

December 12, 2018

Dr. Nicole Alexander-Scott, Director  
Rhode Island Department of Health  
3 Capitol Hill  
Providence, RI 02908

(by email and mail)

Dear Dr. Alexander-Scott:

The undersigned local and national organizations are writing to express our deep distress and concern with the consistently cavalier way that the R.I. Department of Health (RIDOH) has recently been undermining a major goal of criminal justice reform by increasing the barriers for people with past criminal records or substance use disorders to obtain professional licensing from your agency. It has done so no fewer than six times in the past six months.

When objections have been raised to this practice, your Department has responded with a stock, boilerplate and unhelpfully vague explanation that these barriers must be imposed to “protect the integrity of public health.” We cannot allow this disturbing trend to go unchallenged.

Before examining the specific recent actions your Department has taken, a brief review of the harsh impact of criminal-record related professional licensing restrictions and why that is such a problem is in order. Rhode Island already makes it extremely difficult for people with criminal records to obtain occupational licenses. Numerous licensed occupations in our state have some form of conviction-related barrier codified by legislation, which makes it deeply troubling to see an agency like yours further expand these barriers through the regulatory process. Moreover, your agency’s actions are contrary to the federal government’s interest in making sure that the growing need for workers in healthcare professions is partially met by hiring individuals with criminal records who do not pose a risk to public safety.<sup>1</sup>

These laws and regulations impact a startling number of Rhode Islanders. Not only do we have a staggering 23,000-plus citizens currently under probation or parole supervision, more than 70,000 Rhode Islanders are estimated to have a past felony record.<sup>2</sup> This is to say nothing of people with misdemeanor records or with felony arrests not followed by convictions.

Discrimination against people with criminal records is also an issue of equity that should be of the utmost importance to RIDOH. As in other states, justice-involved Rhode Islanders are disproportionately low-income people of color, whose access to meaningful employment is hindered not only by base hiring discrimination but by barriers to licensing. This is of particular significance because over 70% of jobs classified by the Department of Labor as lower income

---

<sup>1</sup> U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation (ASPE). (2018). *Linking People with Criminal Records to Employment in the Healthcare Sector: 5 Things to Consider*. <https://aspe.hhs.gov/system/files/pdf/259686/MeetingtheDemand.pdf>

<sup>2</sup> National Employment Law Project, Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions, Appendix E, 2018. <https://s27147.pcdn.co/wp-content/uploads/FairChanceLicensing-Nov-2018.pdf>

require a license. Thus, restrictive licensing requirements focused on past criminal history shut people out from large swaths of employment that would otherwise be readily available to people exiting the criminal legal system who are in need of gainful and meaningful employment.

Nationally, and here in Rhode Island, healthcare occupations are among the fastest growing industries in the state and have the largest number of licensing requirements. We know that individuals in licensed occupations tend to have higher wages and longer job tenure than their unlicensed peers. Evidence also suggests that black and Latino men particularly feel the benefit of increased wages in licensed occupations as compared to their unlicensed peers.<sup>3</sup> Barring justice-involved individuals from licensed occupations only exacerbates racial wage and wealth gaps.

The Department of Health could and should be a critical agency in reducing the disparity that can be caused by some of those requirements. Yet it has repeatedly acted in just the opposite fashion. There are no fewer than *six* examples of this that we can point to in recent months:

- In adopting new regulations in August governing the licensing of **physical therapists and physical therapy assistants**, the Department now requires all applicants to undergo a full BCI review without providing any guidance to the licensing board on how to take an applicant's past criminal record into consideration. Since the regulations fail, for example, to include any sort of time consideration, a twenty-year old drug conviction could have an adverse licensing impact on someone who has worked for years, successfully, to stabilize their life. In fact, by requiring a full BCI background check to be presented as part of the application, this regulation will even give the licensing board access to an applicant's history of arrests not followed by convictions, a practice that clearly has an adverse impact on black and Latino candidates. The Department's one-sentence response to these significant concerns: "[T]he BCI check requirement will ensure the continued safety of patients and the integrity of public health."

Exactly what constitutes the "integrity of public health" is not explained, but there is no reason it should be in conflict with basic goals of promoting justice reform and rehabilitation of formerly incarcerated and convicted license seekers. In fact, employment is one of the most effective ways of protecting public safety in that it creates economic stability for individuals and families in communities often most subject to justice involvement. The Department's one-sentence shrug-off is unacceptable, and doesn't even attempt to explain the lack of any criteria for analyzing a person's criminal record or why mere arrest records should play any part in deciding whether a person is qualified for a license.

- The Department adopted a similar regulation, going beyond what state law mandates, in requiring all applicants for **midwife licenses** to also have a full BCI review, again with no standards for RIDOH to use in analyzing an applicant's criminal record. Further, the Department refused to remove outdated language allowing for the discipline of licensees under such ridiculous and archaic criteria as "immoral conduct" and "habitual drunkenness." As written, the rules even bar applicants from participating in the state's medical marijuana program. The Department's official one-sentence response to all these concerns: the "requirement for background checks and

---

<sup>3</sup> Peter Blair and Bobby Chung, "Job Market Signaling through Occupational Licensing," 2018.

clauses regarding denial/suspension are necessary for RIDOH to maintain the integrity of public health and patient safety.”

- The Department expanded what constitutes “disqualifying information” for purposes of denying applicants a **massage therapist** license. Rather than continue with a specific list of offenses that potentially disqualify an applicant, RIDOH now allows for *any* criminal record to be potentially disqualifying. The Department also refused to revise a provision allowing the conviction of *any felony* to serve as a basis for denying, revoking or suspending a license. The Department’s explanation for the former: RIDOH requires “latitude... in order to maintain the integrity of public health and the safety of consumers.” As for the latter: the any-felony restriction is “integral to RIDOH’s ability to maintain public health and safety.”

- Just this month, RIDOH adopted new regulations governing **emergency medical services licenses** that retain a disqualification of applicants or licensees for any “violation of any federal or state law.” Though discretionary, this disqualification provision applies to felonies, misdemeanors, and even civil violations. It contains no standards for determining what violations of law will be cause for disqualification, and thereby provides the Department unbridled discretion in its decision-making. Even though the EMS licensing statute specifically provides that even a felony conviction “shall not necessarily disqualify an attendant,” these regulations authorize disqualification for a misdemeanor offense, or even less. RIDOH’s one-sentence explanation for this harsh standard is, regrettably, very familiar: in light of the “vulnerable populations” EMS licensees deal with, these broad disqualification standards, RIDOH claims, are “essential to ensuring patient safety and the integrity of public health.”

In short, the Department has increasingly made it harder for people with criminal records to qualify for a variety of professional licenses, and has done so without a legitimate rationale or any evidence that would support further escalation, much less continuation, of these already onerous restrictions.

As disturbing as all these examples are, it is worth noting a few other recent actions where RIDOH refused to make regulatory changes. While not directly tied to criminal records, they too are likely to have a disproportionate impact on individuals facing employment challenges:

- The Department refused to remove a regulatory reference to “habitual intemperateness” as a basis for denying, suspending or revoking a **dietitian or nutritionist license**, even though earlier this year the Governor, recognizing the impropriety of such a standard, sought to revise statutory language from other professional licensing laws with similar archaic language. See 18 H-7200, Article 6. The Department’s rationale for keeping this anachronism: “these grounds for discipline are integral to maintaining continued protection of public health.”

- Finally, RIDOH recently similarly refused to eliminate “habitual intoxication or addiction to drugs” as grounds for suspending or revoking a license for **interpreters for the deaf**, and further refused to remove hopelessly vague revocation standards in those same regulations against “presenting an unprofessional or otherwise distracting appearance” – something most likely to be applied to racial or religious groups. The Department’s response: both of these standards are “required to maintain the integrity of public health and RIDOH’s ability to protect it.”

In each of these instances – all done within the past few months – the Department summarily rejected suggestions designed to halt your agency’s relentless efforts to make it difficult for formerly incarcerated or convicted people and individuals with substance use disorders to obtain professional licenses. In doing so, your agency has demonstrated a callous disregard for the notion of rehabilitation that underlies Rhode Island’s purported commitment to criminal justice reform.

Finally, our concerns about, and frustration with, your troubling approach to professional licensing and criminal justice reinvestment do not arise in a vacuum. We don’t seek to minimize the many positive steps that RIDOH has taken on various issues to help vulnerable communities, but twice in the past two years, your agency has rejected the virtually unanimous consensus of the medical community and instead sided with law enforcement and the departing Attorney General on two very problematic criminal justice bills: “Kristen’s Law” (the drug-induced homicide bill) and a law giving the Attorney General access to RIDOH’s drug prescription database without a warrant. This recent legislative history only adds to our dismay as to how your Department has ignored objections to the impact of its licensing regulations on justice-involved individuals.

Reducing poverty and improving economic mobility are essential to improving health outcomes in our state. As income level is closely related to health outcomes—the more one lives in economic distress and in poverty the more likely one’s health status will deteriorate<sup>4</sup>—it is important to consider how critical employment is to the health and well-being of our most marginalized communities, and to stop putting additional barriers between people with criminal records and decent jobs.

We therefore ask your Department to stop making it more, rather than less, difficult for people who have been involved in the criminal justice system to enter professions that will help them turn their lives around. Instead, we hope that RIDOH will reverse course and collaborate with our organizations over the next year as we promote occupational licensing processes across sectors that give a fair chance to *all* Rhode Islanders who meet fair licensing qualifications.<sup>5</sup>

Thank you for your consideration of these concerns. In light of the significance of this issue, we look forward to a favorable response.

Sincerely,

Steven Brown, Executive Director  
**American Civil Liberties Union of Rhode Island**  
 128 Dorrance Street, Suite 400 – Providence, RI 02903 sbrown@riaclu.org

Megan French-Marcelin, Fair Hiring Project Coordinator  
**JustLeadershipUSA**  
 megan@justleadershipusa.org

---

<sup>4</sup> Kendal Orgera and Samantha Artiga. (2018). *Disparities in Health and Health Care: Five Key Questions and Answers*. <https://www.kff.org/disparities-policy/issue-brief/disparities-in-health-and-health-care-five-key-questions-and-answers/>

<sup>5</sup> Ten states have passed occupational licensing reform legislation in 2018 alone.

Fred Ordoñez, Executive Director  
**Direct Action for Rights and Equality**  
340 Lockwood Street – Providence, RI 02907 fred@daretowin.org

Jim Vincent, President  
**NAACP, Providence Branch**  
PO Box 5767 – Providence, RI 02903 jvincent577@gmail.com

Jordan Seaberry, Director of Public Policy and Advocacy  
**The Institute for the Study and Practice of Nonviolence**  
265 Oxford St. – Providence, RI 02905 jordan@nonviolenceinstitute.org

Patrick Westfall, MBA, and Nick Horton, Co-Executive Directors  
**OpenDoors**  
485 Plainfield Street - Providence, RI 02909 pwestfall@opendoorsri.org

Roberta Meyers, Director of National H.I.R.E. Network  
**Legal Action Center**  
rmeyers@lac.org

Christine Owens, Executive Director  
**National Employment Law Project**  
90 Broad Street Suite 1100 - New York, NY 10004 cowens@nelp.org

cc: Governor Gina Raimondo  
Neil Hytinen