



NCSBN

National Council of State Boards of Nursing

111 E. Wacker Drive, Suite 2900
Chicago, IL 60601-4277

312.525.3600
www.ncsbn.org

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Maureen Ohlhausen
Acting Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Ohlhausen and Members of the Task Force:

Thank you for the opportunity to provide comments on the Federal Trade Commission (FTC) Economic Liberty Task Force Roundtable entitled, “The Effects of Occupational Licensure on Competition, Consumers, and the Workforce: Empirical Research and Results.” The National Council of State Boards of Nursing (NCSBN) commends the FTC for researching and discussing how occupational licensing impacts both workers and consumers.

NCSBN is an independent, non-profit association comprising 59 boards of nursing (BONs) from across the U.S., the District of Columbia and four U.S. territories. BONs are responsible for protecting the public through regulation of licensure, nursing practice, and discipline of the 4.7 million registered nurses (RNs), licensed practical/vocational (LPN/VNs) and advanced practice registered nurses in the U.S. with active licenses. NCSBN was created by these BONs to act and counsel with one another and to lessen the burden of government. The mission of NCSBN is to provide education, service, and research through collaborative leadership to promote evidence-based regulatory excellence for patient safety and public protection. Through NCSBN, BONs work together on policy matters that will affect patient safety, the future of nursing and health care.

The Role of State-Based Licensing in Protecting the Public

First and foremost, the primary responsibilities of a state licensing board are regulating, overseeing, and enforcing the practice of that profession throughout a state as dictated by the state’s practice act with the goal of protecting the public. Depending on the profession, the danger an unsafe professional may pose to the public varies greatly. For health care professionals, such as nurses, this danger is especially high. The exposure to the public at the most vulnerable of times makes the importance of ensuring nurses are competent and safe providers all the more important.

State licensing boards vary in size, organization, membership, and structure. Practice acts are drafted to be profession-specific, and thus vary greatly between one profession to the next in their charges and processes. A one-size-fits-all approach to streamline state licensing board operations across professions is unrealistic and if imposed, could pose a danger to public protection. Due to the large variance, it is important to know that one-size-fits-all approaches to changing state licensing board operations simply will not work.

The Nurse Licensure Compact: Enhancing License Portability and Public Protection

For years, NCSBN has strived to offer nurses the opportunity to practice safely and competently across state lines without undue licensure burdens. One way that we have worked to facilitate interstate mobility of nurses is through the Nurse Licensure Compact (NLC), an interstate compact that allows a nurse to have one multistate license, in his or her state of residency, that grants the privilege to practice in other NLC participating states both physically and electronically. Since the Nurse Licensure Compact went into effect in 2000, 25 state legislatures enacted the compact. This has simultaneously provided a means of better protecting the public, expanded the mobility of our nation's nursing workforce, and facilitated the use of new technologies to deliver care via telehealth.

In an effort to increase the number of states participating in the NLC, BONs recently revised the NLC to increase its appeal to states that have not yet joined, creating the enhanced Nurse Licensure Compact (eNLC). Changes include the addition of uniform licensure requirements and mandatory criminal background checks for nurses seeking a multistate license. To date, 26 states have adopted the eNLC, including five states that did not participate in the original NLC. Furthermore, a significant number of states have indicated their interest in bringing forward legislation in the next session. Multistate licenses will begin to be issued through the eNLC beginning on January 19, 2018. Until that time, the original NLC remains in effect.

In addition to the NLC and eNLC, we have also developed a compact that would facilitate interstate license portability for APRNs, who are increasingly delivering care across state lines via telehealth. The APRN Compact maintains most of the same principles as the NLC, including a mutual recognition licensing model that would allow an APRN to practice in any participating state with just one license. The APRN Compact complies with the Consensus Model for APRN Regulation. NCSBN, along with numerous other nursing associations that represent APRNs, created the APRN Consensus Model in 2008 to achieve the goal of standardizing advanced practice nursing and implementing the best available evidence to ensure safe and quality practice. Notably, the APRN Compact would allow providers the ability to practice "independent of a supervisory or collaborative relationship with a physician," a provision that reflects a long time license portability barrier for APRNs and is in line with the FTC's *Competition and the Regulation of Advanced Practice Nurses* position paper in support of policies that promote APRN independence and removal of restrictive anticompetitive barriers on practice.

BONs under the NLC/eNLC facilitate interstate cooperation and coordination of public protection through participation in Nursys®, the only national database currently available for verification of nurse licensure and discipline for RNs, LPN/VNs and APRNs. Nursys® allows access to the status of a nurse's license and provides information about any history of discipline. The broad adoption of Nursys® demonstrates how BONs have made public protection a priority while also finding ways to lessen the burden of licensure on nurses. Ultimately, the eNLC and APRN Compact create the necessary legal structure that requires BONs to report and share license and discipline information with one another to ensure nurse competency and patient safety across the country.

The FTC, Congress, and other federal agencies can reduce burdens created by occupational licensing by supporting and encouraging the enactment of interstate compacts, mutual recognition agreements, uniform laws, and other policies that facilitate licensure portability across state lines.

State-Based Nurse Licensure and Competition: How BONs Are Planning for the Future

In line with its' mission, NCSBN has been a stalwart in promoting regulatory decision-making that is evidence-based and puts public protection and patient safety as top priorities. NCSBN's mission puts the interests of the public and consumers of nursing services in a position paramount to all others, and ensures these interests can be defended on their merits through sound evidence. To help bolster and inform state nursing regulation, NCSBN's *Journal of Nursing Regulation* (JNR) provides a global forum for sharing research, evidence-based practice, and innovative strategies and solutions related to nursing regulation, policy and practice.

To this point, the majority of research on occupational licensing has focused upon the study of regulation and its economic impact on costs to both the provider and recipient of services. Issues pertaining to consumer safety and protection have not been well-investigated nor have the sequelae of speedy recovery that treatment by a licensed health professional can deliver. New research examining patient outcomes in the changing nursing profession has shown robust, multi-center, and multi-country evidence that regulated nurses across the globe have better patient outcomes than those who are unregulated.¹ Further work needs to be done to quantify the impact both economically and from a safety perspective that nursing regulation has on patients and providers alike. NCSBN intends to pursue and support further research on this topic with interested partners.

Over the past several years, NCSBN has spent considerable time and resources convening BON leaders from across the country and around the world to discuss the future of nursing regulation. In October 2016, NCSBN hosted *Regulation 2030*, a meeting that brought regulators and nurse leaders from across the United States and around the world together to engage in a shared

¹ Dr. Linda Aiken Presents "Nursing's Impact on Patient Outcomes," 3/29/2017, <https://www.ninr.nih.gov/newsandinformation/newsandnotes/aikenlecture>

development opportunity to envision the future of regulation.² The eighty nurse and other leaders attending the meeting represented nurse leaders and regulators from across the globe, state legislators, representatives of other health professional licensing board associations, the FTC, and the Office of Economic Cooperation Development (OECD). The goal of the summit was to analyze trends in regulatory research so as to focus and understand where the future of nursing regulation is headed. Ultimately, significant quantities of data were created through the work done at this meeting, which has both generated questions for further research and actionable steps that need to be addressed as regulation is transformed congruent with the needs of the current complex, dynamic digital health care delivery environment.

In addition to *Regulation: 2030*, NCSBN has convened an “Active Supervision Committee” to analyze the Supreme Court’s decision in *North Carolina State Board of Dental Examiners* and consider how BONs should prepare for the future of nursing regulation in light of the decision. Though that committee’s work is not yet completed, NCSBN hopes to create resources and guidance to BONs to identify areas of exposure to federal antitrust law and to deploy best practices in creating regulation to protect the public. The goal of the committee, and a message continually relayed to BONs, is for BONs to ensure their actions can be legally defended on their merits, thereby removing the potential need for invoking state action immunity. Additionally, NCSBN has long supported the inclusion of consumer or public (non-nurse) members to be added to BONs to further drive regulation in a direction that puts patient interests first. NCSBN recognizes the importance in meeting the legal tests set forth by the Supreme Court in the *North Carolina State Board of Dental Examiners* decision. NCSBN believes that state-level changes should be made to meet any new requirements, based upon the unique circumstances facing each licensing board in a state. State-based changes will ensure the powers specifically granted to the states to regulate the professions that lie within their borders remains intact. Federal incursion into this area could lead to greater legal uncertainty as states determine the best solutions for their licensed occupations and consumers.

Conclusion

NCSBN appreciates the opportunity to comment on this important matter and welcomes further discussion with the FTC and the Economic Liberty Task Force. If you have any questions or would like any additional information, please do not hesitate to contact us. Elliot Vice, NCSBN’s Director of Government Affairs, can be reached at evice@ncsbn.org and 202-530-4830. We look forward to continuing the dialogue on this very important issue.

Sincerely,


David C. Benton, RGN, PhD, FRCN, FAAN
Chief Executive Officer

² Regulation 2030, First Steps of A Journey, Journal of Nursing Regulation , Volume 8 , Issue 2 , S3 - S4