

**BOC BOARD OF CERTIFICATION**  
FOR THE ATHLETIC TRAINER

**Promoting Competition in Regulated Occupations: FTC Perspectives**

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\* The views expressed today are my own, not necessarily those of the Federal Trade Commission or any individual Commissioner.

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Compliance and Regulatory Education: Best Practices for Athletic Training

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**Overview of Presentation**

- **About the FTC and the Office of Policy Planning**
- **Overview of FTC's Competition Advocacy**
- **Health Care Advocacy Letters/Comments Relating to Occupational Licensure**
  - **Scope of Practice: Nursing, Dentistry; Telehealth**
- **Activities of the Economic Liberty Task Force**
  - **Competition Advocacy Comments**
  - **Options to Enhance Occupational License Portability**

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**About the FTC**

- **Independent, bipartisan federal agency**
  - Five Commissioners with staggered terms
  - No more than three of one political party
  - Consensus-driven decision-making
- **Dual mission: Competition and Consumer Protection**
  - **Mission:** Protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without unduly burdening legitimate business activity.
  - **Consumer Protection:** The FTC Act provides that "unfair or deceptive acts or practices in or affecting commerce . . . are . . . declared unlawful." (15 U.S.C. § 45(a)(1)).
  - **Competition:** The FTC Act also prohibits "unfair methods of competition." (15 U.S.C. § 45(a)).

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## Research and Scholarship, FTC Act § 6 (15 U.S.C. § 46)

- Gather and compile information about business practices, § 6(a)
  - May use compulsory process, § 6(b), (if authorized)
- Disseminate information, consistent with the public interest and confidentiality, § 6(f)



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## Office of Policy Planning (OPP) Overview

- We report to the Chairman's office
- We collaborate and coordinate with staff throughout the agency
- We help to develop and promote the Commission's policy agenda
  - Our collaborative research, scholarship, and advocacy is complementary to the agency's enforcement efforts

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## Public Hearings



### FTC Announces Hearings On Competition and Consumer Protection in the 21st Century

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FOR RELEASE

June 20, 2018

Trade | Government | Policy | Bureau of Competition | Bureau of Consumer Protection | Bureau of Economics | Office of Policy Planning | Office of International Affairs | Office of the General Counsel | Competition | Consumer Protection

The Federal Trade Commission today announced that the agency will hold a series of public hearings on whether broad-based changes in the economy, involving business practices, new technologies, or international developments might require adjustments to competition and consumer protection enforcement law, enforcement priorities, and policy. The multi-day, multi-part hearings, which will take place this fall and winter, will be central in form and structure to the FTC's 1995 "Global Competition and Innovation Hearings" under the leadership of then-Chairman Robert Pitofsky.

"The FTC has always been committed to self-examination and critical thinking, to ensure that our enforcement and policy efforts keep pace with changes in the economy," FTC Chairman Jon DeVine commented today. "When the FTC periodically engages in serious reflection and evaluation, we are better able to promote competition and innovation, protect consumers, and shape the law, so that free markets continue to thrive."

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**Workshops**

Streamlining Licensing Across State Lines:  
Initiatives to Enhance Occupational License Portability  
*A Roundtable Organized by the FTC's Economic Liberty Task Force*

**PATENT ASSERTION ENTITY ACTIVITY WORKSHOP**

**now hear this**

**Pet Medications WORKSHOP**  
Something New Under the Sun  
Competition & Consumer Protection Issues in Solar Energy

**The "Sharing" Economy**  
Issues Facing Platforms, Participants, and Regulators

**Auto Distribution**  
Current Issues & Future Trends

**CONDITIONAL Pricing Practices**  
economic analysis & policy implications  
an FTC staff workshop

**reexamining**  
health care competition  
an FTC staff workshop

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**Studies and Reports**

- Formal studies using compulsory process
- Other studies and reports
  - Workshop reports
  - Policy papers

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**About Competition Advocacy Comments**

- Advocacy Analyzes Bills or Proposed Regulations from a Competition Perspective**
  - State bills**—usually, comments are in response to a request from a state official—a legislator
  - Proposed state or federal regulations**—comments on proposed regulations are in response to an open comment period
  - Outside parties may alert us to a bill or proposed regulation with competitive issues
  - Our research may lead us to suitable bills or proposed regulations
  - Recommendations in advocacy comments are voluntary**
  - Many health care advocacy comments**

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### Goals of Competition Advocacy

- **Provide a framework for thinking about public policy issues from a competition perspective**
  - What is the likely competitive impact?
  - How will this affect consumers?
  - Any legitimate justifications to restrict competition?
  - Are there less restrictive alternatives?
- **Protect consumers and fulfill other important public policy goals, BUT**
  - Do not unnecessarily restrict legitimate business activities, especially those that may promote competition

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### Benefits of Competition



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### Main Themes of Health Care Scope-of-Practice (SoP) Advocacy

- Occupational licensing can protect from health and safety risks, but also restricts the number of providers and competition, resulting in higher prices and lower quality
- Affiliated providers, e.g., nurses, dental hygienists, and physician assistants, may be subject to unnecessary or unduly restrictive SoP requirements
  - For example, supervision, services, setting, or prior examination
- Unnecessary or unduly restrictive supervision and other SoP requirements allow one group of health care professionals to restrict market access by a competing group
  - Negative effects on competition, access, cost, innovation
  - "Safety" justifications may be pretextual
- All health care professionals should be allowed to practice to the "top of their license," to the full extent of their training and knowledge

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## Advanced Practice Nurse Policy Paper

### Policy Perspectives: Competition and the Regulation of Advanced Practice Nurses

March 2014



<https://www.ftc.gov/reports/policy-perspectives-competition-regulation-advanced-practice-nurses>

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## Key Points from Report, *Competition and the Regulation of Advanced Practice Nurses*

- Supervision and collaborative practice agreement requirements likely impede competition by preventing Advanced Practice Registered Nurses (APRNs) from practicing independently, resulting in
  - Decreased access to health care services
  - Higher health care costs
  - Reduced quality of care
  - Less innovation in health care delivery
- Collaborative practice requirements can be viewed as *de facto* supervision requirements, and are not necessary to encourage APRN/MD collaboration
- Policymakers should carefully scrutinize health and safety justifications for APRN supervision and collaboration requirements, and ensure that any requirements serve patient protection needs
- Provider shortages could be mitigated via expanded APRN practice

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## Access, Supply, and Competition

- Expanded SoP of affiliated providers—e.g., APRNs, dental hygienists—can increase access, supply, and competition, and may decrease costs
  - Substitute for more expensive services
  - Reduce supervisory time of higher paid practitioner
  - But effects on consumers' costs are complex
- Affiliated providers can mitigate provider shortages, especially for vulnerable and underserved populations, if supervision requirements do not prevent them from practicing where supervisors are scarce
- Suggest least restrictive SoP consistent with health and safety

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### Scope of Practice Issues in Dentistry

- Examples of restrictions to care by dental hygienists and dental therapists
  - "Prior Examination" requirements
  - Direct or indirect supervision requirements that require a dentist to be on site or make an initial diagnosis
  - Location/settings requirements
  - What services can be offered
  - Supervision/collaboration agreements
- Barrier highest in areas with shortages of dentists
  - Reduces access to care for underserved populations
- Restrictive SoP can reduce cost savings from use of lower-cost provider (duplication of providers)
- See Comment from FTC Staff to Peggy Lehner, State Senator, Ohio State Senate (March 3, 2017)
  - <https://www.ftc.gov/policy/advocacy/advocacy-filings/2017/03/ftc-staff-comment-ohio-state-senate-regarding-competitive>

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### Telehealth



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### Main Themes of Telehealth Advocacy

- Telehealth, the use of telecommunications to provide health care services, may be a safe and effective alternative to in-person care
- Enhanced access, supply and convenience, reduced travel costs
- Increased competition, which may lead to higher quality and lower costs
- Reduce barriers:
  - Allow practitioner to decide whether telehealth meets the standard of care, including on the first encounter
  - Restrictions should be narrowly tailored to meet specific safety concerns (if any)
  - **Alleviate licensure barriers to interstate practice**

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### Alaska Telehealth Advocacy— Potential for Increased Competition from Out-of-State Physicians (2016)



- Existing law had a geographic restriction: Out-of-state Alaska-licensed MDs were required to conduct an in-person examination before writing a Rx; no requirement for in-state physicians
- FTC staff supported a Bill that would eliminate the *in-state* requirement
- No credible health/safety justification to exclude *out-of-state* Alaska-licensed MDs
- Seattle is closer to some parts of Alaska than Anchorage

- 2000 Alaska-licensed MDs located *out-of-state*, as many as *in-state*
- Expansion of supply of telehealth providers would promote competition and increase access to safe and cost-effective care in a state that is almost entirely a health professional shortage area
- Bill passed

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### Advocacy on License Portability in New York State: Endorsement of Canadian Dental Licenses



- FTC supported New York's proposed rule that would allow Canadian dentists to become licensed in New York State using the same endorsement process available to U.S. dentists

- Endorsement is important for dentistry in NY because of a nearly unique licensure requirement: instead of a clinical examination, NY requires a 1-year clinical postdoctoral residency
- U.S. dentists who have practiced > 2 years can avoid this residency
- The rule would decrease barriers to licensure of Canadian dentists
- It could potentially increase the supply of dentists in NY, promote competition and consumer choice, increase access to care, and decrease the price of dental services

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### Economic Liberty Task Force



Convened by former Acting Chairman Ohlhausen in 2017 to consider the harms of excessive occupational licensing and reforms that could promote greater economic opportunity for all Americans, consistent with legitimate consumer protection goals

<https://www.ftc.gov/policy/advocacy/economic-liberty>

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**Why the Economic Liberty Task Force Focuses on Occupational Licensure**

- About 30% of American jobs require a license today, up from less than 5% in the 1950s
- For some professions, licensing is necessary for health and safety reasons
- But the expansion of occupational licensing imposes significant barriers and costs that can harm workers, employers, consumers, and the economy
- The burdens fall disproportionately on the disadvantaged
- Commission/ELTF activities: Congressional testimony, speeches, articles, workshops, fireside chats, advocacy comments and a report

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**2017 Comments on Bills to Reduce Nebraska Occupational Licensing Requirements**

- Staff commented on four bills that would reduce or eliminate certain licensing requirements
  - For example, banking officers, motor vehicle and trailer salespersons, potato shippers
- Since the four bills were part of a larger occupational licensing reform initiative, the comments focused on the procompetitive effects of loosening licensing requirements generally, and did not address specific occupations
- Explained that licensing can limit occupational opportunities, impede competition, cause prices to increase, and stifle innovation
- May not offer meaningful protection from risks

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**2017 Comments on Bills to Reduce Nebraska Occupational Licensing Requirements, continued**

- The comments offered a framework for evaluating the proposed licensing laws
  - Why were the original licensing requirements imposed?
  - What justifies continuing the license requirement?
  - Do the benefits of licensing outweigh the likely harms, such as reduced economic opportunity, restricted employment, increases in consumer prices, and reductions in quality or access?
  - If state licensing appears justified, are the requirements narrowly tailored to the public policy goals? Are there less restrictive alternatives?
    - E.g., would a certification system that allows consumers to choose between certified and noncertified professionals be sufficient?

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### 2018 Comment on Proposed Occupational Licensing Reform in Nebraska

- Comment on a bill that would require review of the competitive impact of proposed licensing laws and existing licensing regulations
- Comment generally supported the bill's approach
  - To evaluate licensing proposals to determine whether they are necessary to protect consumers from substantiated harms
  - To consider less costly or restrictive regulatory approaches that adequately address consumer protection
- But the comment cautioned against other measures that could be misused to undercut reform by potentially protecting, rather than eliminating, anticompetitive regulation by self-interested regulatory boards

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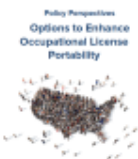
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### Options to Enhance Occupational License Portability

- **2018 FTC Staff Report:**
- Report examines ways to ease cross-state practice/licensing of licensed, out-of-state providers in occupations for which all (or nearly all) states require licensing as a public protection measure



[https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license\\_portability\\_policy\\_paper.pdf](https://www.ftc.gov/system/files/documents/reports/options-enhance-occupational-license-portability/license_portability_policy_paper.pdf)

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### Why Occupational Licensure Portability?

- Occupational licensing can protect from health and safety risks
- But licensing also restricts the number of providers and competition
- Loss of competition results in higher prices, potentially lower quality and convenience
- Little justification for burdensome process for licensed, out-of-state applicants
- Limits mobility of licensed workers
- High barrier for multistate practice (e.g., telehealth) and military spouses
- Portability initiatives—compacts or model laws—can lower the burden

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### Based on FTC Roundtable (2017)

Streamlining Licensing Across State Lines:  
Initiatives to Enhance Occupational License Portability  
*A Roundtable Organized by the FTC's Economic Liberty Task Force*



- Examined ways to ease licensing of licensed, out-of-state providers in occupations that generally require licensure
- Participants represented organizations involved in license portability initiatives
  - Nursing, Medicine, Accountancy, Teaching, Department of Defense

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### Legal Structure: Compacts

• **Binding contracts between states, U.S. Const., art. I, § 10, cl. 3**

- Must be adopted verbatim, cannot be unilaterally amended
- **Stable but Inflexible:** Hard to change, but a Compact Commission can adopt rules with the force of state law (controversial)
  - All 6 health profession licensure compacts provide for a Compact Commission
- Role of Federal grants, and National Center for Interstate Compacts (NCIC) of the Council of State Governments
- 192 Compacts, but only 7 for occupational licensure

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### Occupational Licensure Compacts and Adoption

• **6 Licensure Compacts in the Health Professions**

- Nurse Licensure Compact (NLC), 33 states
- Interstate Medical Licensure Compact (IMLC), 31 jurisdictions, 43 boards
- Physical Therapy Licensure Compact\* (PTLC), 25 states
- Emergency Medical Services\* (REPLICA), 18 states
- Psychology Interjurisdictional Compact\* (PSYPACT), 11 states
- Advanced Practice Registered Nurse\* (APRN), 3 states
- Most health compacts address portability procedures, not scope of practice
- \*not yet facilitating multistate practice

- **Other:** Interstate Compact of Licensure of Participants in Live Racing with Parimutuel Wagering ("National Racing Compact"), 15 states

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### Legal Structure: Model Laws

- Earliest licensure portability initiatives, variable
  - **Flexible:** State laws need not be identical, and can be amended
  - **Some adopted nationwide**
- **Examples:**
- **Uniform Accountancy Act** (55 jurisdictions)
  - Substantial equivalency of state licensing standards
  - High adoption because services provided across state lines electronically
- **Nat'l Ass'n of Boards of Pharmacy (NABP)** (all states + jurisdictions)
  - Licensure transfer in Constitution and Bylaws since 1904; Model Act; all members participate in electronic licensure transfer program
- Longstanding: Engineering (NCEES), Architecture (NCARB)

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### Mutual Recognition/Multistate License

- One state license provides a privilege to practice in member states
- Must meet criteria, but usually no additional fees or paperwork
- Low barrier to entry: Practice in all member states without notice
- Licensees within each state's jurisdiction for disciplinary purposes
- Licensees must apply for a new license when moving to another state
  - Streamlining varies—routine with substantially equivalent qualifications? Existing endorsement process? Practice during processing of application?
- **Compacts:** NLC, APRN, REPLICA, PSYPACT
- **Model Law:** UAA

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### Expedited Licensure

- Multistep process—Submit application for determination of qualification for expedited treatment; then receive expedited treatment in other jurisdictions
- Reduce paperwork and review time in secondary jurisdictions, but higher fees overall
  - Multiple state licenses necessary for accountability in each state?
- May facilitate a move to another state (if addressed)
- **Compacts:** Interstate Medical Licensure Compact
  - PTLC: Although the PTLC does not require licensure in every state of practice, it requires notice and a compact privilege in remote states, features similar to expedited licensure. The PTLC requires licensees to notify the compact commission of their intent to practice in another state and pay compact and any state fees; the remote state grants the compact privilege. See PTLC §§ 2(4); 3(C),(D); 4.
- **Model Laws:** NABP, NCEES, NCARB

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### Harmonization of Licensure Requirements

- Core areas: education, examination, disciplinary & criminal history
  - Some compacts have had difficulty instituting FBI background checks
- Instills confidence in qualifications of out-of-state practitioners
- Encourages adoption of portability initiative
- Standards need not be identical: substantial equivalence
- But standards may be set as high or higher than the most restrictive state
  - Could exacerbate tendency of occupational licensing to restrict labor supply, reduce competition, and increase prices
  - Suggest using the least restrictive standard acceptable

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### Initiatives for Military Families and Others

- State-based efforts to reduce barriers to licensing of relocated military spouses often address multiple occupations that require licensing
  - but some occupations are not covered
- Important for military families and those who move frequently
- U.S. Dep't of Defense has encouraged license portability
  - Endorsement of licenses, avoiding need for re-examination
  - Temporary licenses
  - Expedited procedures, e.g., allowing photocopies until official copies can be obtained; conditional approval prior to board meetings

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### Key to Adoption: Importance of Portability to Practitioners and Consumers

- Stakeholders agree on the need for interstate practice and mobility
- Agreement may be driven by technology for providing services remotely and firms with nationwide presence
- If the need for interstate practice and mobility is great, it likely outweighs local concerns, e.g., minor variations in qualifications
- Development and adoption of portability initiatives takes time
- Policies may need to be able to evolve to address changes
- Can FTC Staff Advocacy help?

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### Suggested Approaches

- Can use Model Law or Interstate Compact
- Consider mutual recognition (multistate license) and no notice
- Alternatively, consider expedited licensure in each state of practice
- Harmonize state licensure standards, using the least restrictive standard acceptable
- For military spouses and others licensed in one state, ease licensure on relocation to a new state
  - Expedite, allow practice during processing, temporary licensing

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### Thank you!

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