

Health Care Practitioner Regulation in Florida and Other States

Presentation to the Senate Committee on Health Policy

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OPPAGA

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Project Scope and Methodology

- As directed by the Legislature, OPPAGA examined
 - Health care practitioner regulation and licensure in Florida and other states
 - Best practices to address licensure barriers
 - Alternatives to Florida's approach to health care board oversight

Methodology

**Information
and Data
Requests**

**State Statutory
Analyses**

**Assessment of
Stakeholder
Perspectives**

**Literature
Review**

Occupational Licensure



Occupational licensing has several benefits, but requirements may pose barriers to entering a profession

Benefits

- Safeguards the public
- Allows consumers to distinguish low-quality from high-quality practitioners
- Allows practitioners to achieve greater professionalization, legitimacy, and pay

Drawbacks

- Licensing requirements such as examination, continuing education, and licensure and renewal fees may pose barriers to entering a profession
- State-specific licensing requirements may reduce geographic mobility, which can disproportionately affect certain populations such as active-duty military service families

Regulating and Licensing Occupations



Multiple entities collaborate to regulate and license occupations

State legislatures establish occupational licensing laws and regulations



State agencies and boards establish rules about licensing requirements and perform licensing functions



Administration

- Setting and collecting examination, licensing, and other fees
- Managing boards' budgets

Licensure and Professional Practice

- Determining standards for licensing, relicensing, continuing education, and professional practice
- Administering licensure examinations
- Reviewing license applications and issuing licenses and renewals
- Investigating complaints and disciplining licensees

Occupational Licensing Best Practices



Research suggests best practices for reducing barriers and complying with anti-trust laws

Best practices for reducing barriers to entering a profession and allowing geographic mobility

- Promoting licensure reciprocity across states
- Aligning licensing requirements among states

Best practices for complying with federal anti-trust laws

- Appointing non-practitioners to boards
- Strengthening state supervision of boards



Supreme Court Case

- In 2010, the U.S. Federal Trade Commission brought an anti-trust complaint against the North Carolina Board of Dental Examiners for notifying non-dentists and their suppliers that only licensed dentists could whiten teeth.
- In 2015, the U.S. Supreme Court ruled that because a controlling number of the board's decision makers are active participants in the occupation that the board regulates, the board was treated as a private entity and its actions were anti-competitive and in violation of federal anti-trust laws.

Health Care Practitioners Are Subject to Occupational Licensure



Health care boards are involved in the regulation and licensure of health care occupations

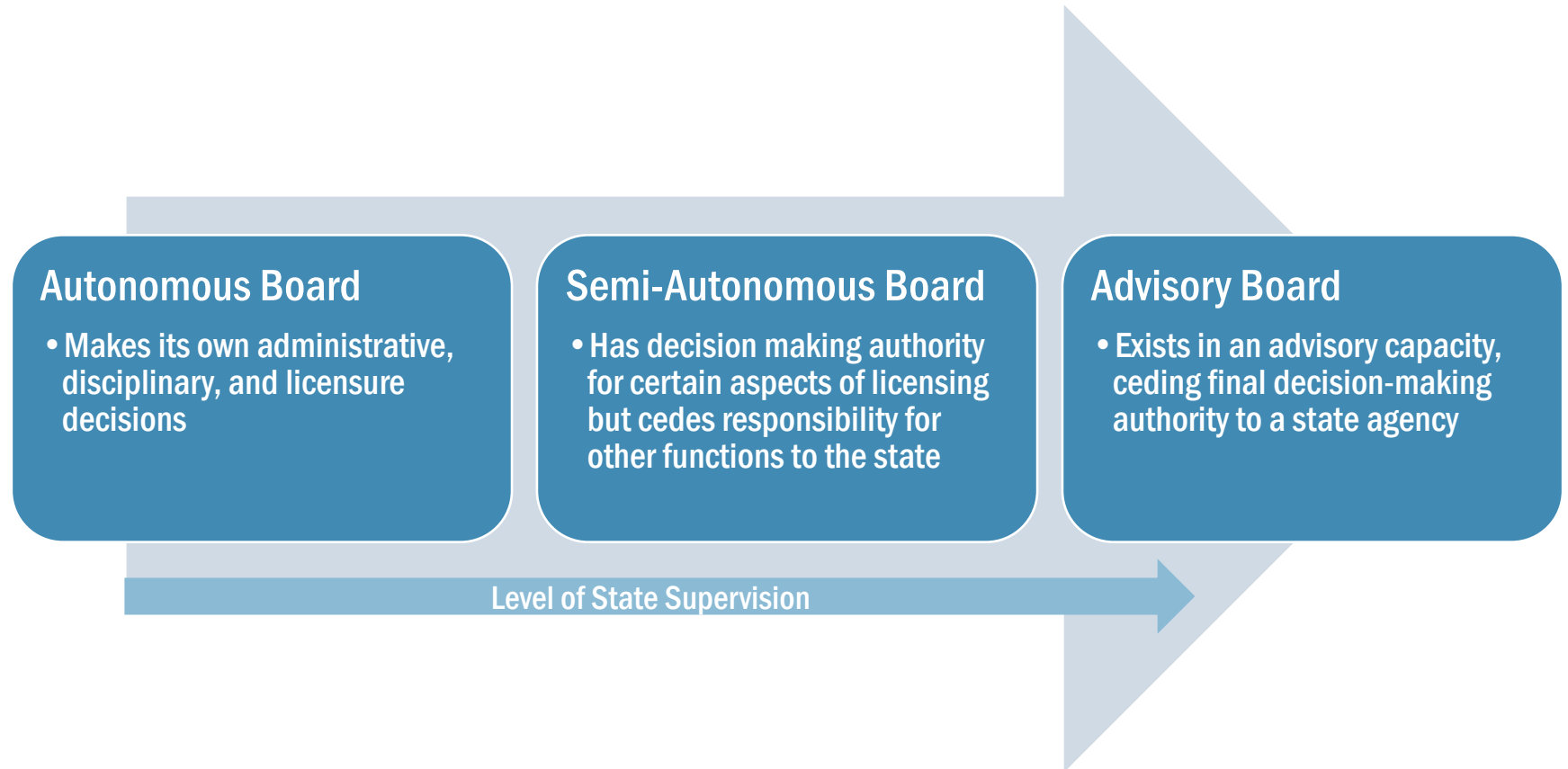
Health care boards are in all states and are charged with regulating and licensing health care professions, though functions vary by state. Boards are typically composed of volunteer members of the regulated profession and lay members.



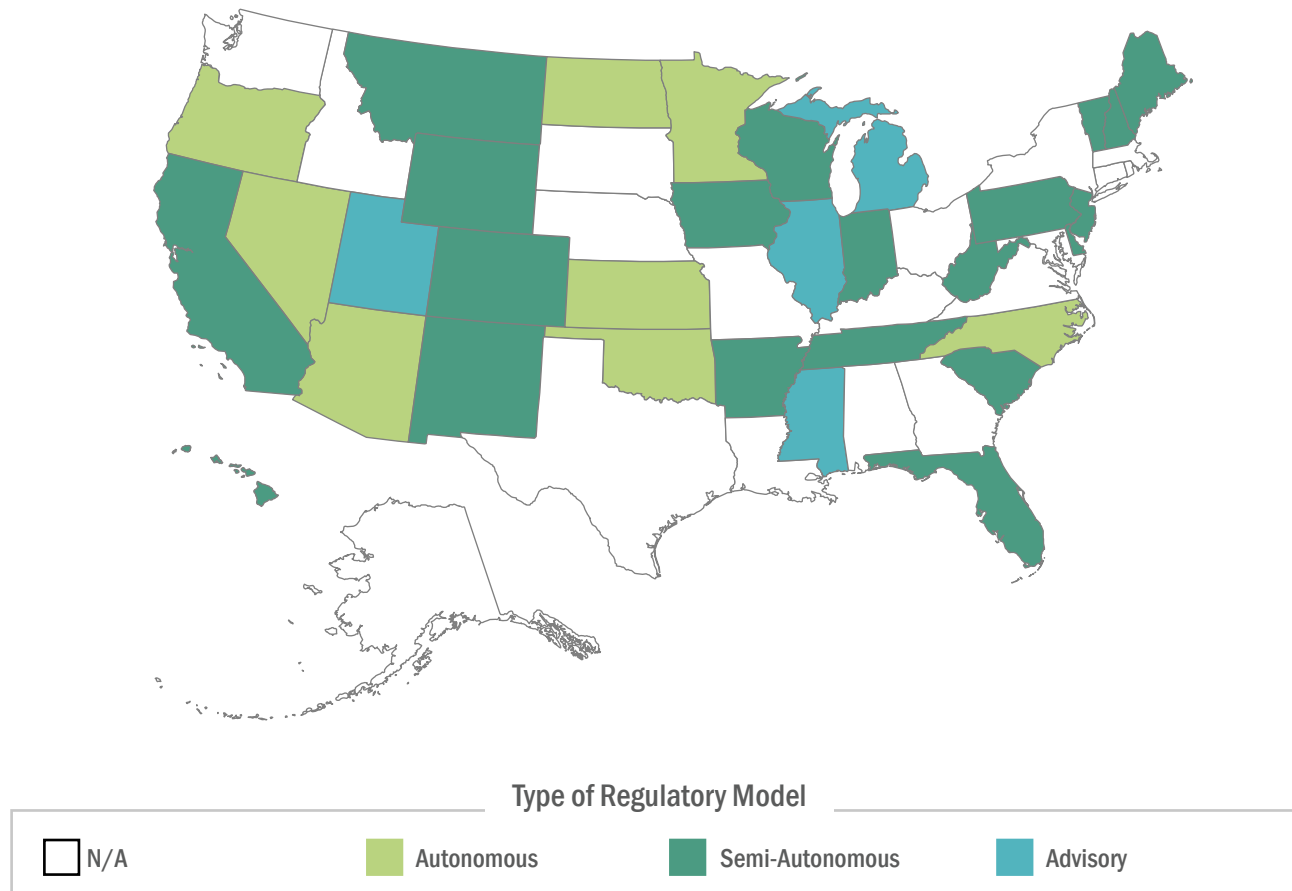
In Florida, the Department of Health (DOH) is responsible for licensing and regulating more than 40 health care professions and provides administrative support for 22 professional boards including the boards of

- Medicine
- Osteopathic Medicine
- Nursing

Health Care Board Regulatory Autonomy Varies by State; Florida Has Semi-Autonomous Boards



Among States That Use Only One Regulatory Model, the Most Commonly Reported Was Semi-Autonomous



Source: OPPAGA analysis of Council on Licensure, Enforcement, and Regulation self-reported survey data.

Florida Health Care Boards Share Licensing Responsibilities With DOH

Licensing Responsibilities



DOH and Boards both have rulemaking authority, depending on the implementing statute



DOH conducts administrative review of applications for licensure

Boards certify that licensees meet licensure requirements

DOH issues licenses



DOH investigates complaints

Boards discipline practitioners

Alternatives to Florida's Health Care Board Oversight: Other State Examples

Some States Supervise Boards Using the Advisory Regulatory Model



In Florida, boards are semi-autonomous and share responsibilities with the Department of Health.

Other States Use the Advisory Model

In advisory states, the legislature does not statutorily authorize health care boards to have independent decision-making authority. Instead, a state agency is typically authorized to create rules and conduct disciplinary hearings, though boards may advise state agencies in certain matters.



- The Illinois Medical Board advises the Department of Financial and Professional Regulation in several areas, including
 - changing rules related to practitioner regulation;
 - assisting the department in reviewing applications; and
 - conducting hearings related to disciplinary actions



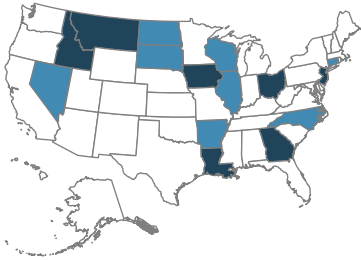
- In Utah, boards advise the regulatory department and retain several other functions, including
 - approving and establishing a passing score for applicant examinations; and
 - screening applicants for licensure.

States May Provide Board Oversight via Legislative Review of Proposed or Existing Rules



In Florida, s. 120.545, *Florida Statutes*, authorizes the Joint Administrative Procedures Committee (JAPC) to examine proposed rules. However, the relevant state agency or board is not required to modify, amend, withdraw, or repeal the rule if JAPC objects.

Other States



15 states authorize legislative entities to reject or invalidate proposed or existing rules, using either a two-house veto or committee veto.

Two-House Veto

A rule can be rejected or modified by majority vote of the whole legislature.

Committee Veto

The committee itself can reject or modify a rule.

Other Methods of Board Oversight Include Processes for Halting Board Actions and Removing Board Members

Florida

Halting Board Actions

Florida law provides the State Surgeon General standing to challenge any health care board rule or proposed rule to the Division of Administrative Hearings.

Removing Board Members

The Governor can suspend from office any board member for malfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.



Other States



The Vermont Director of the Office of Professional Regulation monitors board actions and can halt board actions and implement alternative actions.



In Illinois, the secretary of the department that oversees health care practitioner licensing can remove any member of the board of nursing.



In Utah, the director of professional licensing may remove a board member.

Some States Require Legislative Appropriation of Board Funds, While Some Boards Have Direct Access to Funds



Typically, states' health care boards are funded through fees from practitioner licenses and fines.

Type of Board Funding	
Florida	
Legislative appropriation of fees and fines	<ul style="list-style-type: none">Legislative appropriation through the Medical Quality Assurance Trust fund, funded through board fees and fines.
Other States	
Direct access to fees and fines revenue	<ul style="list-style-type: none">Boards of health charge fees for licensing and can discipline practitioners through imposing fines. Boards deposit these revenues into banks outside state treasuries and access them directly. (Alabama and Nevada)
Legislative appropriation from state general funds	<ul style="list-style-type: none">Legislature allocates health care boards general revenue funds for expenditures in addition to trust funds comprised of practitioner-related fees. (Massachusetts)

State Statute Determines Board Composition, Which Varies by State

Practitioner Specialty

- **Florida** statute does not require some boards to have members with certain subfields or specialties.
- The Illinois Medical Board requires members with subspecialties.

Geographic Location

- **Florida** statute does not have requirements related to appointment of board members based on location.
- Alabama requires board membership to reflect the geographic and urban/rural composition of the state.
- Minnesota allots no more than one member per congressional district.

Inclusion of Lay Members

- In **Florida**, the Governor must appoint one or more non-practitioners to health care boards, but there are no requirements for lay members characteristics.
- South Carolina, Louisiana, and Nebraska impose lay member requirements.

Governors or State Entities Appoint Board Members; Practitioners or The Board Also Elect Board Members



In Florida, the Governor selects and appoints health care board members, who are then confirmed by the Senate.

Other States

State agency head appointment	Heads of agencies that oversee health care boards appoint board members (Illinois, New York—Board of Nursing, and Utah)
Governor appointment with recommendations from professional associations	Professional associations make recommendations. Statute may specify which professional associations submit lists of practitioners to the governor; in some cases, governor must select from list (Kansas, Minnesota, and New York—State Board of Professional Medical Conduct)
Executive and legislative appointment	Governor, lieutenant governor, and speaker of the house of representatives appoint board members (Alabama—Medical Licensure Commission)
Board election	Board conducts an election among licensed practitioners to nominate some or all board members (Alabama—Board of Medical Examiners and South Carolina)
Governor and board appointment	Governor appoints members to an oversight board and that board appoints members of all boards (Nebraska)

State Statutes May Dictate Term Limits for Board Members



In Florida, members of the boards of Medicine, Osteopathic Medicine, and Nursing serve four-year terms until the Governor appoints a successor; statute does not limit the number of terms members can serve.

Other States

Term number

Dictate the number of terms a board member may serve. (Illinois, Minnesota, Nebraska)

Term sequence

Specify whether terms can be consecutive. For example, members of the Illinois Medical Board, Kansas Board of Nursing, Nebraska Board of Health, and Utah Board of Medical Practice may only serve two consecutive terms.

Member vacancies

Clarify the number of additional terms a replacement board member can serve after filling a vacancy. For example, replacements may serve the remainder of an unexpired term (Kansas Board of Nursing, Nebraska State Board of Health, and Illinois Board of Medicine) or one additional term after the replacement term (Utah health care licensing boards).

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