

 Council on Licensure, Enforcement and Regulation

 **DENVER**
2009 Annual Conference
September 10 - 12

Global Service Provision and Implications for Regulators

Presenter: Dale Atkinson, Esq.

Promoting Regulatory Excellence


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Speaker

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- ASWB
- AAVSB
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- NABP
- JRCERT
- FARB
- NMTCB
- OTHERS.....



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Why are you here????

- Poll the audience
- Role as a regulator
- Topic
- What do you expect to get out of this session?
- Way more questions than answers

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Outline

- Mobility
- Legal Issues
- Relevant Cases from United States
- Examples of Solutions

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Mobility

- Increased mobility of professionals
- Practice vs. physical presence
- Importance of WELL DRAFTED LEGISLATION
- Defined Scope of practice
- Qualifications for licensure
- National vs. international.....

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Legal Issues

- Why do we license??
- Elements to licensure law??
 - Education
 - Experience
 - Examination
 - Good moral character
 - Others.....
- To what extent can a "state" board rely upon another licensing entity??

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Legal Issues

- **Most pressing legal issue:** *jurisdiction/legal authority of regulatory boards over unlicensed practitioners*
- **Other most pressing legal issue:** *choice of law*
- **Other most pressing legal issue:** *enforcement of administrative actions*

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Judicial Opinions

- Relevant cases.....

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Contract 9-2009

- **Farrell v. Whiteman, 2009 WL 198516 (ID 2009)** Supreme Court of Idaho vacated and remanded lower court and held that **contract for architectural services entered into for services related to Idaho project was unenforceable as architect was not licensed in Idaho, in spite of the fact that contracting architect was licensed during critical times during the project.** Court cited the public protection aspects of the practice act and that the **statute unambiguously requires licensure for any practice of architecture, not just during critical times.** While law will not provide judicial aid to parties to an illegal contract, the court remanded the matter to the lower court to determine if architect entitled to relief under public policy and unjust enrichment theories and vacated the award of attorneys fees. (architect, contract, unlicensed, enforceability)

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Education 33-2009

- Hampton University v. Accreditation Council for Pharmacy Education (ACPE), 2009 WL 1180875 (Dist. Ct. VA 2009)** Federal District Court denied request by university for injunctive relief related to placement of schools pharmacy program on probation for failure to meet accreditation standards, specifically related to quantitative faculty and staff. Program argued probation decision violated its common law due process rights, by, among other factors, failing to provide concrete number and/or ratios of students to faculty, limiting the time for conformance, treating the program differently from other programs, and failing to provide an appeal mechanism. **The court applying the test for injunctive relief, held that the public interest element weighed in favor of the accrediting body and the need for public protection was paramount and denied the school's request for removal from probation.** (pharmacy, accreditation, common law due process, probation) **NABP 6/2009**

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Education 44-2009

- Weismueller v. Kosobucki, 2009 WL 1956335 (App. Ct. 7th Circuit 2009)** Seventh Circuit Court of Appeals reversed District Court dismissal of class action challenging the "diploma privilege" which allows graduates of one of the two Wisconsin law school (one public and one private) to be granted the privilege of a law license in Wisconsin without passing the bar exam. The 7th Circuit held the record, based upon the dismissal upon motion, did not provide enough of a basis for review and that the lower court must address whether the Wisconsin law schools have a Wisconsin emphasized curriculum. The plaintiffs challenged the Wis Supreme Court rule under the commerce clause. (attorneys, license, exemption, bar exam, local school).

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Internet 8-2008

- Golob v. Arizona Medical Board, 2008 WL 308446 (App. Ct. AZ 2008)** Appellate Court affirmed the lower court's affirmation of the Board's order to **censure physician's license, place her on probation and impose fines related to her practice of prescribing drugs over the internet.** The Court agreed with the board's finding that no sufficient doctor-patient relationship existed to warrant such a practice, given that **the only contact doctor had with patients were their answers to medical questionnaires.** She therefore committed unprofessional conduct by deviating from the applicable standard of care and potentially exposing patients to harm. (physician, censure, internet prescriptions, unprofessional conduct)


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Internet/Location 29-2008


- Low Cost Pharmacy, Inc. v. Arizona State Board of Pharmacy, 2008 WL 2154793 (App. Ct. AZ 2008)** Appellate Court affirmed lower court which upheld board action **revoking a pharmacy permit pending a five year probationary term for filing prescriptions written by a physician based solely on internet questionnaires.** The pharmacy owner and prescribing physician worked for another company which promoted and facilitated the internet prescribing activities. The court **rejected arguments of the permit holder that the Arizona statutes were unconstitutionally vague, and that the laws were being selectively enforced.** The court also held that the board had **jurisdiction over the permit holder in spite of the fact that the drugs were not dispensed to Arizona patients.** The court also held that board properly considered the findings of the medical board (re the physician) and properly omitted testimony of the permit holder's expert re the application of Arizona law (limiting testimony to pharmacy practice). (pharmacy permit, internet, vague, expert witness)

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Examples of Programs




Association of Regulatory Boards of Optometry, Inc.

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Examples of Programs




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Examples of Programs




Association of
Social
Work
Boards

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Examples of Programs




FEDERATION OF CHIROPRACTIC LICENSING BOARDS
1926

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Examples of Programs




NAB National Association
of Long Term Care
Administrator Boards

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