

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF CHIROPRACTIC

[49 PA. CODE 5]

Licensure by Reciprocity

The State Board of Chiropractic (Board) amends § 5.13 (relating to licensure by reciprocity) to read as set forth in Annex A.

Description and Need for the Final-Form Rulemaking

Section 504 of the Chiropractic Practice Act (act) (63 P.S. § 625.504) authorizes the Board to grant a license without further examination to an individual from another state or a province of Canada if: (1) the standards for licensing in that jurisdiction are substantially the same as those provided in the act; (2) that jurisdiction accords similar privileges to persons licensed in this Commonwealth; (3) the applicant holds a valid license in that jurisdiction; and (4) the applicant complies with applicable regulations of the Board. Under section 501(a) of the act (63 P.S. § 625.501(a)), the standards for licensure in this Commonwealth include graduation from an approved chiropractic school and passing the required licensure examinations, which as specified in § 5.12(a)(2) (relating to licensure by examination) are Parts I, II, III and IV of the National Board Examination (NBE).

These standards for licensure have changed over time. For example, prior to 1992 the Board did not require an applicant to pass Part III of the NBE, and before 1997 the Board did not require an applicant to pass Part IV of the NBE. Section 5.13(a) formerly required an applicant for licensure by reciprocity to have graduated from chiropractic school, passed clinical and written examinations acceptable to the Board, passed Parts I and II of the NBE or another written licensure examination acceptable to the Board and hold a current and valid unrestricted license to practice chiropractic in another jurisdiction that met the standard of section 504 of the act. Additionally, § 5.13(c) formerly required that the applicant “is currently engaged in active practice and has been so continually for at least 1 year immediately preceding the date of the application, in the [jurisdiction] of the license on the basis of which the applicant is seeking a license in this Commonwealth by reciprocity.”

The Board published a proposed rulemaking at 41 Pa.B. 4958 (September 17, 2011) to amend § 5.13. As set forth in the proposed rulemaking, the determination of whether standards for licensure are substantially the same would be based upon the standards for licensure at the time of graduation from chiropractic school and first licensure, rather than the current standards for licensure. Part III or both Parts III and IV of the NBE would be required, in addition to Parts I and II of the NBE, for later chiropractic college graduates. Though the unrestricted license upon which reciprocity is based would have to have been obtained by examination, it would not need to be current. Rather than construing “similar privileges” to further limit reciprocity to licensees from those jurisdictions that “accept[t] Pennsylvania licensees for licensure by reciprocity,” this limitation would be

interpreted to include a jurisdiction that “licenses by reciprocity chiropractors licensed in another jurisdiction whose standards for licensure are substantially equivalent to those required in that jurisdiction.” Rather than requiring an applicant for licensure by reciprocity to be “currently engaged in active practice and [have] been so continually for at least 1 year immediately preceding the date of application, in the state . . . of the license on the basis of which the applicant is seeking a license in this Commonwealth by reciprocity,” an applicant would be required to have been practicing for at least 3 years, including at least 20 of the last 24 months and including at least 12 months in the state of initial licensure. Finally, the proposed rulemaking explicitly stated that the Board may deny an application for licensure by reciprocity as provided in the disciplinary section of the act.

Summary of Comments and Responses to Proposed Rulemaking

The Board published the proposed rulemaking at 41 Pa.B. 4958 with a 30-day public comment period. The Board did not receive comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

The HPLC requested that the Board clarify whether “unrestricted license” in proposed § 5.13(a)(4) includes an inactive license. To make the comparison of the standards for obtaining a license by examination, the Board proposed identifying that jurisdiction where the applicant obtained licensure by examination, rather than by reciprocity, because as the initial licensing jurisdiction it would by necessity have more fully evaluated the applicant’s qualifications. The Board did not wish to license by reciprocity an applicant whose license by examination was restricted, suspended or revoked. However, as is to be expected when discussing licensure by reciprocity, an applicant may have left the original jurisdiction of licensure by examination (and let that license become inactive) and been practicing lawfully in another jurisdiction. The applicant’s qualifications should not be called into question merely for that change. Accordingly, the Board proposed revising the regulation to require only that the license be unrestricted, not that it also be current and valid. Upon review of this comment, the Board concluded that it should, as an alternative when the applicant’s license by examination otherwise satisfies the requirements but is merely inactive, permit the applicant to satisfy this requirement by demonstrating that the applicant holds a current unrestricted license in another jurisdiction whose standards for licensure by examination at the time of initial licensure were at least equal to those of this Commonwealth and that also accepts Pennsylvania licensees for licensure by reciprocity. The Board revised § 5.13(a)(4) to include this alternative.

The HPLC requested clarification as to whether active practice in proposed § 5.13(a)(5) includes both full-time and part-time practice or just full-time practice. IRRC agreed that the phrase lacked clarity and suggested that the Board define it. The intent of this paragraph was to ensure that applicants for licensure by reciprocity not

only meet the minimum standards for licensure but also have experience in the active practice of chiropractic so as not to have one's skills deteriorate. Because this experience may certainly be acquired on a part-time basis, the Board revised this paragraph to clarify that the specified time is for full-time practice or the equivalent on a part-time basis. To accommodate the previously described revision to paragraph (4), the Board additionally revised paragraph (5) to make clear that "the license described in paragraph (4)" is the license obtained by examination.

IRRC asked the Board to explain how the proposed rulemaking, which bases the comparison upon standards in effect at the time of initial licensure rather than current standards, is consistent with the intent of the General Assembly in enacting section 504 of the act. Section 504 of the act provides that the Board may license without further examination an applicant from another jurisdiction if, among other things, the "standards for licensing in such states or provinces are substantially the same as those provided in this act." However, in the absence of corroborating language such as "current" or "present," it is not clear that use of the present tense verb "are" by itself was intended to require the comparison be made of the standards at the present time. The Board notes that, for example, section 4(b)(1) of the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. § 151(b)(1)) permits licensure by reciprocity in this Commonwealth of an individual who, among other things, holds a license in another jurisdiction "in which the requirements and qualifications . . . were at the time of the initial issuance of such license or certificate of registration at least equal to the existing standards of this Commonwealth." When the General Assembly intended a particular time of comparison, it was able to say so. Section 504 of the act does not make clear whether the standards for licensure to be compared should be the current standards as they exist today or those at the time the applicant was first licensed to practice chiropractic.

Because the words of the act are not clear and free from all ambiguity and are not explicit, in construing this provision, the Board must ascertain the intention of the General Assembly under 1 Pa.C.S. § 1921 (relating to legislative intent controls). To do so, the Board considered and given weight to the consequences of particular constructions of this provision under 1 Pa.C.S. § 1921(c)(6). A chiropractor who met the Pennsylvania standards at the time of graduation from chiropractic college and became licensed in this Commonwealth may remain licensed despite the additional requirements imposed over the last four decades. If the current licensure standards are compared, a chiropractor who met the Pennsylvania standards at the time of graduation from chiropractic college and became licensed in another jurisdiction would be eligible for licensure by reciprocity in this Commonwealth only if the other jurisdiction has similarly added to its requirements. However, a chiropractor who did not meet the Pennsylvania standards at the time and was licensed in another jurisdiction with lesser standards would qualify for licensure by reciprocity in this Commonwealth if the other jurisdiction has added to its requirements for licensure by examination, even though that applicant has never met the standards for licensure in this Commonwealth. The Board believes that this would be an absurd result and could not have been the intent of the General Assembly under 1 Pa.C.S. Part V (relating to Statutory Construction Act of 1972). See 1 Pa.C.S. § 1922(1) (relating to presumptions in ascertaining legislative intent). On the other hand, if the standards at the time of original licensure are compared, a chiropractor

who first became licensed outside of this Commonwealth will qualify for licensure by reciprocity in this Commonwealth to the same extent that a chiropractor would have been licensed in this Commonwealth if originally applied here. Also, a chiropractor who would not have qualified for licensure in this Commonwealth at the time of initial licensure in another state would not qualify for licensure by reciprocity unless that chiropractor completed the additional requirements. Construing section 504 of the act to apply the standards in effect at the time of initial licensure provides a reasonable result for all possibilities and must have been the intent of the General Assembly.

IRRC noted that in the Regulatory Analysis Form for proposed rulemaking the Board indicated that on average a few dozen chiropractors each year apply for licensure in this Commonwealth on the basis of reciprocity. IRRC questioned how many of these applicants are denied under the existing regulations. Essentially every applicant for licensure by reciprocity in recent years has been denied licensure under the current regulations. This is because the Board encourages an applicant that has passed all four parts of the NBE to apply for licensure by examination, not by reciprocity. Therefore, an applicant for licensure by reciprocity would most likely come from a jurisdiction that has not adopted all four parts of the NBE, which means their current standards are not, at this time, substantially the same, even though they may have been exactly the same at the time of initial licensure. This situation has effectively eliminated licensure by reciprocity.

IRRC requested additional information concerning comparable requirements in other states so that it may better determine whether the proposed rulemaking is in the public interest. An applicant may be licensed by credentials in Maryland upon waiver of any examination if the applicant became licensed to practice chiropractic in another state upon passing an examination similar to that for which waiver is sought and the applicant has been in active clinical practice for the 5 years immediately preceding application. Code of Md. Reg. § 10.43.04.02 (relating to eligibility). A chiropractor licensed in another state that has licensure and examination requirements equivalent to those in New Jersey may become licensed by reciprocity to practice in New Jersey if the applicant is in good standing in every jurisdiction in which the applicant is licensed to practice chiropractic and has provided proof of graduation. N.J. Admin. Code § 13:44E-1A.3(a) (relating to applicants licensed in other states). A person licensed to practice a profession in another state may be licensed by endorsement to practice in New York if, among other things, the applicant has education and experience and passed examinations satisfactory to the New York licensing board. N.Y. Educ. Law § 605(6). According to the web site of the New York State Education Department's Office of the Professions (<http://www.op.nysed.gov/prof/chiro/chirolic.htm#sta>), the required examinations for licensure as a chiropractor in New York consist of Parts I, II, III and IV of the NBE. While an out-of-state chiropractor who has passed all four parts of the NBE would be considered to be an applicant for licensure by examination, an applicant for licensure by endorsement in New York who has passed only Parts I and II of the NBE shall also have completed other equivalent examinations and practiced chiropractic for at least 2 of the prior 5 years.

A chiropractor may become licensed by reciprocity to practice in Ohio without further examination or educational review if the applicant holds a current license to practice chiropractic in another state whose standards for

licensure are considered by the Ohio licensing board to be, on the date the license was issued, substantially equivalent to those of Ohio. Ohio Rev. Code § 4734.23(b). For the 5 consecutive years immediately preceding application, the applicant shall also have held a valid unrestricted license in good standing in a jurisdiction that has licensing requirements, on the date the license was issued, that are considered by the Ohio licensing board to be substantially equivalent to those in Ohio. Ohio Admin. Code § 4734-6-02 (relating to licensure by endorsement). Persons licensed to practice chiropractic under the laws of another state may become licensed in West Virginia without additional examination if the other state has requirements for licensure equivalent to those in West Virginia and provides similar privileges to practitioners in West Virginia. W. Va. Code § 30-16-10. However, a person may not receive a license to practice chiropractic in West Virginia without successfully completing Parts I, II, III and IV of the NBE. W. Va. Code § 30-16-7(a). A chiropractor who is currently licensed to practice in another state may be licensed by reciprocity in Delaware if the applicant successfully completed the following parts of the NBE: Parts I, II and III of the NBE and the physiotherapy portion if the applicant graduated after July 1, 1997; Parts I, II, III and IV of the NBE if the applicant graduated between January 31, 1991, and July 1, 1997; or Parts I, II and III of the NBE or Parts I and II of the NBE and the special purpose chiropractic examination if the applicant graduated before January 31, 1991. 24 Del. Code Ann. § 710(b).

IRRC noted that § 5.13(a)(3)(i) would require an applicant for licensure by reciprocity to have completed Parts I and II of the NBE if the applicant graduated from chiropractic college after January 1, 1968; subparagraph (ii) would require an applicant to have completed Part III if the applicant graduated after December 27, 1991; and subparagraph (iii) would require an applicant to have completed Part IV if the applicant graduated after May 23, 1997. Based upon this language, IRRC asked for clarification as to whether a later graduated applicant would also have to complete the earlier parts of the examination. The Board intended that an applicant who “graduated from chiropractic college after May 23, 1997,” would be included in the description of an applicant who graduated “after December 27, 1991,” and in the description of an applicant who graduated “after January 1, 1968,” and therefore would be required to have completed, in addition to Part IV, Part III and Parts I and II, respectively. To make these provisions clearer, the Board revised subparagraph (ii) to require Parts I, II and III of the NBE if the applicant graduated after December 27, 1991, and revised subparagraph (iii) to require Parts I, II, III and IV of the NBE if the applicant graduated after May 23, 1997.

IRRC noted that the Board’s web site includes a notice that the Pennsylvania Chiropractic Law Examination is no longer required and questioned why proposed § 5.13(a)(6) would require an applicant for licensure by reciprocity to pass the Pennsylvania Chiropractic Law Examination. This provision was mistakenly consolidated from § 5.15(a)(2) (relating to licensure examinations) into the proposed rulemaking for licensure by reciprocity. The Board deleted it from the final-form rulemaking. Because the Board intends to separately address its regulations for licensure by examination, § 5.15 is not revised in this final-form rulemaking.

IRRC asked how an applicant’s verification under § 5.13(c) will satisfy the requirement that the applicant present evidence of experience required under subsection

(a)(5). This provision replaces a requirement that the applicant execute an affidavit certifying that the applicant is in active practice and was intended to allow the applicant’s statements to be sufficient without having to produce corroborating evidence from patients, employers or insurers and works in tandem with the requirement of subsection (b) that the applicant detail the applicant’s education, examinations, licensure and experience, and certify that the applicant has met the requirements for licensure. The application form will include statements that the applicant has met the requirements for licensure, that the applicant has the specified experience and that the application is true and correct, subject to the penalties for unsworn falsification.

Disapproval by IRRC

IRRC disapproved the final-form rulemaking on April 4, 2013. In its disapproval order of April 15, 2013, IRRC noted that the final-form rulemaking would delete from § 5.13(a)(4) the requirement that an applicant for licensure by reciprocity hold a license in a jurisdiction “whose standards for licensure by examination are substantially equivalent to those required under the act and this chapter for licensure” and that “accepts Pennsylvania licensees for licensure by reciprocity.” IRRC concluded that, because “these deletions nullify the ‘similar privileges are accorded persons licensed in this Commonwealth’ standard,” they “do not simplify the process of licensure by reciprocity, rather, they eliminate it completely from the regulation.” IRRC then concluded that deleting these provisions is inconsistent with the act and the intent of the General Assembly and therefore is not in the public interest. In response to the disapproval, the Board revised § 5.13(a)(4) so that it does not require the applicant to hold a license in a jurisdiction that “licenses by reciprocity chiropractors licensed in another jurisdiction whose standards for licensure are substantially equivalent to those required in that jurisdiction,” as stated in the proposed rulemaking. Instead, the final-form rulemaking requires the applicant to hold a license in a jurisdiction “which accepts Pennsylvania licensees for licensure by reciprocity.” To the extent the Board revised this paragraph to allow for an applicant whose license in the jurisdiction of original licensure was not current, it did so in a manner consistent with this revision in response to the order of disapproval.

In response to this disapproval, the Board also chose not to delete the requirement of § 5.13(a)(4) that the applicant hold a license in a jurisdiction “whose standards for licensure are substantially equivalent to those required by the act and this chapter for licensure by reciprocity,” as delivered for final-form rulemaking. Deletion would have resulted in having only the requirement that the applicant passed the examinations as historically required under paragraph (3), consistent with the assumption as described in the proposed rulemaking that a jurisdiction that licensed a candidate who met those standards shall have had standards substantially equivalent to those of the Commonwealth. Instead, the Board revised this provision to make clear that the comparison must be made of licensure standards by examination at the time of the applicant’s initial licensure. To more easily make these standards clear to applicants and to other jurisdictions for similar comparison purposes, the Board will retain the requirement that an applicant for licensure by reciprocity, in addition to holding a license in a jurisdiction whose standards for licensure were at least equal to those of the Commonwealth and that accepts Pennsylvania licensees for licensure by reciprocity, shall

have passed those parts of the National examination that had been required in this Commonwealth for licensure by examination.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 6, 2011, the Board submitted a copy of the notice of proposed rulemaking, published at 41 Pa.B. 4958, to IRRC and the Chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on March 13, 2013, the final-form rulemaking was approved by the HPLC. On April 3, 2013, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 4, 2013, and disapproved the final-form rulemaking.

The Board delivered the revised final-form rulemaking, together with a copy of IRRC's disapproval order and the supporting report required under section 7(c) of the Regulatory Review Act (71 P. S. § 745.7(c)) to IRRC, the HPLC and the SCP/PLC on May 28, 2013. Under section 7(c.1) of the Regulatory Review Act, IRRC met on June 20, 2013, and approved the final-form rulemaking. Under section 7(d) of the Regulatory Review Act, the final-form rulemaking was deemed approved by the HPLC and by the SCP/PLC on July 5, 2013.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth, its political subdivisions or the private sector. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, its political subdivisions or the private sector.

Statutory Authority

This final-form rulemaking is authorized under section 302(3) of the act (63 P. S. § 625.302(3)) and 504 of the act.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Regulatory Unit Counsel, Department of State, P.O. Box 2649, Harrisburg, PA 17105-2649, (717) 783-7200, st-chiro@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 41 Pa.B. 4958.

(4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the act.

Order

The Board, acting under the act, orders that:

(a) The regulations of the Board, 49 Pa. Code Chapter 5, are amended by amending § 5.13 to read as set forth in Annex A.

(b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

KATHLEEN G. McCONNELL, DC,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 43 Pa.B. 3857 (July 6, 2013).)

Fiscal Note: Fiscal Note 16A-4320 remains valid for the final adoption of the subject regulation.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 5. STATE BOARD OF CHIROPRACTIC

Subchapter B. LICENSURE, CERTIFICATION, EXAMINATION AND REGISTRATION PROVISIONS

§ 5.13. Licensure by reciprocity.

(a) An applicant for licensure by reciprocity shall present evidence of the following:

(1) Graduation from an approved chiropractic college.

(2) A passing score on clinical and written examinations acceptable to the Board, if the applicant graduated from chiropractic college prior to January 1, 1968.

(3) Passing scores on the following parts of the National Board Examination:

(i) Parts I and II if the applicant graduated from chiropractic college after January 1, 1968.

(ii) Parts I, II and III if the applicant graduated from chiropractic college after December 27, 1991, or was first licensed to practice chiropractic after December 27, 1991.

(iii) Parts I, II, III and IV if the applicant graduated from chiropractic college after May 23, 1997, or was first licensed to practice chiropractic after May 23, 1997.

(4) A current and valid unrestricted license to practice chiropractic obtained by examination in another state or territory of the United States or a province of Canada whose standards for licensure by examination at the time of initial licensure were substantially equivalent to those required under the act and this chapter for licensure at that time and which accepts Pennsylvania licensees for licensure by reciprocity. An applicant who otherwise

meets the requirements of this paragraph but whose license is not current satisfies the requirements of this paragraph if the applicant holds a current and valid unrestricted license to practice chiropractic in another state or territory of the United States or a province of Canada whose standards for licensure by examination at the time of initial licensure were substantially equivalent to those required in this Commonwealth at that time and that jurisdiction accepts Pennsylvania licensees for licensure by reciprocity.

(5) Having engaged in the active clinical practice of chiropractic under a license in another state or territory of the United States or a province of Canada on a full-time basis for at least 3 years, including at least 20 months of the 2 years immediately preceding the date of application, and including at least 12 months in the jurisdiction that issued the license by examination described in paragraph (4), or the equivalent on a part-time basis.

(b) The applicant shall complete an application obtained from the Board detailing the applicant's education, examinations, licensure and experience, and certifying that the applicant has met the requirements for licensure under the act and this chapter, and return the application and appropriate documentation to the Board with the required fee.

(c) An applicant's verification that the applicant has engaged in the practice of chiropractic as required under subsection (a)(5) will satisfy the requirement that the applicant present evidence of experience.

(d) The applicant shall provide proof that the applicant has obtained professional liability insurance in accordance with § 5.41 (relating to certification of professional liability insurance). It is sufficient if the applicant files with the application a copy of a letter from the applicant's professional liability insurance carrier indicating that the applicant will be covered against professional liability in the required amounts effective upon the issuance of the applicant's license to practice chiropractic in this Commonwealth. Upon issuance of the license, the licensee has 30 days to submit to the Board the certificate of insurance or copy of the policy declaration page as described in § 5.41. The effective date of this subsection is September 1, 1988.

(e) The Board may deny an application for licensure by reciprocity as provided in section 506(a) of the act (63 P. S. § 625.506(a)).

[Pa.B. Doc. No. 13-1583. Filed for public inspection August 23, 2013, 9:00 a.m.]