenses (§ 3117)

- By BPOA Commissioner, in consultation with boards and business
- Offenses must be “**directly related**” to the occupation
- List to be published in the PA Bulletin by 12/28/2020
- Proposed regulations within 2 years after publication of list
- List to be provided to each applicant/on websites
- Used by boards for discipline, licensure, preliminary determinations



What is “Directly Related” ? (§3102)

“The nature of the criminal conduct for which the person was convicted has a **direct bearing on the fitness or ability** to perform one or more of the duties or **responsibilities necessarily related to the profession, trade or occupation** for which the individual seeks licensure.”

New Method of Considering Criminal Records (§ 3113(B))

STAGE 1: See if the offense is on the published list as “directly related.”

- If yes, determine whether the person would pose a “**substantial risk**” to health and safety of clients or of future offending by conducting an “individualized assessment.”
- Rebuttable presumption that it would pose a substantial risk, but person can rebut with evidence of rehabilitation.

STAGE 2: If the offense is not directly related (i.e., is not on the list), the Board shall determine whether the conviction, due to its nature, poses a substantial risk.

- If so, the Board shall conduct the individualized assessment.
- Again, the person can provide evidence of rehabilitation.



11 Factors in Individualized Assessment (§3113(C))

- 1) Criminal conduct involved **act or threat of harm**, incl property/reputation
- 2) **Facts and circumstances** around the conviction
- 3) **Number of convictions**
- 4) **Increase in age/maturity** since date of conviction
- 5) **Criminal history, if any, after conviction**
- 6) Completion of **education/training**, including in incarceration
- 7) **References** from employers or others (including from incarceration)
- 8) **Personal rehabilitation**
- 9) Meets **other licensing requirements**
- 10) Criminal history while engaged in occupation
- 11) Any other factor deemed relevant to fitness

Carve-outs

- **Sexual offenses/health care practitioners** – lifetime ban (§3113(D)).
- **Crimes of violence** as defined in 42 Pa. CSA §9714 (listing convictions carrying mandatory minimums – such as some agg assaults, sex crimes, kidnapping, burglary, robbery, drug delivery resulting in death, etc.)
UNLESS all of these:
 - Crime-free at least 3 years since release from incarceration (tolled by parole violation) or imposition of sentence;
 - Person demonstrates significant rehabilitation;
 - Board finds person does not pose substantial risk (§3113(E))
- **Drug trafficking** (NOT ordinary drug felony) – depends on amt/weight of drugs involved; burden on Board to prove trafficking (§3113(F)).
- Many of these terms are defined in §3113(I).

Restricted Licenses for Barber/Cosmetologist (§3112)

- Meant to help people trained for these professions while incarcerated (§3112.1 allows restricted licenses for other training occurring during incarceration)
- Licenses last 1-2 years
- Establishes criteria for fitness
- Permits conditions by the Board, including reasonable supervision by a licensee
- Provides for revocation
- At end, supervisor tells Board whether person complied. If so and otherwise qualified, the person will then receive a regular license.



Preliminary Determination (§3115)

- Meant to enhance certainty about possibility of license before training is entered.
- Can file a petition for preliminary determination. Fee of not more than \$45 (can be in forma pauperis).
- Board will determine whether the person's record is on "the list" and thus is "directly related." Decision in 45 days.
- If record is determined to be directly related, determination is not final. Person can present evidence on the 11 factors in a formal application.



Other Provisions

- Expunged or sealing cases – No! (18 Pa CSA § 9124(b)(2))
- Juvenile adjudications – No! (§3114)
- Best practice guide for applicants – prepared by Dept. of State to summarize the law (§3116)



Enforcement

- Licensing hearings
- Appeals to Commonwealth Court



QUESTIONS?

CONTACT

