

## STATE LICENSURE IN SLP AND AUDIOLOGY:

IMPORTANT THEN, STILL IMPORTANT TODAY

ASHA CONVENTION  
NOVEMBER 11, 2017

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## DISCLOSURES

Financial: There are no financial disclosures.

Non-Financial: All presenters are members of the Board of Directors of the National Council of State Boards of Examiners for Speech Language Pathology and Audiology (NCSB).

- Alison Lemke is currently the President of NCSB and member of the ASHA Committee on Leadership Cultivation. She is a past member of the ASHA Board of Directors, a past Iowa state association president, a past Iowa licensure board member and Vice Chair.
- Tracy Grammer is a member of the ASHA Board of Ethics and an ASHA SLP Advisory Council member, a past Chair of the Oklahoma licensure board, a past Oklahoma state association president, and a past President of the Oklahoma Academy of Medical SLPs.
- Amy Goldman is the Secretary of NCSB, a current Pennsylvania licensure board member, and a past Pennsylvania state association president.
- Dr. Kerri Phillips is a member of the ASHA Continuing Education Board, a past president of NCSB, and a past Louisiana licensure board member.
- Vickie Pullins is currently President-Elect of NCSB, on the West Virginia licensure board, and is Vice President of the West Virginia Speech Language Hearing Association.

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## WHAT IS NCSB? NATIONAL COUNCIL OF STATE BOARDS OF EXAMINERS FOR SLP AND AUDIOLOGY

- Mission: to promote consumer protection by supporting regulatory boards in fulfilling statutory, professional, and ethical obligations.
- Vision: to be the preeminent resource regarding licensure for the professions of speech-language pathology and audiology.

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### WHAT IS NCSB?

- NCSB purposes:
  - Annual conference for networking, dialogue, and information about licensure in SLP and Audiology.
  - To assist stakeholders to be well informed regarding SLP and Audiology licensure issues.
  - To advocate for consumer protection and access to quality services.
  - Engage licensing boards, their administrators, and members in discussions of relevance to the regulation of the professions through conference, website, Facebook, and other means.
  - Offer training for new state licensure board members who may be unfamiliar with the work that licensure boards do.

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### NCSB ANNUAL CONFERENCE

- Recent Annual Conference: New Orleans, Louisiana- September 14-16, 2017
- 2018 Conference: Vienna, Virginia- October 4-6, 2018 (11 miles west of Washington, D.C.)
- Topics:
  - Licensure Portability and Compacts
  - Threats to licensure across the nation
  - Issues in supervision and regulation
  - Ethics of Social Media
  - Top regulatory cases for 2017

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### NCSB POSITION STATEMENTS

- <http://www.ncsb.info/position-statements>

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### 2017 ASHA CONVENTION NCSB POSTER

- Saturday, November 11, 2017 – 8:00-9:30 a.m.  
Session Number 7636 Poster # 162

Professional Licensure: Prerequisite for Portability and Public Protection  
(contact us for a copy if you missed it!)

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### WHAT IS NCSB?

- Membership:
  - Licensing Boards- boards responsible for regulation/licensing in the professions.
  - Related organizations- associate membership for groups that have interests related to CSD.
  - Individual- for those who have been a member or officer of a state board and have continued interest. Membership is available for just \$35.
  - Related individuals- associate membership for individuals who have been part of a group that has interests related to CSD.

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- What is licensure? Professional licensure-
  - Establishes minimal qualifications for entry to the practice of a profession in a state.
  - Establishes rules for continuation, or renewal, of a license, usually certain professional continuing education requirements.
  - Provides a mechanism for consumer complaint, and a disciplinary process and sanctions for professionals for unprofessional, unethical, and/or fraudulent practice.

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- The first medical profession to be licensed in the U.S. was, of course, physicians. Prior to this, "...anyone who had the inclination to set himself up as a physician could do so, the exigencies of the market alone determining who would prove successful in the field..."  
Ronald Hanaway, Dept. of History, University of Alberta  
 "The Early Development of Medical Licensing Laws in the United States, 1875-1900"

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- Hanaway's quote contains the central controversial arguments related to licensure that still exist today:
  - Consumer protection: should anyone "who has an inclination to" be allowed to practice as a physician (or other health care professional); or, are there legitimate concerns regarding health, safety, and quality of care?
  - Economic protectionism: do licensure laws unnecessarily provide 'economic protection' for those who are licensed in a given field?

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- SLP and Audiology Licensure as Consumer Protection
  - 1<sup>st</sup> state to license: Florida, 1969
  - Much activity related to enacting licensure in states in 1970's. Coincided with upgrade of education level to Master's Degree.
  - Last state to enact licensure: South Dakota, 2012 (SLP)
  - In Iowa, achievement of licensure for SLP and Audiology was seen as recognition of the professions. There was little opposition, and anti-regulation sentiment was not present. (Dr. Charles Anderson, personal communication, 2017).

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- **Licensure as Economic Protection**
  - Kleiner and Kruger (2013). Study suggests that licensing an occupation at the state level is associated with a 17% increase in earnings by members of the occupation. They stated that specific license regulations can have good, bad, or mixed competition effects, depending on the circumstances. Also said that license burdens may discourage innovation and entrepreneurship, and may severely impede the flow of labor or services to where they are most in demand, potentially reducing consumer access to valued services.
  - "People of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices." – Adam Smith in *The Wealth of Nations*, 1776

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- American Medical Association (AMA) established in 1847 in Philadelphia, PA.
- Members had concerns about quality of education and care, but also about "a proliferation of medical personnel... (and the)... growth of heterodox theories arising in opposition to standard therapeutics."

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- 1867- At the annual meeting in Cincinnati, the AMA endorsed a resolution urging "upon the members of the profession in different States to use all their influence in securing such immediate and positive legislation as will require all persons, whether graduates or not, desiring to practice medicine to be examined by a State Board of Medical Examiners, in order to be licensed for that purpose..."

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- By 1890:
  - 42 States in the U.S.
  - Most had licensure of physicians, but 28 states and territories had "registration" laws only.
  - "Much disappointment has been expressed by physicians... at the operation of the Registration act, it being claimed that the practical result is that, instead of elevating the profession above irregulars and charlatans, it has degraded the regular practitioner to the level of anyone who can register under the act, however unworthy he may be...."
  - Licensure laws eventually replaced registration in all states, in which passing of an examination was required, with the power to revoke licenses for "dishonorable" or unprofessional conduct.

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

- Early pre-eminence of the AMA in the establishment of professional licensure also, for some, conferred upon the AMA the presumed authority to regulate other health professions as they were developed:
- In 2000's: AMA challenges to physician supervision requirements for Advanced Practice Registered Nurses (APRNs).
- 2017: Iowa de-licensure proposal put registration of SLPs and Audiologists under the Iowa Board of Medicine, and this was supported by 1-2 independent physician's organizations in the state.

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### HISTORY OF PROFESSIONAL LICENSURE IN THE U.S.

#### Supreme Court decisions upholding licensure:

- 1889 Supreme Court unanimous decision upholding West Virginia's refusal to grant a license to a physician applicant.
- 1903 Supreme Court decision upheld Michigan's physician's practice act.
- 1910 Supreme Court decision, Justice William Day, "It is too well settled to require discussion at this day that the police power of states extends to the regulation of certain trades and callings, particularly those which closely concern public health."
- These decisions established the right of individual states to regulate the practice of professions within the state.

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RECENT CONCERNS ABOUT AND CHALLENGES TO LICENSURE

- 2016: "New Steps to Reduce Unnecessary Occupation Licenses that are Limiting Worker Mobility and Reducing Wages"- *White House Press Release*
  - Nearly one quarter of all U.S. workers need a government license to do their job.
  - Acknowledges that licensing can offer important health and safety protections to consumers.
  - Says that the current system often requires unnecessary training, lengthy delays, or high fees.
  - Says that the current system can create higher costs for consumers.

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RECENT CONCERNS ABOUT AND CHALLENGES TO LICENSURE

- White House recommendations for best practices for state licensure reform:
  - Design and implement approaches that enhance the portability of licenses across states and reduce overly burdensome licensing restrictions in general.
  - Reduce prevalence of unnecessary and overly broad occupational licenses (ex: florists, interior designers, plumbers).
  - Expand reciprocity and harmonize licensing requirements to increase worker's mobility across state lines.
  - Streamline licensing for military services members, veterans, and their families.
  - Facilitate credentialing and licensure for skilled immigrants.
  - Limit licensing exclusions for individuals with criminal records to offenses that are relevant and recent.

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RECENT CONCERNS ABOUT AND CHALLENGES TO LICENSURE

- 2014: "Prepared Statement of the Federal Trade Commission (FTC) on Competition and the Potential Costs and Benefits of Professional Licensure before the Committee on Small Business, United States House of Representatives"
  - Occupational licensure can offer important benefits: consumer protection from health and safety risks, supports valuable public policy goals, BUT:
    - Benefits may not be sufficient to justify the harm it can do to competition and mobility in the workforce.
  - Occupational regulation can be especially problematic when regulatory authority is delegated to a nominally "independent" board comprised only of members of the occupation it regulates. Such boards ... "can become protectionist of current industry incumbents."
  - FTC intends to use a combination of advocacy and enforcement tools to promote competition among professionals.

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RECENT CONCERNS ABOUT AND CHALLENGES TO LICENSURE

- FTC actions:
  - Respond to calls for public comment and invitations from legislators and regulators to identify and analyze specific legislative restrictions that may harm competition.
  - Encourage policy makers to integrate competitive concerns into their decision-making, so as not to impose unnecessary restrictions on competition.
  - Use enforcement authority to challenge anticompetitive behavior by regulators. FTC has authorized civil challenges to boards comprised of 'self-interested' competitors, as in *North Carolina State Board of Dental Examiners Case, 2013*, which was upheld by the Supreme Court.

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RECENT CONCERNS ABOUT AND CHALLENGES TO LICENSURE

- FTC does say that, "Licensure regulations may serve an especially important function in health care, where consumers might face serious risks if they were treated by unqualified individuals, and patients might find it difficult (if not impossible) to adequately assess quality of care at time of delivery."

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"DOWNSTREAM EFFECTS" OF FEDERAL LICENSURE CHALLENGES

- Challenges to state licensure for SLP and Audiology have occurred sporadically over the years.
- Significant increase in challenges to licensure in our professions in 2016-2017.

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### "DOWNSTREAM EFFECTS" OF FEDERAL LICENSURE CHALLENGES

- Issues related to increasing challenges to SLP and Audiology licensure in the states:
  - Overgeneralization of licensure concerns by state legislators and policy makers who are not aware of or do not understand the nuances of the discussions.
  - Legislators and policy makers relatively or completely unaware of the professions of SLP and Audiology, including Scopes of Practice, extent of education and training, as well as health, safety, and quality effects of unqualified practice.
  - Politicization of issues of deregulation in states, with national involvement (for example, The ERISA Industry Committee-ERIC).
  - Appropriateness of licensure board changes need to be carefully considered at the state and national levels.

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### "DOWNSTREAM EFFECTS" OF FEDERAL LICENSURE CHALLENGES

- Challenges to SLP and Audiology licensure in 2017:
  - Iowa: de-licensure, change to Registration under the Iowa Board of Medicine, involvement of ERIC in state policy discussions.
  - Texas: de-licensure, board consolidation.
  - Kentucky: board consolidation.
  - Ohio: Governor's Office of Workforce Transformation proposed to consolidate several licensure boards, with 4 or 5 professions on one board. Later modified to SLP, Audiology, and Hearing Aid Dealers.

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### LICENSE PORTABILITY AS A RESPONSE

#### What is Licensure Portability?

- Arrangement for health professionals to practice in states other than the 'home state' in which they are licensed.

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### LICENSE PORTABILITY AS A RESPONSE

- Benefits of License Portability:
  - Improves consumer access to health care through tele practice and/or in person practice.
  - Expedites mobility of health professionals in order to address workforce needs and alleviate shortages.
  - Improves the efficiency of the licensing system in the U.S.
  - Reduces duplicative processes and fees for professionals who practice in multiple states.
  - Clients and providers benefit from time efficiencies and reduced travel.
  - Increased client compliance, motivation, and therapeutic outcomes.

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### LICENSE PORTABILITY AS A RESPONSE

- Concerns about License Portability:
  - Significant variability among states regarding requirements for licensing, renewal, CE, and disciplinary sanctions.
  - Difficulty negotiating uniform policies and processes.
  - Complexities of implementing agreements within state government systems that are short of resources.
  - Possibility that practitioners who are suspended/banned in one state could go to a different state and practice without being detected within a large, complex system.
  - Service quality concerns, depending upon activities being done.
  - Federal government entities may view it differently, depending upon the administration: A means of increasing access to and expanding services across state lines, or/ itself a form of anti-competitive action through the establishment of multi-state agreements.

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### LICENSE PORTABILITY AS A RESPONSE

- NCSB Response
  - NCSB has officially supported tele practice across state borders for many years.
  - Consumer protection concerns- will consumers be adequately protected and quality ensured.
  - Actively engaged in discussions and evolution of issues regarding license portability.

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### LICENSE PORTABILITY AS A RESPONSE

- Models of License Portability:
  - Reciprocity/Mutual Recognition:** Adopted on a state-by-state basis. Licensing authorities voluntarily enter into an agreement to legally accept, in some form, the policies and processes of a licensee's home state.  
Nurse, PT, physicians license compacts are mutual recognition models.  
PT: the FTLC- 4 originators (AZ, MO, OR, TN) passed legislation in 2016. As of April, 2017, these states were joined by WA, MT, UT, ND, TX, KY, MS, NC, NH.  
Nurses- the enhanced NLC- 34 states as of August, 2017.

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### LICENSE PORTABILITY AS A RESPONSE

- Other models of License Portability:
  - National Licensure:** Licensing criteria are set at the national level, but are administered by individual states. This involves relinquishing some state control over licensure criteria and would oblige states to negotiate a set of regulatory policies.
  - Federal Licensure:** Creates a single license for all SLPs and Audiologists, granted and administered by the Federal Government. Complexities of negotiating uniformity are similar to national license. Removes states from regulatory role, creating questions about legal authority- regulation of health and safety is traditionally a matter of state concern.

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### LICENSE PORTABILITY AS A RESPONSE

- Limited Licensure:** License granted by each state that is limited in scope to the practice of telehealth across state lines. Granted in addition to provider having at least one full license in 'home' state.
- Registration:** health professional licensed in one state informs board of another state that they intend to practice in that state part-time and/or for tele practice only. Provider agrees to operate under legal authority and jurisdiction of the state. Typically provider is not required to meet entrance requirements, but could be held accountable for professional conduct violations.

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### LICENSE PORTABILITY AS A RESPONSE

- Conclusions about Models:
  - There are advantages and disadvantages to various models.
  - Not all models would be acceptable. For example, Federal licensure would be unacceptable to many.
  - Licensure portability is moving forward, for example, the nurse, PT, and physician's compacts and registration for tele practice in Louisiana.

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### LICENSE PORTABILITY AS A RESPONSE

- NCSB is actively engaged in exploration of license portability with national partners including ASHA.
- NCSB advocates for high consideration of consumer protection.
- 2017 and 2018 NCSB conferences featured sessions on license portability and discussion by stakeholders from NCSB member/stakeholder states.

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### STATE READINESS FOR CHALLENGES TO LICENSURE

- Be sure your board has a structure that protects it from concerns about being self-protective, such as public members and integration into the state system for licensure boards.
- Be sure that you have a complete board, with all positions filled.
- Be sure your website clearly explains the role of licensing and has readily available, understandable information for consumers.
- Be sure that board members understand the role of licensure, particular responsibilities of members, and current developments regarding nature of challenges to state boards. Be educated and prepared to respond to challenges.
- Be sure that your state association and its members understand the role of licensure and current developments regarding nature of challenges to state boards. Is the board presenting and being available for questions at state conferences?
- Encourage and support strong state associations. Do they have a lobbyist? A member contact network that can be quickly activated? Good email and social media communications?

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**QUESTIONS AND DISCUSSION**

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**SOURCES**

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