

Advocacy Talking Points

The Federation of Associations of Regulatory Boards (FARB) has developed a series of resource documents regarding the regulation of licensed professionals. These documents address common sense regulation and promote efficient and effective state licensing boards. These talking points will assist state licensing boards in their discussions with legislators and other stakeholders and are categorized as follows:

1. **Effective State Regulation** – Statements supporting the regulation of licensed professionals through a state Board responsible for administering the practice/title act and associated state laws.
2. **Board Composition** – Statements that identify the issues surrounding the composition of state licensing boards and the important role played by all volunteer board members, including active licensees and public representatives.
3. **Deregulation of Professions** – Statements outlining many of the issues that can arise when a profession is deregulated or monitored by a voluntary, private sector certification program.
4. **Active State Supervision** – Statements that identify some of the issues surrounding various proposed options to implement additional oversight over decisions made by state licensing boards.

The Federation of Associations of Regulatory Boards (FARB) promotes common sense regulation through efficient and effective state-based licensure of professions. FARB supports state licensing boards which provide essential health, safety, and welfare protections of the public through the enforcement of applicable statutes and regulations.

Effective State Regulation

- The constitutional rights of the states to regulate the professions in the interest of the protection of the health, safety, and welfare of the public should be recognized and respected.
- Common sense state regulation of the professions through legislatively enacted statutes that create and delegate authority to the state licensing board should be recognized and respected.
- State statutes should establish the standards and criteria necessary for licensure and enforcement.
- The state licensing board appointment process should include reasoned policies and procedures regarding the nomination, evaluation, appointment, and oversight of board members to ensure an understanding of their regulatory obligations.
- Recognition of the need for professional expertise on the licensing boards is essential to effectively and efficiently fulfill their mandate to protect the public.
- Comprehensive training ensures that board appointees clearly understand and adhere to their public protection roles and responsibilities in regulating the profession.

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Board Composition

- A well-structured state licensing board is comprised of active licensed practitioners, public members, experienced administrative staff, and legal counsel.
- Volunteer active licensed practitioners provide the board with subject matter expertise that contributes to the effectiveness and efficiencies in fulfilling the legislative mandates.
- Public members provide the balance of perspectives that contribute to the effectiveness and efficiencies in fulfilling the legislative mandates.
- This balance of representation provides much needed expertise and consumer perspectives and allows for informed decisions in the interest of the health, safety and welfare of the public.
- Informed, efficient decisions involve board operations and meetings, legislative interpretation, rulemaking, assessment of complaints and investigations, administrative proceedings, and defense of decisions.
- A well-structured state licensing board provides fiscal accountability and operational benefits by diminishing the need for paid subject matter experts necessary to conduct investigations, provide opinions, and assist in resolving practice-related questions.
- A well-structured state licensing board ensures that board decisions are consistent, fair, comply with applicable due process requirements, and promote deference to the board decisions by the judiciary when challenges and appeals are filed.

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Deregulation of Professions

- Regulation of the professions provides inherent fairness through a regulatory process for the benefit of consumers, applicants for licensure, licensees, and complainants by promulgation of and adherence to administrative procedures and due process principles.
- Regulation of the professions provides a mechanism for protection of the public as a whole, a benefit not realized by a “buyer beware” approach to consumer protection.
- A “buyer beware” approach to regulation only affects the parties to the dispute to the detriment of the public as a whole and does not deter future misconduct on the part of the licensee.
- Deregulation of the professions eliminates the abilities of government to act on behalf of the public and places enforcement and protection burdens on the consumers.
- Deregulation disadvantages consumers otherwise unable to protect themselves from unqualified practitioners based upon economic factors and lack of knowledge regarding the profession.
- Deregulation in deference to private sector certification programs displaces government involvement at the expense of due process and administrative procedures not mandated upon the private sector.
- Deregulation in deference to private sector certification may unlawfully empower a private sector organization to act on behalf of the state.
- Deregulation in deference to voluntary regulation of a profession creates a tiered licensure structure that may be applied inconsistently and will be confusing to the public.

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Active State Supervision

- To rely on the state action immunity doctrine defense as a shield to antitrust allegations, state boards comprised of active licensed practitioners must operate under active state supervision.
- Relatively few board activities, such as individual disciplinary actions, implicate the antitrust laws.
- Boards are represented by attorneys, usually from the attorney general's office, which consider and advise the board regarding activities and decision making.
- Active state supervision is a fact-specific determination and supervision can exist in numerous forms, such as attorney general representation, executive branch appointment, training of board members, and legislative mandates in statutes.
- Active state supervision through the creation of additional agencies removes the expertise necessary to assess and determine factual findings specific to the profession and may also result in decisions that are more likely susceptible to legal challenge on appeal.
- Active state supervision through the creation of additional agencies adds redundancy, slows the decision making process, and contributes to the inefficient use of government resources.
- Alternative options exist whereby the board can request legislative changes, promulgate regulations, and/or seek declaratory rulings from the judicial branch.