

Administrative Regulation and Sunset Review

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Summary:

- Common Sunset focus was on mandatory criminal background checks, Board member antitrust training, uniform investigation and notice requirements, and prescription monitoring requirements;
- Chiropractic, Dentistry, Optometry, Nursing, Physical and Occupational Therapy, and Pharmacy independently continued 12 years; Vet Board, 4 years.

Summary:

- Podiatry moved to TDLR (as Advisory Board, effective 9/1/17); TDLR Sunset extended to 2021 to allow for transfer and review;
- Special Session- Medical, Psychology, LMFT, Professional Counselors, and Social Workers proposed extension to 2019;
- Proposed combination of Psychologists, LMFTs, PCs, and SWs into the "Texas Behavioral Health Executive Council" (BHEC) and adding Council on Sex Offender Treatment and chemical dependency counselors from the DSHS.

Across the board Sunset changes:

- Sunset noted Dental and Chiropractic Board's focus on scope of practice and market interests;
- Board member training on rulemaking and implications for antitrust and actions that:
 - regulate the ***scope of practice*** of persons in a profession or business the board regulates;
 - restrict advertising***;
 - affect the price*** of goods or services; and;
 - restrict participation...***

North Carolina State Board of Dental Examiners v. FTC :

- Held: Because a ***controlling number of the Board's decision makers are active market participants*** in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to **active supervision** by the State;
- No definition of "active supervision";
- Sufficiency of active supervision must be "flexible and context dependent";
- "Realistic assurances" a non-sovereign actor's anticompetitive conduct promotes state policy rather than merely the party's individual interests.

Possible mechanisms of supervisory review?

- SB 844- never made it out of Senate, but would have required:
 - AG "actively supervise" and review of all proposed rules as to possible antitrust or adverse market effects affecting competition;
 - Use of "least restrictive" regulations concerning market effects;
 - Authority of AG to reject agency non-compliant rules and investigate complaints.
- Possible voluntary process of AG review from agencies? Review by AG representative on agency counsel certification?
- Does an umbrella agency such as TDLR meet "active supervision" of advisory boards?

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