

## 18 VAC 80-20 – HEARING AID SPECIALISTS REGULATIONS

### BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

#### DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

##### AGENCY RESPONSE TO ECONOMIC IMPACT ANALYSIS (EIA) PERFORMED BY THE VIRGINIA DEPARTMENT OF PLANNING AND BUDGET (DPB):

The Board concurs with the approval. However, the Board would like to correct an error in the summary and address certain statements regarding the Board's projected revenues and expenditures.

##### Summary Correction – “The Board also proposes to decrease the fee for licensure by reciprocity.”

*EIA position – “Specifically, the Board proposes to increase fees for initial application, renewal of licensure, reinstatement of licensure and fees for temporary permits. The Board also proposes to decrease the fee for licensure by reciprocity. In a separate action (<http://townhall.virginia.gov/L/ViewStage.cfm?stageid=7102>), the Board proposes to eliminate the examination fee from this regulation and instead inform regulated entities that this fee will be set according to requirements of the Virginia Public Procurement Act.”*

##### Agency Response:

The Board's proposed fee adjustment does not decrease the fee for licensure by reciprocity. The current regulations include a \$30.00 application fee and a \$110.00 examination fee. For those applying for licensure by reciprocity, the regulations combine these fees into one fee, \$140.00. This \$140.00 fee explicitly states it includes the examination fee, which is set at \$110.00 on the preceding line. The actual licensure by reciprocity application fee, excluding the exam fee, is \$30.00. This is the same licensing fee for non-reciprocity applicants. The application fee is being increased from \$30.00 to \$85.00, pursuant to the Callahan Act. The examination fee is not being changed in this action; however, its inclusion in the reciprocity license fee is being removed. This change creates consistency in the regulations. It should be noted that in a separate regulatory action, the application fee and reciprocity license fee are being consolidated into a single fee type, Initial application for licensure, simplifying the regulations even further.

##### Estimated Economic Impact –

*EIA position – “The Board also proposes to amend the fee for licensure by reciprocity in such a way that looks like a fee reduction but that will likely see individuals seeking such licensure paying more.”*

##### Agency Response:

The Board disagrees with the EIA's characterization that the proposed amendment appears as a fee reduction. As noted above, the Board is separating out the examination fee from the license by reciprocity fee by removing the language “includes examination fee” from the regulation. The application fee for licensure by reciprocity is currently \$30.00, the same amount as the non-reciprocity application fee. The current text of the regulation states the initial application fee is \$30.00, the exam

fee is \$110.00, and the licensure by reciprocity fee is \$140.00, “includes[ing] examination fee”. It is clear in the regulation that the \$140.00 reciprocity fee is the \$110.00 examination fee and \$30.00 application fee. The proposed fee adjustment is a change to the application fee, and should not mislead any potential reciprocity applicants about the nature of the change. It should be noted that the Board has had only one applicant for reciprocity since 2009.

*EIA position – “Absent some fee increase, Board staff reports that the Board will run a deficit by the 2016-18 biennium. Even though historical revenue and expenditure numbers support that the Board would eventually have to increase fees, an assumption used to forecast a decrease in revenues seems dubious.”*

Agency Response:

The Board concurs with the EIA’s conclusion that revenue and expenditure numbers support that the Board must increase fees. The Board disagrees with the EIA’s characterization that its revenue forecast is dubious. Revenue projections for applicants are based on historical averages for the past 8 years for Opticians. This method has been proven successful when considering that the number of applicants vary from year to year. The projection methodology used for renewals has also shown to be historically fairly accurate, with a typical variance of less than 5%. This revenue projection method has been reviewed by DPOR management, external budget analysts, and an external auditor; and the method is considered sound and reasonable. This revenue projection methodology is used across all professions under DPOR, and has been in place for over a decade. These specific revenue projections are the same used for all budgeting purposes, including the annual executive branch six year budget projections. It is of note that the Board projects the cash deficit to occur in the first part of 2017 under the current fee structure.

*EIA position – “Specifically, if neither licensee services nor investigations of complaints for this Board have suffered a significant lag on account of DPOR’s lower staffing levels, neither licensees of this Board nor the public who uses their services are likely to experience a significant benefit on account of DPOR’s anticipated hiring of additional staff.”*

Agency Response:

DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. Boards are staffed with licensing professionals who are generalists in licensing and Board specific functions. Functions that are not Board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the Boards at DPOR. So, for example, the DPOR finance section staffs accountants, who split their time performing accounting for each of the boards. The Board is then charged a portion of the accountant’s costs based on the percentage of the accountant’s workload that was spent on the Board’s accounting. This model saves the Board the expense of hiring a staff accountant to perform this function. The Board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the Board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the Board. The Board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is

adequately staffed, all of the Boards, including this Board, operate at minimal costs by receiving the benefits of specialization and economies of scale.

Filling vacant positions is only one aspect of the projected increased expenditures. The increases in health insurance and retirement costs to DPOR that are already in effect as of Fiscal Year 2015 total nearly \$2 million per biennium, with the Board's allocated portion estimated at about \$18,000 per biennium.

#### **Projected Impact on Employment –**

*EIA position – “Increased licensure fees will likely lead to at least a marginal decrease in the number of individuals who are employed as hearing aid specialists.”*

#### Agency Response:

In DPOR's experience, the number of licensees rarely decreases solely because of fee increases. Licensees rarely drop out of the profession due to fee increases. This is likely due to the cost of changing careers greatly exceeding that of the marginal fee adjustment. It is of note that even if this fee is increased, Virginia will still have one of the lowest Hearing Aid Specialist licensing fees in the nation.

#### **Effects on the Use and Value of Private Property –**

*EIA position – “To the extent that professional licenses are private property of value to licensees, increasing the cost of licenses will commensurately decrease their value.”*

#### Agency Response:

Regardless of the EIA response's relation to a separate action, the Board disagrees with the characterization of an occupational license as private property. The Board, in consultation with the Attorney General's office, maintains that an occupational license is a legal status conferred by the state granting special privileges to the licensee, not private property.

Further, it is not clear how increasing the cost of the license decreases its value. Changing the cost of the license does not affect its function, characteristics, or the usability of the license, factors that would normally determine its value. In this sense, it is not clear how a fee change alone can change the value of a license. The EIA takes the position that a fee increase will lead to a decrease in the number licensees making the license more scarce. A decrease in supply would likely result in increased value. So if the license is more scarce due to the fee increase, its value would increase, not decrease as the EIA indicates.

#### **Small Businesses: Costs and Other Effects-**

*EIA Position – “To the extent that increasing licensure fees leads to a decrease in the number of individuals licensed as hearing aid specialists, the cost of hiring the services of the remaining, smaller pool of licensees may marginally increase for the small businesses that hire them.”*

#### Agency Response:

As noted above, in DPOR's experience, the number of licensees rarely decreases solely because of fee increases. Licensees rarely drop out of the profession due to fee increases, as the cost of changing careers usually greatly exceed that of the marginal fee adjustment.

### **Small Businesses: Alternative Method that Minimizes Adverse Impact-**

*EIA Position – “There are actions that the Board could take that might mitigate the necessity of raising fees at this time. If licensees and the public have not thus far been harmed by decreased staffing levels, licensees would likely benefit from DPOR reconsidering its decision to hire more staff that would need to be funded through licensure fees.”*

#### Agency Response:

As indicated above, licensees and the public benefit when DPOR maintains adequate staffing levels. DPOR utilizes a specific staffing model, honed over several decades, to keep costs at a minimum while maintaining its charge of protecting the health, safety, and welfare of the public by ensuring minimal competency of licensed professionals. Boards are staffed with licensing professionals who are generalists in licensing and Board specific functions. Functions that are not Board specific, some of which include accounting, investigations, examinations, information services, and recordkeeping, are staffed by professionals in those fields who perform these functions for all of the Boards at DPOR. So, for example, the DPOR finance section staffs accountants, who split their time performing accounting for each of the boards. The Board is then charged a portion of the accountant’s costs based on the percentage of the accountant’s workload that was spent on the Board’s accounting. This model saves the Board the expense of hiring a staff accountant to perform this function. The Board simply does not have the funds to staff professionals to perform all of the incidental or specialized services performed by DPOR staff. Neither can the Board afford the loss of productivity by having generalists attempt to perform these functions in addition to their other duties for the Board. The Board receives the benefits of economies of scale when sharing the cost of services provided by DPOR staff. When DPOR is adequately staffed, all of the Boards, including this Board, operate at minimal costs by receiving the benefits of specialization and economies of scale.