



PROFESSIONAL
CERTIFICATION
COALITION

May 17, 2019

Representative Brandt Iden
Room C-372
Capitol Building
100 North Capitol Avenue
Lansing, MI 48933
BrandtIden@house.mi.gov

Re: Michigan H.B. 4488

Dear Representative Iden:

The Professional Certification Coalition (PCC) writes to share our views regarding the potential effects of Michigan H.B. 4488, relating to occupational licensing reform. In its current form, H.B. 4488 removes important protections for the public and would have an adverse effect on private certification organizations' enforcement of their ethics codes or eligibility requirements. In addition, it could be construed to restrict or invalidate licensure regulations that condition licensure on current private certification. Given how important it is to the general public that professionals have relevant qualifications and meet the established standards that private certifications confer, the bill should be modified to avoid these potential impacts.

The PCC is a nonprofit association founded last year to address legislative initiatives that affect professional certification programs and those who hold private certification credentials. The PCC currently has well over 100 members, including non-governmental professional certification organizations, professional societies and service providers. The PCC's members reflect a full spectrum of professions, including health care, engineering, human resources management, financial services, and information technology, among many others. The PCC advances the best interests of those who use or rely on professional certification—such as employers, reimbursers, and the general public—as well as of individual professionals themselves who achieve professional certification status, including many residents of Michigan. Our founding organizations – the American Society of Association Executives (the leading organization for association management) and the Institute for Credentialing Excellence (the leading developer of accreditation standards for professional certification programs) – serve as the Steering Committee for the PCC.

H.B. 4488 advances the important goal of reducing recidivism by making it easier for an ex-offender to earn a living in certain occupations. We believe this is a worthy objective and we are supportive of this important next step in national efforts to reform the criminal justice system and to ensure pathways to opportunity for ex-offenders. This objective must be balanced, however, against the need to protect the public and the ability of both state licensing boards and private certification organizations to learn about or consider relevant conduct for which individuals have been provided full due process.

The standards established by private certification programs in their ethics codes often call for revocation or denial of certification due to criminal convictions, judicial determinations, or licensure actions about other wrongful acts that are relevant to the practice of a specific occupation. For example, convictions or license revocations for abusing prescription privileges to distribute opioids typically lead to loss of certification for healthcare professionals, and embezzlement or fraud typically and appropriately leads to loss of certification for financial professionals. As non-governmental entities without the resources or legal authority to conduct full-fledged investigations, issue subpoenas, and hold trial-type proceedings, most private certification organizations rely on judicial determinations, criminal convictions, and licensure board enforcement actions to trigger their own ethics code enforcement.

H.B. 4488, however, would prohibit a licensing board from considering a civil judgment against an individual as evidence of whether the individual is likely to serve the public in the licensed area in a fair, honest, and open manner. In addition, as currently drafted, the bill would not permit licensing boards to consider any misdemeanor convictions or even felony convictions that are not substantially related to the state's interest in protecting public safety. The bill's omission of public health and welfare as legitimate state interests is deeply concerning, as is the bill's prohibition of licensing board considerations of civil judgments and misdemeanor convictions. These determinations are made in situations in which the individual has had full due process. Yet the bill would deny licensing boards the ability to rely on or even consider those findings – and, by extension, could prevent private certification organizations from learning that their certificants had engaged in fraud against or stolen from their clients, abused prescription privileges, violated patient privacy, or engaged in serious misconduct short of violent or safety-endangering felonies.

The PCC is also concerned about the provision in H.B. 4488 limiting licensing boards from considering other “public records” that relate to an individual's conviction. In some fields, such as health care, safety-related roles, and the engineering and financial industries, regulatory agencies have incorporated the competency and ethical conduct standards established by non-governmental professional certification programs into state licensure requirements. These regulatory requirements serve to acknowledge both the importance of setting knowledge and conduct standards for the protection of the public and the value of having those standards defined by subject matter experts rather than by government officials. As noted above, some conduct that relates to an individual's conviction may violate the ethics codes of private certification organizations and result in the loss or denial of certification. The PCC believes it is important to clarify that H.B. 4488 is not intended to remove certification requirements from practice acts that require licensed professionals to earn and maintain current certifications issued by private certification bodies. State agencies should be able to deny licensure to individuals who fail to meet a requirement of holding current private certification without second-guessing or conducting an independent review of the independent decisions made by private certification organizations. Applicants may be denied certification for many reasons, including failing to complete an accredited educational program, achieve a passing score on the certification exam, fulfill continuing education requirements, or pay a renewal fee. An applicant who was denied certification due to an

Representative Brandt Iden

May 17, 2019

Page 3

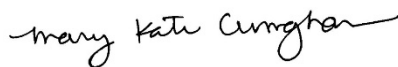
ethics code violation that relates to a criminal conviction should not be granted a special exemption from certification requirements that have been incorporated into licensing laws.

To address the concerns the PCC has identified, we recommend the inclusion of a new Section 8, as follows:

“Notwithstanding any other provision of this act, nothing shall restrict a licensing board or agency from considering factual findings from a civil or criminal proceeding in which the individual was provided due process, if those factual findings are directly relevant to the individual’s ability to perform the duties authorized by the occupational or professional license, to meet the conditions for licensure, or to the state’s interest in public health, safety, or welfare. Nothing in the section shall be construed to require a private certification organization to grant or deny private certification or a certificate to any individual. Notwithstanding any other provision, this act does not alter or restrict enforcement of any requirement in a licensure statute or regulation for an individual to hold current private certification as a condition of licensure or renewal of licensure.”

Thank you for your consideration of these amendments. If you have any questions regarding this letter, please feel free to reach out to us using the contact information identified below.

Sincerely,



Mary Kate Cunningham
Vice President, Public Policy
ASAE: The Center for Association Leadership
Phone: (202) 626-2787
Email: mcunningham@asaecenter.org



Denise Roosendaal
Executive Director
Institute for Credentialing Excellence
Phone: (202) 367-1165
Email: droosendaal@credentialingexcellence.org

cc: Representative Michael Webber (Chair, House Committee on Regulatory Reform;
MichaelWebber@house.mi.gov)