



HB 263 Testimony – State of Ohio Board of Pharmacy

December 2, 2020

Chair McColley, Vice Chair Johnson, Ranking Member Antonio and members of the Senate Transportation, Commerce and Workforce Committee, thank you for the opportunity to provide written testimony on HB 263. My name is Cameron McNamee, and I am the Director of Policy and Communications for the State of Ohio Board of Pharmacy.

On behalf of the Board, we believe that the aim of this legislation is well-intentioned as it seeks to reduce barriers to employment for individuals with previous criminal convictions. However, working together with Ohio's healthcare regulatory boards, the Board has identified the following four areas of concern that we respectfully ask the committee to address.

1. **CLEAR AND CONVINCING EVIDENCE STANDARD:** Line 278 of HB 263 requires a licensing authority to use the legal standard of clear and convincing evidence when evaluating the factors of a conviction for an offense that may lead to the denial of an initial occupational license. The inclusion of this standard for the issue of initial licensure under the bill presents the following challenges:
 - a. The courts have long established that the standard of "clear and convincing" evidence is an inappropriate standard for administrative action (*Sanders v. Fleckner*, 59 Ohio Law Abs. 135 (2d Dist. 1950)).
 - b. Adoption of this provision would create multiple legal standards for any licensure action by an occupational licensing board/agency:
 - i. The issuance of an initial license;
 - ii. The issuance of a license via reciprocity (currently pending in SB 246); and
 - iii. The standard for licensure sanctions (denial, suspension, etc.), which was established by the courts.
 - c. This would create an uneven standard throughout administrative law that may lead to further confusion. Additionally, moving to a different standard could subject licensing decisions to further litigation when the standard has already been established by the courts and successfully implemented for the last 70 years.

As the proposed section of code already requires the consideration of several different factors when issuing an initial licensure decision, the Board requests the restoration of uniformity across agency licensing decisions by removing the reference to "clear and convincing evidence" in lines 278-279.



(D)(1) A licensing authority that may, under this section, consider a conviction of, judicial finding of guilt of, or plea of guilty to an offense in determining whether to refuse to issue an initial license to an individual shall consider all of the following factors ~~and shall use a standard of clear and convincing evidence~~ in evaluating those factors to determine whether the conviction, judicial finding of guilt, or plea of

2. LOOKBACK TIME PERIODS: HB 263 prohibits a licensing authority from considering an offense when it occurred outside of certain lookback period (generally 5-years). We, along with other healthcare regulatory boards, have concerns about the length of the lookback time period and suggest that a longer lookback is necessary for certain criminal offenses in order to safely vet applicants for many healthcare professions.

As individuals regulated by healthcare licensing boards have access to controlled substances and other drugs, insurance information, and protected health information, the Board respectfully requests an extended 10-year lookback for felony drug offenses and felony theft offenses to ensure an applicant is appropriately vetted and is safe to practice in Ohio. This proposed lookback period would not automatically deny an applicant licensure but would subject them to a more careful review by licensing boards.

As healthcare licensing Boards only comprise approximately 65 out of 651 occupations, this extended lookback could be limited to those specific professions.

3. LIST OF SPECIFIC CRIMINAL OFFENSES: Line 233 of the bill requires licensing authorities to adopt a list of specific criminal offenses for which a conviction, judicial finding of guilt, or guilty plea may disqualify an individual from obtaining a license. The Board is concerned that such a list would be overly broad and lead to unnecessary disqualifications. For example, the Board does not currently have any disqualifying offenses outside of the Ohio Medical Marijuana Control Program. We see this as an asset because the facts and circumstances surrounding each case is unique and should be afforded the opportunity of a thorough review.

In closing, the State of Ohio Board of Pharmacy recognizes that individuals should not be automatically disqualified from employment due to involvement with the criminal justice system. **This is why in the past five years (2014-2019), the Board has only denied initial licensure of 4 applicants due to criminal convictions.** To put this in context, the Board licenses approximately 60,000 individuals. By addressing the concerns outlined above, HB 263 can be an important part of how the Board protects the public while ensuring qualified individuals can pursue the career of their choice.

Chair McColley and members of the committee, thank you again for the opportunity to submit written testimony on HB 263. Should you have questions or wish to discuss further, please do not hesitate to contact me directly by phone 614-466-7322 or email (Cameron.McNamee@pharmacy.ohio.gov).