

# Public Protection Cabinet

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PROPOSED REORGANIZATION OF GENERAL GOVERNMENT  
LICENSING BOARDS

# Presenters

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- David Dickerson, Secretary
- Gail Russell, Deputy Secretary
- Barry Dunn, General Counsel

# The Need for Reorganization

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- Ensure Free Markets and Bolster Competition
- Promote Kentucky Professionals and Businesses
- Achieve Cost Savings
- Improve Compliance

North Carolina  
State Board of  
Dental Examiners  
v.  
Federal Trade  
Commission



- 2015 U.S. Supreme Court decision.
- North Carolina Dental Board sent cease-and-desist letters to non-dentists that were engaging in teeth whitening practices.
- Boards comprised of market participants must be supervised by the state.
- “Market participants” include board members who hold active licenses in the field regulated by the board.

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## Implications for State Licensing Boards:

- If a board is not actively supervised by the state, the board could be held liable for potential anti-trust actions.
- Potentially, board members may be subject to personal liability.
- Treble damages.

# FTC Guidance

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**The following do not constitute “active state oversight” according to the FTC:**

- The entity responsible for supervising the regulatory board is comprised of active market participants in the occupation the board regulates;
- A state official monitors the actions of the regulatory board but lacks the authority to disapprove anticompetitive acts;
- A state official serves as an ex-officio member of the board but lacks the authority to disapprove competitive acts;
- The state’s attorney general or another state official provides advice to the regulatory board on an ongoing basis.

# Organizations and Associations

## Citizen Advocacy Center



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# Organizations and Associations

## Federation of State Boards of Physical Therapy

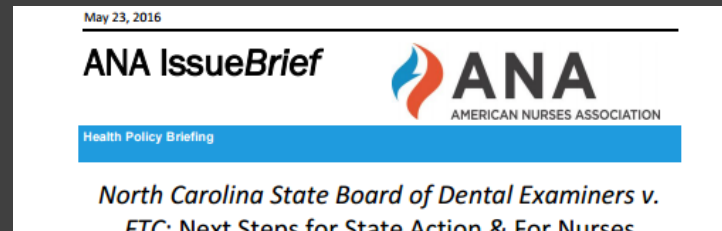


As was expected, litigants have been suing. Everything from a routine disciplinary action to a more significant broad rule affecting the scope of practice are potential targets for antitrust claims. Most, but not all, have resulted in wins for the boards.



# Organizations and Associations

## American Nurses Association



- States with boards comprised with a majority of members practicing in the profession will need to review their supervisory structures to determine if they are consistent with the guidance provided by the Court and make changes if necessary.

Section 1 of the Sherman Act and constituted unfair competition under the Federal Trade Commission Act. The FTC asserted that the Dental Board's actions deprived consumers of the important benefits of competition and provider choice. The Dental Board argued that as a state regulatory agency, it was exempt from FTC scrutiny under the theory of state action immunity. The Commission's [opinion](#) and [final order](#) found that the Dental Board was not exempt from FTC review and state action immunity did not apply because the actions taken by the Dental Board were not actively supervised by the State. The administrative law judge found the Dental Board liable for violating the FTC Act, and the full Commission affirmed that finding.

The Dental Board appealed to the 4th Circuit Court of Appeals (which upheld the Commission's decision) and then to the United States Supreme Court. The American Nurses Association (ANA) joined with the American Association of Nurse Anesthetists, American College of Nurse Midwives, American Academy of Nurse Practitioners and National Association of Clinical Nurse Specialists (Nursing Organizations) to file a friend of the court or [amicus brief](#) in support of the FTC's position. The [Citizen Advocacy Center](#) also joined the brief. ANA and the other Nursing Organizations urged the Supreme Court to find that licensing boards are not immune from liability if they unlawfully restrain the practice of other licensed professionals.

### The Supreme Court's Decision

On February 25, 2015, the [U.S. Supreme Court](#) affirmed the 4th Circuit's decision and the position of the [FTC](#) by stating that "a state board on which a controlling number of decision makers are active market

# Other States

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Illinois



Indiana



Ohio

# Reorganization Plan

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- State licensing boards will maintain individual identity.
- Similar licensing boards will be grouped together for purposes of oversight, staffing, and administrative support.
- The executive director, employed by the Public Protection Cabinet (PPC), will provide active state supervision to each group.
- Each board will continue to regulate and license its respective profession with oversight from the executive director and commissioner of the Department of Professional Licensing within PPC.

# Reorganization Plan

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**Each individual licensing board will have the authority to:**

- **Grant Licenses**

- Licensing appeals will be considered by the executive director.

- **Promulgate Administrative Regulations**

- Regulatory changes will be recommended by the individual licensing boards and reviewed by the executive director to either approve or send back to the board with suggested revisions.

- **Initiate Disciplinary Actions**

- Individual licensing boards may initiate disciplinary actions. Upon request, disciplinary appeals shall be reviewed by the Executive Director, subject to KRS 13B.

# Reorganization Plan

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- Board Members:
  - Any changes in board membership or composition will be realized over time.
- Staff:
  - Classified staff will become employees of PPC.
  - Interested individuals may apply for executive director or administrative coordinator positions.
- Budgets:
  - The board will continue to propose a budget with oversight from the executive director.
- Licensing Fees:
  - Licensing fees will not be impacted by the proposed reorganization and shall continue to be set by the boards.

# Advantages

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- Active State Supervision

- Cabinet Structure
- Budgets
- Personal Services Contracts

- Efficiencies

- Cost Savings

- Ensuring Competitive State Markets

# Proposed Oversight Groups

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## Medical

State Board of Medical Licensure

## Nursing

Board of Nursing

## Health Equipment

Ky. Board of Prosthetics, Orthotics & Pedorthics  
Ky. Board of Medical Imaging and Radiation Therapy  
Ky. Board of Ophthalmic Dispensers  
Ky. Board of Durable Medical Equipment Suppliers  
Ky. Licensing Board for Specialists in Hearing Instruments

## General Health

Ky. Board of Dentistry  
Ky. Board of Optometric Examiners  
State Board of Podiatry  
Ky. Board of Pharmacy  
Ky. State Board of Chiropractic Examiners  
Ky. Board of Examiners of Psychology

# Proposed Oversight Groups

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## Health Maintenance and Restoration

Board of Physical Therapy

Board of Occupational Therapy

Board of Speech-Language Pathology &  
Audiology

Board of Respiratory Care

Ky. Board of Licensure for Massage Therapy

Ky. Board of Licensure and Certification for  
Dietitians and Nutritionists

Ky. Board of Interpreters for the Deaf and  
Hard of Hearing

Ky. Board of Licensed Diabetes Educators

## Behavioral Health and Human Services

Ky. Board of Alcohol and Drug Counselors

Ky. Board of Licensed Professional Counselors

Ky. Board of Licensure for Marriage and Family  
Therapists

Ky. Board of Social Work

Ky. Applied Behavior Analysis Licensing Board

Ky. Board of Licensure for Professional Art  
Therapists

Ky. Board of Licensure for Pastoral Counselors



# Proposed Oversight Groups

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## General Professional Licensing

Board of Embalmers and Funeral Home  
Directors

State Board of Accountancy

Ky. Board of Veterinary Examiners

Ky. Board of Licensure for Private  
Investigators

Ky. Board of Licensure for Long-Term Care  
Administrators

Ky. Board of Barbering

Ky. Board of Hairdressers and  
Cosmetologists

## Land Development

Ky. Board of Architects

Ky. Board of Landscape Architects

State Board of Licensure for Professional  
Engineers and Land Surveyors

Board of Registration for Professional  
Geologists

# Stakeholder Meetings

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- Goals:

- Transparency and Accessibility
- Dialogue
- Correct Misinformation

- Results:

- 38 of 39 Boards
- Board Members, Licensees, Associations, Trade Groups, Executive Directors, and Staff
- Q&A
- Follow-Up

# Contact

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# Questions