

Title 12 Recodification Project
Meeting to Discuss Common Provisions Definitions
July 12, 2018
1:30 p.m.
SCR 357

Persons present:

Christy Chase, Office of Legislative Legal Services (OLLS)

Jessica Wigent, OLLS

Eric Turner, Dept of Regulatory Agencies (DORA) – Real Estate Division

Steve Conklin, National Society of Professional Engineers

Ronne Hines, DORA, Division of Professions and Occupations

Reviewing Definitions

Christy Chase and the attendees moved through each proposed common provision definition, which would apply throughout Title 12, including to all practice acts regulated by the Division of Occupations and Professions. The revised definitions are included below, along with notes from the discussion on the particular definition. In addition, the group present agreed that language would be needed in the common provisions that would indicate that, if there existed any conflict between a provision of the common provisions and a specific practice, the provision of the practice act would prevail. This language is based on a Nebraska law, the Uniform Credentialing Act, which covers persons and businesses providing health-related services and has provisions that are common to all health-related "credential" holders (license, certificate, or registration).

Changes to Schedule of Meetings

The schedule of upcoming meetings has been revised. Please see the attached schedule or the Title 12 website for the changes.

Draft Common Provisions Definitions for Title 12

Revised 7/12/18

12-1-10X. Definitions. As used in this title 12, unless the context otherwise requires:

() "Applicant" means a person applying, pursuant to a part or article of this title 12, for a new, ~~active~~ license, certification, or registration or to renew, reinstate, or reactivate ~~an active~~ a license, certification, or registration that is authorized pursuant to that part or article.

Discussion: The concern among stakeholders at the meeting was that a license can be issued on "inactive" status, and removing "active" from the definition would ensure that the definition is more widely applicable. There was also discussion about temporary practice permits (in the Division of Real Estate) and temporary licenses and licenses by endorsement; the decision was to keep this type of information in the specific practice act in which it applies.

() "Board" means a board created by a part or article of this title 12 that ~~regulates has~~ regulatory authority concerning the practice of a profession or occupation ~~pursuant to~~ regulated by that part or article.

Discussion: Christy Chase, OLLS, explained that some of the definitions in this section are included because they are used in other definitions within this same section (See the definition of "license" below, which includes the word "board"). The stakeholders discussed the importance of modifying the draft of the definition of "board" to ensure that it was the same as "commission", so as not to create what could be seen as a substantive difference between the two, when one doesn't exist. There was also some discussion about combining the two definitions as well, though the consensus was that the two should be kept separate.

() "Certificate holder" or "**certificant**" means a person that has a valid certificate.

Discussion: There was some discussion concerning whether "credential holder" would be more applicable than "certificate holder". However, this change could result in having to update, throughout Title 12, many, many references, which could be viewed as a more substantive change than was intended. In addition, the word "certificant" is used widely in article 2 of Title 12, which deals with accountants.

() "Certificate" or "certification" means a credential that demonstrates that a person has the qualifications required by a part or article of this title 12 to practice the profession or occupation regulated by that part or article.

Discussion: The issue was raised about whether this definition reads more as a definition of "credential", although the discussion mostly focused on whether the definitions of "certification", "license", etc. should just make clear that they all refer to "authority to practice a profession", although that could also require needing to define "authority to practice".

Commented [CC1]: Stakeholders feedback is that this definition, as well as the definitions of "license" and "registration", may need additional work to better differentiate the different levels of regulation that is associated with each type of authorization to practice. OLLS and DORA will look into this and provide options at a future meeting.

() "Commission" means a commission created by a part or article of this title 12 that has regulatory authority concerning the practice of a profession or occupation regulated by that part or article.

Discussion: As mentioned earlier, the group suggested that the definitions of "board" and "commission" should be identical. Also, while there are only three commissions in Title 12, two in the Division of Real Estate and the Combative Sports Commission created in article 10 of Title 12, the word is used in the definition of "license" and so needs to be defined broadly for this common provisions definitions section.

() "Department" means the department of regulatory agencies created in section 24-1-122.

Discussion: The suggestion was made to include the citation to the provision where the department was created by the "Administrative Organization Act of 1968".

() "Director" means the director of the division of professions and occupations created by section 12-200-10X or the director's designee; except that, for purposes of article 100 of this title 12, "director" means the director of the division of real estate created by section 12-100-10X or the director's designee.

Discussion: Christy Chase explained that "or the director's designee" was added to the more general definition of "director" that's in each of the practice acts, and the group agreed that the addition did not substantively expand the definition.

() "Division" means the division of professions and occupations created in the department by section 12-200-10X; except that, for purposes of article 100 of this title 12, "division" means the division of real estate created in the department by section 12-100-10X.

Discussion: The group agreed that this definition was acceptable.

() "Executive director" means the executive director of the department or the executive director's designee.

Discussion: The group agreed that this definition was acceptable.

() "License" means a grant of authority issued by the director or a board or commission pursuant to a part or article of this title 12 that authorizes a person to engage in a profession or occupation regulated by that part or article.

Discussion: The group had a discussion of whether and how "registration", "certification", and "license" differ, whether they are or are not always hierarchical (i.e., does licensure come after certification), and how some professions might want to use one of the particular terms in a different context, etc. The group also discussed that there may be other ways to earn a license, other than it being issued by the director, a board, or a commission.

() "Licensee" means a person regulated by a part or article of this title 12 that holds a current license issued pursuant to that part or article.

Discussion: The group agreed that this definition was acceptable.

() "Profession or occupation", "profession", or "occupation" means an activity subject to regulation by a part or article of this title 12.

Commented [CC2]: Same comment as above.

Discussion: The group discussed that both individuals and businesses and entities are "subject to regulation", which is reflected in the above definition. Throughout Title 12, there are many references to the term "profession or occupation", but also to "profession" or "occupation," and thus the draft of the definition was expanded to include the words on their own as well.

() "Register", ~~or~~ "registered", or "registration" means to record the information required by a part or article of this title 12 in a form and manner as determined by the director or a board or commission that regulates the practice of a profession or occupation pursuant to that part or article.

Commented [CC3]: Same comment as above.

Discussion: The group discussed that how "register" is used throughout Title 12 can differ from how "registration" is used, from meaning simply "a record" to having specified requirements.

() "Registrant" means a person that is currently registered.

() "Regulate" or "regulation" means to subject a person to a requirement, including a requirement to obtain a license, certification, or registration, pursuant to a part or article of this title 12 and rules adopted pursuant to that part or article of this title 12 in order to practice a profession or occupation.

Discussion: The addition of the track-changed language above was inspired by a letter of comment submitted by Dr. Jean Martin, of COPIC, who suggested that "there is a distinction between a rule as a 'statement of general applicability and future effect' and licensing applicable to an individual. Dr. Martin's letter is included with this summary.

~~() "Unlicensed person" means a person that ...~~

Discussion: Christy Chase explained that this definition was meant to work as a placeholder, as she wasn't sure whether it needed to be included in the common provisions definitions, and the consensus was, at least for now, that "unlicensed person" is included in a few specific practice acts, and that keeping the definition in those acts would make more sense than attempting to make it apply more broadly.



Fw: Title 12 Recodification Project meeting
Christy Chase to: Jessica Wigent

07/12/2018 02:47 PM

----- Forwarded by Christy Chase/CLICS on 07/12/2018 02:47 PM -----

From: Jean Martin <jmartin@COPIC.COM>
To: "christy.chase@state.co.us" <christy.chase@state.co.us>
Date: 07/12/2018 12:20 PM
Subject: Title 12 Recodification Project meeting

Christy,

I have a meeting conflict for today's discussion but I reviewed the draft common provisions and have just a couple of thoughts. If a definition of "credential" is added, it could help in avoiding using "licensee, certificate holder, or registrant" for provisions that would be common to all of those regulated by DORA. I don't know if you have gotten much feedback from the mental health boards or community because they have a large mix of certificate holders, registrants, and licensees. For example:

"Credential" means a license, certificate or registration.

Nebraska's Uniform Credentialing Act, that has common provisions for all the health-related and environmental services practice acts, includes a provision that "if there is any conflict between any provision of [the Uniform Credentialing Act] and any provision of a practice act, the provision of the practice act shall prevail. NRS § 38-101. Having some sort of similar language might alleviate concerns people may have about having common provisions in general.

I wasn't sure why we need to define "regulate" when rulemaking (which includes "regulation") and "licensing" are addressed in the Administrative Procedure Act. CRS § 24-4-102. There's a distinction there for a rule as a "statement of general applicability and future effect" and licensing applicable to an individual. I'm most familiar with the health professions but in their powers and duties of the board sections they usually distinguish the board's authority to adopt and promulgate rules and its licensing/investigative authority in regard to an individual applicant/licensee. A search of "regulate" in Title 12 shows that it is used broadly ("The Colorado podiatry board shall regulate the practice of podiatry.") If "regulate" is currently understood very broadly in the practice acts as all the authority of the board, it might make sense to add to the definition, e.g.:

"Regulate" or "regulation" means to subject a person to a requirement, including a requirement to obtain a license, certification, or registration, and rules promulgated pursuant to a part or article of this title 12 in order to practice a profession or occupation.

Thank you for your consideration,

Jean

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MSG#:LG820X

2018 Schedule for Title 12 Recodification Project - Revised

July 12, 2018

1. **Phase I:** Develop common provisions proposals applicable to entire title and common provision proposals consisting of duplicative provisions in DPO practice acts:
 - a. July 12, 1:30 p.m. in SCR 357 – meeting to discuss proposal to *consolidate definitions*
 - b. July 18, 10 a.m. in HCR 0112 – meeting to discuss proposal to *relocate common portions of Title 12 in part 1 of article 1.5 and articles 70 and 71*
 - c. August 8, 10 a.m. in HCR 0112 – meeting to discuss proposal to *consolidate Board/Director powers*
 - d. August 21, 10 a.m. in location TBD – meeting to discuss proposal to *consolidate Board/Director duties and remaining common provisions*
 - e. September 5, 10 a.m. in HCR 0112 - meeting to discuss *revisions* to all common provisions proposals
 - f. September 19 – deadline for stakeholders to provide *feedback* on Phase I consolidation proposals

2. **Phase II:** Develop proposals for moving provisions generally applicable to health care professions and occupations and for reorganizing Real Estate Division statutes:
 - a. September 12, 10 a.m. in HCR 0112 – meeting to discuss proposal to *relocate common provisions applicable to health care professions and occupations* contained in Title 12, part 2 of article 1.5 and articles 29.1 and 36.5 and in Title 24, article 34, part 1 (e.g., 24-34-109, 24-34-110, 24-34-110.5)
 - b. September 20, 1:30 p.m. in HCR 0112 – meeting to discuss proposal to *reorganize real estate division statutes, article 61 of Title 12*
 - c. October 5 – deadline for stakeholders to provide *feedback* on Phase II proposals

3. **Phase III:** Develop proposals for relocating and reorganizing DPO practice acts:
 - a. October 3, 10 a.m. in location TBD – meeting to discuss proposals regarding *accountants, barbers and cosmetologists, combative sports, fantasy contests, mortuaries, and outfitters and guides*

- b. **October 10, 10 a.m. in location TBD** – meeting to discuss proposals regarding *electricians, engineers, surveyors, architects, landscape architects, passenger tramway operators, plumbers, and private investigators*
- c. **October 17, 10 a.m. in location TBD** – meeting to discuss proposals regarding *acupuncturists, athletic trainers, audiologists, chiropractors, hearing aid providers, and massage therapists*
- d. **October 24, 10 a.m. in location TBD** – meeting to discuss proposals regarding *dentists and dental hygienists, direct-entry midwives, medical practice, mental health professionals, naturopathic doctors, nurses, and nurse aides*
- e. **October 31, 10 a.m. in location TBD** – meeting to discuss proposals regarding *nursing home administrators, occupational therapists, optometrists, pharmacy, physical therapists, podiatrists, psychiatric technicians, respiratory therapists, speech-language pathologists, surgical assistants and surgical technologists, and veterinarians*
- f. **November 14** – deadline for stakeholders to provide *feedback* on Phase III proposals