



House Bill 263 Testimony-State Medical Board of Ohio

December 2, 2020

Chair McColley, Vice Chair Johnson, Ranking Member Antonio, and members of the Senate Transportation, Commerce, and Workforce Committee. My name is Chelsea Wonski, and I am the Legislative Director for the State Medical Board of Ohio (the “Board” or “Medical Board”). Thank you for the opportunity to provide written testimony regarding House Bill 263 (HB263).

The Medical Board appreciates the spirit of HB263 and is supportive of second chances for individuals who want to participate in the workforce. Given the professions the Medical Board licenses, such as physicians, physician assistants, podiatrists, massage therapists and more, the Board must also ensure that we protect the citizens of Ohio when they are at their most vulnerable. Accordingly, the Board has concerns with HB263’s requirement to create a list of disqualifying offenses, the length of time the Board may ‘look back’ at an applicant’s criminal record and the evidentiary standard the Board must use when reviewing an applicant’s criminal record.

The Board’s Current Practice

Because of our charge to protect the public, under the Board’s current initial licensee application process, each application is reviewed on a case by case basis. If a crime is reported through the background check process, the type and severity of the crime committed are reviewed. The amount of time that has elapsed since the applicant’s conviction and the age of the applicant when the crime was committed are also analyzed. The Board also reviews applicants for good moral character. The goal of a case by case review is not to prevent individuals from becoming licensed in this state but to ensure Ohio patients are adequately protected.

List of Disqualifying Offenses

The all-inclusive list of disqualifying offenses currently required in HB263 could have the unintended consequence of disqualifying an applicant that may otherwise receive licensure under the Board’s current case by case review. Additionally, while it is rare for the Board to deny a license solely for a criminal conviction, we must ensure the Board has the discretion to properly investigate when an applicant’s criminal history raises

questions about his or her fitness to practice safely and ethically. **The Board believes the required list of disqualifying offenses unnecessarily restricts the Board's discretion for an extremely important review.**

Lookback Period

Regardless of whether the Board does a case by case review of reported crimes or follows a mandatorily created list of disqualifying offenses, the Board is concerned about the limitations of a five-year lookback period for all non-violent, non-sexual crimes. Again, the Board's licensees are frequently working with Ohio citizens who are very vulnerable to the licensee's action(s), including the licensee's access to a citizen's most personal information. HB263 does not address the concerning convictions of some drug offenses, illegal prescribing, theft or even fraud. **The Board respectfully requests a ten-year lookback period for felony drug and felony theft offenses.**

Evidentiary Standard of Review

The Board has concerns with the clear and convincing evidentiary standard required in line 278 of HB263. The requirement to use a clear and convincing standard when evaluating whether a conviction can be a disqualifying offense is a different legal standard for initial licensure than the standard used in other parts of the licensure process. This higher standard has not only been found inappropriate by the courts for administrative proceedings, but it may cause confusion in administration and unnecessary litigation for the Board's actions. **The Board respectfully requests the deletion of the clear and convincing standard requirement.**

Chair McColley and members of the committee, the Board applauds and appreciates the work being done to ensure a more robust Ohio workforce. We also appreciate your willingness to consider our concerns to balance our state's workforce needs and our duty to protect the public. If you have any questions or concerns for me, please do not hesitate to reach me by phone 614-230-4253 or by email at Chelsea.Wonski@med.ohio.gov.
