

# New York State Ethics Commission

---

**Advisory Opinion No. 94-2:** Application of the post-employment restrictions of Public Officers Law §73(8) to a former State employee seeking to renew her professional license from her former State agency.

---

## Introduction

The following advisory opinion is issued in response to a request by a former employee of the New York State Department of Health ("DOH") who wishes to renew her certificate of qualification to serve as a [health professional] within two years of leaving State service.

Pursuant to its authority under Executive Law §94(15), the Commission hereby concludes that the former State employee would not violate Public Officers Law §73(8) by seeking to renew her professional license issued by the former State agency within two years of terminating State service.

## Background

The requesting individual was formerly employed by the New York State Department of Health in the position of [ ]. She had not been designated as serving in a policymaking position by her appointing authority. She left DOH on [ ], to accept employment as director of laboratory operations for [an out-of-state laboratory].

While employed with DOH, the requesting individual served as the [ ].

During this period of employment, DOH issued the requesting individual a certificate of qualification as a [health professional] pursuant to regulations contained in 10 New York Code of Rules and Regulations Part 19. To receive such a certificate, an individual must possess certain educational background, training, and experience. According to the requesting individual, she applied for a renewal of her certificate of qualification on [ ] (six months after she left State service); DOH has not acted on her renewal application, pending the Commission's review of the issue.

## Applicable Statute

Public Officers Law §73(1)(b) provides:

The term "licensing" shall mean any state agency activity . . . respecting the . . . renewal . . . of a license, permit or other form of permission conferring the right or privilege to engage in (i) a profession, trade, or occupation . . .

Public Officers Law §73(8) provides in relevant part:

No person who has served as a state officer or employee shall within a period of two years after the termination of such service or employment appear or practice before such state agency or receive compensation for any services rendered by such former officer or employee on behalf of any person, firm, corporation, or association in relation to any case, proceeding or application or other matter before such agency.

### **Discussion**

The issue before the Commission is whether, by seeking to renew her DOH certificate of qualification, the former employee would "appear . . . before such state agency" in violation of the two year bar provision of Public Officers Law §73(8).

[A senior DOH official] explained the process of renewing a certificate of qualification for a [health professional]. She characterized it as a ministerial procedure following a two-year cycle. [The senior DOH official] explained that about three or four months before a certificate expires, DOH sends a renewal application package and cover letter to the home address of the individual holding a current certificate. The individual is instructed to fill out the forms, add information concerning newly acquired education and training including any necessary documentation, sign the last page, include a check to cover the filing fee and return the package to the DOH. DOH reviews the materials for updated educational experience, evidence of keeping current in the field and employment within the last six years. Assuming all responses are satisfactory, DOH issues the renewal.

Public Officers Law §73(8), generally referred to as the "revolving door" provision, sets the ground rules for what individuals may do with the knowledge, experience and contacts gained from public service after they terminate their employment with a State agency. In short, subdivision 8 of §73, bars former State officers and employees for two years after termination from appearing or practicing before their former agencies or receiving compensation for any services rendered in relation to any case, proceeding, application or other matter before such agency.

The intent of the "revolving door" provision of the law is not to preclude one from practicing a given trade, profession or occupation, but rather to prevent a former employee from unfairly trading on contacts and information garnered while in State service. Whereas this nearly always means that all appearances before one's former State agency within two years are banned, the former employee may conduct any lawful activity elsewhere.<sup>(1)</sup> We do not believe that, should the requesting individual submit to her former agency an application for renewal of an existing certificate, it would constitute the abuse, or its potential, that the law is intended to prevent. Such a result would curtail certain professionally licensed former State officers and employees from practicing their professions even if such practice does not cause them to otherwise appear, practice or render services for compensation in matters before their former agency for the two year post-employment period. It would amount to a requirement that a State employee relinquish his or her professional license for two years upon leaving State service.

The Commission finds it significant that the requesting individual, prior to separating from State service, had been certified by DOH as a [health professional] and that her renewal application

consists largely of updating information that her former agency has already reviewed and approved, at the time of the original application.

The Commission therefore concludes that the former DOH employee, by seeking renewal of her certification as a [health professional] during the two-year post-employment period, does not "appear" before the former State agency in violation of Public Officers Law §73(8).<sup>(2)</sup>

This opinion, until and unless amended or revoked, is binding on the Commission in any subsequent proceeding concerning the person who requested it and who acted in good faith, unless material facts were omitted or misstated by the person in the request for opinion or related supporting documentation.

All concur:

Joseph M. Bress, Chair

Barbara A. Black

Robert E. Eggenschiller

Donald A. Odell, Members

Dated: February 25, 1994

---

## Endnotes

1. Except, of course, those activities that are prohibited by the lifetime bar of Public Officers Law §73(8).

2. This opinion bears upon other former State employees who seek to renew their licenses in other professions including: nursing, pharmacy, engineering and public accountancy, land surveying, medicine, dentistry, architecture, landscape architecture, shorthand reporting, psychology, massage therapy, ophthalmic dispensing, physical therapy, chiropractic, social work, optometry and veterinary medicine [New York State Education Department]; real estate brokers, barbers, and hairdressers [New York State Department of State]; and emergency medical technicians [New York State Department of Health]. There may be other professions that are licensed by these or other State agencies.