









Craig Saperstein
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Legislative Topics

- Professional Certification Coalition & State Legislation
 - Louisiana
 - Missouri
 - Ohio
 - Michigan
- Maintenance of Certification
- Federal legislation



Why is this Important?

- Impacts ability for certification organization to operate
- Could impact regardless of whether certification is linked to licensure or not
- If impacts go unaddressed, could impact certificants' ability to operate within certain states



Voluntary Certifications vs. Licensure?





Legislative Landscape

- Political Environment – federal/state
- Department of Labor grants program
- National Conference of State Legislature - Consortium
- Model Legislation for Occupational Licensing Reforms
- Interest in jobs growth, military portability
- Media focus on hair braiding or florist licensure



Professional Certification Coalition

- Over 97 organizations are members
- <https://www.profcertcoalition.org/>
- Focusing on state legislation with misplaced or incorrect definitions or burdensome requirements for voluntary certification



Members of the PCC & ABNS

- Heuristic Solutions
- Infusion Nurses Certification Corporation
- Medical-Surgical Nursing Certification Board
- National Board of Certification & Recertification for Nurse Anesthetists
- Pediatric Nursing Certification Board
- Prometric
- PSI
- SeaCrest Consulting



Model Legislation

- Attempts to address over regulation in occupational licensing or criminal justice legislation related to reentry programs
- Definitions are muddled and creating confusion
- Creating government reviews of licensure programs for economic effectiveness, less focus on public safety
- Evidentiary requirement for reviews is burdensome



Process Concerns

- Introduced without full comprehension of details
- Amended without full knowledge of bill's sponsor
- State legislatures are often on a rocket style timeline
- Touches so many entities, voices can create confusion

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Louisiana – Passed as Amended

- Introduced 2018 session
- Original language proposed a prohibition of the term “certified” unless the individual is also licensed
- Started as Model Legislation for Occupational Licensing Reform



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Missouri-H.B. 1719, H.B. 1500

- Introduced 2018 session
- Attached to an omnibus funding bill, signed by the resigning Governor on last day
- Confusion by sponsor on unintended consequences
- Current Status: Attempts to rectify through regulation interpretation or 2019 legislative session



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Missouri-H.B. 1719, H.B. 1500

- Weakens licensure laws for private certifications (supplants with governmental certification programs)
- Shifts enforcement onto private certification programs for professions that currently have both state licensing boards and private certification programs.
- Precludes professionals who hold private credentials that confer the “registered” titled from accurately advertising their credentials, unless the state has established a registration system

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Ohio

- Introduced 2018 session, moving forward in lame duck session
- Currently allows government to engage in certification activities potentially in competition with private, voluntary certification
- Problematic language regarding the periodic review of licensure for effectiveness. Lacks sufficient protections of protection of health, safety and welfare of the public
- Current Status: Optimism for amendment; passage expected in lame duck session



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Michigan – H.B. 6114

- Overall, less threatening. Defines certification correctly.
- However, evidentiary bar details are troublesome:
 - Still, omits public “welfare” as a legitimate interest
 - Unrealistic, high evidentiary standard of “present, significant, and substantiated harms
 - Good side, legislature must act to eliminate licensure, not recommending commission



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January 2019

- Pre-filing for most states are in the fall
- Progress of conversations with opposing organizations
- Strategy will be dictated by types of legislation introduced
 - Monitor, amend
 - Lobbying on the ground
- Costs reduced when caught early


Questions on State Legislation and PCC Coalition




Maintenance of Certification

- Primarily for Physician Certification
- [Right to Safe Care Coalition](#) – Members?
- Focused on Physicians, concerns about spillover effect
- Approaches include:
 - Addressing limitations to MOC requirements in state practice acts
 - Addressing limitations in regulation to prohibit health plans or hospitals from requiring MOC for credentialing purposes


State Legislatures

- Passed some version of limitation: Arizona, Georgia, Kentucky, Maine, Maryland, North Carolina, Oklahoma and Texas
- Monitoring: Alaska, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina, Washington, Wisconsin

STATE LEGISLATION OPPOSING THE USE OF CERTIFICATION 2016-2018

Legislation Pending in 2018 (11):
 Alaska, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Rhode Island, South Carolina, Washington, Wisconsin

Legislation Passed in 2014/2017 (8):
 Arizona, Georgia, Kentucky, Maine, Maryland, North Carolina, Oklahoma, Texas

Legislation Passed in 2014/2017 & Currently Pending in 2018 (2):
 Missouri, Tennessee

Legislation No Longer Active in 2018 (6):
 California, Florida, Indiana, Iowa, Virginia, Utah

All passed legislation to date would prohibit the use of MOC for licensing decisions. In addition, Georgia prevents health plans from requiring MOC and Texas prohibits the use of MOC as requirement for health plans and hospitals.

American Board of Medical Specialties
 www.abms.org

Maryland DOJ Letter

- Early September, State Senator requested interpretation on a bill that intended to restrict the hospitals and health plans from using maintenance of certification for credentialing physicians
- DOJ Letter encourages legislature to:
 - continue allowing hospitals and insurers independently to decide whether to consider a physician's MOC status when making business decisions, such as granting hospital privileges*

Responses to NC Dental Board Supreme Court Decision

Quick Facts:

- 6 out of 8 members of Dental Board Examiners were required to be licensees
- Board sent cease-and-desists letters to unlicensed teeth cleaning service kiosks
- Board assumed it had anti-trust exemption; must have been subjected to "active" state oversight

For more information on case: https://www.tdflp.com/images/center/114/V3/1481/NC_Dental_Leaves_State_Boards_With_Little_To_Smile_About.pdf



Outcomes

- FTC filed suit, 2010; Supreme Court Decision, 2015
- Focus on Licensure Board makeup, members of the public
- Interpretation of "Active" state supervision
- Form of Board Action – alternatives to cease-and-desist



Federal Legislation – H.B. 6515

- To limit private antitrust damages against occupational licensing boards, to promote beneficial reforms of State occupational licensing, and for other purposes.
- Similar to Restoring Board Immunity (RBI) Act
- Reported out of committee this week



Federal Legislation – H.B. 6515

- (1) requiring a board's actions to be authorized by a non-frivolous interpretation of the state's occupational licensing laws; and (2) using less restrictive alternatives to occupational licensing to address threats to public health, safety, or welfare.
- includes "least restrictive means" language seen in state bills.



Restoring Board Immunity (RBI) Act

- H.R. 3446 and S. [1649](#)
- “(5) Voluntary certification provides a particularly significant alternative to licensure, as it allows market participants to signal to consumers the attainment of personal qualifications without limiting entry into the marketplace.”



Questions on Federal Legislation





Military Initiatives

- Could impact state licensure law
- Background – Exiting military and military spouses
- Issues:
 - Alignment of Eligibility Requirements
 - Reciprocity & Portability
- American Legion involvement



Questions



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Thank you!

Questions?



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Follow-up

- Professional Certification Coalition
www.profcertcoalition.org
- Institute for Credentialing Excellence
www.credentialingexcellence.org



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