

General Government Boards Reorganization Talking Points

Background:

- A restructuring is necessitated by a 2015 U.S. Supreme Court ruling in *N.C. Dental Board v. Federal Trade Commission*.
 - The N.C. Dental Board sent cease and desist letters to non-dentists that were providing teeth whitening services.
 - The ruling found that the board's actions were anti-competitive and that board members were subject to liability because the board was not actively supervised by the state.
 - As a result, boards comprised of market-based participants must be supervised by the state for board members to enjoy individual anti-trust immunity.
- If your licensing board has a market-based participant (i.e. someone that holds an active license in the field in which the board regulates) and is not actively supervised by the state, then board members can be held personally liable for board decisions.
- Kentucky is one of several states that will be changing the structure of licensing boards to comply with the Supreme Court decision.

Structure:

- State licensing boards will largely maintain their individual identity. Similar boards will, however, be grouped together in an authority for purposes of government oversight, personnel staffing, and administrative support. The oversight will primarily come from an Executive Director that will provide active state supervision to each licensing board through management, oversight, and administrative assistance.
- The Executive Director will be hired by the Public Protection Cabinet.
- Individual licensing boards will be housed within the Department of Professional Licensing under the Public Protection Cabinet.
- Each licensing board will continue to regulate and license their respective profession with oversight from the Executive Director and the Commissioner of the Department of Professional Licensing.
- With very limited exceptions, each licensing board will have five members.
- Board appointments will be made through the Boards and Commissions process, and stakeholder groups and associations will have the opportunity to submit recommendations, through Boards and Commissions, for the Governor's consideration.

Process:

- Each individual licensing board will have the authority to:
 - **Grant licenses**
 - Licensing appeals will be sent to the Executive Director of the oversight board.
 - **Recommend regulatory changes**
 - Regulatory changes will be recommended by the individual licensing boards and sent to the Executive Director. The Executive Director will review the proposed regulatory changes and either approve or send back to the board with suggested revisions.
 - **Initiate disciplinary actions**
 - Individual licensing boards may initiate disciplinary actions against licensees. Disciplinary appeals will be handled by the Executive Director.
- The Executive Director will have final approval on licensing appeals, regulatory changes, and disciplinary appeals.

Services:

- Each authority will be assigned a general counsel to provide legal services for member licensing boards.
- The licensing board will create a budget that is subject to the approval of the Executive Director.