

# LICENSURE PORTABILITY

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American Association of Dental Boards  
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# Licensure Portability

- “Supreme Court should find that the NC Dental Board’s actions are not restrained by federal antitrust laws. In doing so, the Court would vindicate the principles of federalism by respecting the states’ long standing, primary role in the area of professional licensing and would clarify that the state-action exemption applies to state agency licensing boards.”
  - David J. Owsiany, “Federalism Implications of Applying Antitrust Scrutiny to State Licensing Boards,” *Engage Law Journal*, Volume 15, Issue 2 (July 2014)

# Licensure Portability

- “Making clear that state licensing boards are exempt from federal antitrust scrutiny satisfies the dual objectives of ensuring that the states will continue to have the ability to design professional licensing and regulatory systems that best protect the public while also preserving the principles of state sovereignty and federalism.”
  - David J. Owsiany, “Supreme Court Ruling May Determine the Future of State-Based Professional Licensing,” *Journal of the American College of Dentists*, Volume 81, Number 4 (Fall 2014)

# Licensure Portability

- Maintain state authority over licensure and regulation of dentists

and

- True Licensure Portability

# Licensure Portability

- Growing skepticism over state licensing – protectionism vs. public health and safety

# Licensure Portability

- Adam Summers – Reason Foundation – “While occupational licensing laws are billed as a means of protecting the public from negligent, unqualified, or otherwise substandard practitioners, in reality they are simply a means of utilizing government regulation to serve narrow economic interests...not to protect consumers but rather to protect existing business interests from competition.”

# Licensure Portability

- Shirley Svorny – California State University & Cato Institute – “Licensure not only fails to protect consumers from incompetent physicians, but, by raising barriers to entry, makes health care more expensive and less accessible” and state-based licensing “limits competition” and hampers access to care by restricting the availability of telemedicine.

# Licensure Portability

- Skepticism from all sides of the political spectrum
- Morris Kleiner – University of Minnesota – New York Times – “On the left, there are concerns about inflated prices for essential services...On the right, the issue is one of economic liberty. From that perspective, government-issued licenses largely protect occupations from competition. Conservatives often see members of the regulated occupation supporting licensing laws under claims of ‘public health and safety.’ However, these laws do much more to stop competition and less to enhance the quality of service.”



# Licensure Portability

- *North Carolina State Board of Dental Examiners v. FTC*
- Many Variables and Questions
- Elected Board members?
- “Controlling” number of market participants?
- What constitutes active state supervision?
- Teeth whitening as dentistry?
- Cease and desist letters?

# Licensure Portability

- *North Carolina State Board of Dental Examiners v. FTC*
- Bottom line – Justice Kennedy – “If a state wants to rely on market participants as regulators, it must provide active supervision” for state action immunity from antitrust scrutiny
- What is underlying rationale? Justice Kennedy – “State agencies controlled by active market participants pose the very risk of self-dealing.”

# Licensure Portability

- FTC enforcement – new guidelines
- FTC pressure on state licensing boards – Litigation, Advocacy, Publications Conferences on Health Care Competition and the Impact of Licensure and Regulations

# Licensure Portability

- “Occupational Licensing: A Framework for Policymakers” – July 2015 Report from U.S. Department of Treasurer, Council on Economic Advisors & Department of Labor
- Modern Society – Mobility
- State licensing inhibits professional mobility. Mobility not only benefits the licensees but those who receive the services and the overall economy.

# Licensure Portability

- “Occupational Licensing: A Framework for Policymakers” – July 2015 Report from U.S. Department of Treasurer, Council on Economic Advisors & Department of Labor
- Technology – Tele-healthcare – Tele-dentistry
- As professions and occupations evolve and with the emergence of technologies and changes in practices, “licensing rules set down in earlier decades may become an increasingly poor fit” for emerging occupational and professional structures, “necessitating review and updates.”
- Telework (tele-dentistry) has the potential to offer “more continuous access to providers and access to more specialized providers.” State licensure can inhibit the ability of licensees to engage in telework (tele-dentistry) by requiring practitioners to “obtain licenses in every State where patients reside” inhibiting licensed practitioners to consult across state lines with the use of modern technology. “State licensure has proven to be a barrier to growth and development of telework.”

# Licensure Portability

- “Occupational Licensing: A Framework for Policymakers” – July 2015 Report from U.S. Department of Treasurer, Council on Economic Advisors & Department of Labor
- Recommendation to state licensing boards:
- Harmonize licensing requirements to the maximum extent possible across States.
- Incentivize states to “develop ways to make licenses portable across states, including cross-state licensing reciprocity agreements to accept each other’s licenses.”
- Encourage interstate licensure compacts.

# Licensure Portability

- Federation of State Medical Boards – responding to pressure from FTC and others
- License Portability Project
- Uniform Application – A web-based application that standardizes, simplifies and streamlines the licensure application process for physicians
- Physicians may use the Uniform Application to apply for licensure to a number of state medical boards

# Licensure Portability

- Federation of State Medical Boards
- Interstate Medical Licensing Compact
- FSMB 2013 Annual Meeting – unanimously passed resolution calling for development of an Interstate Compact to Expedite Medical Licensure and Facilitate Multi-State Practice
- State Medical Board Reps from diverse collection of states + experts from Council on State Governments charged with developing model legislation for licensure compact
- 2014 Bipartisan letter from 16 U.S. senators to FSMB “support for an interstate compact to provide a solution to expedite the process whereby physicians can be licensed in multiple states and practice telemedicine in a safe and accountable manner.”



# Licensure Portability

- Federation of State Medical Boards
- Interstate Medical Licensing Compact
- 2015 – Model Act – purpose is to provide “a streamlined process that allows physicians to become licensed in multiple states, thereby enhancing the portability of a medical license.”
- Voluntary participation for physicians and states
- Pathway to licensure but no other changes to state practice acts

# Licensure Portability

- Federation of State Medical Boards
- Interstate Medical Licensing Compact
- Affirms that practice occurs where the patient is located so doc must be licensed where patient is located
- State of principal license - May apply for expedited licenses in other compact states
- Compact states share disciplinary info
- 11 states have already passed legislation to join compact in 2015

# Licensure Portability

- Other professions – Medicine, CPAs, professional engineers, Nurses, Pharmacists, etc.
- Progress in Dentistry
- Licensure by Credentials
- ADEX

# Licensure Portability

- Who said?
- “Desirable freedom of opportunity for competent dentists to engage in practice in any state would seem to be most satisfactorily attainable, from the point of view of public welfare as distinguished from the personal convenience of dentists, through the agency of an accessory system of uniform national examinations. This should be conducted on a plane high enough to ensure approval of only such persons as would certainly be able to practice dentistry in accordance with the most advanced legal requirements. License examinations of uniformly high grade, approved by the most exacting state boards, and conducted by a national board of dental examiners in an advisory relationship, preferably under the auspices or with the active cooperation of the National Association of Dental Examiners, would be a reliable foundation for an interstate exchange of an increasing number of qualified practitioners of universal acceptability.”

# Licensure Portability

- William J. Gies, Dental Education in the United States and Canada: A Report to the Carnegie Foundation for the Advancement of Teaching 1926



*William Gies*

# Licensure Portability

- Bottom Line:
- Mobile Society
- Technological advancements Tele-health care & Tele-dentistry
- Left and Right coalition on skepticism of state licensing regimes
  - Progressives
  - Conservatives/Libertarians
  - FTC
  - U.S. Supreme Court – federal courts
- Now is the time for dental licensure portability
  - Right thing
  - Help preserve States' primary role in professional licensure

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