

# Administrative Regulation and Sunset Review

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Antonio "Tony" Cobos

Sharp & Cobos, L.L.P.

## 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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