



Mary Fallin
Governor

FILED

JUL 17 2015

OKLAHOMA SECRETARY
OF STATE

**EXECUTIVE DEPARTMENT
EXECUTIVE ORDER 2015-33**

I, Mary Fallin, Governor of the State of Oklahoma, pursuant to the power and authority vested in me by Section 2 of Article VI of the Oklahoma Constitution, hereby order all state boards who have a majority of members who are participants of markets that are directly or indirectly controlled by the board, to immediately implement and adopt the following procedures.

Attorney General Guidance

Attorney General Scott Pruitt issued a letter to this office on July 6, 2015, recommending reform of certain current practices by Oklahoma licensing boards, in light of the recent opinion of the United States Supreme Court in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*. The Attorney General advised that any state board that has a majority of its members who are participants of markets that are directly or indirectly controlled by the board would be subject to possible suit for violations of antitrust law. The Attorney General opined that Oklahoma must implement procedures for those boards with a majority of such members that demonstrate active supervision by the State by a politically accountable state actor who has the power to review, veto and modify board decisions.

Administrative Rules

The Attorney General has reviewed the rulemaking powers of such boards and concluded that sufficient statutory safeguards are currently in place to prevent exposure to possible suit for violations of antitrust or other anti-competitive laws. The *Oklahoma Administrative Procedures Act* and *Executive Order 2013-34* clearly establish procedures that demonstrate active supervision by the Governor and Legislature who are comprised of politically accountable actors. Both the Governor and the Legislature have the power to review, veto and modify board administrative rules.

Other Board Licensure or Prohibition Actions

The Attorney General has concluded that licensure or prohibition actions (other than rulemaking) have insufficient procedures to demonstrate active supervision of boards with a majority of members who are participants of markets that are directly or indirectly controlled by

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the board. The Attorney General recommended that a single state agency be clearly established as the politically accountable actor with the power to review, veto and modify board licensure or prohibition actions.

The agency best equipped to assume these duties is the Office of the Attorney General. It is the Office of the Attorney General that has the ultimate responsibility for review of violations of antitrust statutes. It is the Office of the Attorney General that is charged with the responsibility to enjoin and enforce the *Oklahoma Antitrust Reform Act* (79 O.S. §§ 201 et seq.) and the *Oklahoma Consumer Protection Act* (15 O.S. §§ 751 et seq.). The Office of the Attorney General is also the entity that provides legal advice to most boards and agencies. See 74 O.S. § 18c.

Therefore, I hereby order that all non-rulemaking actions proposed by any state board on which, a majority of its members are participants in the same market that the board regulates:

1. All proposed licensure or prohibition actions shall be submitted to the Office of the Attorney General for review and written analysis of possible violation of law;
2. Upon receipt of the written analysis provided by the Office of the Attorney General, the board shall defer to any recommended modification, including rescinding the proposed action; and
3. Failure to follow the written analysis provided by the Office of the Attorney General shall constitute misconduct and shall subject such board member(s) to removal for cause by the appointing authority.

This Executive Order shall be distributed to all members of the Governor's Executive Cabinet and the chief executives of all state agencies, who shall cause the provisions of this Order to be implemented.

IN WITNESS WHEREOF, I have set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 17th day of July, 2015.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA



MARY FALLIN

ATTEST:



Acting Assistant SECRETARY OF STATE