Preserving and Promoting Professional Certification
Monday, March 28, 2022

Moderated by:
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Kristen Cloutier

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Women In Government Board of Directors

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Preserving and Promoting Professional Certification
#StrongEconomies
▪ Please use the Chat Box in the Zoom Toolbar to ask questions after the presentation!

▪ When introducing yourself in the Chat Box, be sure to include your state!

▪ For optimized viewing of this program, click ‘speaker view’ or ‘side by side.’

▪ Please take a moment to introduce yourself in the Chat Box.
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Preserving and Promoting Professional Certification
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Maine State Representative
Kristen Cloutier
About Professional Certification

Key Elements

• Voluntary
• Granted by non-governmental organizations
• Reflect established standards defined by subject matter experts
• Credentials require establishing necessary qualifications and adhering to conduct codes

Key Benefits

• Promotes competition and informed choice
• Enables the public to distinguish between qualified and unqualified professionals
• Prospective professionals can identify necessary skills and demonstrate mastery
Enforcement Function of State Regulators

- Some **licensure requirements incorporate private certification competency standards**
- **Competency standards protect the public** — standards defined by subject matter experts
- **Content** of standards best established by non-governmental professional certification program
- **Enforcement** of standards more effective by the licensing agency
Certifications and Licensure Promote Opportunity

• According to a 2017 Working Paper from the Human Capital and Economic Opportunity Global Working Group of the University of Chicago, both certification and occupational licensure reduce the racial wage gap among men by 43% and the gender wage gap between women and white men by 36%-40%.
PCC State Legislative and Regulatory Monitoring

In the 2020-2021 fiscal year, the PCC analyzed and tracked more than 140 bills introduced in more than 43 states.

- States that introduced bills on the PCC’s watchlist.
- States with no watchlist bills in the 2020-2021 fiscal year.
Key Areas of Concern

Legislation that restricts the authority of licensing boards and certification organizations to enforce eligibility and conduct standards or to uphold profession-specific values.

1. Universal/Reciprocal Licensure
2. Occupational Licensing Reform
3. Ex-Offender Reentry Legislation
4. Clean Slate Legislation
5. Barring Discipline for Violating Professional Values
Universal/Reciprocal Licensure Principles

1. **Profession-specific action** rather than automatic, sweeping recognition.
2. Permit reciprocity only if substantial similarity between requirements, knowledge, and scope of practice.
4. Any **alternative pathways** must reflect substantially equivalent education, training, exam, credential, and experience requirements, not just work experience.
5. Consider residency requirements.
Occupational Licensing Reform Principles

- Private certification organizations have First Amendment right to define and enforce their own standards.
- Ensure **balanced standards** for determining whether an occupational licensing regime for a certain field should be maintained or adopted.
- Recognize that the **public expects licensure laws to set a higher bar** than protecting against gross negligence and injury.
- Avoid **title restrictions** ("certified" or "registered") for earned non-governmental credentials.
Ex-Offender Reentry Legislation Principles

• Conduct requirements often overlap with legal requirements.

• Restricting consideration of criminal convictions based solely on whether they are felonies or misdemeanors disregards that the underlying conduct may be the same.

• Where private certification is a condition of licensure, reflects judgment that the standards established by the credentialing organization are necessary to protect the public.

• To protect the public from unacceptable risks, some criminal convictions permanently and automatically disqualify offenders from holding certain professional certifications.
“Clean Slate” case study: CT Public Act No. 21-32

- **Automatic erasure** of criminal conviction history for individuals with certain criminal convictions — based **only** on the passage of time
  - 7 years after most recent conviction for a misdemeanor
  - 10 years after most recent conviction for certain class D or E felonies, or unclassified felonies with prison terms of five years or less
- Only exceptions: family violence crimes, nonviolent sexual offenses, and sexually violent offenses
- Erasure even if pending charges for reoffending, but individual has not yet been convicted
- No evidence of rehabilitation required
“Clean Slate”: CT Public Act No. 21-32

• Added twist:

  Makes it a **discriminatory practice** for a membership association, board, or organization of regulated professionals “to refuse to accept a person as a member…solely on the basis of that person’s erased criminal history record information.”
“Clean Slate” Legislation: In General

• Arguments in favor:
  • Ex-offenders unnecessarily denied access to career paths
  • Criminal conviction history stigma disproportionately affects POC and economically disadvantaged
  • Access/fairness concerns about individualized approach
• Bipartisan interest in removing barriers to opportunities for ex-offenders
“Clean Slate” Bills: Considerations

• Cookie-cutter approach to dissimilar professions and offenses
  • Places **blinders on licensure agencies** about potentially relevant conduct
  • **Fraud crimes/crimes of opportunity** may be relevant to many licensed professions
  • Example: **Medicaid fraud** – details of offense matter for **patient safety**

• One bad outcome could set back all ex-offender reentry laws
“Clean Slate” alternative approaches

- **Completion of sentence**, not date of conviction, starts clock for automatic erasure/sealing based on passage of time.
- Delay of automatic erasure/sealing if **pending charges**.
- Broaden categories of offenses excluded from automatic erasure.
- Allow licensing agencies to consider sealed/erased records of offenses that would violate licensee conduct standards
  - Maine LD 1465; bar on considering convictions after 3 years, unless conduct is otherwise a ground for disciplinary action against a licensee
Misinformation, Professionalism, and Professional Self-Regulation

Tom Granatir
American Board of Medical Specialties
Senior Vice President, Policy and External Affairs
ABMS Member Boards

24 Independent Member Boards | 40 Specialties | 88 Subspecialties
Over 950,000 Board-Certified Physicians | Over 650,000 in Continuing Certification

1933 Founding Member Boards:
American Board of Dermatology
American Board of Obstetrics and Gynecology
American Board of Ophthalmology
American Board of Otolaryngology – Head and Neck Surgery

1935 American Board of Orthopaedic Surgery
American Board of Pediatrics
American Board of Psychiatry and Neurology
American Board of Radiology
American Board of Urology

1936 American Board of Internal Medicine
American Board of Pathology

1937 American Board of Surgery

1940 American Board of Neurological Surgery
1941 American Board of Anesthesiology
American Board of Plastic Surgery

1947 American Board of Physical Medicine and Rehabilitation

1949 American Board of Colon and Rectal Surgery
American Board of Preventive Medicine

1969 American Board of Family Medicine

1971 American Board of Allergy and Immunology
American Board of Nuclear Medicine
American Board of Thoracic Surgery

1979 American Board of Emergency Medicine

1991 American Board of Medical Genetics and Genomics

MARCH 28, 2022
Medical training, licensure, and certification

US Medical school (UME) | Foreign Medical School (IMG)
ECFMG Certification

ACGME Accredited Residency
US Medical Licensing Exam
Licensure – undifferentiated by specialty
Certification in Specialty and subspecialty
Continuing Certification
Continuing Medical Education
ABMS-ACGME Core Competencies

- Medical Knowledge
- Patient Care and Procedural Skill
- Interpersonal Communication
- Practice-based Learning and Improvement
- Systems-based Practice
- Professionalism
Specialty Board Certification

INITIAL CERTIFICATION
ACGME-accredited training
Assessment of knowledge and clinical skills
Other forms of assessment
• Objective Structured Clinical Examination
• Chart review
• Peer assessment
• Oral Examination

Professionalism & professional standing

CONTINUING CERTIFICATION
Learning and Self-Assessment
Assessment of Knowledge and Clinical Skills
Improvement in Health and Health Care
Professionalism & Professional Standing
Professional misconduct

Breaching norms of professional conduct that

• Pose a risk to patient safety
  Harm or the potential to harm patients or the public

• Undermine trust

  *To certification* – demonstrating the knowledge, professionalism and clinical judgment to practice safely as a specialty physician

  *To the profession* – questions of personal or professional ethics
AMA Code of Medical Ethics - Opinion 8.12

Ethical responsibility when speaking publicly as a physician

Speak truthfully

Represent the science faithfully

Acknowledge debate where it exists, and the limits of what is known

Recognize the limits of one’s personal knowledge and experience

Be honest about recommendations that are not consistent with standard care and explain why non-standard care is being recommended
Identifying Potential Misconduct

<table>
<thead>
<tr>
<th>Type of Misinformation</th>
<th>Ethical or Professional Misconduct</th>
<th>Relevance to Certification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pseudoscience</td>
<td>Spreading information that is unscientific or based on fraudulent or false data</td>
<td>Calls into question clinical competence</td>
</tr>
<tr>
<td>Outdated science</td>
<td>Spreading information that has been disproved</td>
<td>Calls into question whether the clinician is up to date</td>
</tr>
<tr>
<td>Misapplication of science</td>
<td>Making recommendations for treatment that is scientifically valid but not appropriate to the clinical context</td>
<td>Calls into question clinical judgment</td>
</tr>
<tr>
<td>Debatable science</td>
<td>Failure to acknowledge that science is unclear or state of the science</td>
<td>Potentially misleading and ethically questionable</td>
</tr>
<tr>
<td>Public recommendation of nonstandard treatment</td>
<td>Innovation that is not supported by sound scientific data or reasoning or that is recommended unprofessionally or unethically</td>
<td>Unethical or unprofessional testing or dissemination of clinical innovation</td>
</tr>
</tbody>
</table>
State Legislation – Misinformation/Board Restriction

Legislation in 28 states
23 mention licensure
FSMB - Legislative Limits on authority to investigate harm

FSMB OPPOSES LEGISLATIVE EFFORTS TO LIMIT STATE MEDICAL BOARDS’ AUTHORITY TO INVESTIGATE PATIENT HARM

State medical boards protect patients by investigating complaints, evaluating the standard of care and taking disciplinary action when appropriate. The FSMB opposes legislation intended to limit a board’s ability to conduct this important work as it sets a dangerous precedent and puts the public at risk. State legislatures are encouraged to work with their state medical boards to uphold existing statutory authority to respond to complaints about the quality of care provided and take disciplinary action against physicians when necessary to protect the public.
Implications and Open Questions

• While targeted to state medical boards, certification is grounded by medical licensure and therefore directly affected by constraints on it.
• Threatens to undermine the system of professional self-regulation, board autonomy, and “social contract” with medicine
• Public professional speech, civic speech, practice choices by individual physicians for individual patients are different issues.
• Ethical and professional norms convey not only what a physician may do but the manner in which they do it.
Questions?

For more information, please email info@profcertcoalition.org or visit www.profcertcoalition.org.
Join Women In Government for an Upcoming #ResilientCommunities Webinar:

Thursday, April 21st at 2:00 pm ET:

Meeting Kids Where They Are: Preventing Child Abuse
#ResilientCommunities