Practice Leadership Conference

Practice, Politics & Policy
The Deregulation Movement: Strategies for Policy Advocacy from the National Perspective

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Licensing board consolidation: historical context

- The issue of consolidating psychology licensing board with other mental health licensing boards dates back to at least the 1980s
- This issue has emerged periodically every 5-6 years throughout the US
- Budget savings has been the common rationale
Licensing board consolidation: more recent events

- **LEGAL:** 2015 US Supreme Court ruling in **NC State Board of Dental Examiners v. FTC**
  - Licensing boards often filled with those professionals the board is charged to regulate ("market participants")
  - Concern about licensing boards’ activities being subject to antitrust litigation; treble damages
  - Concern about how to implement the “active state supervision” requirement for antitrust immunity to apply

- **POLITICAL:** Conservative state legislators push for smaller government/deregulation plus budget cuts
Strategies?

- Licensing board consolidation is not the only solution to address concerns raised in the US Supreme Court’s ruling in the NC Dental Board case.
- There are other possible options that state attorneys general have explored.
- The response to consolidation to address state budget shortfalls may depend on whether your board is financially self-sustaining.
- Is the board viewed as overburdened with backlog of applications for licensure and/or complaints?
- Is there an existing coalition with other affected professions/organizations?
- Consumer protection perspective – more money, more time required to consolidate boards & regulate multiple professions under one board & fewer volunteers to serve on boards.
States’ Responses to NC Dental Board ruling

- **Oklahoma:**
  - July 22, 2015: Governor’s executive order required licensing boards to submit "all proposed licensure or prohibition actions" to the attorney general for review and written analysis regarding potential legal violations.
  - Board members who reject the attorney general's advice would be subject to removal for misconduct.

- **California:**
  - September 10, 2015: Attorney General opinion to state senator outlined several options to protect against antitrust liability.
  - Change composition of licensing boards; increase state oversight of board decisions; provide indemnification & antitrust training for board members.
Why not licensing board consolidation?

- Omnibus licensing structure would combine different disciplines with different education/training standards, different scopes of practice & different ethical requirements
  - Board evaluates applicants for licensure, develops rules and policies, investigates complaints and when necessary, disciplines individuals
  - Omnibus boards can create challenging practice environments dissuading others from coming to the state to practice
  - Under an omnibus board, representatives from different professions would be involved in disciplining individuals not just from own profession but other professions

- Psychology is the only doctoral-level licensed mental health profession
- Scope of practice and number of specialties greater than other mental health professions
Why not licensing board consolidation?

2 of 3 states that have had omnibus mental health licensing boards have since re-established an independent psychology board

- Colorado (1998)
- New Hampshire (2012)

Kansas is currently only state where psychology is under a consolidated licensing board.

Current threats of consolidation – Ohio, Texas, ???
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