



March 17, 2017

The Honorable Keith Faber  
 Ohio House of Representatives  
 77 South High Street  
 Columbus, Ohio 43215

Dear Chairman Faber:

Thank you for organizing the recent interested parties meeting regarding the proposals in House Bill 49 to eliminate and combine the operations of certain healthcare licensing boards and establish a process to protect state regulatory boards against allegations of antitrust violations. Our coalition members appreciate and share your view that the board consolidation plan is flawed and does not have or warrant support.

At the end of our meeting, you asked our organizations to go back and thoroughly consider all the ideas and proposals expressed during the meeting and provide you with any recommendations on how to move forward on these two issues. Utilizing the working group you helped us establish, our organizations conducted an extensive review of the issues presented. After much discussion among the members of our working group, we would like to provide you with our input concerning these two unrelated items contained in HB 49:

**Board Consolidation – Continued Opposition by All Organizations**

As we have previously stated, we do not believe a compelling rationale exists to consolidate licensing boards and that the current proposal is unnecessary. Our respective licensing boards function properly, adequately protect the public, and operate at or under budget annually. These regulatory bodies should be showcased as an effective and efficient arm of state government, rather than being targeted for elimination. Additionally, if adopted, consolidation potentially weakens the state’s ability to protect the public by establishing boards which lack the expertise to oversee the professions they are charged with regulating.

## Antitrust Review – Retain Current Version in HB 49

As you know, the proposals for board consolidation and the antitrust review process contained in HB 49 are separate issues. The oft-cited US Supreme Court ruling in *North Carolina Board of Dental Examiners v. FTC* does not trigger the need for licensing board consolidation or restructuring, and any claims otherwise are not accurate.

At no point does the Court suggest that states consolidate or reconfigure licensing board composition to remove a majority of active marketplace participants. In fact, shortly after the decision, the Federal Trade Commission (FTC) issued guidance on the case for states. Part of that guidance warns that even those regulatory boards that do not have a majority of active market participants could still be subject to claims of anti-competitive behavior and be required to have “active supervision” from the state in order to receive protection. This is due to the presumption that board members who are not market participants in the area being regulated would defer to the expertise of the active market participant board members on complex issues.

The provisions of HB 49 which provide DAS oversight of certain decisions of the medical regulatory boards will meet the Court’s standard of “active state supervision” by itself and provide protection to all boards, regardless of composition. Furthermore, if proponents of board consolidation truly believed that reconfiguring the composition of the boards was necessary to comply with the Court’s decision, one must ask why the largest medical licensing boards are not changed by the legislation. These boards regulate a higher volume of licensees and generally govern a broader scope of activity making them even more susceptible to allegations of anti-competitive activity based on size and scope alone.

Upon review, our organizations believe the DAS review system as proposed in HB 49 is an adequate protection for the state and its regulatory boards. It meets the Court’s standard on “active supervision” and will offer the strongest protection against antitrust allegations.

Our organizations also took an extended look at your proposal to create a “Super Board” as an alternative regulatory mechanism to address final rule promulgation, final disciplinary actions, staff conduct and other actions which could run afoul of the *NC Board of Dental Examiners* standard. As we noted during our meeting, our organizations oppose this concept. It would add a layer of bureaucracy which may unnecessarily delay the initial licensure process and slow the state’s ability to protect the public. Additionally, for the reasons outlined in the FTC guidance referenced above, the “Super Board” would not satisfy the Court’s standard of active supervision and itself could be subject to claims of anticompetitive behavior even with a minority of active market participants in each respective discipline.

We appreciate your concerns over the potential for legal action arising out of the *NC Board of Dental Examiners* case and your willingness to consider alternative proposals to address these concerns. However, after review, our organizations believe that if policymakers feel action is needed on this issue, the DAS antitrust review language contained in the current version of HB 49 is sufficient.

Once again, thank you for the opportunity to work with you concerning these two issues. We are happy to have the opportunities to express our views and welcome the chance to continue dialogue on these two proposals.

Sincerely,

American Association for Marriage and Family Therapy, Ohio Division  
Hearing Healthcare Alliance of Ohio  
National Association of Social Workers, Ohio Chapter  
Ohio Academy of Audiology  
Ohio Academy of Nutrition and Dietetics  
Ohio Alliance of Recovery Providers

Ohio Association of Alcoholism & Other Drug Addiction Counselors  
Ohio Athletic Trainers' Association  
Ohio Counseling Association  
Ohio Occupational Therapy Association  
Ohio Optometric Association  
Ohio Physical Therapy Association  
Ohio Psychological Association  
Ohio School Psychologists Association  
Ohio School Speech Pathology and Educational Audiology Coalition  
Ohio Speech-Language-Hearing Association  
Ohio Society for Respiratory Care  
Opticians Association of Ohio

cc. The Honorable John Patterson