



Michigan Nutrition Association

Comment to the Federal Trade Commission on  
Examining Competition in Health Care

May 16, 2014



Michigan Nutrition Association appreciates the opportunity to add comments to the discussion on Occupational Regulation that began during the Examining Competition in Healthcare Workshop in March 2014. And we appreciate that the FTC is giving attention to this important issue.

Michigan Nutrition Association (MNA) is a 501 (c) 6 corporation formed in 2010 in opposition to a Dietetic Licensure law sponsored by the Michigan Dietetic Association and passed in 2006. MNA's mission is to ensure public access to diverse healthcare providers who incorporate nutrition counseling in their practice and to promote nutrition and healthcare through a competitive, open and transparent system. Our constituents are both professionals and consumers who utilize nutrition care in practice and value increased access to a diverse range of nutrition care options.

Michigan's Dietetic Licensing law is extremely controversial due to the fact that it is effectively written such that most non-dietetic nutrition care providers do not qualify for licensure and would immediately be put out of business. Under this licensure law 100% of registered dietitians® automatically qualify for licensure upon application and payment of licensing fee; no other practitioner would qualify without additional training and/or supervised practice and a candidacy review (by a licensing board with only RD's as it's professional members.) This would include professionals with as much or more training and practice experience in nutrition and those with nationally recognized nutrition credentials, as well as, for example, trained health coaches, community outreach workers, and fitness trainers with nutrition certifications.

Eight years after passage of this law, rules have not been promulgated and no licenses have ever been issued. This is due to the extreme controversial nature of the law. We were fortunate in Michigan that despite a statute mandating all professional members are to be registered dietitians, two RDs dually trained and nationally credentialed as Certified Clinical Nutritionists were appointed to board. Although consistently overruled by the majority, these two professionals along with hundreds of members of the public consistently rejected the idea that only RDs are qualified to give nutrition advice and presented contrary evidence and viewpoints.

Because of this opposition, the rule-making process took almost five years and promulgation did not take place before an Advisory Review Committee established by the Michigan Office of Regulatory Reinvention, did an in-depth review of the law and it's impact on consumer safety and on jobs, and recommended in 2012 that the law be repealed.<sup>1</sup>

The repeal process itself has become quite politicized and two years later is still underway. As key stakeholders we would like to reflect on a few issues that we hope the FTC will further explore in its search for "natural experiments" in occupational regulations.

### **Call for all Stakeholders**

A single, private professional association, often the first, or most established entrant into the profession, typically initiates requests for regulations. In the case of Michigan the Michigan Dietetics Association brought the Dietetics licensing bill, now law.

---

<sup>1</sup> Michigan Office of Regulatory Reinvention press release attached

Legislators are rarely equipped to independently evaluate either the need for, nor the impact of proposed occupational legislation brought to them. They necessarily must rely on constituents both professional and consumer to educate them on the inherent issues. Yet in this case, no identifiable effort was made to consult stakeholders beyond the dietitians, or to provide a

reasonable or timely opportunity for input from other stakeholders.

Nutrition separate from Dietetics is an expanding profession and is not represented by a solitary association as is true of Dietetics. There are a growing number of non-dietetic, graduate degree programs in nutrition in colleges and universities. Many health professions are increasingly incorporating nutrition into practice; a trend we believe is optimal for public health. And other rapidly growing professions such as Health Coaching are built on an evidence-based need to bridge an existing gap between “should do” and “can do” lifestyle changes. All of these groups of professionals are effectively excluded from licensure under the Michigan Dietetics statute (as they are in many states), yet none effectively had the opportunity to give input in the regulation before it was passed because none were aware of the bill.

This points out one of the fundamental problems in how occupational regulations are typically created. *There is a lack of a defined and what we believe should be, a mandatory process for inclusion of all stakeholders in discussions when an occupational regulation is being considered or amended.*

We believe this would create more transparency and reduce the status quo in many occupations including ours, for regulations that serve the professional association rather than the public.

If these laws are truly for the benefit of the public there should be no resistance to due diligence and open discussion happening in the light of day. We encourage the FTC to explore legislative guidelines that strongly encourages such transparency in occupational regulation.

### **Defining an “Evidence of Harm” Threshold**

The call to protect the public is heard repeatedly as registered dietitians in Michigan and elsewhere have sought and continue to seek anti-competitive regulations for nutrition and dietetics.

However there does not seem to be a standard for what constitutes harm or legitimate evidence of harm. In Michigan what we have seen is a campaign by the Michigan Dietetic Association to urge member dietitians to submit “anecdotes of potential harm”<sup>2</sup>

In our own interactions with legislators and with dietitians, the “anecdotes of potential harm” we have observed are:

- unvetted by anyone
- written by dietitians rather than initiated the consumer
- frequently based on opinion, not science
- complain of behaviors or actions that would not be subject to an occupational regulation
- are often in conflict with evidence, apparently unknown to the complainant

---

<sup>2</sup> Michigan Dietetic Association, Contest of Harm flyer attached

Yet these “scare stories” are enough to convince many legislators that they must indeed protect citizens by voting in favor of the regulation put before them.

MNA agrees that nutrition advice should be based on evidence. We do not agree that simply deviating from well known studies can be the single measure of whether harm has occurred. We look to Dr. David Sackett, identified as the “father of evidence-based medicine” to note that evidenced based practice includes not just external evidence, but must also include clinical expertise and patient preferences.

“External clinical evidence can inform, but can never replace, individual clinical expertise, and it is this expertise that decides whether the external evidence applies to the individual patient at all and, if so, how it should be integrated into a clinical decision. Similarly, any external guideline must be integrated with individual clinical expertise in deciding whether and how it matches the patient's clinical state, predicament, and preferences, and thus whether it should be applied.”<sup>3</sup>

Thus one clinician may not like or agree with her patient’s choice of using a complementary or alternative modality, one with perhaps fewer or smaller clinical trials, or even studies not known to the complaining clinician. Should an individual be prohibited from exercising that choice?

Unexamined anecdotes cannot be the basis on which occupational regulations are based. Treatment modalities that are based on evidence other than large randomized controlled trials should not out of hand be defined as harmful simply for being outside the mainstream.

We ask that the FTC consider guidelines for legislators to thoughtfully evaluate evidence of harm put before them in order to achieve occupational regulations that do not diminish competition, and do promote access, innovation, and quality of care. Most legislators are neither scientists nor practitioners and cannot reasonably be expected to scientifically evaluate claims put before them. But they can, as some do, be reasonably expected to apply some filters when considering those claims.

### **Regulatory Guidance**

We urge the FTC to use its resources to explore the development of regulatory guidelines and guiding questions to be used by legislators, professional groups seeking regulation, and the public.

We have outlined two areas in particular we believe would contribute to putting the “public” back into public policy:

- a defined process for increasing transparency and allowing all stakeholders to provide input into any regulation being considered or amended
- guidance for all stakeholders to evaluate claims of harm being used to justify the need for the level of regulation being proposed

This is clearly not an exhaustive list of areas for which regulatory guidance would be immensely helpful in limiting occupational regulations that have unintended negative consequences or that serve anti-competitive agendas before or instead of serving the public.

We appreciate the attention FTC and its dedicated staff are giving to these matters and appreciate the opportunity to have a voice in the conversation.

Judy Stone Executive Director  
Michigan Nutrition Association [info@michigannutritionassociation.org](mailto:info@michigannutritionassociation.org)

---

<sup>3</sup> Evidence based medicine: what it is and what it isn't, Sackett, David et al, *BMJ* 1996; 312 : 71 (*Published 13 January 1996*)

---

## Office of Regulatory Reinvention Issues Recommendations to Deregulate 18 Occupations; Eliminate 9 Boards

---

Office of Regulatory Reinvention Issues Recommendations to Deregulate 18 Occupations; Eliminate 9 Boards

**Contact:** John Groen (517) 373-9280  
**Agency:** Licensing and Regulatory Affairs

*The Office of Regulatory Reinvention Made 63 Recommendations to Governor Snyder for Improving Michigan's Occupational Licensing Regulations*

**April 16, 2012** - Today, the Office of Regulatory Reinvention (ORR) released to the public its report to Governor Snyder containing 63 recommendations for improving Michigan's occupational licensing regulations while continuing to protect Michigan's citizens. In addition, the ORR recommends the rescission of all or parts of 23 separate occupational rules and the amendment or revision of many more. Gov. Snyder has reviewed the recommendations and the ORR and Department of Licensing and Regulatory Affairs (LARA) will now work toward implementing the recommendations.

The ORR formed the recommendations after a comprehensive review process, including convening an Advisory Rules Committee of stakeholders that included lawyers, occupational association professionals, business owners, policy analysts, academics and senior officials from LARA.

"According to a 2007 study, Michigan is the sixth most heavily-regulated state with respect to occupational licensing. This study found that for each occupation that a state regulated, that occupation would experience a decrease in the rate of job growth by 20 percent on average," said Steven H. Hilfinger, Chief Regulatory Officer and LARA Director. "Occupational regulations, while in many cases necessary to protect consumers and public health, operate as a barrier to entry into a given profession. This inhibits entrepreneurship and restricts competition, leading to increased costs and decreased levels of service for consumers."

The ORR recommends the complete deregulation of 18 occupations, representing 17.3% of occupations regulated by the State of Michigan. The ORR recommends the elimination of 5 more licensing provisions, as well as the elimination of 9 occupational boards and further exploration of eliminating 11 more boards.

"The Advisory Rules Committee carefully considered the public health and safety benefits of 87 different occupations. We found that there were at least 18 occupations that did not require regulation. These regulations provide little or no significant protection to the public," said Shelly Edgerton, Deputy Director of LARA. "In addition, we found that there is ample opportunity to streamline Michigan's licensing processes. These recommendations will reduce the size and cost of government and lead to better customer service for licensees."

The 18 occupations recommended for deregulation are:

- Acupuncturist
- Auctioneers
- Community Planner
- Consumer Finance Services
- Dieticians & Nutritionists
- Forensic Polygraph Examiner
- Forester
- Immigration Clerical Assistant
- Insurance Solicitor
- Interior Designer
- Landscape Architect
- Ocularist
- Professional Employer Organizations
- Proprietary School Solicitors
- Respiratory Care

Security Alarm Contractors  
Speech Pathologist  
Vehicle Protection Product Warrantor

The 9 occupational boards recommended for elimination are:

- Board of Acupuncture  
Board of Auctioneers  
Board of Carnivals & Amusement Rides  
Board of Dietetics & Nutrition  
Board of Occupational Therapy  
Board of Respiratory Care  
Board of Speech Language Pathology  
Osteopathic Medicine Advisory Board  
Ski Area Safety Board

While the ORR recommends abolishing the Carnival Amusement Safety Board, the ORR recommends the licensing and inspections should continue and fees should be increased to be sufficient to cover administrative costs of regulation. Similarly, the ORR recommends that Ski Area Safety licensing and inspections should continue and fees should be increased to be sufficient to cover administrative costs.

"The Advisory Rules Committee was very deliberate in weighing the public health and safety implications of deregulation," said Roger Newton, Founder, President, and CEO of Esperion Therapeutics, Inc. in Plymouth, MI. "I think these recommendations create a more business-friendly environment and eliminate unnecessary government oversight that does not provide any value to the citizens of Michigan."

Implementation of these recommendations would reduce the impact of government regulations on businesses and professionals. They will also reduce both the size of government and the cost of licensing the large number of currently regulated occupations.

"The Advisory Rules Committee was very serious in its considerations about whether certain occupational licensing regulation provides consumer protection." Rose Baran, Assistant Professor at Ferris State University. "We found a number of occupational regulations that simply did not provide enough benefit to justify devoting taxpayer dollars for administration of these programs."

The ORR's recommendations continue to protect the public from unscrupulous business and health service providers, while streamlining government processes related to regulating occupations. In addition, these recommendations will increase competition in the affected occupations, thereby lowering costs for consumers. The recommendations encourage business growth and job creation by removing barriers to entry and allowing employers to hire qualified employees without government dictating the employee's qualifications.

"A comprehensive review of our occupational licensing system was long overdue," said Russ Harding, Senior Fellow in Environmental and Regulatory Policy, Mackinac Center for Public Policy. "This report sends a strong signal to businesses across the nation that Michigan is serious about regulatory reinvention. These recommendations demonstrate that Michigan is focused on creating an environment where job creation flourishes. The Legislature should take a hard look at these proposed reforms."

[Click here to view the complete recommendations.](#)

Michigan Dietetic Association CONTEST  
to solicit "evidence" of harm

Win Free Registration to MDA's 2004 Annual Conference  
(a \$200+ value)! Generously donated by [REDACTED]

Thank You [REDACTED]  
Look for Contest  
WINNERS here!!!

**Contest Guidelines:**

1. Obtain a Documentation of Harm form from the MDA website.
2. Submit one case of Documentation of Potentially Harmful Nutrition Information and/or Products to be eligible to win free registration to the 2004 MDA Annual Conference.
3. Documented incidents must have occurred in Michigan between January 1999 to March 1, 2004.
4. All cases must be sent/postmarked by March 1, 2004 and returned to:



Email (preferred method):

[REDACTED] Or

Snail mail:

[REDACTED]  
MDA At Large Director of Legislation

[REDACTED]  
[REDACTED] MI 48335 Or

Fax:

[REDACTED]

5. Contestant names will be placed in a drawing and one winner will be selected for free registration. For each case of harm submitted, contestant's name will be entered in the drawing (that means you can send in as many as you have!).
6. Please note that the Documentation of Harm forms must be completed thoroughly in order to be eligible for the drawing.

*Who is eligible????*

**All MDA members**, includes Board members, Dietetic **Students and Interns** (*must be co-signed by an RD*), and this year non-MDA members are also eligible!

For further information about this contest, please contact:

[REDACTED]@madonna.edu