

**SUMMARY OF COMMENTS**  
**For Proposed Rule**  
**Licensure for Military Veterans**

**RECEIVED**

**MAY 15 2020**

**BUREAU OF  
LEGISLATIVE RESEARCH**

**Commenter:** Don K. Berry, Col, USAF (Ret)

**Summary:** Two comments were received from Mr. Berry regarding this rule and those comments were both against the original language submitted for not defining automatic licensure. (comments enclosed for reference)

**Response:** The board's counsel as well as a member from ADH and/or the governors office spoke and/or met with Mr. Berry about his concerns and came to an agreement that the addition of the automatic licensure definition would suffice for him.

**Laurie Mayhan**

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**From:** DK Berry <dkberry2@sbcglobal.net>  
**Sent:** Tuesday, February 11, 2020 4:08 PM  
**To:** ASBCE  
**Subject:** Opposition to ASBCE Rule 029.00.2-A

**Ms. Mahan** – Proposed rule fails to accurately cite A.C.A. 17-1-106 as amended by Act 820.

I will make formal objection by 9 Mar 20 Public Comment Period but want to give you the basics of my objection for discussion.

Proposed rule fails to include “Automatic Licensure” definition which provides the basis for agency action. Needs to be added to Sec A.

“Automatic licensure” means the granting of occupational licensure without an individual's having met occupational licensure requirements provided under this title or by the rules of the occupational licensing entity;

*B. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction ...”*

- By failing to include the “automatic licensure” definition occupational licensure entities and the public may erroneously view that a requirement for licensure provided by Title 17 or occupational licensure entity rule applies. Clearly by reading the omitted definition Title 17 and occupational licensure entity rule does not apply.
- Based on A.C.A. § 17-1-106 (b) (1) and the “automatic licensure” definition the term substantially equivalent can only be interpreted to relate to the scope of practice of the license.
- Missing from the rule is “... holder in good standing” which together which further backs the perspective that “substantially equivalent” relates to the license currency and scope of practice.

*“C. The Board shall grant such automatic licensure upon receipt of all of the below:*

1. *Payment of the initial licensure fee;*
  2. *Evidence that the individual holds a substantially equivalent license in another state; and*
  3. *Evidence that the applicant is a qualified applicant under Section B.*
- Recommend Sec C 2. read – “2. A certified copy of the substantially equivalent license from another U.S. jurisdiction ...”
  - Introducing the term “evidence” the model rule language without definition makes the rule vague and could be interpreted independently by the agency and public to require other materials beyond what the statute specifies.
  - Suggest adding a provision for the applicant to provide as a reference the scope of practice provision from the agency of the state where the license is held.

**BOTTOM LINE:**

- An eligible applicant in good standing who presents a license to practice a specific occupation in another state is eligible to receive an Arkansas occupational license for that occupation.

- The only stipulation that might be applied here is a reference demonstrating that the scope of practice of the license held is 'substantially equivalent' to the scope of practice of the Arkansas occupational license sought.
- Model language provided by Arkansas AG- State Agencies is fatally flawed.

Have highlighted and discussed this deficiency of the AG model language to the Governor's Office.

Don K. Berry, Col, USAF (Ret)  
Arkansas Veterans Coalition  
501 773 5189

## ASBCE

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**From:** DK Berry <dkberry2@sbcglobal.net>  
**Sent:** Thursday, February 27, 2020 11:37 AM  
**To:** ASBCE  
**Subject:** Arkansas Veterans Coalition Public Comments on ASBCE Rule 029.00.2-A

Please replace my 11 Feb 20 preliminary notice email with the following.

**Ms. Mahan** – The Arkansas Veterans Coalition . . . principal advocate for current and former Arkansas service members and their families . . . makes this public comment on the State Board of Chiropractic Examiners administrative rule implementing the Act 820 provisions amending A.C.A. § 17-1-106.

The language or omitted language of the draft ASBCE administrative rule . . . along with the Arkansas Attorney General model on which it is based . . . could lead agency staff to a misapply the law and cause military families confusion when they arrive in Arkansas.

Following are our recommendations for amending the draft rule to resolve our issues and our rationale.

### Recommendations and Rationale –

- **Section A.** Recommend the addition from statute of the “automatic licensure” definition to rule language.

*“Automatic licensure” means the granting of occupational licensure without an individual's having met occupational licensure requirements provided under this title or by the rules of the occupational licensing entity;*

- Omitting the ‘automatic licensure’ definition when the principle direction of the statute is to grant an automatic license leaves out of the rule the most important information on which agencies shall act (see highlighted segment above).
- Omitting the ‘automatic licensure’ definition leaves agency staff with the incorrect view that requirements for licensure in the practice act or occupational licensure entity rule apply . . . thereby, denying the existence of the ‘automatic licensure’ statutory direction.
- Omission of the ‘automatic licensure’ definition leaves this draft rule for license mobility of covered military members without any basis for different treatment than would be the granting an Arkansas license through normal reciprocity provisions.
- Omission of the definition . . . coupled with open-ended vague language in Section C2 . . . gives agency staff and the public the view that to meet the Section B provisions the applicants are challenged to produce undefined and unbounded ‘evidence’ to support that requirements for the license they hold in another jurisdiction are equal or equivalent to the requirements of an Arkansas license. That is not found in statute.
- Omission of the definition . . . coupled with open-ended vague language in Section C3 . . . gives agency staff and the public the view that to meet the Section B provisions the applicants are challenged to produce undefined and unbounded ‘evidence’ asserting that they are ‘qualified’ e.g. in possessing the education, training and experience to be professionally qualified. That is not found in statute. ‘Eligible’ is a more appropriate term than ‘qualified’ in this context.



- Relating to the two previous points the word 'automatic' is defined as 'done or occurring spontaneously, without conscious thought or intention' i.e. to respond without deliberation. If agencies are to grant a license without deliberation then there is no basis for requiring documents to deliberate over.
- The 'automatic licensure' definition excludes requirements for an Arkansas license from consideration, therefore, 'substantially equivalent' in this context can only refer to a scope of practice comparison between jurisdictions. If the held license contains a restriction to the holder's scope of practice the Arkansas license granted should be similarly restricted. If the held license is unrestricted the Arkansas license granted should also be without restriction.
- **In summary**, including the 'automatic licensure' definition finitely establishes in the rule that the holder in good standing of a license of another jurisdiction **shall be granted** an Arkansas license . . . without requiring the applicant to meet licensure provisions of the Arkansas license.
- **Section C2 and C3.** Recommend amending vague and unbounded language to specifically identify the required documentation to meet the provisions of the statute and legislative intent.
  - Suggest amend C2 to require the applicant to specifically provide the held occupational license from another U.S. jurisdiction. The held license is the only relevant document.
  - Suggest amend C3 to require the applicant to specifically provide the following documents to precisely meet the statutory requirement for them to establish their eligibility by this statute.
    - For active duty service members and/or spouse
      - Copy of their DoD military or dependent identity credential
      - Copy of their military assignment order for duty in Arkansas
    - For eligible veterans and/or spouse
      - Copy of member's separation or retirement order,
      - Copy of members DD Form 214 (to attest to the characterization of their discharge)
      - Government-issued identification
  - **Making Sec C2 and C3 requirements specific eliminates the perspective that the applicant may be required to produce an unbounded amount of evidence to reach a vague target which is not found in statute or its legislative intent.**

#### **BOTTOM LINE:**

- **Suggest** amend the rule by adding the 'automatic licensure' definition along with requiring presentation of specific documents supporting their eligibility.
- **Recognize** that an eligible applicant in good standing who presents a license to practice a specific occupation in another state along with specific credentials is eligible to be granted an Arkansas occupational license for that occupation. The only legitimate deliberation might be a scope of practice comparison.
- **Suggest** review the model language supplied by Arkansas Attorney General to make sure it accurately represents what is established in law through the Act and does not inadvertently lead to promulgation of a misleading agency rule and confusion by staff and eligible military families.

Thank you for considering our public comment and suggestions.

Don K. Berry, Col, USAF (Ret)

**Arkansas Veterans Coalition**  
**501 773 5189**